CITY OF ONTARIO

Regular City Council/Housing Authority Meeting
APRIL 2, 2024

City Hall
303 East B Street, Ontario, CA 91764

MAYOR PAUL S. LEON • MAYOR PRO TEM DEBRA DORST-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.

Comments will be limited to 3 minutes. 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 meeting begins with Closed Session and Closed Session Comment at 5:30 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

Dorst-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 a maximum of 3 minutes for each speaker and comments will be 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)(1), CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
City of Ontario v. Inland Empire Utilities Agency, San Bernardino Superior Court Case No. CIVSB 2328325

GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN: 218-111-06; 13115 South Ontario Avenue; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: Huaiqing Ren and Xia Cui, Husband and Wife as Joint Tenants; Under negotiation: Price and terms of payment.

GC 54956.9 (d)(4), CONFERENCE WITH LEGAL COUNSEL, POTENTIAL INITIATION OF LITIGATION: One (1) case.

ATTACHMENT: 20240402 Closed Session

PLEDGE OF ALLEGIANCE

Council Member Wapner

INVOCATION

Pastor Taylor Kern, Ontario United Reformed Church

REPORT ON CLOSED SESSION

City Attorney

PUBLIC COMMENTS 6:30 P.M.

The Public Comment portion of the Council/Housing Authority meeting is limited to 30 minutes with each speaker given a maximum of 3 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 2 minutes.

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1. APPROVAL OF MINUTES

Minutes for the regular meetings of the City Council and Housing Authority of March 5, 2024 and approving same as on file in the Records Management Department.

ATTACHMENT: 20240305 Meeting Minutes (Not Official Until Approved).docx

2. BILLS & PAYROLL

Bills March 1, 2024 through March 14, 2024, and Payroll February 25, 2024 through March 9, 2024.

3. A RESOLUTION ORDERING THE SUMMARY VACATION OF AN EASEMENT FOR PUBLIC STREET PURPOSES LOCATED WITHIN TRACT MAP NO. 18916 AT THE SOUTHWEST CORNER OF ARCHIBALD AVENUE AND CHINO AVENUE

That the City Council adopt a Resolution ordering the summary vacation of an easement for street purposes located within Tract Map No. 18916 at the southwest corner of Archibald Avenue and Chino Avenue.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF AN EASEMENT FOR PUBLIC STREET PURPOSES LOCATED WITHIN TRACT MAP NO. 18916 AT THE SOUTHWEST CORNER OF ARCHIBALD AVENUE AND CHINO AVENUE.

ATTACHMENT: 20240402 Vacation 324^01 EXH 1.pdf
ATTACHMENT: 20240402 Vacation 324^02^RESO^RM
ATTACHMENT: 20240402 Vacation 324^03 RESO EXH A - B.pdf

4. A RESOLUTION ORDERING THE SUMMARY VACATION OF THE RIGHT-OF-WAY AND EASEMENT FOR PUBLIC UTILITY PURPOSES IN EAST EAMES STREET, EAST POLLOCK STREET, SOUTH JACOBSON AVENUE, AND EAST LAUTNER DRIVE AND RECONVEYING ANY OF THE CITY'S INTEREST THEREIN

That the City Council adopt a Resolution ordering the summary vacation of the right-of-way and public utility easements located within Tract Map No. 20134 in East Eames Street, East

Pollock Street, South Jacobson Avenue, and East Lautner Drive near the southwest corner of Mill Creek Avenue and Chino Avenue and reconveying any of the City's interest therein and authorize the City Manager to execute the documents necessary to evidence the vacation and the reconveyance of the City's interest therein.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF THE RIGHT-OF-WAY AND EASEMENT FOR PUBLIC UTILITY PURPOSES IN EAST EAMES STREET, EAST POLLOCK STREET, SOUTH JACOBSON AVENUE, AND EAST LAUTNER DRIVE AND RECONVEYING ANY OF THE CITY'S INTEREST THEREIN.

ATTACHMENT: 20240402 Vacation 315, 318, 320 & 321^01 EXH 1.pdf
ATTACHMENT: 20240402 Vacation 315, 318, 320, 321^02^RESO^RM
ATTACHMENT: 20240402 Vacation 315, 318, 320 & 321^03 EXH A - H.pdf

5. DESIGN SERVICES AGREEMENTS FOR ON-CALL TRANSPORTATION PLANNING AND TRAFFIC ENGINEERING DESIGN SERVICES

That the City Council approve three-year Design Services Agreements with six firms to provide On-Call Transportation Planning and Traffic Engineering Design Services in the amount of $200,000 per year for a three-year total not to exceed $600,000 for each firm; and authorize the City Manager, or his designee, to execute said Agreements and future amendments within the authorization limits.

ATTACHMENT: 02_Contract_Chen Ryan.docx
ATTACHMENT: 02_Contract STC Traffic.docx
ATTACHMENT: 02_Contract Iteris.docx
ATTACHMENT: 02_Contract_ADVANTEC.pdf
ATTACHMENT: 02_Contract_KH.docx
ATTACHMENT: 02_Contract Fehr & Peers.docx

6. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH TELCON SERVICES, LLC FOR THE ONTARIONET BROADBAND INTEGRATION TECHNICAL SERVICE PROJECT

That the City Council approve Amendment No. 1 to the Professional Services Agreement with Telcon Services, LLC of Idaho, for additional broadband design, engineering, project management, and inspection services for the OntarioNet Broadband Integration Technical Service Project and ongoing expansion efforts in the amount of $680,000, plus a contingency in the amount of $180,000, for a revised not-to-exceed total of $2,060,000; and authorize the City Manager, or his designee, to execute said Agreement and future amendments within the authorization limits.

ATTACHMENT: 20240402 Telcon Amendment 1^01^AGR

7. AUTHORIZE THE PURCHASE OF HAZARDOUS MATERIALS RESPONSE TRAINING PROPS WITH ADVANCED ENTERTAINMENT TECHNOLOGY FOR THE ONTARIO FIRE DEPARTMENT HAZMAT TEAM

That the City Council authorize the City Manager or designee to execute the purchase of

Hazardous Materials Response Training Props from Advanced Entertainment Technology, of Monrovia, CA, in the amount of $451,465.

ATTACHMENT: Agreement_with_scope_of_services (1).docx

8. AN AMENDMENT TO THE INTERNET SERVICE ORDER WITH CENTURYLINK COMMUNICATIONS, LLC FOR INTERNET SERVICE UPGRADES

That the City Council approve and authorize the City Manager, or his designee, to execute Amendment No. 1 to the Internet Service Order, with CenturyLink Communications, LLC d/b/a Lumen Technologies Group, of Louisiana, to upgrade internet backhaul bandwidth services from 1Gbps to 10Gbps for the OntarioNet network in the amount of $332,559 plus a 15% contingency of $49,884, for a total not-to-exceed contract amount of $382,443, including expenditures of $35,019 within the current term.

ATTACHMENT: 04022024 Ontario1Gig Existing Services^01^MSA

9. A CHANGE ORDER TO THE CONSTRUCTION AGREEMENT WITH SLS PROPERTY SOLUTIONS, INC. FOR EMERGENCY ON-CALL BOARD UPS AND ABATEMENT

That the City Council authorize Change Order No. 1 to the construction agreement with SLS Property Solutions, Inc. of Santa Ana, CA for emergency on-call board ups and abatements, increasing the not-to-exceed amount to $150,000 per fiscal year and the total not-to-exceed amount to $400,000 for the initial term of the agreement; and authorize the City Manager, or his designee, to execute said Agreement and future change orders within the authorization limits.

ATTACHMENT: SLS Property Solutions - Change Order 1.pdf

10. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH GHD INC. FOR THE DESIGN OF UT1019 WELL 50 TREATMENT FACILITY PROJECT

That the City Council approve and authorize the City Manager or designee to execute Amendment No. 1 to Professional Services Agreement with GHD Inc., of Irvine, California, for professional design services of UT1019 Well No. 50 Treatment Facility Project in the amount of $82,908, plus a 15% contingency of $12,436, for a total amount of $95,344 for a new total not-to-exceed amount of $494,654, and a term from June 7, 2022 to June 6, 2025.

ATTACHMENT: Exhibit A.pdf

ATTACHMENT: 20240402 PSA with GHD Amend No. 1 AGRM^01.pdf

11. A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT WITH DPIF3 CA 36 ONTARIO RANCH, LLC REGARDING COMMUNITY FACILITIES DISTRICT FORMATION FOR ASSESSOR PARCEL NUMBER (LD PARCEL 1) 0218-211-31 AND FEE IN-LIEU

That the City Council consider and:

A. Adopt a Resolution Approving an Agreement regarding Community Facilities District Formation for Assessor Parcel Number (LD Parcel 1) 0218-211-31 and Fee In-Lieu (the "Agreement") between the City of Ontario and DPIF3 CA 36 Ontario Ranch, LLC (the "Developer"); and

B. Authorize the City Manager or his designee to finalize, execute, and record said Agreement.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT REGARDING COMMUNITY FACILITIES DISTRICT FORMATION FOR ASSESSOR PARCEL NUMBER (LD PARCEL 1) 0218-211-31 AND FEE IN-LIEU BETWEEN THE CITY OF ONTARIO AND DPIF3 CA 36 ONTARIO RANCH, LLC.

ATTACHMENT: Approving_In-Lieu_Agreement_w_DPIF3_CA_36_Ontario_Ranch_LLC_RESO_RM.docx
ATTACHMENT: Rich Haven Industrial Services In-Lieu Agreement^02 Agreement Fee in-Lieu

12. AN ORDINANCE APPROVING FILE NO. PUD23-002, A PLANNED UNIT DEVELOPMENT FOR A 1.22-ACRE PARCEL OF LAND LOCATED AT 218 EAST D STREET; SUBMITTED BY EUCLID INVESTMENT GROUP, LLC.

That the City Council consider and adopt an Ordinance Approving File No. PUD23-002, the Downtown Ontario Luxury Apartments (Phase II) Planned Unit Development, establishing development standards and design guidelines to facilitate a multiple-family residential development at 218 East D Street.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PUD23-002, A PLANNED UNIT DEVELOPMENT TO ESTABLISH DEVELOPMENT STANDARDS AND DESIGN GUIDELINES FOR THE PROJECT SITE LOCATED AT 218 EAST D STREET WITHIN THE MU-1 (MIXED USE DOWNTOWN) ZONING DISTRICT AND MAKING FINDINGS IN SUPPORT THEREOF - APNS: 1048-556-01, 1048-556-02, 1048-556-03, 1048-556-04, 1048-556-05, AND 1048-556-14.

ATTACHMENT: PUD23-002 Downtown Lux Apart 02^ORD^RM
ATTACHMENT: File No. PUD23-002 Downtown Lux Apart^03 PUD.docx

13. AN ORDINANCE APPROVING THE WATERMARKE ONTARIO PLANNED UNIT DEVELOPMENT (FILE NO. PUD22-006) ON A 5.81-ACRE PROJECT SITE LOCATED AT THE NORTHEAST CORNER OF MOUNTAIN AVENUE AND FOURTH STREET, SUBMITTED BY JAT LAND DEVELOPMENT

That the City Council consider and adopt an Ordinance approving the Watermarke Ontario Planned Unit Development (File No. PUD22-006).

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PUD22-006, THE WATERMARKE ONTARIO PLANNED UNIT DEVELOPMENT, ESTABLISHING DEVELOPMENT STANDARDS AND DESIGN GUIDELINES FOR A 5.81-ACRE PROJECT SITE LOCATED AT THE NORTHEAST CORNER OF MOUNTAIN AVENUE AND FOURTH STREET, AND MAKING FINDINGS IN SUPPORT THEREOF - APNS: 1008-513-16, 1008-522-01, 1008-522-02, AND 1008-522-03.

ATTACHMENT: PUD22-006 Watermarke Ontario Mixed Use CC A - PUD 04^ORD^RM.docx

ATTACHMENT: File No. PUD22-006 Watermarke Ontario Mixed Use CC^05 Ordinance Attachment A - PUD Doc

STAFF MATTERS

City Manager Ochoa

COUNCIL MATTERS

Mayor Leon
Mayor pro Tem Dorst-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)*
April 2, 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)(1), CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
  City of Ontario v. Inland Empire Utilities Agency, San Bernardino Superior Court Case No. CIVSB 2328325

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

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

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
  Property: APN: 218-111-06; 13115 South Ontario Avenue; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: Huaiqing Ren and Xia Cui, Husband and Wife as Joint Tenants; Under negotiation: Price and terms of payment

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

CITY OF ONTARIO
CLOSED SESSION REPORT
City Council // Housing Authority // Other // *(GC 54957.1)*
April 2, 2024
(Continued)

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

- GC 54956.9 (d)(4), CONFERENCE WITH LEGAL COUNSEL, POTENTIAL INITIATION OF LITIGATION: One (1) case.

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

Reported by:

_____
City Attorney / City Manager / Executive Director

ONTARIO CITY COUNCIL/
ONTARIO HOUSING AUTHORITY
MINUTES
March 5, 2024
(Not Official Until Approved)

JOINT MEETINGS

The regular meetings of the Ontario City Council and the Housing Authority were held on Tuesday, March 5, 2024 at Ontario City Hall, 303 E. B Street Ontario, California.

CALL TO ORDER

Mayor Leon called the joint meetings to order at 6:01 p.m.

ROLL CALL

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

Also present were City Manager / Executive Director Scott Ochoa, Assistant 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 6:03 p.m. for discussion of the following:

GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APNs: 1048-564-03, 1048-564-04,1048-564-05, 1048-564-06; 121-143 North Euclid Avenue; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: LAB-CO LLC; Under negotiation: Price and terms of payment

GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APNs: 1047-543-20, 1047-543-30, 1047-543-31; 315-405 East Fourth Street and 406 East Harvard Place; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: C.C. Graber Co.; 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.

REPORT ON CLOSED SESSION

City Attorney Duran stated there was no reportable action.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor pro Tem Porada.

INVOCATION

Mayor Leon led a moment of silence.

PUBLIC COMMENTS

Assistant City Clerk Isbell announced there were six written public comments:
Harry Gutierrez, regarding parking congestion near Cherry Avenue and C Street.
Marisol Becerra, regarding traffic delinquency on I Street.
Loree Masonis, regarding the ongoing fentanyl crisis and clarification on Measure I.
Arthur & Melinda Delgado, regarding building requirements for their fence project.
Husam Suleiman, regarding transparency in the City of Ontario's investments.

Mayor Leon called upon the first speaker:

Dr. Peter Bloomfield, regarding an open invitation to collaborate with the City of Ontario.
Ezequiel Franco, regarding an open invitation to collaborate with the City of Ontario.
Alejandra Ruiz, regarding an open invitation to collaborate with the City of Ontario.

AGENDA REVIEW/ANNOUNCEMENTS

City Manager Ochoa made no announcements.

CONSENT CALENDAR

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

1. APPROVAL OF MINUTES

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

2. BILLS & PAYROLL

Approved bills February 2, 2024 through February 15, 2024, in the amount of $23,324,860.68, and Payroll January 28, 2024 through February 10, 2024 in the amount of $5,018,735.48.

3. AN AMENDMENT TO THE DESIGN SERVICES AGREEMENT WITH POPULOUS, INC. FOR ADDITONAL MASTER PLANNING SERVICES FOR THE PROPOSED MINOR LEAGUE BASEBALL STADIUM AND PARKING STRUCTURE PROJECT, AND AN AMENDMENT TO THE ON-CALL PROFESSIONAL SERVICES AGREEMENT WITH TILDEN-COIL CONSTRUCTORS, INC. FOR CONSTRUCTION MANAGEMENT MULTI-PRIME SERVICES FOR THE ONTARIO SPORTS COMPLEX PROJECT

The City Council took the following actions:

A. Authorized the City Manager, or his designee, to execute Amendment No. 1 to the Design Services Agreement with Populous, Inc., of Los Angeles, California, to provide additional Master Planning Services for the Proposed Minor League Baseball Stadium and Parking Structure Project in the amount of $2,987,375 for a total not-to-exceed contract amount of $9,775,010; and
B. Authorized the City Manager, or his designee, to execute Amendment No. 2 to the Professional Services Agreement with Tilden-Coil Constructors, Inc., of Riverside, California, to provide Construction Management Multi-Prime Services for the mass grading of the entire 192-acre site, construction management for the o□site infrastructure construction, and the additional scope added to the Proposed Minor League Baseball Stadium and Parking Structure in the amount of $14,813,944 for a new not-to-exceed contract amount of $18,352,944 and to extend the contract term until October 27, 2027.

4. FISCAL YEAR 2023-24 MID-YEAR BUDGET UPDATE REPORT

The City Council approved the budget adjustments and recommendations as presented in the Fiscal Year 2023-24 Mid-Year Budget Update Report.

5. A SERVICE AND SOFTWARE LICENSING AGREEMENT WITH ACCELA, INC. TO UPGRADE THE CITY'S LAND MANAGEMENT SOFTWARE SYSTEM

The City Council authorized the City Manager, or his designee, to execute an Agreement with Accela, Inc., of San Ramon, California, to upgrade the City's land management software system, in an amount not-to-exceed $3,041,548.

6. AMENDMENTS TO THE PROFESSIONAL SERVICE AGREEMENT WITH TRANSTECH ENGINEERS, INC. FOR ON-CALL PROJECT MANAGEMENT SERVICES

The City Council took the following actions:

A. Authorized the City Manager, or his designee, to execute Amendment No. 2 to the Professional Services Agreement with Transtech Engineers, Inc. (Transtech), of Chino, California, for on-call Project Management Services for the Concession Stand Remodel at Latimer Field in an amount of $7,040 for a total not-to-exceed contract amount of $1,146,000; and
B. Authorized the City Manager or his designee to execute Amendment No. 3 to the Professional Services Agreement with Transtech, of Chino, California, for on-call Project Management Services in an amount of $150,000 for a total not-to-exceed contract amount of $1,296,000.

7. A PROFESSIONAL SERVICES AGREEMENT WITH WITT O'BRIEN'S, LLC FOR A CONTINUITY OF OPERATIONS PLAN

The City Council authorized the City Manager, or his designee, to execute a Professional Services Agreement with Witt O'Brien's, LLC, for consulting services in the creation of a citywide Continuity of Operations Plan, inclusive of the Continuity of Government and Disaster Recovery plans for a not-to-exceed contract amount of $211,900.

8. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH STETSON ENGINEERING INC. FOR THE EVALUATION OF AN ADVANCED WASTEWATER PURIFICATION FACILITY ALTERNATIVE SUPPLY PROGRAM PROJECT

The City Council authorized the City Manager, or designee to execute Amendment No. 1 to the Professional Services Agreement with Stetson Engineering Inc., of Covina, California, for the Evaluation of an Advanced Wastewater Purification Facility Alternative Supply Program Project for $150,000, for a new total not-to-exceed contract amount of $336,148 and a term from July 19, 2022 to January 1, 2025.

9. A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 20449 LOCATED AT THE SOUTHEAST CORNER OF HAVEN AVENUE AND ONTARIO RANCH ROAD

The City Council adopted a Resolution approving an Improvement Agreement, Improvement Security and Final Tract Map No. 20449 located at the southeast corner of Haven Avenue and Ontario Ranch Road.

RESOLUTION NO. 2024-006 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 20449 LOCATED AT THE SOUTHEAST CORNER OF HAVEN AVENUE AND ONTARIO RANCH ROAD.

10. A CONSTRUCTION CONTRACT WITH MAMCO INC., A PROFESSIONAL SERVICES AGREEMENT WITH STANTEC CONSULTING SERVICE INC., AND AMENDMENTS TO THE PROFESSIONAL SERVICES AGREEMENTS WITH ANSER ADVISORY MANAGEMENT LLC AND KLEINFELDER INC., FOR THE ARCHIBALD SEWER DIVERSION PROJECT

The City Council took the following actions:

A. Approved the plans and specifications and awarded Contract No. UT1016 to Mamco Inc., of Perris, California, for the construction of the Archibald Sewer Diversion Project, in the amount of $3,666,666 plus a 15% contingency of $550,000, for a total not-to-exceed amount of $4,216,666, a term of 200 calendar days after issuance of notice to proceed; and authorize the City Manager, or his designee, to execute said contract and file a notice of completion at the conclusion of all construction activities related to the project.
B. Authorized the City Manager, or his designee, to execute a Professional Services Agreement with Stantec Consulting Services Inc., of Irvine, California, for a total not-to- exceed amount of $129,000 for construction engineering services and a term from March 5, 2024 to March 31, 2026.
C. Authorized the City Manager, or his designee, to execute Amendment No. 10 to the Professional Services Agreement with ANSER Advisory Management LLC DBA Wallace and Associates Consulting Inc., of Santa Ana, California, to amend the Agreement amount by $137,660 for a new total not-to-exceed amount of $2,172,433 for construction management and inspection services and a term from March 5, 2024 to October 1, 2024.
D. Authorized the City Manager, or his designee, to execute Amendment No. 5 to the Professional Services Agreement with Kleinfelder Inc., of Ontario, California, to amend the Agreement amount by $87,951 for a new total not-to-exceed amount of $1,016,486 for geotechnical and material testing services and a term from March 5, 2024 to June 30, 2025.

11. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CERTAIN SECTIONS OF CHAPTER 13 OF THE ONTARIO MUNICIPAL CODE RELATING TO THE FLOOD DAMAGE PREVENTION PROGRAM

The City Council adopted an Ordinance amending certain sections of Chapter 13 of the Ontario Municipal Code relating to the City's flood damage prevention program.

ORDINANCE NO. 3271 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CERTAIN SECTIONS OF CHAPTER 13 OF THE ONTARIO MUNICIPAL CODE RELATING TO THE FLOOD DAMAGE PREVENTION PROGRAM.

12. A GRANT APPLICATION FROM OMNITRANS MEASURE I FOR THE ONTARIO SILVER S.T.A.R.S. PROGRAM

The City Council authorized the City Manager, or his designee, to execute all documents necessary to apply for and accept a 2-year grant in the amount of $1,519,198 from Omnitrans Measure I for the Ontario Silver S.T.A.R.S. Program

STAFF MATTERS:

City Manager Ochoa made no announcements.

COUNCIL MATTERS:

Mayor pro Tem Porada invited the community to the Ontario Heritage's March 15th golf tournament and to visit the Emporia Arts District third Saturday Artwalk event.

Mayor Leon asked the Council for consent to adjourn the meeting in memory of Tom Liegler.

All members of the Council agreed to Mayor Leon's request.

ADJOURNMENT:

Mayor Leon adjourned the meetings of the Joint Agencies at 6:43 p.m. in memory of Tom Liegler. Mayor Leon announced the next regular meeting was scheduled for March 19, 2024.

Respectfully submitted,

_____
SHEILA MAUTZ, CITY CLERK/SECRETARY

APPROVED:

_____
PAUL S. LEON, MAYOR

CITY OF ONTARIO *Agenda Report* **April 2, 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 PURPOSES LOCATED WITHIN TRACT MAP NO. 18916 AT THE SOUTHWEST CORNER OF ARCHIBALD AVENUE AND CHINO AVENUE**

RECOMMENDATION: That the City Council adopt a Resolution ordering the summary vacation of an easement for street purposes located within Tract Map No. 18916 at the southwest corner of Archibald Avenue and Chino 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. 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, KB Home, has requested that the City vacate an existing easement for street purposes, as shown on Exhibit 1, to facilitate the development of the area. The easement is not needed for any present or future street purposes. There are currently no existing public utilities within the easement and the easement is determined to be excess.

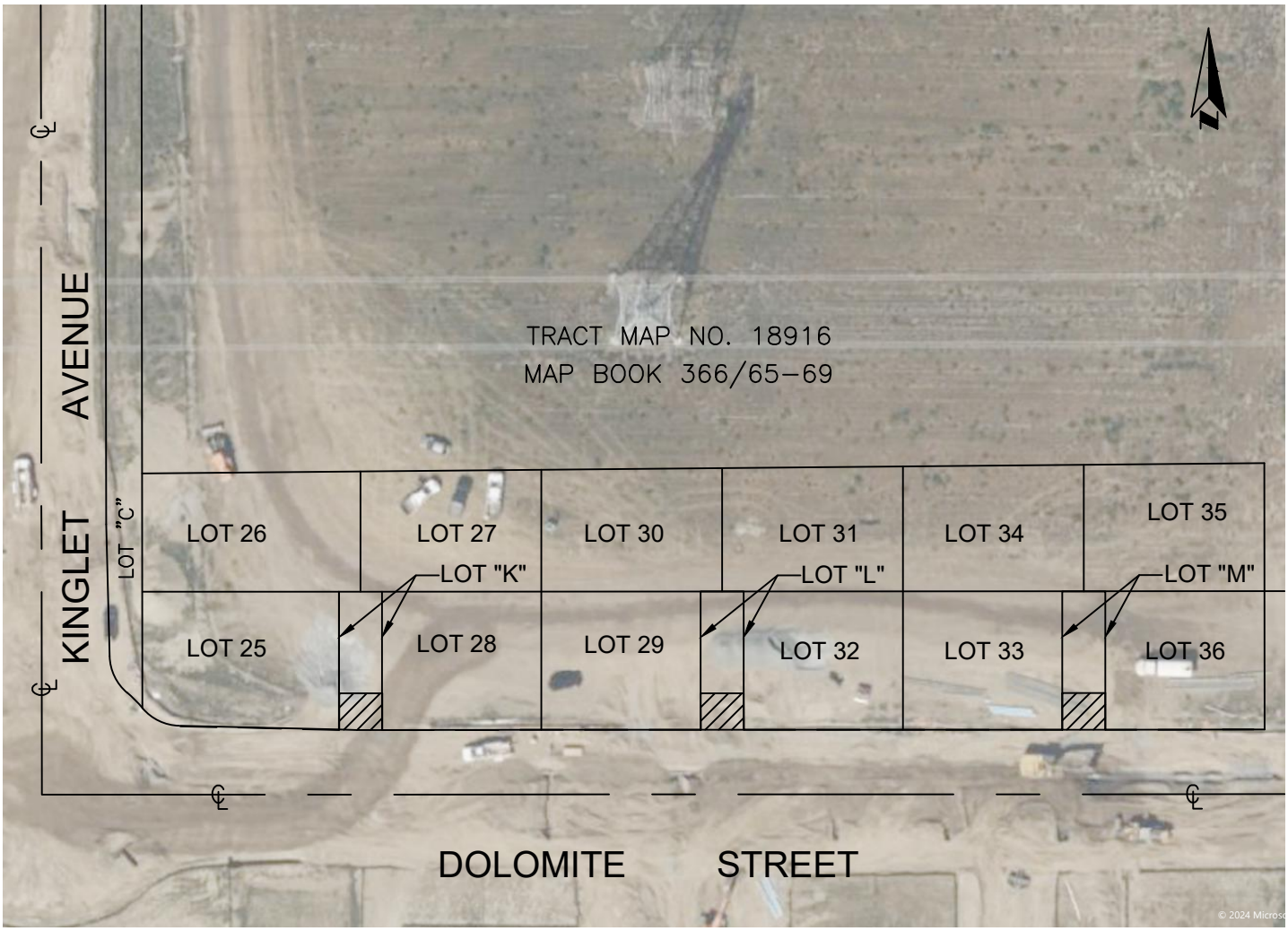
Section 8334(a) of the California Streets and Highways Code authorizes the City to summarily vacate (by Resolution with no public hearing) an excess right-of-way of a street or highway not required for street or highway purposes.

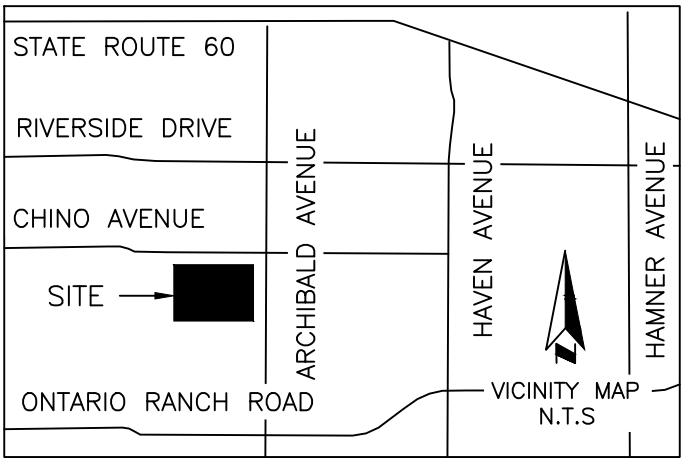
This summary vacation meets the California Government Code, Streets and Highways Code, Ontario Municipal Code, and has been reviewed and approved by the City Engineer.

0' 40' 80'
SCALE: 1"=80'

EXHIBIT 1

PUBLIC EASEMENT VACATION





LEGEND

AREA TO BE VACATED - 1,017 SQUARE FEET

KDM MERIDIAN, INC. - 1340 REYNOLDS AVE., STE. 110 - IRVINE, CA. 92614 - PH. (949)768-0731 | KDMM JOB NO. 22-HAR-49

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF AN EASEMENT FOR PUBLIC STREET PURPOSES LOCATED WITHIN TRACT MAP NO. 18916 AT THE SOUTHWEST CORNER OF ARCHIBALD AVENUE AND CHINO 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 purposes located within Tract Map No. 18916, shown on a portion of the land described in Easement Deed of Right-of-Way Dedication recorded February 15, 2023 as Document No. 2023-0035993, of Official Records in the Office of the County Recorder of San Bernardino County, lying within Lots 25, "K", 28, 29, "L", 32",33, "M", and 36 as shown on Tract Map No. 18916 recorded November 2, 2023 in Book 366 Pages 65 through 69, inclusive, of Maps in the Office of said County Recorder, is not needed for any present or future street or public utility or other municipal purposes and is determined to be excess;

WHEREAS, an easement for public utility purposes within above described portions of land will be reserved; and

WHEREAS, 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;

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 2nd day of April, 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 April 2, 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 April 2, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT "A"

LEGAL DESCRIPTION

IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, THOSE PORTIONS OF THE LAND DESCRIBED IN EASEMENT DEED OF RIGHT-OF-WAY DEDICATION RECORDED FEBRUARY 15, 2023 AS DOCUMENT NO. 2023-0035993, OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING WITHIN LOTS 25, "K", 28, 29, "L", 32",33, "M", AND 36 AS SHOWN ON TRACT MAP NO. 18916 RECORDED NOVEMBER 2, 2023 IN BOOK 366 PAGES 65 THROUGH 69, INCLUSIVE, OF MAPS IN THE OFFICE OF SAID COUNTY RECORDER.

RESERVING THEREFROM UNTO THE CITY OF ONTARIO EASEMENTS FOR PUBLIC UTILITIES LYING WITHIN SAID PORTIONS OF LAND.

THE ABOVE DESCRIBED PORTIONS OF LAND CONTAIN 1,017 SQUARE FEET (0.024 ACRES), MORE OR LESS.

ALL AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND MADE A PART THEREOF.

THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYOR'S ACT.

Richard C Maher 2/20/24

RICHARD C. MAHER, PLS 7564 (CA) DATE

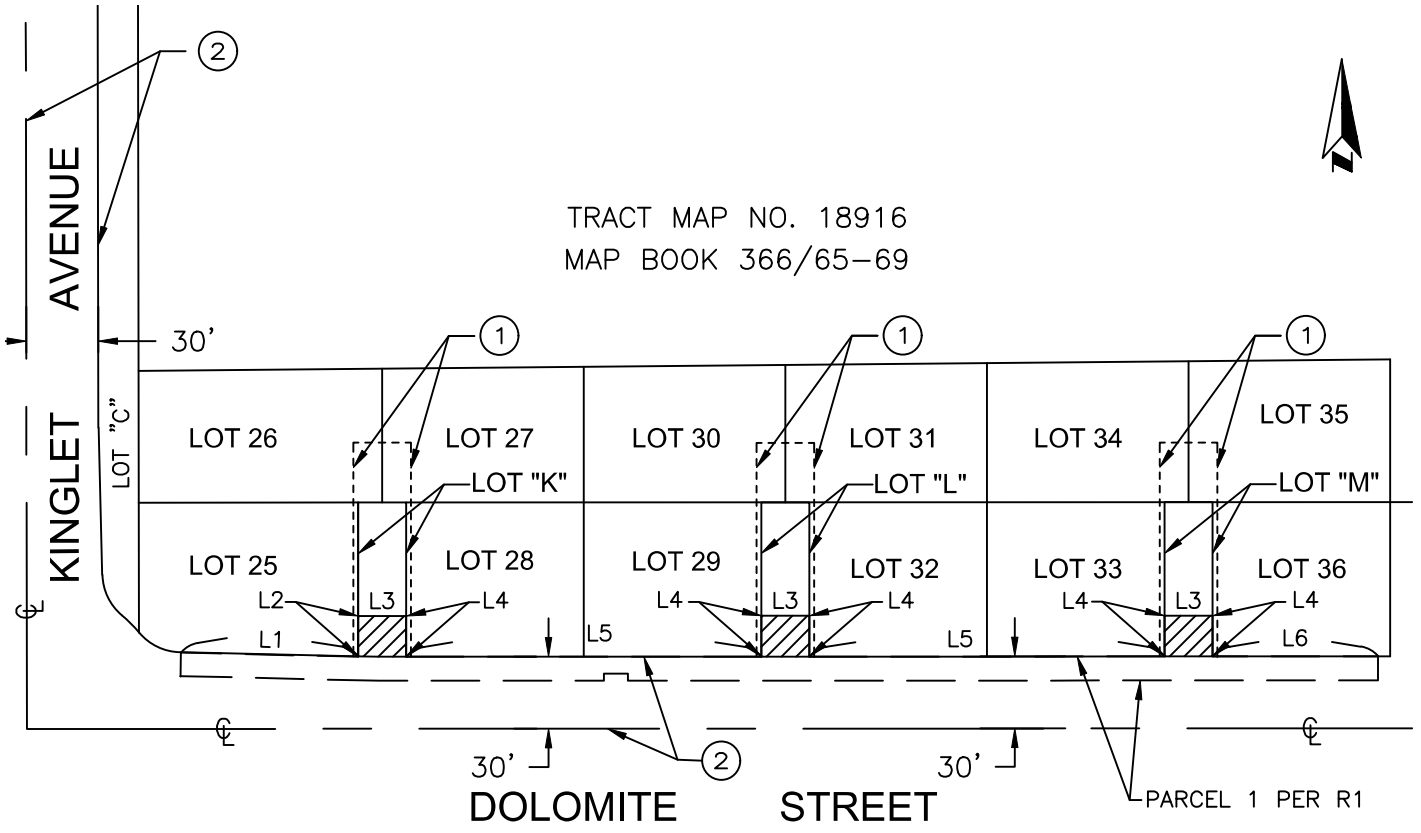
THIS DOCUMENT IS PRELIMINARY UNLESS SIGNED



0' 40' 80'
SCALE: 1"=80'

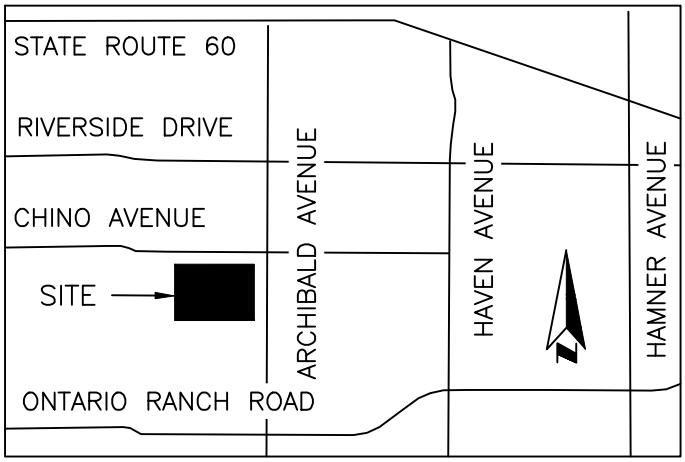
EXHIBIT "B"

PLAT TO ACCOMPANY LEGAL DESCRIPTION



LINE TABLE		
LINE	DISTANCE	BEARING
L1	73.91'	S88°37'58"E
L2	16.79'	N0°01'22"W
L3	20.00'	N89°58'38"E
L4	17.00'	S0°01'22"E
L5	148.00'	N89°58'38"E
L6	68.93'	N89°58'38"E

NOTE:
DIMENSIONS ARE RECORD PER R1.



VICINITY MAP
N.T.S

LEGEND

AREA OF DESCRIPTION - 1,017 SQUARE FEET

(1) EASEMENT FOR PUBLIC UTILITY & EMERGENCY ACCESS IN FAVOR OF THE CITY OF ONTARIO PER R2

(2) EASEMENT FOR STREET AND PUBLIC UTILITY PURPOSES DEDICATED TO THE CITY OF ONTARIO PER R2

R1 DOCUMENT NO. 2023-0035993 OFFICIAL RECORDS.

R2 TRACT MAP NO. 18916, MAP BOOK 366 PAGES 65-69.

Richard C Maher 2/20/24

RICHARD C. MAHER, P.L.S. 7564 (CA) DATE
THIS DOCUMENT IS PRELIMINARY UNLESS SIGNED

LICENSED LAND SURVEYOR
RICHARD C. MAHER
NO. 7564
STATE OF CALIFORNIA

CITY OF ONTARIO *Agenda Report* **April 2, 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: 4

SUBJECT: **A RESOLUTION ORDERING THE SUMMARY VACATION OF THE RIGHT-OF-WAY AND EASEMENT FOR PUBLIC UTILITY PURPOSES IN EAST EAMES STREET, EAST POLLOCK STREET, SOUTH JACOBSON AVENUE, AND EAST LAUTNER DRIVE AND RECONVEYING ANY OF THE CITY'S INTEREST THEREIN**

RECOMMENDATION: That the City Council adopt a Resolution ordering the summary vacation of the right-of-way and public utility easements located within Tract Map No. 20134 in East Eames Street, East Pollock Street, South Jacobson Avenue, and East Lautner Drive near the southwest corner of Mill Creek Avenue and Chino Avenue and reconveying any of the City's interest therein and authorize the City Manager to execute the documents necessary to evidence the vacation and the reconveyance of the City's interest therein.

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. The City did not pay to acquire the subject easements. The Developers have paid the applicable processing fees to defray any City cost to process this request.

BACKGROUND & ANALYSIS: The Developers, Richland Communities and Landsea Homes, have offered certain portions of East Eames Street, East Pollock Street, South Jacobson Avenue, and East Lautner Drive for street right-of-way dedication in fee simple and for public utility purposes, as one of the requirements for the development of Tract Map No. 20134 within the Rich Haven Specific Plan.

Due to a Specific Plan Amendment changing the land use from residential to industrial, the aforementioned streets will not be needed for any present or future street and/or public utility

purposes. The Developers have requested that the City vacate the existing right-of-way and easements, as shown on Exhibit 1, and reconvey the vacated portion to the Developers. There are currently no existing public utilities within those streets and easements and the easements are determined to be excess.

Section 66477.5(c) of the California Government Code requires the City to reconvey the subject property in interest to the subdivider if the dedication was made in fee simple and the City has determined that the same public purpose for which the dedication was required no longer exists. Since the Developer offered the right-of-way in fee simple, and the right-of-way and easements are no longer required, the City will reconvey the property to the Developer.

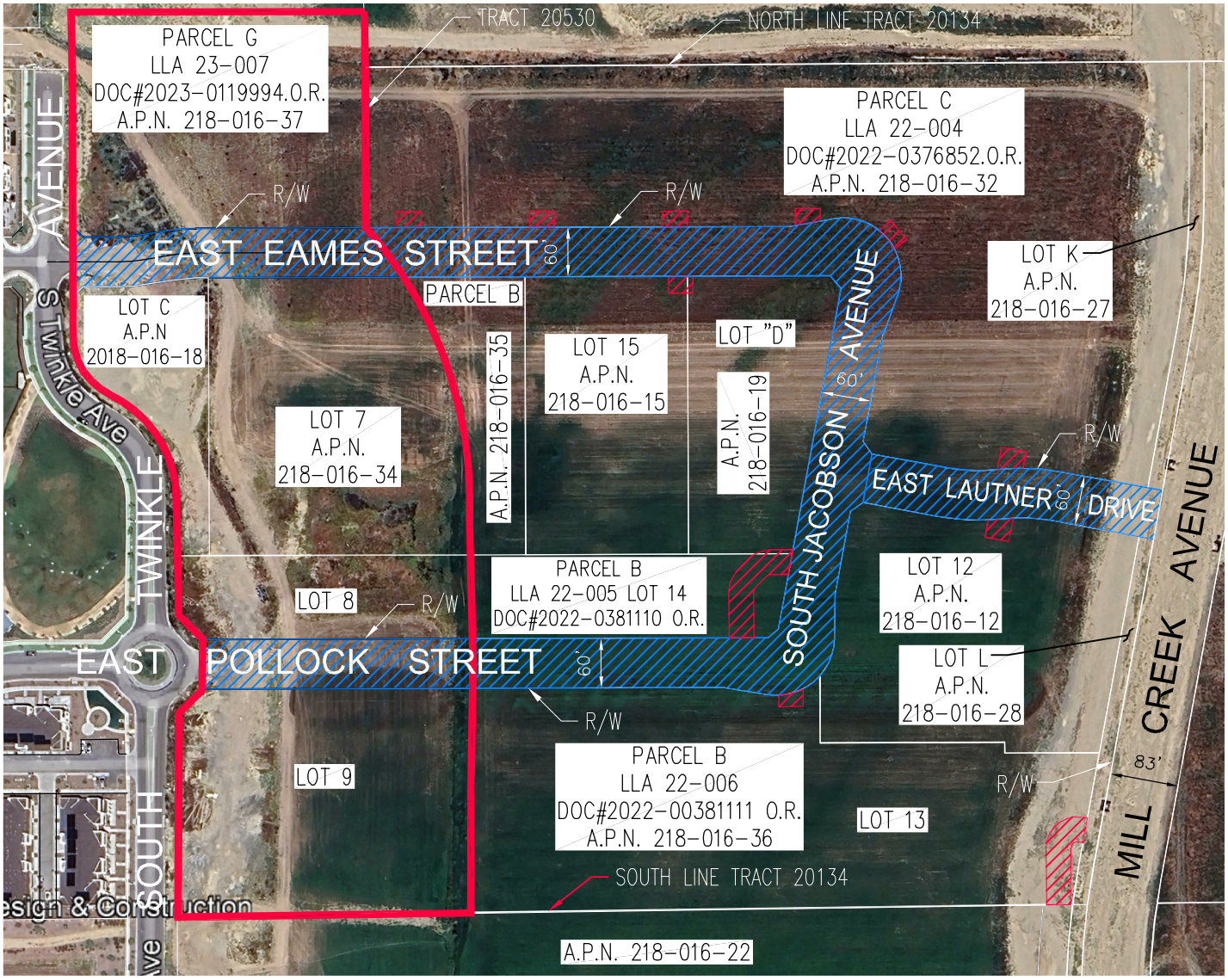
Section 8334(a) of the California Streets and Highways Code authorizes the City to summarily vacate (by Resolution with no public hearing) right-of-way or highway determined to be excess and not required.

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 public facilities 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.

EXHIBIT 1

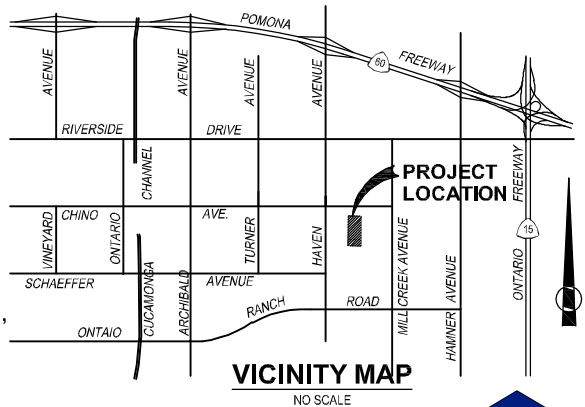
VACATION NO. V–315, NO. V–318, NO. V–320, & NO. V–321



LEGEND

INDICATES RIGHT OF WAY AS DEDICATED IN FEE SIMPLE AND SHOWN ON TRACT NO. 20134 FILED UNDER DOCUMENT NO. 2020-0445112, NOVEMBER 10, 2020 IN BOOK 357 OF TRACT MAPS AT PAGES 23 THROUGH 33 TO BE VACATED

INDICATES VARIOUS EASEMENTS FOR PUBLIC UTILITY, WATER, SEWER, FIBER OPTIC, EMERGENCY ACCESS AND SOLID WASTE COLLECTION PURPOSES, SHOWN AS #6 PER MB 357 / PG 23 - 33 TO BE VACATED



VICINITY MAP
NO SCALE

A PORTION OF TRACT 20134, CITY OF ONTARIO

LDKING
Engineers/Surveyors
975 N. Haven Avenue
Suite 200
Ontario, California 91764
Phone: (909) 945-0526

NORTH

0' 200' 400'

E:\600–699\689–Landsea\0689–013 Neuhouse 2\Maps\Vacation Docs\Council Exhibit 1.dwg, Plotted: Mar 12, 2024 – 3:34pm
JN: 481190 Lewis Operating Corp

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF THE RIGHT-OF-WAY AND EASEMENT FOR PUBLIC UTILITY PURPOSES IN EAST EAMES STREET, EAST POLLOCK STREET, SOUTH JACOBSON AVENUE, AND EAST LAUTNER DRIVE AND RECONVEYING ANY OF THE CITY'S INTEREST THEREIN

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 streets and easements under certain conditions specified therein; and

WHEREAS, right-of-way and easement for public utility purposes shown on Tract Map No. 20134, recorded November 10, 2020 as Document No. 2020-0445112, of Official Records of the County Recorder of San Bernardino County, State of California, as per map recorded in Book 357, Pages 23 through 33 of Tract Maps Official Records of Said County, is not needed for any present or future public utility or other municipal purposes and is determined to be excess after a Specific Plan Amendment changed the land use; and

WHEREAS, Section 66477.5(c) of the California Government Code requires the City to reconvey the subject property in interest to the subdivider if the dedication was made in fee simple and the City has determined that the same public purpose for which the dedication was required no longer exists; and

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

WHEREAS, Section 8333(c) of the California Streets and Highways Code authorizes the City to summarily vacate 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 Exhibits “A,” “C,” “E,” and “G” and depicted on Exhibits “B,” “D,” “F,” and “H” 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 2nd day of April 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 April 2, 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 April 2, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT "A"

LEGAL DESCRIPTION

VACATION

V- 320

THAT PORTION OF EAST POLLOCK STREET, TRACT 20134, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN ON MAP FILED IN BOOK 357, PAGES 23 THROUGH 33 OF MAPS, IN THE OFFICE OF THE RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 8 OF SAID TRACT MAP NO. 20134, SAID POINT ALSO BEING ON THE NORTHERLY RIGHT OF WAY LINE OF EAST POLLOCK STREET:

THENCE NORTH 89° 48' 24" EAST ALONG SAID NORTHERLY RIGHT OF WAY OF EAST POLLOCK STREET A DISTANCE OF 325.76 FEET;

THENCE SOUTH 00° 11' 36" EAST, PERPENDICULAR TO SAID NORTHERLY RIGHT OF WAY OF EAST POLLOCK STREET 60.00 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF SAID EAST POLLOCK STREET, SAID POINT ALSO BEING ON THE NORTHERLY LINE OF LOT 9 OF SAID TRACT NO. 20134;

THENCE SOUTH 89° 48' 24" WEST ALONG SAID SOUTHERLY RIGHT OF WAY LINE OF EAST POLLOCK STREET, 325.76 FEET TO THE NORTHWEST CORNER OF SAID LOT 9;

THENCE NORTH 00° 11' 36" WEST, 60.00 FEET TO SAID SOUTHWEST CORNER OF LOT 8, SAID POINT ALSO BEING **THE POINT OF BEGINNING**.

CONTAINING AN AREA OF 19,546 SQUARE FEET MORE OR LESS

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

SUBJECT TO COVENANTS, CONDITIONS, RESERVATIONS, RESTRICTIONS, EASEMENT RIGHTS AND RIGHT OF WAY OF RECORD, IF ANY.



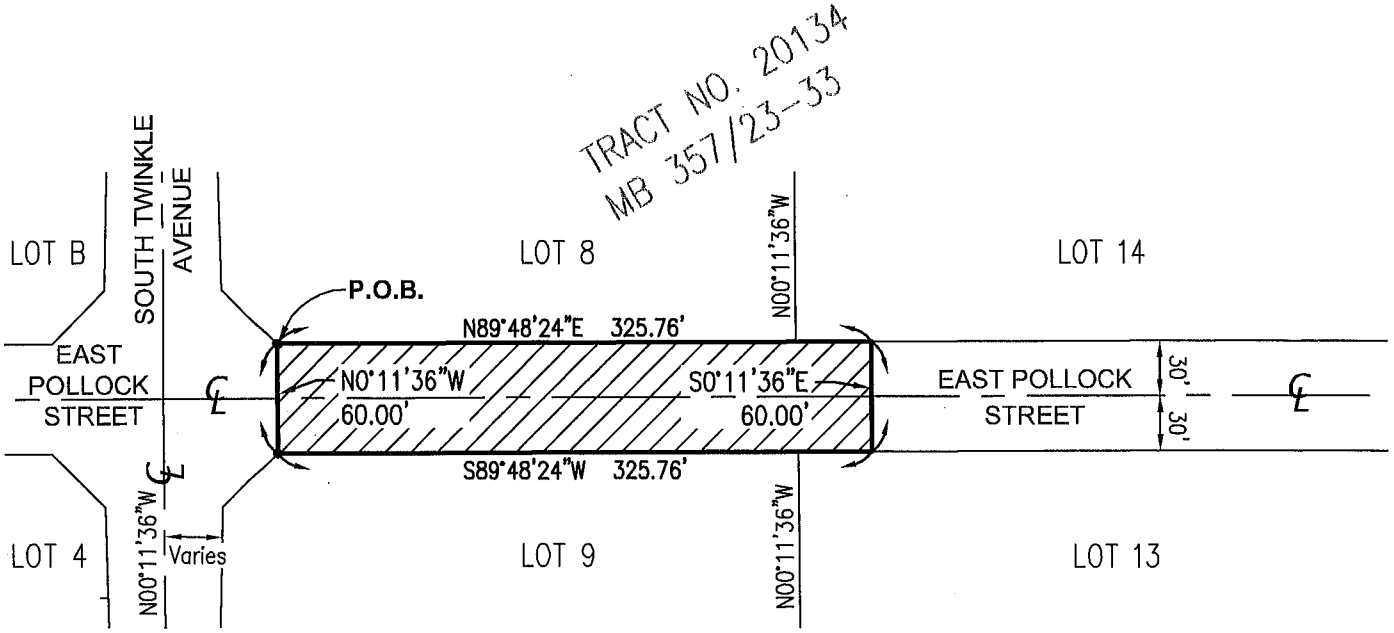
February 8, 2024

MICHAEL A. BAINE, LS 7326 DATE

SHEET 1 OF 1

EXHIBIT "B"

VACATION
V-320
(PLAT)



BASIS OF BEARINGS

THE BEARING OF N00°11'36"W FOR THE CERNTERLINE OF SOUTH TWINKLE AVENUE PER TRACT NO. 20134, M.B. 357, PAGES 23-33, WAS USED AS THE BASIS OF BEARINGS FOR THIS PLAT.

NOTE:

THIS PLAT IS BASED ON RECORD DATA PER TRACT NO. 20134, M.B. 357, PAGES 23-33,

SCALE: 1" = 100'

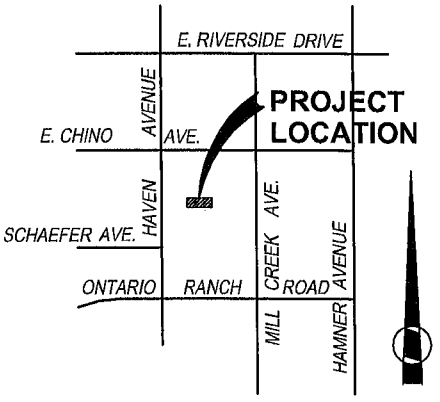
LEGEND

P.O.B.	POINT OF BEGINNING
M.B	MAP BOOK
℄	CENTERLINE
—·—	CENTERLINE
———	RIGHT OF WAY LINE
▬▬	VACATION LINE
AVE.	AVENUE

LEGEND

▨ = INDICATES AREA FOR PUBLIC STREET AND UTILITY PURPOSES TO BE VACATED 19,546 SQUARE FEET

PROFESSIONAL LAND SURVEYOR
MICHAEL A. BAINE
LS 7326
STATE OF CALIFORNIA



VICINITY MAP
NTS

LDKING
Engineers / Surveyors
975 N HAVEN AVENUE
Suite 200
ONTARIO CA 91764
Phone: (909) 945-0526

SKETCH TO ACCOMPANY LEGAL DESCRIPTION

EXHIBIT "C"

(LEGAL DESCRIPTION)

VACATION

V- 321

THAT PORTION OF EAST EAMES STREET, TRACT 20134, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN ON MAP FILED IN BOOK 357, PAGES 23 THROUGH 33 OF MAPS, IN THE OFFICE OF THE RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOW:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 6 OF SAID TRACT MAP NO. 20134, SAID POINT ALSO BEING ON THE NORTHERLY RIGHT OF WAY LINE OF EAST EAMES STREET:

THENCE NORTH 89° 48' 24" EAST ALONG SAID NORTHERLY RIGHT OF WAY OF EAST EAMES STREET A DISTANCE OF 42.50 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 170.00 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 9° 09' 59" AN ARC DISTANCE OF 27.20 FEET;

THENCE NORTH 80° 38' 25" EAST ALONG SAID NORTHERLY RIGHT OF WAY OF EAST EAMES STREET, 30.71 FEET TO THE BEGINNING A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 230.00 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE 9° 09' 59" AN ARC DISTANCE OF 36.80 FEET;

THENCE NORTH 89° 48' 24" EAST ALONG SAID NORTHERLY RIGHT OF WAY LINE OF EAST EAMES STREET, 206.17 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 495.00 FEET, A RADIAL LINE THROUGH SAID POINT BEARS NORTH 48° 23' 00" EAST;

THENCE SOUTHEASTERLY ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE 08° 42' 44", AN ARC DISTANCE OF 75.27 FEET TO THE SOUTHERLY RIGHT OF WAY OF EAST EAMES STREET;

THENCE ALONG THE SAID SOUTHERLY RIGHT OF WAY LINE OF EAST EAMES STREET SOUTH 89° 48' 24" WEST, 251.50 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 170.00 FEET;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE 9° 09' 59" AN ARC DISTANCE OF 27.20 FEET;

THENCE SOUTH 80° 38' 25" WEST ALONG SAID SOUTHERLY RIGHT OF WAY OF EAST EAMES STREET, 30.71 FEET TO THE BEGINNING A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 230.00 FEET;

EXHIBIT "C"

(LEGAL DESCRIPTION)

VACATION

V- 321

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE 9° 09' 59" AN ARC DISTANCE OF 36.80 FEET;

THENCE SOUTH 89° 48' 24" WEST ALONG SAID SOUTHERLY RIGHT OF WAY OF EAST EAMES STREET, 42.50 FEET TO THE NORTHWEST CORNER OF LOT C OF SAID TRACT MAP NO. 20134;

THENCE SOUTH 44° 48' 24" WEST, 18.38 FEET TO THE EASTERLY RIGHT OF WAY LINE OF SOUTH TWINKLE AVENUE;

THENCE NORTH 00° 11' 36" WEST, 86.00 FEET;

THENCE SOUTH 45° 11' 36" EAST, 18.38 FEET TO SAID SOUTHWEST CORNER OF LOT 6 AND **THE POINT OF BEGINNING**.

CONTAINING AN AREA OF 22,983 SQUARE FEET MORE OR LESS

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

SUBJECT TO COVENANTS, CONDITIONS, RESERVATIONS, RESTRICTIONS, EASEMENT RIGHTS AND RIGHT OF WAY OF RECORD, IF ANY.



February 8, 2024

MICHAEL A. BAINE, LS 7326 DATE

SHEET 2 OF 2

BASIS OF BEARINGS

THE BEARING OF N00°11'36"W FOR THE CERNTERLINE OF SOUTH TWINKLE AVENUE PER TRACT NO. 20134, M.B. 357, PAGES 23-33, WAS USED AS THE BASIS OF BEARINGS FOR THIS PLAT.

NOTE:

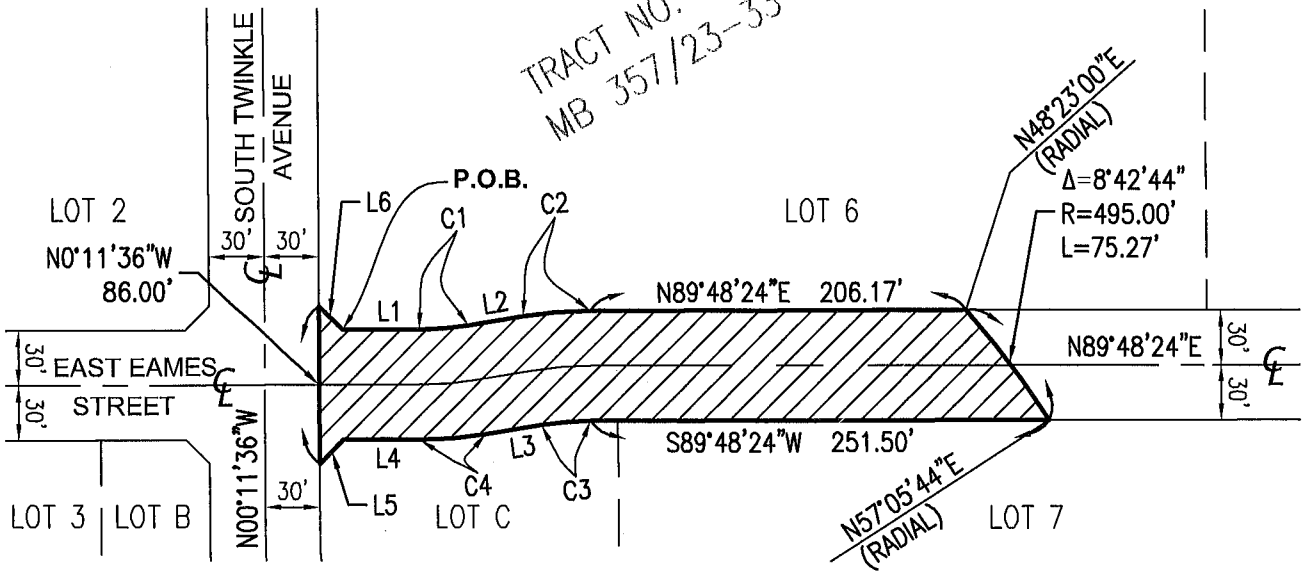
THIS PLAT IS BASED ON RECORD DATA PER TRACT NO. 20134, M.B. 357, PAGES 23-33,

EXHIBIT "D"

VACATION
V-321
(PLAT)

LEGEND

P.O.B.	POINT OF BEGINNING
M.B	MAP BOOK
℄	CENTERLINE
	CENTERLINE
	RIGHT OF WAY LINE
	VACATION LINE
AVE.	AVENUE



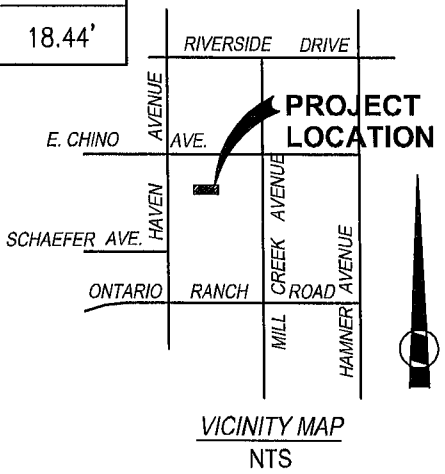
LINE TABLE

LINE #	LENGTH	BEARING
L1	42.50'	N89°48'24"E
L2	30.71'	N80°38'25"E
L3	30.71'	S80°38'25"W
L4	42.50'	S89°48'24"W
L5	18.38'	S44°48'24"W
L6	18.38'	S45°11'36"E

CURVE TABLE

CURVE #	RADIUS	DELTA	LENGTH	TANGENT
C1	170.00'	9°09'59"	27.20'	13.63'
C2	230.00'	9°09'59"	36.80'	18.44'
C3	170.00'	9°09'59"	27.20'	13.63'
C4	230.00'	9°09'59"	36.80'	18.44'

SCALE: 1" = 100'



VICINITY MAP
NTS

LEGEND

= INDICATES AREA FOR PUBLIC STREET AND UTILITY PURPOSES TO BE VACATED 22,983 SQUARE FEET

PROFESSIONAL LAND SURVEYOR
MICHAEL A. BAINE
LS 7326
STATE OF CALIFORNIA

LDKING
Engineers / Surveyors
975 N HAVEN AVENUE
Suite 200
ONTARIO CA 91764
Phone: (909) 945-0526

SKETCH TO ACCOMPANY LEGAL DESCRIPTION

EXHIBIT "E"
VACATION NO. V-315
LEGAL DESCRIPTION

IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

BEING ALL OF SOUTH JACOBSON AVENUE AND ALL OF EAST LAUTNER DRIVE TOGETHER WITH A PORTION OF EAST EAMES STREET AND EAST POLLOCK STREET, AS DEDICATED IN FEE SIMPLE AND SHOWN ON TRACT MAP NO. 20134 FILED UNDER DOCUMENT NO. 2020-0445112, NOVEMBER 10, 2020 IN BOOK 357 OF TRACT MAPS AT PAGES 23 THROUGH 33, INCLUSIVE, RECORDS OF THE COUNTY RECORDER OF SAN BERNARDINO COUNTY, CALIFORNIA, LYING EASTERLY OF A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF PARCEL B OF LOT LINE ADJUSTMENT NO. LLA22-006, IN THE CITY OF ONTARIO, DESCRIBED IN A DOCUMENT RECORDED NOVEMBER 22, 2022, AS DOCUMENT # 2022-0381111, IN OFFICIAL RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA, SAID POINT ALSO BEING ON THE SOUTHERLY LINE OF EAST POLLOCK STREET;

THENCE, ALONG THE NORTHERLY PROLONGATION OF THE WESTERLY LINE OF SAID PARCEL B, NORTH 0°11'36" WEST, 60.00 FEET TO THE NORTHERLY LINE OF EAST POLLOCK STREET, AND THE SOUTHWESTERLY CORNER OF PARCEL B OF LOT LINE ADJUSTMENT NO. LLA22-005, IN THE CITY OF ONTARIO, DESCRIBED IN A DOCUMENT RECORDED NOVEMBER 22, 2022 AS DOCUMENT # 2022-0381110, IN OFFICIAL RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA;

THENCE, ALONG THE WESTERLY LINE OF LAST MENTIONED, PARCEL B OF LLA22-005, NORTH 0°11'36" WEST, 37.12 FEET;

THENCE, CONTINUING ALONG SAID WESTERLY LINE, NORTH 1°28'44" WEST, 98.42 FEET;

THENCE, CONTINUING ALONG SAID WESTERLY LINE, NORTH 0°11'36" WEST, 34.49 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 495.00 FEET;

THENCE, CONTINUING ALONG SAID WESTERLY LINE, AND NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 32°42'40", AN ARC LENGTH OF 282.60 FEET TO THE SOUTHERLY LINE OF EAST EAMES STREET, SAID POINT ALSO BEING THE NORTHWEST CORNER OF PARCEL B OF SAID LLA22-005;

THENCE, CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08°42'44" AN ARC LENGTH OF 75.27 FEET TO THE NORTHERLY LINE OF EAST EAMES STREET AND TO THE SOUTHEAST CORNER OF PARCEL G OF LOT LINE ADJUSTMENT NO. LLA23-007, IN THE CITY OF ONTARIO, DESCRIBED IN A DOCUMENT RECORDED MAY 17, 2023 AS DOCUMENT # 2023-0119994, IN OFFICIAL RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA, AND THE **TERMINATION** OF THIS DESCRIPTION.

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

AS SHOWN ON EXHIBIT "B," ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED BY ME OR UNDER MY DIRECTION

02/01/2024

GERALD R. ANDERSON, LS 4400 DATE:



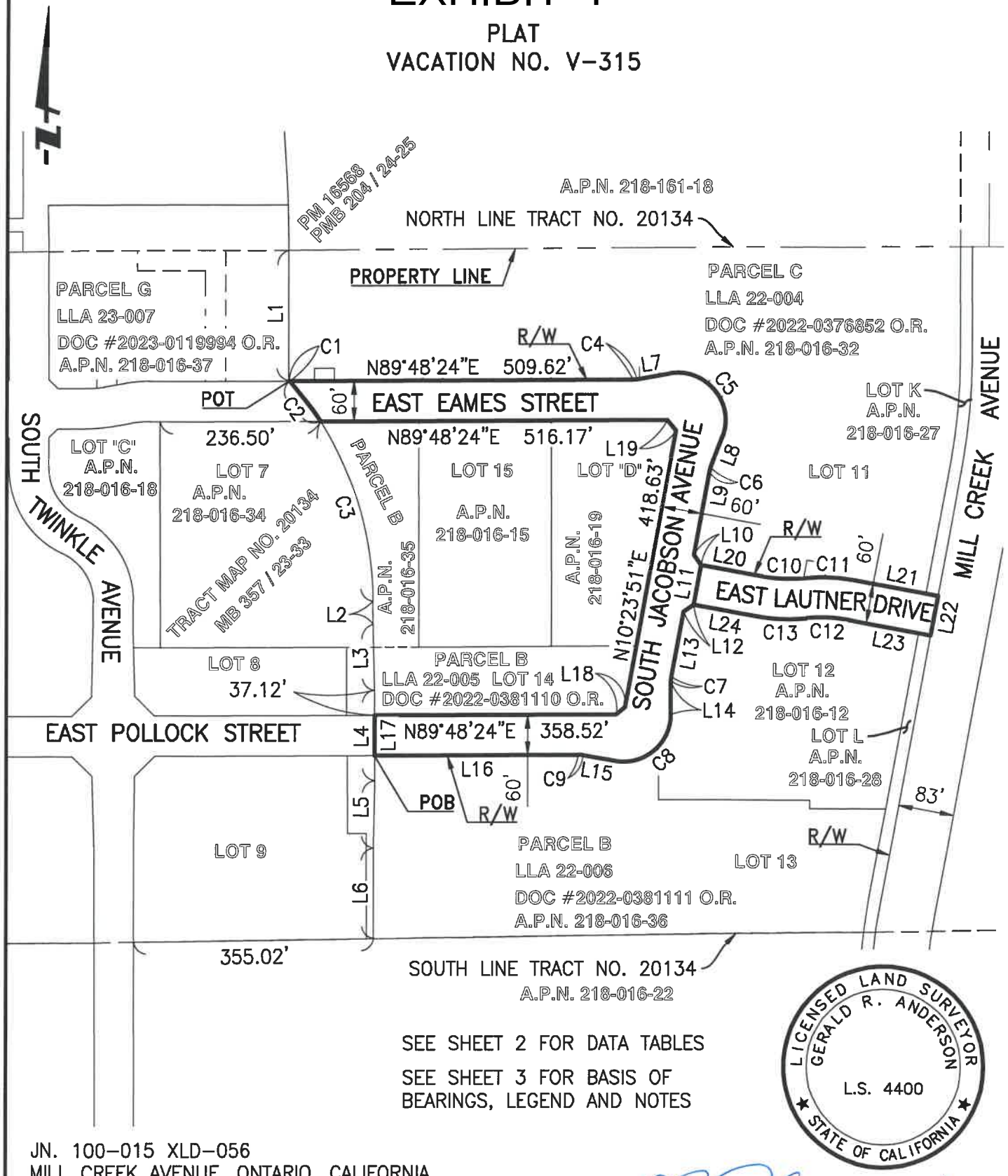
100-015 XLD-056
MILL CREEK AVENUE, ONTARIO, CALIFORNIA

SCALE 1"=200'

EXHIBIT "F"

PLAT
VACATION NO. V-315

SHEET 1 OF 3 SHEETS



SEE SHEET 2 FOR DATA TABLES

SEE SHEET 3 FOR BASIS OF BEARINGS, LEGEND AND NOTES

LICENSED LAND SURVEYOR
GERALD R. ANDERSON
L.S. 4400
STATE OF CALIFORNIA

JN. 100-015 XLD-056
MILL CREEK AVENUE, ONTARIO, CALIFORNIA

X ENGINEERING & CONSULTING, INC.
6 Hutton Centre Drive, Suite 650
Santa Ana, California 92707
949.522.7100 | xengineeringinc.com

02/04/2022
GERALD R. ANDERSON L.S. 4400 DATE
EXPIRES: 09/30/2023

EXHIBIT "F"

LINE AND CURVE DATA
VACATION NO. V-315

LINE TABLE		
LINE #	BEARING	DISTANCE
L1	N0°11'36"W	193.82'
L2	N0°11'36"W	34.49'
L3	N1°28'44"W	98.42'
L4	N0°11'36"W	134.41'
L5	N1°04'00"E	100.39'
L6	N0°11'36"W	134.52'
L7	S80°04'48"W	50.00'
L8	S20°07'27"W	50.00'
L9	S10°23'51"W	125.20'
L10	S34°36'09"E	18.38'
L11	S10°23'51"W	60.00'
L12	S55°23'51"W	18.38'

LINE TABLE		
LINE #	BEARING	DISTANCE
L13	S10°23'51"W	98.82'
L14	S0°40'15"W	50.00'
L15	N80°28'00"W	50.00'
L16	S89°48'24"W	301.78'
L17	S0°11'36"E	60.00'
L18	S50°06'08"W	16.61'
L19	S39°53'52"E	20.00'
L20	N79°36'09"W	90.50'
L21	N79°36'09"W	123.50'
L22	N10°23'51"E	60.00'
L23	S79°36'09"E	123.50'
L24	S79°36'09"E	90.50'

CURVE TABLE			
CURVE #	DELTA	LENGTH	RADIUS
C1	0°07'26"	1.07'	495.00'
C2	8°42'44"	75.27'	495.00'
C3	32°42'40"	282.60'	495.00'
C4	9°43'36"	6.45'	38.00'
C5	120°02'39"	146.66'	70.00'
C6	9°43'36"	6.45'	38.00'
C7	9°43'36"	6.45'	38.00'

CURVE TABLE			
CURVE #	DELTA	LENGTH	RADIUS
C8	98°51'45"	120.78'	70.00'
C9	9°43'36"	6.45'	38.00'
C10	16°15'37"	62.43'	220.00'
C11	16°15'37"	79.46'	280.00'
C12	16°15'37"	62.43'	220.00'
C13	16°15'37"	79.46'	280.00'

JN. 100-015 XLD-056
MILL CREEK AVENUE, ONTARIO, CALIFORNIA

SCALE N/A

EXHIBIT "F"

SHEET 3 OF 3 SHEETS

BASIS OF BEARINGS, LEGEND AND NOTES VACATION NO. V-315

BASIS OF BEARINGS:

THE BEARINGS INDICATED HEREON ARE BASED ON THE WEST LINE OF THE SOUTHWEST 1/4 OF SECTION 12, T2S, R7W, S.B.M. PER RECORD OF SURVEY, RSB 139/66-70 BEING NORTH 00°11'36" WEST.

LEGEND

— — — — — — —	EASEMENT LINE
———————	RIGHT OF WAY
———————	LOT LINE
—— — — ——	TRACT BOUNDARY
▬▬▬▬▬▬▬	RIGHT OF WAY TO BE VACATED
AC	ACRE
A.P.N.	ASSESSOR'S PARCEL NUMBER
DOC	DOCUMENT
LLA	LOT LINE ADJUSTMENT
NO.	NUMBER
O.R.	OFFICIAL RECORDS
PM	PARCEL MAP

LEGEND CONT.

PMB	PARCEL MAP BOOK
POB	POINT OF BEGINNING
POT	POINT OF TERMINATION
R.S.	RECORD OF SURVEY
R/W	RIGHT OF WAY
S.B.M.	SAN BERNARDINO MERIDIAN
SF	SQUARE FOOT
CONT.	CONTINUED

SURVEYORS' NOTE:

THE PLAT IS BASED ON TRACT MAP NO. 20134,
IN THE CITY OF ONTARIO,
FILED UNDER DOCUMENT NO. 2020-0445112,
NOVEMBER 10, 2020,
IN BOOK 357 OF TRACT MAPS AT PAGE 23 - 33,
RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA.

AREA TOTALS

GROSS AREA (AC): 2.61

NET AREA (AC): 2.61

GROSS AREA (SF): 113,641

NET AREA (SF): 113,641

JN. 100-015 XLD-056
MILL CREEK AVENUE, ONTARIO, CALIFORNIA

X ENGINEERING & CONSULTING, INC.
6 Hutton Centre Drive, Suite 650
Santa Ana, California 92707
949.522.7100 | xengineeringinc.com

EXHIBIT "G"

LEGAL DESCRIPTION
EASEMENT VACATION No. V-318

IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

VARIOUS EASEMENTS, LABELED AS #6 SHOWN ON TRACT MAP NO. 20134 FILED UNDER DOCUMENT NO. 2020-0445112, NOVEMBER 10, 2020, IN BOOK 357 OF TRACT MAPS AT PAGES 23 THROUGH 33, INCLUSIVE, RECORDS OF THE COUNTY RECORDER OF SAN BERNARDINO COUNTY, CALIFORNIA, OVER PORTIONS OF LOTS 6, 10, 11, 12, 13, 14, 15, AND LOT D, AS DEDICATED ON SAID TRACT NO. 20134, LYING EASTERLY OF A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF PARCEL B OF LOT LINE ADJUSTMENT NO. LLA22-006, IN THE CITY OF ONTARIO, DESCRIBED IN A DOCUMENT RECORDED NOVEMBER 22, 2022, AS DOCUMENT # 2022-0381111, IN OFFICIAL RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA;

THENCE, ALONG THE WESTERLY LINE OF SAID PARCEL B, NORTH 0°11'36" WEST, 134.52 FEET;

THENCE, CONTINUING ALONG SAID WESTERLY LINE NORTH 1°04'00" WEST, 100.39 FEET;

THENCE, CONTINUING ALONG SAID WESTERLY LINE NORTH 0°11'36" WEST, 37.29 FEET TO THE NORTHWEST CORNER OF SAID PARCEL B AND THE SOUTHERLY RIGHT OF WAY OF EAST POLLOCK STREET;

THENCE, CONTINUING ALONG THE NORTHERLY PROLONGATION OF THE WESTERLY LINE OF SAID PARCEL B, NORTH 0°11'36" WEST, 60.00 FEET TO THE NORTHERLY RIGHT OF WAY OF EAST POLLOCK STREET, AND THE SOUTHWEST CORNER OF PARCEL B OF LOT LINE ADJUSTMENT NO. LLA22-005, IN THE CITY OF ONTARIO, DESCRIBED IN A DOCUMENT RECORDED NOVEMBER 22, 2022, AS DOCUMENT #2022-0381110, IN OFFICIAL RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA;

THENCE, CONTINUING ALONG THE WESTERLY LINE OF SAID PARCEL B, NORTH 0°11'36" WEST, 37.12 FEET;

THENCE, CONTINUING ALONG SAID WESTERLY LINE, NORTH 1°28'44" WEST, 98.42 FEET;

THENCE, CONTINUING ALONG SAID WESTERLY LINE, NORTH 0°11'36" WEST, 34.49 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 495.00 FEET;

THENCE, CONTINUING ALONG SAID WESTERLY LINE, AND NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 32°42'40", AN ARC LENGTH OF 282.60 FEET TO THE SOUTHERLY LINE OF EAST EAMES STREET, SAID POINT ALSO BEING THE NORTHWEST CORNER OF PARCEL B OF SAID LLA22-005;

THENCE, CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08°42'44" AN ARC LENGTH OF 75.27 FEET TO THE NORTHERLY LINE OF EAST EAMES STREET AND TO THE SOUTHWEST CORNER OF PARCEL C OF LOT LINE ADJUSTMENT NO. LLA22-004, IN THE CITY OF ONTARIO, DESCRIBED IN A DOCUMENT RECORDED NOVEMBER 17, 2022, AS DOCUMENT # 2022-0376852, IN OFFICIAL RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA,

THENCE, CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0°07'26" AN ARC LENGTH OF 1.07 FEET TO A POINT OF NONTANGENCY, SAID POINT ALSO BEING ON THE WESTERLY LINE OF SAID PARCEL C;

THENCE, CONTINUING ALONG SAID WESTERLY LINE NORTH 0°11'36" WEST, 193.82 FEET; TO THE NORTHWEST CORNER OF SAID PARCEL C AND THE **TERMINUS** OF THIS DESCRIBED LINE.

EXHIBIT "G"

LEGAL DESCRIPTION
EASEMENT VACATION No. V-318

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

AS SHOWN ON EXHIBIT B, ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED BY ME OR UNDER MY DIRECTION

01/22/2024

GERALD R. ANDERSON, LS 4400 DATE:

100-015 XLD-057

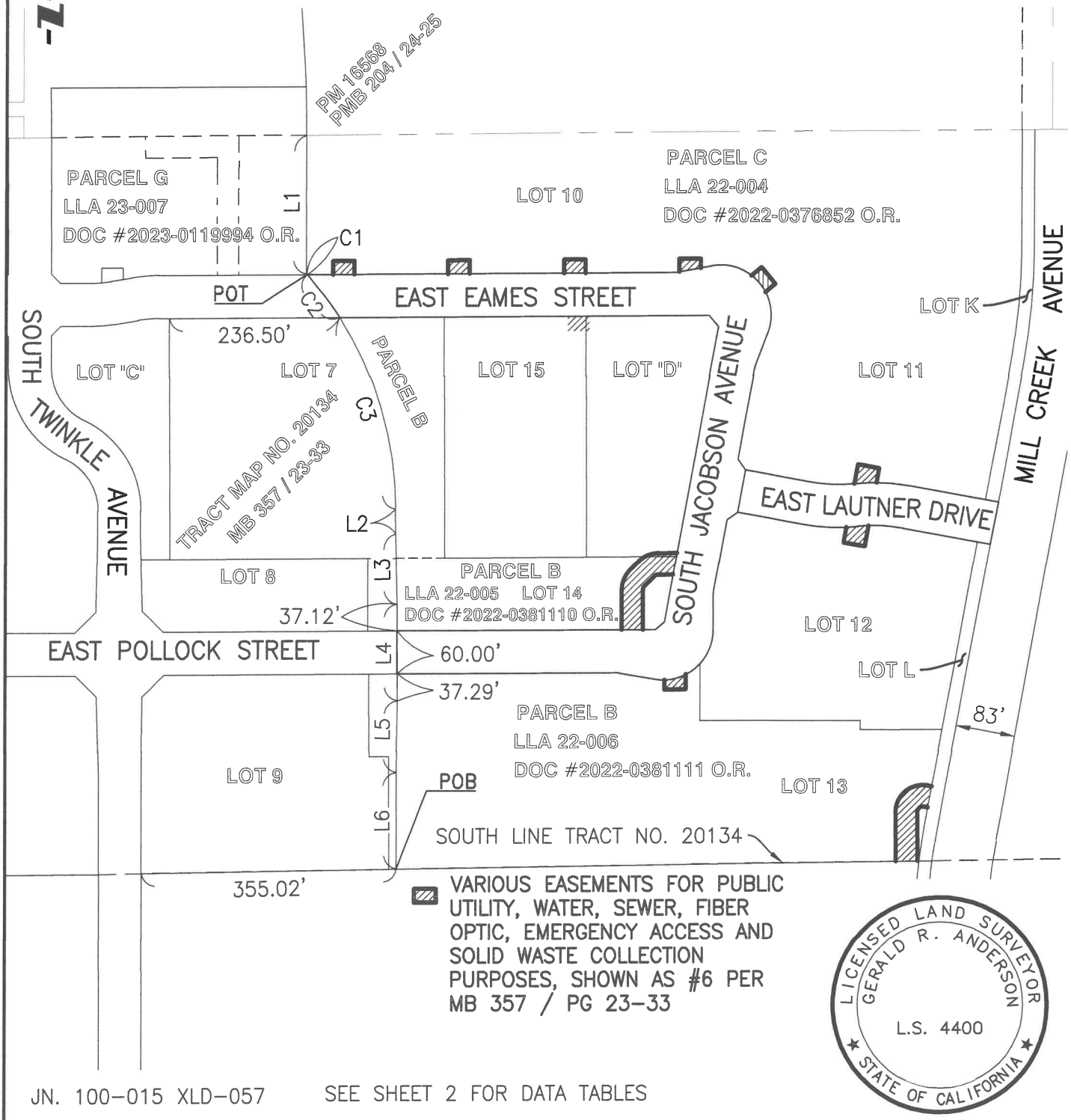


SCALE 1"=200'

EXHIBIT "H"

SHEET 1 OF 2 SHEETS

LEGAL DESCRIPTION
EASEMENT VACATION No. V-318



LICENSED LAND SURVEYOR
GERALD R. ANDERSON
L.S. 4400
STATE OF CALIFORNIA

JN. 100-015 XLD-057

SEE SHEET 2 FOR DATA TABLES

X ENGINEERING & CONSULTING, INC.
6 Hutton Centre Drive, Suite 650
Santa Ana, California 92707
949.522.7100 | xengineeringinc.com

GERALD R. ANDERSON L.S. 4400
EXPIRES: 09/30/2025

01/22/2024
DATE

EXHIBIT "H"

LEGAL DESCRIPTION
EASEMENT VACATION NO. V-318

LINE TABLE		
LINE #	BEARING	DISTANCE
L1	N0°11'36"W	193.82'
L2	N0°11'36"W	34.49'
L3	N1°28'44"W	98.42'
L4	N0°11'36"W	134.41'
L5	N1°04'00"E	100.39'
L6	N0°11'36"W	134.52'

CURVE TABLE			
CURVE #	DELTA	LENGTH	RADIUS
C1	0°07'26"	1.07'	495.00'
C2	8°42'44"	75.27'	495.00'
C3	32°42'40"	282.60'	495.00'

JN. 100-015 XLD-057

CITY OF ONTARIO *Agenda Report* **April 2, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Craig Cruz Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 5

SUBJECT: DESIGN SERVICES AGREEMENTS FOR ON-CALL TRANSPORTATION PLANNING AND TRAFFIC ENGINEERING DESIGN SERVICES

RECOMMENDATION: That the City Council approve three-year Design Services Agreements with six firms to provide On-Call Transportation Planning and Traffic Engineering Design Services in the amount of $200,000 per year for a three-year total not to exceed $600,000 for each firm; and authorize the City Manager, or his designee, to execute said Agreements and future amendments within the authorization limits.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Maintain the Current High Level of Public Safety
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: The Fiscal Year 2023-24 Adopted Budget includes, and future year budgets will include appropriations in the related projects for design services as needed. In no event shall the proposed agreement with each firm exceed $600,000 over a three-year period with an allocation of $200,000 per year. At the City's discretion, up to two additional one-year extensions may be executed for each firm, commensurate with future City Council approved budgets.

BACKGROUND & ANALYSIS: The City has a need for on-call transportation planning and traffic engineering services for work that cannot be provided by City Staff. Services may include, but are not limited to, traffic study review, traffic improvement designs, traffic design plan check services, and staff augmentation. Staff is recommending contracts with a total of six qualified firms to ensure a timely and cost-effective option is always available for each task order. Additionally, Staff is recommending that all contracts be executed between the firms and the City so that any City agency can utilize these firms. This procedure reduces overhead charges and increases efficiency in completing critical projects, ultimately resulting in more satisfactory work products.

On December 12, 2023, the City solicited requests for qualifications (RFQ) for On-Call

Transportation Planning and Traffic Engineering Design Services, and responses from the following firms were evaluated:

COMPANY	LOCATION
ADVANTEC Consulting Engineers	Ontario, CA
AGA Engineers, Inc.	Fullerton, CA
Chen Ryan Associates, Inc.	San Diego, CA
EXP US SERVICES, Inc.	San Bernardino, CA
Fehr & Peers	Irvine, CA
GTS	Los Angeles, CA
HR Green, Inc.	Cedar Rapids, IA
Iteris, Inc.	Santa Ana, CA
JMD	City of Industry, CA
Kimley-Horn and Associates, Inc.	Orange, CA
KOA Corporation	Ontario, CA
Linscott, Law, and Greenspan, Engineers	Irvine, CA
Michael Baker International, Inc.	Ontario, CA
STC Traffic, Inc.	Carlsbad, CA
TKE Engineering, Inc.	Riverside, CA
Toole Design Group, LLC	Silver Spring, MD
Urban Crossroads, Inc.	Newport Beach, CA
Willdan Engineering	Anaheim, CA

Using a qualifications-based selection process, a panel of City Staff reviewed the statements of qualifications for all firms that submitted a response to the RFQ. The firms were scored on the criteria of clarity and conformance of proposal, proposer and team member's experience and performance, and proposed method to accomplish work. ADVANTEC Consulting Engineers, Chen Ryan Associates, Inc., Fehr & Peers, Iteris, Inc., Kimley-Horn & Associates, Inc., and STC Traffic, Inc., were determined to be the most qualified firms.

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
DESIGN SERVICES AGREEMENT
FOR ON-CALL SERVICES

1. PARTIES AND DATE.

This Agreement is made and entered into as of _____, by and between the City of Ontario, a municipal corporation organized and operating 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 CR Associates, a CORPORATION with its principal place of business at 3900 5th Avenue, Suite 310, San Diego, California (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 City. City is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Consultant**.** Consultant desires to perform and assume responsibility for the provision of certain professional engineering design services required by the City on the terms and conditions set forth in this Agreement. Consultant warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Consultant is a corporation or other organization, the Project Consultant designated pursuant to Section 3.2, and not the Consultant itself, shall be fully licensed to practice as an engineer in the State of California.

2.3 Project**.** City desires to engage Consultant to render such services for the On-Call Transportation Planning & Traffic Engineering Design Services ("Project") as set forth in this Agreement.

3. TERMS

3.1 Employment of Consultant.

3.1.1 Scope of Services. Consultant promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional engineering and related services necessary for the full and adequate completion of the Project described in Exhibit "A" attached hereto and incorporated herein by reference ("Services"). The Services shall be more particularly described in the individual Task Order issued by the City or its designee. No Services shall be performed unless authorized by a fully executed Task Order in the form attached hereto as Exhibit "C". All Services

shall be subject to, and performed in accordance with, this Agreement, each Task Order, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Consultant shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld.

3.1.2 Term. The term of this Agreement shall be from April 2, 2024 to April 2, 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.

3.2 Project Consultant; Key Personnel.

3.2.1 Engineer of Record. Consultant shall name a specific individual to act as Project Consultant, subject to the approval of City. Consultant hereby designates Monique Chen (License No. T2272) to act as the Engineer of Record for the Project. The Engineer of Record shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the Engineer of Record shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Engineer of Record shall be of at least equal competence as the prior Engineer of Record. In the event that City and Consultant cannot agree as to the substitution of a new Engineer of Record, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Engineer of Record, Consultant has represented to the City that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Consultant may substitute others of at least equal competence upon written approval of the City. In the event that City and Consultant cannot agree as to the substitution of key personnel, engineers or consultants, City shall be entitled to terminate this Agreement for cause. The key additional personnel, engineers and consultants for performance of this Agreement are as follows: Ross Duenas, Principal, 84324; Phuong Nguyen, Sr. Engineer, T2660; Aryo Rad, Sr. Engineer, 81231; Tomo Takahashi, Sr. Engineer, 81522; and Andrew Prescott, Sr. Planner, AICP 31154.

3.3 Hiring of Consultants and Personnel.

3.3.1 Right to Hire or Employ. Consultant shall have the option, unless City objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Consultant may delegate without relieving Consultant from administrative or other responsibility under this Agreement. Consultant shall be responsible for the coordination and cooperation of Consultant's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by City in its sole and reasonable discretion. Consultant shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work to allow City to review their qualifications and approve to their participation on the Project in its sole and reasonable discretion.

3.3.2 Qualification and License. All architects, engineers, experts and other consultants retained by Consultant in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.3.3 Standards and Insurance. All architects, engineers, experts and other consultants hired by Consultant shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the City in writing. Unless changes are approved in writing by the City, Consultant's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.3.4 Assignments or Staff Changes. Consultant shall promptly obtain written City approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Consultant's consultants and key personnel shall be subject to approval by City.

3.3.5 Draftsman and Clerical Support. Draftsmen and clerical personnel shall be retained by Consultant at Consultant's sole expense.

3.4 Standard of Care.

3.4.1 Standard of Care. 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 qualified to perform the Services in the same discipline in the State of California, and shall be responsible to City for damages sustained by the City and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Consultant shall be fully responsible to the City for any increased costs incurred by the City as a result of any such delays in the design or construction of the Project. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants and represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, 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.

3.4.2 Performance of Employees. Any employee or consultant 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 or consultant 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.

3.5 Laws and Regulations.

3.5.1 Knowledge and Compliance. Consultant shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Consultant by law. Consultant shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. Consultant shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.5.2 Drawings and Specifications. Consultant shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Consultant. Consultant shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto. For the preparation of all such drawings and specifications, the Consultant shall use Computer Aided Design Drafting ("CADD") (e.g., AutoCAD) or other technology acceptable to the Consultant and City.

3.5.3 Americans with Disabilities Act. Consultant will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Consultant shall inform City of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide the City with its interpretation of such inconsistencies and conflicting interpretations. Unless Consultant brings such inconsistencies and conflicting interpretations to the attention of the City and requests City's direction on how to proceed, the Consultant's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Consultant, and the Consultant shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Consultant request's City's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Consultant shall be responsible to the City only pursuant to the indemnification provisions of this Agreement.

3.5.4 Permits, Approvals and Authorizations. Consultant shall provide City with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Consultant shall then assist the City in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the City.

3.5.5 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 (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant shall 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. Failure to comply with laws, regulations, and ordinances listed in this Section is a violation of federal and state law.

3.6 Independent Contractor.

3.6.1 Control and Payment of Subordinates. City retains Consultant on an independent contractor basis and Consultant is not an employee of City. Consultant is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City's employees. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City, and shall at all times be under Consultant's exclusive direction and control. 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.

3.7 Schedule of Services.

3.7.1 Consultant Services. Consultant shall fully and adequately complete the Services described in this Agreement, each individual Task Order issued by the City, and in Exhibit "A" attached hereto and incorporated herein by reference.

3.7.2 Timely Performance Standard. Consultant shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Consultant shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the City and within any completion schedules adopted for the Project. Consultant agrees to coordinate with City's staff, contractors and consultants in the performance of the Services, and shall be available to City's staff, contractors and consultants at all reasonable times.

3.7.3 Performance Schedule. Consultant shall prepare an estimated time schedule for the performance of Consultant's Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the City's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for City's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If City and Consultant cannot mutually agree on a performance schedule, City shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Consultant without the prior written approval of City. If the Consultant's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the City will suffer damage for which the Consultant will be responsible.

3.7.4 Excusable Delays. Any delays in Consultant's work caused by the following may be added to the time for completion of any obligations of Consultant: (1) the actions

of City or its employees; (2) the actions of those in direct contractual relationship with City; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control of the Consultant; and (5) any Force Majeure Event (as defined herein) or other unforeseen occurrence not due to any fault or negligence on the part of Consultant. Neither the City nor the Consultant shall be liable for damages, liquidated or otherwise, to the other on account of such delays.

3.7.5 Force Majeure Events. 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. Should a Force Majeure Event occur, the non-performing Party shall, within fifteen (15) calendar days of the beginning of an Force Majeure Event, 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 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.

3.7.6 Request for Excusable Delay Credit. The Consultant shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify the City in writing of the causes of delay (unless City grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). City will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The City's findings of fact thereon shall be final and conclusive on the Parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Consultant for extensions of time shall be an extension of the performance time at no cost to the City. If Additional Services are required as a result of an excusable delay, the Parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Consultant make an application for an extension of time, Consultant shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

3.8 Additional Services.

3.8.1 Request for Services. At City's request, Consultant may be asked to perform services not otherwise included in this Agreement, not included within the basic services listed in Exhibit "A" attached hereto, and/or not customarily furnished in accordance with generally accepted architectural practice.

3.8.2 Definition. As used herein, "Additional Services" mean: (1) 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 for the Consultant to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit "A" attached hereto. Consultant shall not perform, nor be compensated for, Additional Services without prior written authorization from City and without an agreement between the City and Consultant as to the compensation to be paid for such services. City shall pay Consultant for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Consultant pursuant to the indemnification provision of this Agreement.

3.8.3 Examples of Additional Services. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Consultant was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

(a) Separately Bid Portions of Project. Plan preparation and/or administration of work on portions of the Project separately bid.

(b) Furniture and Interior Design. Assistance to City, if requested, for the selection of moveable furniture, equipment or articles which are not included in the Construction Documents.

(c) Fault of Contractor. Services caused by delinquency, default or insolvency of contractor, or by major defects in the work of the contractor, provided that any such services made necessary by the failure of Consultant to detect and report such matters when it reasonably should have done so shall not be compensated.

(d) Inconsistent Approvals or Instructions. Revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Consultant.

(e) Legal Proceedings. Serving as an expert witness on City's behalf or attending legal proceedings to which the Consultant is not a party.

(f) Damage Repair. Supervision of repair of damages to any structure.

(g) Extra Environmental Services. Additional work required for environmental conditions (e.g. asbestos or site conditions) not already contemplated within the Consultant's services for the Project.

3.9 City Responsibilities. City's responsibilities shall include the following:

3.9.1 Data and Information. City shall make available to Consultant all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and criteria. As part of the budget limitation information, the City shall provide the Consultant with a preliminary construction budget ("City's Preliminary Construction Budget").

3.9.2 Project Survey. If required pursuant to the scope of the Project and if requested by Consultant, City shall furnish Consultant with, or direct Consultant to procure at City's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.

3.9.3 Bid Phase. Distribute Construction Documents to bidders and conduct the opening and review of bids for the Project.

3.9.4 Testing. Retain consultant(s) to conduct chemical, mechanical, soils, geological or other tests required for proper design of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.

3.9.5 Required Inspections and Tests. Retain consultant(s) to conduct materials testing and inspection or environmental/hazardous materials testing and inspection pursuant to any applicable laws, rules or regulations.

3.9.6 Fees of Reviewing or Licensing Agencies. Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

3.9.7 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates Jay Bautista, Transportation Manager, or his or her designee, as the City's contact for the implementation of the Services hereunder. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.9.8 Review and Approved Documents. Review all documents submitted by Consultant, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Consultant of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

3.10 Compensation.

3.10.1 Consultant's Compensation for Basic Services. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The maximum compensation for Services to be provided pursuant to each Task Order shall be set forth in the relevant Task Order. The total compensation for all Task Orders issued hereunder shall not exceed **Two Hundred Thousand Dollars and Zero Cents ($200,000.00)** without written approval of the City Council or City Manager, as applicable. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

3.10.2 Payment for Additional Services. At any time during the term of this Agreement, City may request that Consultant perform Additional Services. As used herein,

Additional Services 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. Any additional work in excess of this amount must be approved by the City. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "B" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the rates and in the manner set forth in Exhibit "B" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. City shall have the authority to review and approve the rates of any such consultants. In addition, Consultant shall be reimbursed for any expenses incurred by such consultants pursuant to the terms and conditions of Section 3.10.3.

3.10.3 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the Services and Additional Services. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, which approval may be evidenced by inclusion in Exhibit "B" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Consultant in the interest of the Project. Consultant shall be required to acquire prior written consent in order to obtain reimbursement for the following: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of $1,000; and (5) other costs, fees and expenses in excess of $1,000.

3.10.4 Payment to Consultant. Consultant's compensation and reimbursable expenses shall be paid by City to Consultant no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the compensation rates indicated in Exhibit "B" attached hereto and incorporated herein by reference. In order to receive payment, Consultant shall present to City an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid. The statement 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 statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Consultant shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit "B", attached hereto. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the Parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Consultant shall present to City an itemized statement which indicates the Additional Services performed, percentage of Additional Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Consultant shall be compensated as

set forth in the termination provision herein.

3.10.5 Withholding Payment to Consultant. The City may withhold payment, in whole or in part, to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under the indemnification provisions of this Agreement. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which Consultant is liable under the Agreement or state law. Payments to the Consultant for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Consultant shall not be withheld, postponed, or made contingent upon receipt by the City of offsetting reimbursement or credit from Parties not within the Consultant's reasonable control.

3.10.6 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. 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 and to require its consultants 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 shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Consultant or its consultants to comply with the Prevailing Wage Laws.

(a) Registration/DIR Compliance. If the Services are being performed as part of an applicable "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 performing such Services 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. 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 Department of Industrial Relations 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 Department of Industrial Relations against Consultant or any subconsultant.

3.11 Notice to Proceed.

Consultant shall not proceed with performance of any Services under this Agreement unless and until the City provides a written notice to proceed.

3.12 Termination, Suspension and Abandonment.

3.12.1 Grounds for Termination; Consultant's Termination for Cause. City hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Consultant shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Consultant shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by City as a result of the default, if any, by Consultant. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, abandonment or termination. Consultant may terminate this Agreement for substantial breach of performance by the City such as failure to make payment to Consultant as provided in this Agreement.

3.12.2 City's Suspension of Work. If Consultant's Services are suspended by City, City may require Consultant to resume such Services within ninety (90) days after written notice from City. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the City and Consultant.

3.12.3 Documents and Other Data. Upon suspension, abandonment or termination, Consultant shall provide to City all preliminary studies, sketches, working drawings, specifications, computations, and all other Project Documents, as defined below, to which City would have been entitled at the completion of Consultant's Services under this Agreement. Upon payment of the amount required to be paid to Consultant pursuant to the termination provisions of this Agreement, City shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Consultant under this Agreement. Consultant shall make such documents available to City upon request and without additional compensation other than as may be approved as a reimbursable expense.

3.12.4 Employment of other Consultants. 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.

3.13 Ownership and Use of Documents; Confidentiality.

3.13.1 Ownership. All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, architectural

presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes (hereinafter referred to as the "Project Documents") shall be and remain the property of City. Although the official copyright in all Project Documents shall remain with the Consultant or other applicable subcontractors or consultants, the Project Documents shall be the property of City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Consultant shall provide to City copies of all Project Documents required by City. In addition, Consultant shall retain copies of all Project Documents 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 reasonable duplication costs. Before destroying the Project Documents following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.13.2 Right to Use. Consultant grants to City the right to use and reuse all or part of the Project Documents, at City's sole discretion and with no additional compensation to Consultant, for the following purposes:

(a) The construction of all or part of this Project.

(b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;

(c) The construction of another project by or on behalf of the City for its ownership and use;

City is not bound by this Agreement to employ the services of Consultant in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Consultant or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Consultant.

Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Consultant shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall remove the Consultant's seal from the Project Documents and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

3.13.3 License. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Consultant shall require any and all subcontractors and consultants to agree in writing that City is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.13.4 Right to License. Consultant represents and warrants that Consultant has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Consultant prepares or causes to be prepared pursuant to this Agreement. Consultant shall indemnify and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Consultant makes no such

representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Consultant and provided to Consultant by City.

3.13.5 Confidentiality. All Project Documents, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Project Documents 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 written consent of City.

3.14 Indemnification.

3.14.1 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.

3.14.2 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.

3.15 Insurance. 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.

3.15.1 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, Consultant shall, at its expense, procure and maintain in full force and effect for the duration 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.

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

3.15.3 Commercial General Liability

(a) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(b) Coverage for Commercial General Liability insurance shall be at least as broad as the following: Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent. Commercial General Liability Insurance must include coverage for the following:

(i) Bodily Injury and Property Damage

(ii) Personal Injury/Advertising Injury

(iii) Premises/Operations Liability

(iv) Products/Completed Operations Liability

(v) Aggregate Limits that Apply per Project

(vi) Explosion, Collapse and Underground (UCX) exclusion deleted

(vii) Contractual Liability with respect to this Contract

(viii) Broad Form Property Damage

(ix) Independent Consultants Coverage

(c) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(d) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(e) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

3.15.4 Automobile Liability

(a) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(b) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(c) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status.

(d) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

3.15.5 Workers' Compensation/Employer's Liability

(a) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(b) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this Section.

3.15.6 Professional Liability (Errors and Omissions)

(a) At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. 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 must include a provision establishing the insurer's duty to defend.

3.15.7 Minimum Policy Limits Required

(a) The following insurance limits are required for the Agreement:

Coverage	Combined Single Limit
Commercial General Liability	$2,000,000 per occurrence/ $4,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	$2,000,000 per occurrence for bodily injury and property damage
Employer's Liability	$1,000,000 per occurrence
Professional Liability	$2,000,000 per claim and aggregate (errors and omissions)

(b) Defense costs shall be payable in addition to the limits.

(c) Requirements of specific coverage or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

3.15.8 Evidence Required

(a) Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

3.15.9 Policy Provisions Required

(a) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(b) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any 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.

(c) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced

past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(d) 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.

(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.

3.15.10 Qualifying Insurers

(a) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements: 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 admitted to transact in the 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.

3.15.11 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 the City Council, nor any member of the City Council, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

3.15.12 Subconsultant Insurance Requirements

(a) Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

3.16 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 five (5) years from the date of final payment under this Agreement.

3.17 Standardized Manufactured Items.

Consultant shall cooperate and consult with City in the use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items shall be standardized to City's criteria to the extent such criteria do not interfere with building design.

3.18 Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other City site, will be covered by, and be the subject of, a separate Agreement for engineering services between City and the Consultant chosen therefor by City.

3.19 Mediation.

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the Parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the Parties.

3.20 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

3.21 Asbestos Certification.

Consultant shall certify to City, in writing and under penalty of perjury, that to the best of

its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Consultant prepares for the Project. Consultant shall require all consultants who prepare any other documents for the Project to submit the same written certification. Consultant shall also assist the City in ensuring that contractors provide City with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Consultant shall include statements in its specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

3.22 No Third Party Rights.

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

3.23 Governing Law.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in San Bernardino County.

3.24 Exhibits and Recitals.

All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth.

3.25 Severability.

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

3.26 Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

3.27 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 its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

3.28 Harassment Policy.

Consultant shall provide a copy of the City's Harassment Policy to each of its employees assigned to perform the tasks under this Agreement. Consultant shall submit to the City's Personnel Manager a statement signed by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of City's Harassment Policy and certifying that they have read the Harassment Policy. A finding by the City that any of Consultant's

employees has harassed a City employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request.

3.29 Delivery of Notices.

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

CITY:	CONSULTANT:
City of Ontario	CR Associates
303 East "B" Street	3900 5th Avenue, #310
Ontario, CA 91764	San Diego, CA 92103
Attn: Craig Cruz, Engineering	Monique Chen, Principal

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.

3.30 Time of Essence.

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

3.31 City's Right to Employ Other Consultants.

City reserves right to employ other consultants, including designers, in connection with this Project or other projects.

3.32 Prohibited Interests.

3.32.1 Solicitation. 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. Further, 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. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

3.32.2 Conflict of Interest. For the term of this Agreement, no director, official, 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.

3.33 Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. 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.

3.34 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.

3.35 Subcontracting.

As specified in this Agreement, 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 each and every provision of this Agreement.

3.36 Supplemental Conditions.

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

3.37 Entire Agreement.

This Agreement, with its exhibits, contains the entire agreement of the Parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the Parties hereto. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all Parties hereto.

SIGNATURES ON FOLLOWING PAGE

Signature Page for Design Services Agreement
Between the City of Ontario
and [CR Associates]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

CR Associates

By: _____

Its: President

Printed Name: Monique Chen

By: _____

Its: Secretary

Printed Name: Sherry Ryan

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

EXHIBIT "A"
SCOPE OF SERVICES

The City of Ontario is seeking proposals from qualified consulting engineers (the Consultant) to provide On-Call Services for three (3) years, with an option of renewing for two (2) consecutive one (1) year terms for services in transportation planning & traffic engineering design with the intention of maintaining a list of multiple qualified prime engineering firms, with subconsultant support services as needed. Task orders will be issued to firms on a competitive basis based on the qualifications and expertise of the firm and their subconsultants. There is no designated minimum nor maximum value of services to be awarded to any one consultant.

The Consultant is expected to furnish all services as required to complete the scope of services described below for task order projects and to manage and control costs and resources, and complete work in adherence to the agreed upon Project schedule. The Consultant will assign a Project Manager who will act as the City's primary contact and will be entirely responsible for project management activities throughout the duration of an awarded task (including subconsultant work, if applicable). The following is a suggested breakdown of Project tasks and should be incorporated into the fee schedule under the appropriate activities.

TRANSPORTATION AND TRAFFIC ENGINEERING PROJECT DESIGN SERVICES

The City of Ontario is seeking a Request for Qualifications from firms for Professional Services:

Consultant shall be aware that certain labor categories above may be subject to prevailing wage rates as identified in the California Labor Code commencing Section 1770 et. Seq.
Determination of whether or not Prevailing Wages shall apply will be determined when the City's project manager identifies the scope of specific task orders. Please refer to Paragraph I.10 "Prevailing Wage" of this RFQ, and Paragraph 3.10.6 "Prevailing Wages" of the DSA for further requirements.

Expected services to be provided under this on-call contract will be performed under a task order system and may include:

1) Transportation Planning

Development Support Services

- Traffic Study Preparation and Review
- Parking Analysis Preparation and Review
- Trip Generation Analysis Preparation and Review
- VMT Analysis Preparation and Review
- SB743 Analysis Preparation and Review
- Traffic Simulations
- On-site circulation analysis
- Data Collection and Analysis
- Traffic Model Support
- On-Site "extension to staff" support services

Long Range Planning

- General Plan Support
- Specific Plan Support
- Active Transportation Plans and Programs
- Context Sensitive Solutions
- Maintain and Update City Traffic Study Guidelines
- Transit Studies
- Corridor Studies
- On-Site “extension to staff” support services
- Coordination with outside agencies
- Support for funding and grant applications

2) <u>Traffic Engineering</u>

- Traffic Design Plan (including civil work) and Cost Estimate Preparation and Review
- Traffic Signal Plan and Cost Estimate Preparation and Review
- Pedestrian Hybrid Beacon Plan and Cost Estimate Preparation and Review
- Street Light Plan and Cost Estimate Preparation and Review
- Traffic Studies for Capital Projects
- Support for funding and grant applications
- Intelligent Transportation Systems Design
- Traffic Signal Timing and Coordination Studies
- Traffic Control Plan Design and Review
- Technical services and support for non-motorized capital projects
- Active Transportation Design and Review
- Traffic Calming Support
- Traffic Calming Plan Design and Review
- On-Site “extension to staff” support services
- Traffic Counts Support
- Engineering and Traffic Surveys
- Warrant Analyses
- Coordination with outside agencies (Caltrans, railroads, neighboring cities, etc.)
- Signing and Striping Support

Project Design/Plans, Specifications, and Estimates (PS&E) Preparation

Firms shall be capable of performing the following tasks:

- Land Surveying & Mapping
- Civil Engineering Design
- Detailed Engineering/Cost Estimation
- Preparation of construction bid documents and specifications
- Any other work required to complete project design

Consultant shall perform research of records including utility companies and other agency records as necessary to secure information required to identify, locate, and accurately layout all existing improvements and right-of-way within project limits that may interfere with the proposed

improvements. Consultant will identify estimated number of potholes required for a project in their cost proposal for each individual task order.

Consultant shall conduct a site visit to observe the topography and visualize the proposed improvements at the project location and review available subsurface data from nearby structures or published geologic maps to determine general subsurface conditions at the project site.

General Requirements and Project Deliverables

All surveys shall be performed by Consultant in accordance with accepted professional surveying standards. Consultant shall obtain applicable encroachment permits from the City of Ontario, Railroad, Caltrans, and neighboring cities prior to beginning any field investigation. Additionally, if a traffic control plan is required, Consultant shall prepare the plan. Such documents shall be forwarded to the respective permit issuing agency, for review and concurrence prior to beginning any field investigation.

The Consultant shall complete a topographic survey map of the site to prepare a base map for the construction plans. This includes, but is not limited to:

1. Horizontal and vertical control, drainage surveys, topographical surveys within the right-of-way, cross sections, grid grades, open-ended traverses, profile data sheets and required documentation. (Horizontal Control shall be based on NAD 83; Vertical Control shall be based on NAVD 88).

2. Establish street centerlines, right-of-way lines existing and proposed, and all easements from available record information.

3. Provide the basis-of-bearing and benchmark information used for the survey and necessary for construction.

4. Locate and tie any features that would affect the design or construction.

5. Obtain Record of Surveys, benchmark and centerline tie information.

The City will provide the title block and specification boiler plate to the Consultant. All drawings shall utilize AutoCAD 2021 or later and shall utilize the City of Ontario standard title block. For interim submittals, the City may opt to receive only PDF versions of the plans for reviewing purposes. If so, the Consultant team will provide plans and/or specifications accordingly. All original plan sheets, the title sheet of the specifications, calculations, and reports shall be signed and stamped by the Consultants' licensed professional engineer responsible/in-charge of the project.

The Consultant will be expected to revise the documents within a revised schedule set by the City. There will be no additional compensation necessary for the consultant to complete the work to the satisfaction of the City for required revisions. The Consultant's services for plan specifications and estimating (PS&E) for engineering project preparation and special studies/investigations shall include and be in conformance with the latest editions of the Greenbook Standard Specifications for Public Works Construction and the City of Ontario standards, unless otherwise specified. Latest editions of the Caltrans Standards and Specifications shall be used for traffic signal design.

For the City plan check process, the Consultant will be required to submit one PDF electronic copy for all submittals. Consultant shall also be responsible for submitting plans and reports for plan check and approval/permit issuance to any affected agencies.

Permitting

- Prepare and file all necessary documents and apply for all required permits or provide support including, but not limited to:

  i. Federal, Caltrans, Railroad, environmental, and utility permits

  ii. Valet parking review

  iii. Permit Parking review

  iv. On-Site "extension to staff" support services

Consultant shall coordinate permits and any other issues with the City, other agencies, and all utility companies as required. At the direction of the City, the Consultant shall be the liaison with affected agencies.

3) Construction Support and Other Tasks

Firms shall be capable of performing the following tasks:

- Project presentations and meetings
- Construction Support Services
- Any other work required to successfully plan for projects and adequately assess project feasibility

During the bidding process and construction, the Consultant shall assist in answering questions regarding the technical specifications, design drawings or conflicts in the design, respond to City staff and/or contractor RFI's for any technical design clarification or design conflicts that arise during construction, review and recommend materials submittals and shop drawings for concurrence with plans and specifications, attend milestone meetings and pre-con meetings, and prepare record drawings that incorporate redlines comments prepared by the contractor and City Staff. One (1) bond set of the record drawings shall be submitted and all drawings shall be provided to the City electronically, as a PDF file and with the latest AutoCAD file format.

Change Orders (Change to Scope of Work)

All changes must be submitted in writing for City approval. The Consultant shall submit a cost fee proposal for all changes. The City will evaluate and issue a Notice to Proceed for each Change Order separately

1. GENERAL REQUIREMENTS.

1.1 Basic Services. Consultant agrees to perform all the necessary professional architectural, engineering (e.g. mechanical, electrical, plumbing, structural, site engineering, and any other necessary engineering services mutually agreeable to the Parties) and construction

administration services for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

1.2 Exclusions from Basic Services. The following services shall be excluded from the basic services listed above: N/A

1.3 Additional Services. Consultant shall perform the following Additional Services for the Project: N/A

1.4 Communication with City. Consultant shall participate in consultations and conferences with authorized representatives of City and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications and documents in accordance with the applicable standards and requirements of law and the City. Such consultations and conferences shall continue throughout the planning and construction of the Project and the contractor's warranty period. Consultant shall take direction only from the City's Representative, or any other representative specifically designated by the City for this Project, including any construction manager hired by the City.

1.5 Coordination and Cooperation with Construction Manager. The City may hire a construction manager to administer and coordinate all or any part of the Project on its behalf. If the City does so, it shall provide a copy of its agreement with the construction manager so that the Consultant will be fully aware of the duties and responsibilities of the construction manager. The Consultant shall cooperate with the construction manager and respond to any requests or directives authorized by the City to be made or given by the construction manager. The Consultant shall request clarification from the City in writing if the Consultant should have any questions regarding the authority of the construction manager.

2. INITIAL PLANNING PHASE.

During the initial planning phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

2.1 Project Feasibility. Provide advice and assistance to City in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

2.2 Meeting Budget and Project Goals. Consultant shall notify City in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially impact the Project budget and time line, including the City's Preliminary Construction Budget. Consultant shall use its best judgment in determining the balance between the size, type and quality of construction to achieve a satisfactory solution within the Project's budget and construction allowance. It shall be the duty of the Consultant to design the Project within budget. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by the stated amount, Consultant may be required to make the necessary changes in the drawing and specifications, at its sole cost and expense, to bring the bids within the required budget.

2.3 Permits, Approvals and Authorizations. As indicated in Section 3.5.4 of the Agreement, Consultant shall assist City in securing easements, encroachment permits, rights of

way, dedications, infrastructures and road improvements, as well as coordinating with utilities and adjacent property owners.

3. SCHEMATIC PLAN PHASE.

During the schematic plan phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

3.1 Funding Documents. Consultant shall provide a site plan and all other Project-related information necessary and required for an application by City to any federal, state, regional, or local agencies for funds to finance the construction Project.

3.2 Schematic Plans. In cooperation with City, Consultant shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development at the site, and the proposed architectural concept of the buildings ("Schematic Plans"). Consultant shall incorporate the functional requirements of City into the Schematic Plans. The Schematic Plans shall meet all laws, rules and regulations of the State of California. The Schematic Plans shall show all rooms incorporated in each building of the Project in single-line drawings, and shall include all revisions required by City or by any federal, state, regional or local agency having jurisdiction over the Project. All architectural drawings for the Project shall be in a form suitable for reproduction.

3.3 Preliminary Project Budget. Consultant shall use the City's Preliminary Construction Budget and its own expertise and experience with the Project to establish a preliminary project budget or allowance in a format required by City ("Consultant's Preliminary Project Budget"). The purpose of the Consultant's Preliminary Project Budget is to show the probable Project cost in relation to City's Preliminary Construction Budget and the construction standards of any applicable funding agency. If Consultant perceives site considerations which render the Project expensive or cost prohibitive, Consultant shall disclose such conditions in writing to City immediately. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by more than the stated amount, Consultant may be required to make the necessary changes in the drawings and specifications, at its sole cost and expense, to bring the bids within the required budget Consultant shall provide a preliminary written time schedule for the performance of all construction work on the Project.

3.4 Copies of Schematic Plans and Other Documents. Consultant, at its own expense, shall provide a complete set of the Schematic Plans described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4. DESIGN DEVELOPMENT PHASE.

During the design development phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

4.1 Design Development Documents. Once City provides Consultant with specific written approval of the Schematic Plans described herein, Consultant shall prepare design development documents consisting of: (1) site and floor plans; (2) elevations; and (3) any other drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the size and character of the Project's structural, mechanical and electrical systems, and to

outline the Project specifications ("Design Development Documents"). The Design Development Documents shall be prepared in sufficient form to present to the City Council for approval.

4.2 Copies of Design Development and Other Documents. Consultant, at its own expense, shall provide a complete set of the Design Development Documents described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4.3 Updated Project Budget. Consultant shall use its Preliminary Project Budget and expertise and experience with the Project to establish an updated estimate of probable construction costs, containing detail consistent with the Design Development Documents as set forth herein and containing a breakdown based on types of materials and specifications identified herein ("Consultant's Updated Project Budget").

4.4 Timetable. Consultant shall provide a written timetable for full and adequate completion of the Project to City.

4.5 Application for Approvals. Consultant shall assist City in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned with the Project. Consultant shall furnish and process all architectural and engineering information required to prepare and process applications to applicable utilities in order to secure priorities and materials, to aid in the construction of the Project and to obtain final Project approval and acceptance by any of the above agencies as may be required.

4.6 Color and Other Aesthetic Issues. Consultant shall provide, for City's review and approval, a preliminary schedule of all color materials and selections of textures, finishes and other matters involving an aesthetic decision about the Project.

5. FINAL WORKING DRAWINGS AND SPECIFICATIONS.

During the final working drawings and specifications phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

5.1 Final Working Drawings and Specifications. Once City provides Consultant with specific written approval of the Design Development Documents described herein, Consultant shall prepare such complete working drawings and specifications as are necessary for developing complete bids and for properly executing the Project work in an efficient and thorough manner ("Final Working Drawings and Specifications"). Such Final Working Drawings and Specifications shall be developed from the Schematic Plans and Design Development Documents approved by City. The Final Working Drawings and Specifications shall set forth in detail all of the following: (1) the Project construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems; and (3) the utility service connection equipment and site work. As indicated in Section 3.9.2 of the Agreement, City may be requested to supply Consultant with the necessary information to determine the proper location of all improvements on and off site, including record drawings ("as-built drawings") in City's possession. Consultant will make a good-faith effort to verify the accuracy of such information by means of a thorough interior and exterior visual survey of site conditions. City shall also make a good-faith effort to verify the accuracy of the as-built

drawings and provide any supplemental information to Consultant which may not be shown on the as-built drawings.

5.2 Form. The Final Working Drawings and Specifications must be in such form as will enable Consultant and City to secure the required permits and approvals from all federal, state, regional or local agencies concerned with the Project. In addition, the Final Working Drawings and Specifications must be in such form as will enable City to obtain, by competitive bidding, a responsible and responsive bid within the applicable budgetary limitations and cost standards. The Final Working Drawings and Specifications shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Consultant.

5.3 Approval and Revisions. City shall review, study, and check the Final Working Drawings and Specifications presented to it by Consultant, and request any necessary revisions or obtain any necessary approvals by the City Council, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications at no additional cost, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. Consultant shall bring any such conflicts and/or inconsistencies to the attention of City. The Parties agree that Consultant, and not the City, possesses the requisite expertise to determine the constructability of the Final Working Drawings and Specifications. However, the City reserves the right to conduct one or more constructability review processes with the Final Working Drawings and Specifications, and to hire an independent architect or other consultant to perform such reviews. Any such independent constructability review shall be at City's expense. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications which may result from any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. If such changes, additions, deletions or corrections are inconsistent with prior City direction, Consultant shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.

5.4 Costs of Construction. It is understood by Consultant that should the Final Working Drawings and Specifications be ordered by City, City shall specify the sum of money set aside to cover the total cost of construction of the work, exclusive of Consultant's fees. Should it become evident that the total construction cost will exceed the specified sum, Consultant shall at once present a statement in writing to the City's Representative setting forth this fact and giving a full statement of the cost estimates on which the conclusion is based.

5.5 Copies of Final Working Drawings and Specifications and Other Documents. Consultant, at its own expense, shall provide a complete set of the Final Working Drawings and Specifications described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

6. CONSTRUCTION CONTRACT DOCUMENTS.

During the construction contract documents phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

6.1 Bid and Contract Documents. If so required by City, Consultant shall assist City in the completion of all bid and construction documents, including but not limited to, the Notice Inviting Bids, Instructions to Bidders, Contract Bid Forms (including Alternate Bids as requested by City), `Contract, General Conditions, Supplementary General Conditions, Special Conditions, DVBE and other applicable affirmative action documents, Performance Bond, Payment Bond, Escrow Agreement for Security Deposits, and any other certifications and documents required by federal, state and local laws, rules and regulations which may be reasonably required in order to obtain bids responsive to the specifications and drawings. All such documents shall be subject to the approval of City and City's legal counsel.

6.2 Final Estimate. At the time of delivery of these bid and construction documents, which shall include the Final Working Drawings and Specifications (collectively referred to herein as the "Construction Documents"), Consultant shall provide City with its final estimate of probable construction cost ("Consultant's Final Estimate"). As discussed herein, including in Section 7.3, it shall be the Consultant's duty to design the Project within budget.

7. BID PHASE.

During the bid phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

7.1 Reproducible Construction Documents. Once City provides Consultant with specific written approval of the Construction Documents and Consultant's Final Estimate, Consultant shall provide to City one set of reproducible Construction Documents.

7.2 Distribution of Contract Documents and Review of Bids. Consultant shall assist City in distributing the Construction Documents to bidders and conducting the opening and review of bids for the Project.

7.3 Over Budget. If the apparent lowest responsive and responsible bid on the Project exceeds the Consultant's Final Estimate by more than five percent (5%), City may request Consultant to amend, at Consultant's sole cost and expense, the Final Drawings and Specifications in order to rebid the Project and receive a lowest responsive and responsible bid equal to or less than the Consultant's Final Estimate. All revisions necessary to bring the lowest responsible and responsive bid within the Consultant's Final Estimate, including any omissions, deferrals or alternates, shall be made in consultation with, and subject to the approval of, the City.

8. CONSTRUCTION PHASE.

During the construction phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

8.1 Observation. The Project Consultant shall observe work executed from the Final Working Drawings and Specifications in person, provided that City may, in its discretion, consent to such observation by another competent representative of Consultant.

8.2 General Administration. Consultant shall provide general administration of the Construction Documents and the work performed by the contractors.

8.3 Pre-Construction Meeting. Consultant shall conduct one or more pre-construction meetings, as the City determines is needed for the Project, with all interested Parties.

8.4 Site Visits of Contractor's Work. Consultant shall conduct site visits to observe each contractors' work for general conformance with the Construction Documents and with any approved construction schedules or milestones. Such site visits shall be conducted as often as are necessary and appropriate to the stage of construction, according to the City's sole discretion, but in no event less than weekly.

8.5 Site Visits of Inspector's Work. Consultant shall conduct site visits to communicate and observe the activities of the City inspectors. Such site visits shall be conducted as often as is mutually acceptable to Consultant and City. Consultant shall direct the City inspectors and the Project contractors to coordinate the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.

8.6 Coordination of Subconsultants. Consultant shall cause all architects, engineers and other consultants, as may be hired by Consultant or City, to observe the work completed under their disciplines as required, and approve and review all test results for general conformance with the Construction Documents.

8.7 Reports. Consultant shall make regular reports as may be required by applicable federal, state or local laws, rules or regulations, as well as the federal, state, regional or local agencies concerned with the Project.

8.8 Construction Meetings; Minutes. Consultant shall attend all construction meetings and provide written reports/minutes to the City after each construction meeting in order to keep City informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the Project work, according to the City's sole discretion, but no less than weekly.

8.9 Written Reports. Consultant shall make written reports to City as necessary to inform City of problems arising during construction, changes contemplated as a result of each such problems, and progress of the Project work.

8.10 Written Records. Consultant shall keep accurate written records of the progress and quality of the Project work and the time schedules, and shall advise the contractors and City of any deviations from the time schedule which could delay timely completion of the Project.

8.11 Material and Test Reports. Consultant shall check and process, in a timely manner, all required material and test reports for the Project work. In addition, Consultant shall provide notice of any deficiencies in material or work reflected in such reports, as well as its recommendation for correction of such deficiencies, to the contractors and City.

8.12 Review and Response to Submissions. Consultant shall review and respond, in a timely manner, to all schedules, submittals, shop drawings, samples, information requests, change requests, and other submissions of the contractor and subcontractors for compliance with, or alterations and additions to, the Construction Documents. Consultant's review and response shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.13 Rejection of Work. Consultant shall promptly reject, as discussed with City, work or materials which do not conform to the Construction Documents. Consultant shall immediately notify the City and contractor(s) of such rejections. Consultant shall also have the authority to

recommend to the City that additional inspection or testing of the work be performed, whether or not such work is fabricated, installed or completed.

8.14 Substitutions. Consultant shall consult with City, in a timely manner, with regard to substitution of materials, equipment and laboratory reports thereof, prior to the City's final written approval of such substitutions. Consultant's consultation shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.15 Revised Documents and Drawings. Consultant shall prepare, at no additional expense to City, all documents and/or drawings made necessary by errors and omissions in the originally approved Construction Documents.

8.16 Change Requests and Material Changes. Consultant shall evaluate and advise City, in a timely manner and in writing, of any change requests and material change(s) which may be requested or necessary in the Project plans and specifications. Consultant shall provide the City with its opinion as to whether such change requests should be approved, denied or revised. If the City has not hired a construction manager or other person to do so, the Consultant shall prepare and execute all change orders and submit them to the City for authorization. If the City has designated a construction manager or other person to prepare all change orders, the Consultant shall review all change orders prepared by such person, execute them and deliver them to the City for authorization if they meet with the Consultant's approval, or submit them to the City with recommendations for revision or denial if necessary. Consultant shall not order contractors to make any changes affecting the contract price without approval by City of such a written change order, pursuant to the terms of the Construction Documents. Consultant may order, on its own responsibility and pending City Council approval, changes necessary to meet construction emergencies, if written approval of City's Representative is first secured.

8.17 Applications for Payment. Consultant shall examine, verify and approve contractor's applications for payment, and shall issue certificates for payment in amounts approved by the City's inspector.

8.18 Final Color and Product Selection. Consultant shall coordinate final color and product selection with City's original design concept.

8.19 Substantial Completion. Consultant shall determine the date of substantial completion, in consultation with the City.

8.20 Punch List. After determining that the Project is substantially complete, Consultant shall participate in the inspection of the Project and shall review all remaining deficiencies and minor items needed to be corrected or completed on the Project, including those identified on the punch list prepared by the contractor ("Punch List Items"). Consultant shall notify contractor in writing that all Punch List Items must be corrected prior to final acceptance of the Project and final payment. Consultant shall also notify City of all Punch List Items.

8.21 Warranties. Consultant shall review materials assembled by the contractor and subcontractors with regard to all written warranties, guarantees, owners' manuals, instruction books, diagrams, record "as built" drawings, and any other materials required from the contractors and subcontractors pursuant to the Construction Documents. Consultant shall coordinate and provide these materials to the City.

8.22 Certificate of Completion. Consultant shall participate in any further inspections of the Project necessary to issue Consultant's Certificate of Completion and final certificate for payment.

8.23 Documents for Project Close-Out. Consultant shall cause all other architects, engineers and other consultants, as may be hired by Consultant, to file any and all required documentation with the City or other governmental authorities necessary to close out the Project. Consultant shall assist the City in obtaining such documentation from all other architects, engineers, or other consultants.

9. AS-BUILT DRAWINGS.

During the as-built drawings phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

9.1 As-Built Drawings and Specifications. Not later than thirty (30) days after substantial completion of the Project, before receipt of final payment, Consultant shall review and forward the Final Working Drawings and Specifications, indicating on them all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing an "as-built" set of Final Working Drawings and Specifications ("As-Built Drawings and Specifications"). The As-Built Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. Consultant shall personally review and certify that the As-Built Drawings and Specifications are a correct representation of the information supplied to Consultant by any inspectors and the contractor, and shall obtain certifications from any inspectors and the contractor that the drawings are correct.

9.2 Approval. Once City provides Consultant with specific written approval of the As-Built Drawings and Specifications, Consultant shall forward to City the complete set of original As-Built Drawings and Specifications or a complete set of reproducible duplicate As-Built Drawings and Specifications. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

9.3 Documents for Final Payment. Prior to the receipt of Consultant's final payment, Consultant shall forward to City all of the following: (1) one clear and legible set of reproductions of the computations; (2) the original copy of the specifications; (3) the As-Built Drawings and Specifications as required herein; and (4) Consultant's Certificate of Completion.

10. WARRANTY PERIOD.

During the warranty period phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

10.1 Advice. Consultant shall provide advice to City on apparent deficiencies in the Project during any applicable warranty periods for the Project.

EXHIBIT "B"
COMPENSATION RATES AND REIMBURSABLE EXPENSES

1. HOURLY COMPENSATION RATES.

CRA 2024 Standard Billing Rates by Classifications

Job Classification	Hourly Bill Rate
Principal III	$390.00
Principal II	$330.00
Principal I	$300.00
Planning	
Senior Planner III	$255.00
Senior Planner II	$230.00
Senior Planner I	$205.00
Associate Planner III	$190.00
Associate Planner II	$175.00
Associate Planner I	$160.00
Assistant Planner II	$150.00
Assistant Planner I	$135.00
Traffic Engineering Operations	
Senior Engineer III	$270.00
Senior Engineer II	$250.00
Senior Engineer I	$230.00
Associate Engineer III	$205.00
Associate Engineer II	$180.00
Associate Engineer I	$165.00
Assistant Engineer II	$150.00
Assistant Engineer I	$140.00
Design	
Senior Professional III	$300.00
Senior Professional II	$280.00
Senior Professional I	$250.00
Professional III	$225.00
Professional II	$210.00
Professional I	$200.00
Analyst III	$185.00
Analyst II	$165.00
Analyst I	$150.00

Support	
Graphic Design	$165.00
Project Accountant	$160.00
Senior Admin	$155.00
Admin Support	$105.00
Intern	$90.00

Notes:

1. Rates are effective through December 31, 2024.

2. Direct expenses such as but not limited to printing and reproduction, travel expenses, deliveries, materials, shipping, postage, etc. will be invoiced at cost.

3. Labor rates shall be subject to an annual increase of 4%, effective January 1st of each subsequent year.

2. REIMBURSABLE EXPENSES.

Mileage: $0.67 per mile for 2024. Future year mileage expenses will be in accordance with Internal Revenue Service (IRS) issued standard mileage rates.

Other direct expenses will be based on project needs upon City's approval.

3. ADDITIONAL SERVICES.

Additional Services shall be computed at the actual hourly rates listed above.

4. ADDITIONAL CONSULTANTS.

If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the Consultant's actual hourly rates plus 5%. Owner shall have the authority to review and approve the rates of any such consultants.

EXHIBIT "C"
SAMPLE TASK ORDER FORM

Task Order No. _____

Agreement: DESIGN SERVICES AGREEMENT FOR ON-CALL SERVICES

Consultant: [INSERT NAME OF CONSULTANT]

The Consultant is hereby authorized to perform the following services subject to the provisions of the Agreement identified above:

List any attachments: (Please provide if any.)

Dollar Amount of Task Order: Not to exceed $_____,_____.00

Completion Date: _____

The undersigned Consultant hereby agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted above, and perform all services for the work above specified in accordance with the Agreement identified above and will accept as full payment therefore the amount shown above.

CITY OF ONTARIO	**[INSERT NAME OF CONSULTANT]**
Dated: _____	Dated: _____
By: _____	By: _____

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
DESIGN SERVICES AGREEMENT
FOR ON-CALL SERVICES

1. PARTIES AND DATE.

This Agreement is made and entered into as of _____, by and between the City of Ontario, a municipal corporation organized and operating 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 STC Traffic, Inc., a Corporation with its principal place of business at 5973 Avenida Encinas #218, Carlsbad, CA 92008 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 City. City is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Consultant**.** Consultant desires to perform and assume responsibility for the provision of certain professional engineering design services required by the City on the terms and conditions set forth in this Agreement. Consultant warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Consultant is a corporation or other organization, the Project Consultant designated pursuant to Section 3.2, and not the Consultant itself, shall be fully licensed to practice as an engineer in the State of California.

2.3 Project**.** City desires to engage Consultant to render such services for the On-Call Transportation Planning & Traffic Engineering Design Services ("Project") as set forth in this Agreement.

3. TERMS

3.1 Employment of Consultant.

3.1.1 Scope of Services. Consultant promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional engineering and related services necessary for the full and adequate completion of the Project described in Exhibit "A" attached hereto and incorporated herein by reference ("Services"). The Services shall be more particularly described in the individual Task Order issued by the City or its designee. No Services shall be performed unless authorized by a fully executed Task Order in the form attached hereto as Exhibit "C". All Services

shall be subject to, and performed in accordance with, this Agreement, each Task Order, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Consultant shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld.

3.1.2 Term. The term of this Agreement shall be from April 2, 2024 to April 2, 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.

3.2 Project Consultant; Key Personnel.

3.2.1 Engineer of Record. Consultant shall name a specific individual to act as Project Consultant, subject to the approval of City. Consultant hereby designates Rob Blough, Principal Manager (PE #C60204, TE #TR1829) to act as the Engineer of Record for the Project. The Engineer of Record shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the Engineer of Record shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Engineer of Record shall be of at least equal competence as the prior Engineer of Record. In the event that City and Consultant cannot agree as to the substitution of a new Engineer of Record, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Engineer of Record, Consultant has represented to the City that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Consultant may substitute others of at least equal competence upon written approval of the City. In the event that City and Consultant cannot agree as to the substitution of key personnel, engineers or consultants, City shall be entitled to terminate this Agreement for cause. The key additional personnel, engineers and consultants for performance of this Agreement are as follows:

Jason Stack, Principal-In-Charge (TE #2790, PTOE #4174)

Christian Lambarth, Senior Project Manager (PE #C86675, TE #TR2927, PTOE #5180)

Philip Wragg, Project Manager (AICP #32473)

Phil Kern, Senior Principal Manager (PE #40831)

Hiring of Consultants and Personnel.

3.2.3 Right to Hire or Employ. Consultant shall have the option, unless City objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Consultant may delegate

without relieving Consultant from administrative or other responsibility under this Agreement. Consultant shall be responsible for the coordination and cooperation of Consultant's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by City in its sole and reasonable discretion. Consultant shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work to allow City to review their qualifications and approve to their participation on the Project in its sole and reasonable discretion.

3.2.4 Qualification and License. All architects, engineers, experts and other consultants retained by Consultant in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.2.5 Standards and Insurance. All architects, engineers, experts and other consultants hired by Consultant shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the City in writing. Unless changes are approved in writing by the City, Consultant's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.2.6 Assignments or Staff Changes. Consultant shall promptly obtain written City approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Consultant's consultants and key personnel shall be subject to approval by City.

3.2.7 Draftsman and Clerical Support. Draftsmen and clerical personnel shall be retained by Consultant at Consultant's sole expense.

3.3 Standard of Care.

3.3.1 Standard of Care. 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 qualified to perform the Services in the same discipline in the State of California, and shall be responsible to City for damages sustained by the City and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Consultant shall be fully responsible to the City for any increased costs incurred by the City as a result of any such delays in the design or construction of the Project. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants and represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, 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.

3.3.2 Performance of Employees. Any employee or consultant 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 or consultant 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.

3.4 Laws and Regulations.

3.4.1 Knowledge and Compliance. Consultant shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Consultant by law. Consultant shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. Consultant shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.4.2 Drawings and Specifications. Consultant shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Consultant. Consultant shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto. For the preparation of all such drawings and specifications, the Consultant shall use Computer Aided Design Drafting ("CADD") (e.g., AutoCAD) or other technology acceptable to the Consultant and City.

3.4.3 Americans with Disabilities Act. Consultant will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Consultant shall inform City of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide the City with its interpretation of such inconsistencies and conflicting interpretations. Unless Consultant brings such inconsistencies and conflicting interpretations to the attention of the City and requests City's direction on how to proceed, the Consultant's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Consultant, and the Consultant shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Consultant request's City's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Consultant shall be responsible to the City only pursuant to the indemnification provisions of this Agreement.

3.4.4 Permits, Approvals and Authorizations. Consultant shall provide City with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Consultant shall then assist the City in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the City.

3.4.5 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 (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant shall 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. Failure to comply with laws, regulations, and ordinances listed in this Section is a violation of federal and state law.

3.5 Independent Contractor.

3.5.1 Control and Payment of Subordinates. City retains Consultant on an independent contractor basis and Consultant is not an employee of City. Consultant is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City's employees. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City, and shall at all times be under Consultant's exclusive direction and control. 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.

3.6 Schedule of Services.

3.6.1 Consultant Services. Consultant shall fully and adequately complete the Services described in this Agreement, each individual Task Order issued by the City, and in Exhibit "A" attached hereto and incorporated herein by reference.

3.6.2 Timely Performance Standard. Consultant shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Consultant shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the City and within any completion schedules adopted for the Project. Consultant agrees to coordinate with City's staff, contractors and consultants in the performance of the Services, and shall be available to City's staff, contractors and consultants at all reasonable times.

3.6.3 Performance Schedule. Consultant shall prepare an estimated time schedule for the performance of Consultant's Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the City's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for City's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If City and Consultant cannot mutually agree on a performance schedule, City shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Consultant without the prior written approval of City. If the Consultant's Services are not completed within the time provided by the agreed upon performance schedule, or any

milestones established therein, it is understood, acknowledged and agreed that the City will suffer damage for which the Consultant will be responsible.

3.6.4 Excusable Delays. Any delays in Consultant's work caused by the following may be added to the time for completion of any obligations of Consultant: (1) the actions of City or its employees; (2) the actions of those in direct contractual relationship with City; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control of the Consultant; and (5) any Force Majeure Event (as defined herein) or other unforeseen occurrence not due to any fault or negligence on the part of Consultant. Neither the City nor the Consultant shall be liable for damages, liquidated or otherwise, to the other on account of such delays.

3.6.5 Force Majeure Events. 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. Should a Force Majeure Event occur, the non-performing Party shall, within fifteen (15) calendar days of the beginning of an Force Majeure Event, 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 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.

3.6.6 Request for Excusable Delay Credit. The Consultant shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify the City in writing of the causes of delay (unless City grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). City will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The City's findings of fact thereon shall be final and conclusive on the Parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Consultant for extensions of time shall be an extension of the performance time at no cost to the City. If Additional Services are required as a result of an excusable delay, the Parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Consultant make an application for an extension of time, Consultant shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

3.7 Additional Services.

3.7.1 Request for Services. At City's request, Consultant may be asked to perform services not otherwise included in this Agreement, not included within the basic services listed in Exhibit "A" attached hereto, and/or not customarily furnished in accordance with generally accepted architectural practice.

3.7.2 Definition. As used herein, "Additional Services" mean: (1) 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 for the Consultant to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit "A" attached hereto. Consultant shall not perform, nor be compensated for, Additional Services without prior written authorization from City and without an agreement between the City and Consultant as to the compensation to be paid for such services. City shall pay Consultant for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Consultant pursuant to the indemnification provision of this Agreement.

3.7.3 Examples of Additional Services. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Consultant was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

(a) Separately Bid Portions of Project. Plan preparation and/or administration of work on portions of the Project separately bid.

(b) Furniture and Interior Design. Assistance to City, if requested, for the selection of moveable furniture, equipment or articles which are not included in the Construction Documents.

(c) Fault of Contractor. Services caused by delinquency, default or insolvency of contractor, or by major defects in the work of the contractor, provided that any such services made necessary by the failure of Consultant to detect and report such matters when it reasonably should have done so shall not be compensated.

(d) Inconsistent Approvals or Instructions. Revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Consultant.

(e) Legal Proceedings. Serving as an expert witness on City's behalf or attending legal proceedings to which the Consultant is not a party.

(f) Damage Repair. Supervision of repair of damages to any structure.

(g) Extra Environmental Services. Additional work required for environmental conditions (e.g. asbestos or site conditions) not already contemplated within the Consultant's services for the Project.

3.8 City Responsibilities. City's responsibilities shall include the following:

3.8.1 Data and Information. City shall make available to Consultant all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and criteria. As part of the budget limitation information, the City shall provide the Consultant with a preliminary construction budget ("City's Preliminary Construction Budget").

3.8.2 Project Survey. If required pursuant to the scope of the Project and if requested by Consultant, City shall furnish Consultant with, or direct Consultant to procure at City's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.

3.8.3 Bid Phase. Distribute Construction Documents to bidders and conduct the opening and review of bids for the Project.

3.8.4 Testing. Retain consultant(s) to conduct chemical, mechanical, soils, geological or other tests required for proper design of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.

3.8.5 Required Inspections and Tests. Retain consultant(s) to conduct materials testing and inspection or environmental/hazardous materials testing and inspection pursuant to any applicable laws, rules or regulations.

3.8.6 Fees of Reviewing or Licensing Agencies. Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

3.8.7 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates Jay Bautista, Transportation Manager, or his or her designee, as the City's contact for the implementation of the Services hereunder. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.8.8 Review and Approved Documents. Review all documents submitted by Consultant, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Consultant of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

3.9 Compensation.

3.9.1 Consultant's Compensation for Basic Services. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The maximum compensation for Services to be provided pursuant to each Task Order

shall be set forth in the relevant Task Order. The total compensation for all Task Orders issued hereunder shall not exceed **Two Hundred Thousand Dollars and Zero Cents ($200,000.00)** without written approval of the City Council or City Manager, as applicable. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

3.9.2 Payment for Additional Services. At any time during the term of this Agreement, City may request that Consultant perform Additional Services. As used herein, Additional Services 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. Any additional work in excess of this amount must be approved by the City. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "B" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the rates and in the manner set forth in Exhibit "B" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. City shall have the authority to review and approve the rates of any such consultants. In addition, Consultant shall be reimbursed for any expenses incurred by such consultants pursuant to the terms and conditions of Section 3.10.3.

3.9.3 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the Services and Additional Services. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, which approval may be evidenced by inclusion in Exhibit "B" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Consultant in the interest of the Project. Consultant shall be required to acquire prior written consent in order to obtain reimbursement for the following: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of $1,000; and (5) other costs, fees and expenses in excess of $1,000.

3.9.4 Payment to Consultant. Consultant's compensation and reimbursable expenses shall be paid by City to Consultant no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the compensation rates indicated in Exhibit "B" attached hereto and incorporated herein by reference. In order to receive payment, Consultant shall present to City an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid. The statement 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 statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Consultant shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit "B", attached hereto. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the Parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Consultant shall present to City an itemized statement which indicates the Additional Services performed, percentage of Additional

Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Consultant shall be compensated as set forth in the termination provision herein.

3.9.5 Withholding Payment to Consultant. The City may withhold payment, in whole or in part, to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under the indemnification provisions of this Agreement. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which Consultant is liable under the Agreement or state law. Payments to the Consultant for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Consultant shall not be withheld, postponed, or made contingent upon receipt by the City of offsetting reimbursement or credit from Parties not within the Consultant's reasonable control.

3.9.6 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. 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 and to require its consultants 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 shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Consultant or its consultants to comply with the Prevailing Wage Laws.

(a) Registration/DIR Compliance. If the Services are being performed as part of an applicable "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 performing such Services 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. 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 Department of Industrial Relations 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 Department of Industrial Relations against Consultant or any subconsultant.

3.10 Notice to Proceed.

Consultant shall not proceed with performance of any Services under this Agreement unless and until the City provides a written notice to proceed.

3.11 Termination, Suspension and Abandonment.

3.11.1 Grounds for Termination; Consultant's Termination for Cause. City hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Consultant shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Consultant shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by City as a result of the default, if any, by Consultant. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, abandonment or termination. Consultant may terminate this Agreement for substantial breach of performance by the City such as failure to make payment to Consultant as provided in this Agreement.

3.11.2 City's Suspension of Work. If Consultant's Services are suspended by City, City may require Consultant to resume such Services within ninety (90) days after written notice from City. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the City and Consultant.

3.11.3 Documents and Other Data. Upon suspension, abandonment or termination, Consultant shall provide to City all preliminary studies, sketches, working drawings, specifications, computations, and all other Project Documents, as defined below, to which City would have been entitled at the completion of Consultant's Services under this Agreement. Upon payment of the amount required to be paid to Consultant pursuant to the termination provisions of this Agreement, City shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Consultant under this Agreement. Consultant shall make such documents available to City upon request and without additional compensation other than as may be approved as a reimbursable expense.

3.11.4 Employment of other Consultants. 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.

3.12 Ownership and Use of Documents; Confidentiality.

3.12.1 Ownership. All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, architectural presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes (hereinafter referred to as the "Project Documents") shall be and remain the property of City. Although the official copyright in all Project Documents shall remain with the Consultant or other applicable subcontractors or consultants, the Project Documents shall be the property of City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Consultant shall provide to City copies of all Project Documents required by City. In addition, Consultant shall retain copies of all Project Documents 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 reasonable duplication costs. Before destroying the Project Documents following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.12.2 Right to Use. Consultant grants to City the right to use and reuse all or part of the Project Documents, at City's sole discretion and with no additional compensation to Consultant, for the following purposes:

(a) The construction of all or part of this Project.

(b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;

(c) The construction of another project by or on behalf of the City for its ownership and use;

City is not bound by this Agreement to employ the services of Consultant in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Consultant or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Consultant.

Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Consultant shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall remove the Consultant's seal from the Project Documents and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

3.12.3 License. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Consultant shall require any and all subcontractors and consultants to agree in

writing that City is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.12.4 Right to License. Consultant represents and warrants that Consultant has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Consultant prepares or causes to be prepared pursuant to this Agreement. Consultant shall indemnify and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Consultant makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Consultant and provided to Consultant by City.

3.12.5 Confidentiality. All Project Documents, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Project Documents 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 written consent of City.

3.13 Indemnification.

3.13.1 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.

3.13.2 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.

3.14 Insurance. 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.

3.14.1 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, Consultant shall, at its expense, procure and maintain in full force and effect for the duration 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.

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

3.14.3 Commercial General Liability

(a) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(b) Coverage for Commercial General Liability insurance shall be at least as broad as the following: Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent. Commercial General Liability Insurance must include coverage for the following:

(i) Bodily Injury and Property Damage

(ii) Personal Injury/Advertising Injury

(iii) Premises/Operations Liability

(iv) Products/Completed Operations Liability

(v) Aggregate Limits that Apply per Project

(vi) Explosion, Collapse and Underground (UCX) exclusion deleted

(vii) Contractual Liability with respect to this Contract

(viii) Broad Form Property Damage

(ix) Independent Consultants Coverage

(c) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(d) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(e) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

3.14.4 Automobile Liability

(a) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(b) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(c) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status.

(d) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

3.14.5 Workers' Compensation/Employer's Liability

(a) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(b) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this Section.

3.14.6 Professional Liability (Errors and Omissions)

(a) At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. 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 must include a provision establishing the insurer's duty to defend.

3.14.7 Minimum Policy Limits Required

(a) The following insurance limits are required for the Agreement:

Coverage	Combined Single Limit
Commercial General Liability	$2,000,000 per occurrence/ $4,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	$2,000,000 per occurrence for bodily injury and property damage
Employer's Liability	$1,000,000 per occurrence
Professional Liability	$2,000,000 per claim and aggregate (errors and omissions)

(b) Defense costs shall be payable in addition to the limits.

(c) Requirements of specific coverage or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

3.14.8 Evidence Required

(a) Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

3.14.9 Policy Provisions Required

(a) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(b) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any 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.

(c) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(d) 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.

(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.

3.14.10 Qualifying Insurers

(a) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements: 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 admitted to transact in the 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.

3.14.11 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 the City Council, nor any member of the City Council, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

3.14.12 Subconsultant Insurance Requirements

(a) Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

3.15 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 five (5) years from the date of final payment under this Agreement.

3.16 Standardized Manufactured Items.

Consultant shall cooperate and consult with City in the use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items shall be standardized to City's criteria to the extent such criteria do not interfere with building design.

3.17 Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other City site, will be covered by, and be the subject of, a separate Agreement for engineering services between City and the Consultant chosen therefor by City.

3.18 Mediation.

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the Parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the Parties.

3.19 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However,

Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

3.20 Asbestos Certification.

Consultant shall certify to City, in writing and under penalty of perjury, that to the best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Consultant prepares for the Project. Consultant shall require all consultants who prepare any other documents for the Project to submit the same written certification. Consultant shall also assist the City in ensuring that contractors provide City with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Consultant shall include statements in its specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

3.21 No Third Party Rights.

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

3.22 Governing Law.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in San Bernardino County.

3.23 Exhibits and Recitals.

All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth.

3.24 Severability.

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

3.25 Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

3.26 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 its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

3.27 Harassment Policy.

Consultant shall provide a copy of the City's Harassment Policy to each of its employees assigned to perform the tasks under this Agreement. Consultant shall submit to the City's Personnel Manager a statement signed by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of City's Harassment Policy and certifying that they have read the Harassment Policy. A finding by the City that any of Consultant's employees has harassed a City employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request.

3.28 Delivery of Notices.

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

CITY:	CONSULTANT:
City of Ontario	STC Traffic, Inc.
303 East “B” Street	5973 Avenida Encinas, Suite #218
Ontario, CA 91764	Carlsbad, CA 92008
Attn: Craig Cruz, Engineering	Attn: Jason Stack, President

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.

3.29 Time of Essence.

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

3.30 City’s Right to Employ Other Consultants.

City reserves right to employ other consultants, including designers, in connection with this Project or other projects.

3.31 Prohibited Interests.

3.31.1 Solicitation. 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. Further, 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. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

3.31.2 Conflict of Interest. For the term of this Agreement, no director, official, 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.

3.32 Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. 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.

3.33 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.

3.34 Subcontracting.

As specified in this Agreement, 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 each and every provision of this Agreement.

3.35 Supplemental Conditions.

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

3.36 Entire Agreement.

This Agreement, with its exhibits, contains the entire agreement of the Parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the Parties hereto. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all Parties hereto.

SIGNATURES ON FOLLOWING PAGE

Signature Page for Design Services Agreement
Between the City of Ontario
and STC Traffic, Inc.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

STC Traffic, Inc.

By: _____

Its: President _____

Printed Name: Jason Stack _____

By: _____

Its: CFO _____

Printed Name: Sandra Sass _____

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

EXHIBIT "A"
SCOPE OF SERVICES

The City of Ontario is seeking proposals from qualified consulting engineers (the Consultant) to provide On-Call Services for three (3) years, with an option of renewing for two (2) consecutive one (1) year terms for services in transportation planning & traffic engineering design with the intention of maintaining a list of multiple qualified prime engineering firms, with subconsultant support services as needed. Task orders will be issued to firms on a competitive basis based on the qualifications and expertise of the firm and their subconsultants. There is no designated minimum nor maximum value of services to be awarded to any one consultant.

The Consultant is expected to furnish all services as required to complete the scope of services described below for task order projects and to manage and control costs and resources, and complete work in adherence to the agreed upon Project schedule. The Consultant will assign a Project Manager who will act as the City's primary contact and will be entirely responsible for project management activities throughout the duration of an awarded task (including subconsultant work, if applicable). The following is a suggested breakdown of Project tasks and should be incorporated into the fee schedule under the appropriate activities.

TRANSPORTATION AND TRAFFIC ENGINEERING PROJECT DESIGN SERVICES

The City of Ontario is seeking a Request for Qualifications from firms for Professional Services:

Consultant shall be aware that certain labor categories above may be subject to prevailing wage rates as identified in the California Labor Code commencing Section 1770 et. Seq.
Determination of whether or not Prevailing Wages shall apply will be determined when the City's project manager identifies the scope of specific task orders. Please refer to Paragraph I.10 "Prevailing Wage" of this RFQ, and Paragraph 3.10.6 "Prevailing Wages" of the DSA for further requirements.

Expected services to be provided under this on-call contract will be performed under a task order system and may include:

1) Transportation Planning

Development Support Services

- Traffic Study Preparation and Review
- Parking Analysis Preparation and Review
- Trip Generation Analysis Preparation and Review
- VMT Analysis Preparation and Review
- SB743 Analysis Preparation and Review
- Traffic Simulations
- On-site circulation analysis
- Data Collection and Analysis
- Traffic Model Support
- On-Site "extension to staff" support services

Long Range Planning

- General Plan Support
- Specific Plan Support
- Active Transportation Plans and Programs
- Context Sensitive Solutions
- Maintain and Update City Traffic Study Guidelines
- Transit Studies
- Corridor Studies
- On-Site “extension to staff” support services
- Coordination with outside agencies
- Support for funding and grant applications

2) <u>Traffic Engineering</u>

- Traffic Design Plan (including civil work) and Cost Estimate Preparation and Review
- Traffic Signal Plan and Cost Estimate Preparation and Review
- Pedestrian Hybrid Beacon Plan and Cost Estimate Preparation and Review
- Street Light Plan and Cost Estimate Preparation and Review
- Traffic Studies for Capital Projects
- Support for funding and grant applications
- Intelligent Transportation Systems Design
- Traffic Signal Timing and Coordination Studies
- Traffic Control Plan Design and Review
- Technical services and support for non-motorized capital projects
- Active Transportation Design and Review
- Traffic Calming Support
- Traffic Calming Plan Design and Review
- On-Site “extension to staff” support services
- Traffic Counts Support
- Engineering and Traffic Surveys
- Warrant Analyses
- Coordination with outside agencies (Caltrans, railroads, neighboring cities, etc.)
- Signing and Striping Support

Project Design/Plans, Specifications, and Estimates (PS&E) Preparation

Firms shall be capable of performing the following tasks:

- Land Surveying & Mapping
- Civil Engineering Design
- Detailed Engineering/Cost Estimation
- Preparation of construction bid documents and specifications
- Any other work required to complete project design

Consultant shall perform research of records including utility companies and other agency records as necessary to secure information required to identify, locate, and accurately layout all existing improvements and right-of-way within project limits that may interfere with the proposed

improvements. Consultant will identify estimated number of potholes required for a project in their cost proposal for each individual task order.

Consultant shall conduct a site visit to observe the topography and visualize the proposed improvements at the project location and review available subsurface data from nearby structures or published geologic maps to determine general subsurface conditions at the project site.

General Requirements and Project Deliverables

All surveys shall be performed by Consultant in accordance with accepted professional surveying standards. Consultant shall obtain applicable encroachment permits from the City of Ontario, Railroad, Caltrans, and neighboring cities prior to beginning any field investigation. Additionally, if a traffic control plan is required, Consultant shall prepare the plan. Such documents shall be forwarded to the respective permit issuing agency, for review and concurrence prior to beginning any field investigation.

The Consultant shall complete a topographic survey map of the site to prepare a base map for the construction plans. This includes, but is not limited to:

1. Horizontal and vertical control, drainage surveys, topographical surveys within the right-of-way, cross sections, grid grades, open-ended traverses, profile data sheets and required documentation. (Horizontal Control shall be based on NAD 83; Vertical Control shall be based on NAVD 88).

2. Establish street centerlines, right-of-way lines existing and proposed, and all easements from available record information.

3. Provide the basis-of-bearing and benchmark information used for the survey and necessary for construction.

4. Locate and tie any features that would affect the design or construction.

5. Obtain Record of Surveys, benchmark and centerline tie information.

The City will provide the title block and specification boiler plate to the Consultant. All drawings shall utilize AutoCAD 2021 or later and shall utilize the City of Ontario standard title block. For interim submittals, the City may opt to receive only PDF versions of the plans for reviewing purposes. If so, the Consultant team will provide plans and/or specifications accordingly. All original plan sheets, the title sheet of the specifications, calculations, and reports shall be signed and stamped by the Consultants' licensed professional engineer responsible/in-charge of the project.

The Consultant will be expected to revise the documents within a revised schedule set by the City. There will be no additional compensation necessary for the consultant to complete the work to the satisfaction of the City for required revisions. The Consultant's services for plan specifications and estimating (PS&E) for engineering project preparation and special studies/investigations shall include and be in conformance with the latest editions of the Greenbook Standard Specifications for Public Works Construction and the City of Ontario standards, unless otherwise specified. Latest editions of the Caltrans Standards and Specifications shall be used for traffic signal design.

For the City plan check process, the Consultant will be required to submit one PDF electronic copy for all submittals. Consultant shall also be responsible for submitting plans and reports for plan check and approval/permit issuance to any affected agencies.

Permitting

- Prepare and file all necessary documents and apply for all required permits or provide support including, but not limited to:

  i. Federal, Caltrans, Railroad, environmental, and utility permits

  ii. Valet parking review

  iii. Permit Parking review

  iv. On-Site "extension to staff" support services

Consultant shall coordinate permits and any other issues with the City, other agencies, and all utility companies as required. At the direction of the City, the Consultant shall be the liaison with affected agencies.

3) Construction Support and Other Tasks

Firms shall be capable of performing the following tasks:

- Project presentations and meetings
- Construction Support Services
- Any other work required to successfully plan for projects and adequately assess project feasibility

During the bidding process and construction, the Consultant shall assist in answering questions regarding the technical specifications, design drawings or conflicts in the design, respond to City staff and/or contractor RFI's for any technical design clarification or design conflicts that arise during construction, review and recommend materials submittals and shop drawings for concurrence with plans and specifications, attend milestone meetings and pre-con meetings, and prepare record drawings that incorporate redlines comments prepared by the contractor and City Staff. One (1) bond set of the record drawings shall be submitted and all drawings shall be provided to the City electronically, as a PDF file and with the latest AutoCAD file format.

Change Orders (Change to Scope of Work)

All changes must be submitted in writing for City approval. The Consultant shall submit a cost fee proposal for all changes. The City will evaluate and issue a Notice to Proceed for each Change Order separately

1. GENERAL REQUIREMENTS.

1.1 Basic Services. Consultant agrees to perform all the necessary professional architectural, engineering (e.g. mechanical, electrical, plumbing, structural, site engineering, and any other necessary engineering services mutually agreeable to the Parties) and construction

administration services for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

1.2 Exclusions from Basic Services. The following services shall be excluded from the basic services listed above: N/A

1.3 Additional Services. Consultant shall perform the following Additional Services for the Project: N/A

1.4 Communication with City. Consultant shall participate in consultations and conferences with authorized representatives of City and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications and documents in accordance with the applicable standards and requirements of law and the City. Such consultations and conferences shall continue throughout the planning and construction of the Project and the contractor's warranty period. Consultant shall take direction only from the City's Representative, or any other representative specifically designated by the City for this Project, including any construction manager hired by the City.

1.5 Coordination and Cooperation with Construction Manager. The City may hire a construction manager to administer and coordinate all or any part of the Project on its behalf. If the City does so, it shall provide a copy of its agreement with the construction manager so that the Consultant will be fully aware of the duties and responsibilities of the construction manager. The Consultant shall cooperate with the construction manager and respond to any requests or directives authorized by the City to be made or given by the construction manager. The Consultant shall request clarification from the City in writing if the Consultant should have any questions regarding the authority of the construction manager.

2. INITIAL PLANNING PHASE.

During the initial planning phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

2.1 Project Feasibility. Provide advice and assistance to City in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

2.2 Meeting Budget and Project Goals. Consultant shall notify City in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially impact the Project budget and time line, including the City's Preliminary Construction Budget. Consultant shall use its best judgment in determining the balance between the size, type and quality of construction to achieve a satisfactory solution within the Project's budget and construction allowance. It shall be the duty of the Consultant to design the Project within budget. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by the stated amount, Consultant may be required to make the necessary changes in the drawing and specifications, at its sole cost and expense, to bring the bids within the required budget.

2.3 Permits, Approvals and Authorizations. As indicated in Section 3.5.4 of the Agreement, Consultant shall assist City in securing easements, encroachment permits, rights of

way, dedications, infrastructures and road improvements, as well as coordinating with utilities and adjacent property owners.

3. SCHEMATIC PLAN PHASE.

During the schematic plan phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

3.1 Funding Documents. Consultant shall provide a site plan and all other Project-related information necessary and required for an application by City to any federal, state, regional, or local agencies for funds to finance the construction Project.

3.2 Schematic Plans. In cooperation with City, Consultant shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development at the site, and the proposed architectural concept of the buildings ("Schematic Plans"). Consultant shall incorporate the functional requirements of City into the Schematic Plans. The Schematic Plans shall meet all laws, rules and regulations of the State of California. The Schematic Plans shall show all rooms incorporated in each building of the Project in single-line drawings, and shall include all revisions required by City or by any federal, state, regional or local agency having jurisdiction over the Project. All architectural drawings for the Project shall be in a form suitable for reproduction.

3.3 Preliminary Project Budget. Consultant shall use the City's Preliminary Construction Budget and its own expertise and experience with the Project to establish a preliminary project budget or allowance in a format required by City ("Consultant's Preliminary Project Budget"). The purpose of the Consultant's Preliminary Project Budget is to show the probable Project cost in relation to City's Preliminary Construction Budget and the construction standards of any applicable funding agency. If Consultant perceives site considerations which render the Project expensive or cost prohibitive, Consultant shall disclose such conditions in writing to City immediately. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by more than the stated amount, Consultant may be required to make the necessary changes in the drawings and specifications, at its sole cost and expense, to bring the bids within the required budget Consultant shall provide a preliminary written time schedule for the performance of all construction work on the Project.

3.4 Copies of Schematic Plans and Other Documents. Consultant, at its own expense, shall provide a complete set of the Schematic Plans described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4. DESIGN DEVELOPMENT PHASE.

During the design development phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

4.1 Design Development Documents. Once City provides Consultant with specific written approval of the Schematic Plans described herein, Consultant shall prepare design development documents consisting of: (1) site and floor plans; (2) elevations; and (3) any other drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the size and character of the Project's structural, mechanical and electrical systems, and to

outline the Project specifications ("Design Development Documents"). The Design Development Documents shall be prepared in sufficient form to present to the City Council for approval.

4.2 Copies of Design Development and Other Documents. Consultant, at its own expense, shall provide a complete set of the Design Development Documents described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4.3 Updated Project Budget. Consultant shall use its Preliminary Project Budget and expertise and experience with the Project to establish an updated estimate of probable construction costs, containing detail consistent with the Design Development Documents as set forth herein and containing a breakdown based on types of materials and specifications identified herein ("Consultant's Updated Project Budget").

4.4 Timetable. Consultant shall provide a written timetable for full and adequate completion of the Project to City.

4.5 Application for Approvals. Consultant shall assist City in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned with the Project. Consultant shall furnish and process all architectural and engineering information required to prepare and process applications to applicable utilities in order to secure priorities and materials, to aid in the construction of the Project and to obtain final Project approval and acceptance by any of the above agencies as may be required.

4.6 Color and Other Aesthetic Issues. Consultant shall provide, for City's review and approval, a preliminary schedule of all color materials and selections of textures, finishes and other matters involving an aesthetic decision about the Project.

5. FINAL WORKING DRAWINGS AND SPECIFICATIONS.

During the final working drawings and specifications phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

5.1 Final Working Drawings and Specifications. Once City provides Consultant with specific written approval of the Design Development Documents described herein, Consultant shall prepare such complete working drawings and specifications as are necessary for developing complete bids and for properly executing the Project work in an efficient and thorough manner ("Final Working Drawings and Specifications"). Such Final Working Drawings and Specifications shall be developed from the Schematic Plans and Design Development Documents approved by City. The Final Working Drawings and Specifications shall set forth in detail all of the following: (1) the Project construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems; and (3) the utility service connection equipment and site work. As indicated in Section 3.9.2 of the Agreement, City may be requested to supply Consultant with the necessary information to determine the proper location of all improvements on and off site, including record drawings ("as-built drawings") in City's possession. Consultant will make a good-faith effort to verify the accuracy of such information by means of a thorough interior and exterior visual survey of site conditions. City shall also make a good-faith effort to verify the accuracy of the as-built

drawings and provide any supplemental information to Consultant which may not be shown on the as-built drawings.

5.2 Form. The Final Working Drawings and Specifications must be in such form as will enable Consultant and City to secure the required permits and approvals from all federal, state, regional or local agencies concerned with the Project. In addition, the Final Working Drawings and Specifications must be in such form as will enable City to obtain, by competitive bidding, a responsible and responsive bid within the applicable budgetary limitations and cost standards. The Final Working Drawings and Specifications shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Consultant.

5.3 Approval and Revisions. City shall review, study, and check the Final Working Drawings and Specifications presented to it by Consultant, and request any necessary revisions or obtain any necessary approvals by the City Council, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications at no additional cost, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. Consultant shall bring any such conflicts and/or inconsistencies to the attention of City. The Parties agree that Consultant, and not the City, possesses the requisite expertise to determine the constructability of the Final Working Drawings and Specifications. However, the City reserves the right to conduct one or more constructability review processes with the Final Working Drawings and Specifications, and to hire an independent architect or other consultant to perform such reviews. Any such independent constructability review shall be at City's expense. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications which may result from any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. If such changes, additions, deletions or corrections are inconsistent with prior City direction, Consultant shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.

5.4 Costs of Construction. It is understood by Consultant that should the Final Working Drawings and Specifications be ordered by City, City shall specify the sum of money set aside to cover the total cost of construction of the work, exclusive of Consultant's fees. Should it become evident that the total construction cost will exceed the specified sum, Consultant shall at once present a statement in writing to the City's Representative setting forth this fact and giving a full statement of the cost estimates on which the conclusion is based.

5.5 Copies of Final Working Drawings and Specifications and Other Documents. Consultant, at its own expense, shall provide a complete set of the Final Working Drawings and Specifications described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

6. CONSTRUCTION CONTRACT DOCUMENTS.

During the construction contract documents phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

6.1 Bid and Contract Documents. If so required by City, Consultant shall assist City in the completion of all bid and construction documents, including but not limited to, the Notice Inviting Bids, Instructions to Bidders, Contract Bid Forms (including Alternate Bids as requested by City), `Contract, General Conditions, Supplementary General Conditions, Special Conditions, DVBE and other applicable affirmative action documents, Performance Bond, Payment Bond, Escrow Agreement for Security Deposits, and any other certifications and documents required by federal, state and local laws, rules and regulations which may be reasonably required in order to obtain bids responsive to the specifications and drawings. All such documents shall be subject to the approval of City and City's legal counsel.

6.2 Final Estimate. At the time of delivery of these bid and construction documents, which shall include the Final Working Drawings and Specifications (collectively referred to herein as the "Construction Documents"), Consultant shall provide City with its final estimate of probable construction cost ("Consultant's Final Estimate"). As discussed herein, including in Section 7.3, it shall be the Consultant's duty to design the Project within budget.

7. BID PHASE.

During the bid phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

7.1 Reproducible Construction Documents. Once City provides Consultant with specific written approval of the Construction Documents and Consultant's Final Estimate, Consultant shall provide to City one set of reproducible Construction Documents.

7.2 Distribution of Contract Documents and Review of Bids. Consultant shall assist City in distributing the Construction Documents to bidders and conducting the opening and review of bids for the Project.

7.3 Over Budget. If the apparent lowest responsive and responsible bid on the Project exceeds the Consultant's Final Estimate by more than five percent (5%), City may request Consultant to amend, at Consultant's sole cost and expense, the Final Drawings and Specifications in order to rebid the Project and receive a lowest responsive and responsible bid equal to or less than the Consultant's Final Estimate. All revisions necessary to bring the lowest responsible and responsive bid within the Consultant's Final Estimate, including any omissions, deferrals or alternates, shall be made in consultation with, and subject to the approval of, the City.

8. CONSTRUCTION PHASE.

During the construction phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

8.1 Observation. The Project Consultant shall observe work executed from the Final Working Drawings and Specifications in person, provided that City may, in its discretion, consent to such observation by another competent representative of Consultant.

8.2 General Administration. Consultant shall provide general administration of the Construction Documents and the work performed by the contractors.

8.3 Pre-Construction Meeting. Consultant shall conduct one or more pre-construction meetings, as the City determines is needed for the Project, with all interested Parties.

8.4 Site Visits of Contractor's Work. Consultant shall conduct site visits to observe each contractors' work for general conformance with the Construction Documents and with any approved construction schedules or milestones. Such site visits shall be conducted as often as are necessary and appropriate to the stage of construction, according to the City's sole discretion, but in no event less than weekly.

8.5 Site Visits of Inspector's Work. Consultant shall conduct site visits to communicate and observe the activities of the City inspectors. Such site visits shall be conducted as often as is mutually acceptable to Consultant and City. Consultant shall direct the City inspectors and the Project contractors to coordinate the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.

8.6 Coordination of Subconsultants. Consultant shall cause all architects, engineers and other consultants, as may be hired by Consultant or City, to observe the work completed under their disciplines as required, and approve and review all test results for general conformance with the Construction Documents.

8.7 Reports. Consultant shall make regular reports as may be required by applicable federal, state or local laws, rules or regulations, as well as the federal, state, regional or local agencies concerned with the Project.

8.8 Construction Meetings; Minutes. Consultant shall attend all construction meetings and provide written reports/minutes to the City after each construction meeting in order to keep City informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the Project work, according to the City's sole discretion, but no less than weekly.

8.9 Written Reports. Consultant shall make written reports to City as necessary to inform City of problems arising during construction, changes contemplated as a result of each such problems, and progress of the Project work.

8.10 Written Records. Consultant shall keep accurate written records of the progress and quality of the Project work and the time schedules, and shall advise the contractors and City of any deviations from the time schedule which could delay timely completion of the Project.

8.11 Material and Test Reports. Consultant shall check and process, in a timely manner, all required material and test reports for the Project work. In addition, Consultant shall provide notice of any deficiencies in material or work reflected in such reports, as well as its recommendation for correction of such deficiencies, to the contractors and City.

8.12 Review and Response to Submissions. Consultant shall review and respond, in a timely manner, to all schedules, submittals, shop drawings, samples, information requests, change requests, and other submissions of the contractor and subcontractors for compliance with, or alterations and additions to, the Construction Documents. Consultant's review and response shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.13 Rejection of Work. Consultant shall promptly reject, as discussed with City, work or materials which do not conform to the Construction Documents. Consultant shall immediately notify the City and contractor(s) of such rejections. Consultant shall also have the authority to

recommend to the City that additional inspection or testing of the work be performed, whether or not such work is fabricated, installed or completed.

8.14 Substitutions. Consultant shall consult with City, in a timely manner, with regard to substitution of materials, equipment and laboratory reports thereof, prior to the City's final written approval of such substitutions. Consultant's consultation shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.15 Revised Documents and Drawings. Consultant shall prepare, at no additional expense to City, all documents and/or drawings made necessary by errors and omissions in the originally approved Construction Documents.

8.16 Change Requests and Material Changes. Consultant shall evaluate and advise City, in a timely manner and in writing, of any change requests and material change(s) which may be requested or necessary in the Project plans and specifications. Consultant shall provide the City with its opinion as to whether such change requests should be approved, denied or revised. If the City has not hired a construction manager or other person to do so, the Consultant shall prepare and execute all change orders and submit them to the City for authorization. If the City has designated a construction manager or other person to prepare all change orders, the Consultant shall review all change orders prepared by such person, execute them and deliver them to the City for authorization if they meet with the Consultant's approval, or submit them to the City with recommendations for revision or denial if necessary. Consultant shall not order contractors to make any changes affecting the contract price without approval by City of such a written change order, pursuant to the terms of the Construction Documents. Consultant may order, on its own responsibility and pending City Council approval, changes necessary to meet construction emergencies, if written approval of City's Representative is first secured.

8.17 Applications for Payment. Consultant shall examine, verify and approve contractor's applications for payment, and shall issue certificates for payment in amounts approved by the City's inspector.

8.18 Final Color and Product Selection. Consultant shall coordinate final color and product selection with City's original design concept.

8.19 Substantial Completion. Consultant shall determine the date of substantial completion, in consultation with the City.

8.20 Punch List. After determining that the Project is substantially complete, Consultant shall participate in the inspection of the Project and shall review all remaining deficiencies and minor items needed to be corrected or completed on the Project, including those identified on the punch list prepared by the contractor ("Punch List Items"). Consultant shall notify contractor in writing that all Punch List Items must be corrected prior to final acceptance of the Project and final payment. Consultant shall also notify City of all Punch List Items.

8.21 Warranties. Consultant shall review materials assembled by the contractor and subcontractors with regard to all written warranties, guarantees, owners' manuals, instruction books, diagrams, record "as built" drawings, and any other materials required from the contractors and subcontractors pursuant to the Construction Documents. Consultant shall coordinate and provide these materials to the City.

8.22 Certificate of Completion. Consultant shall participate in any further inspections of the Project necessary to issue Consultant's Certificate of Completion and final certificate for payment.

8.23 Documents for Project Close-Out. Consultant shall cause all other architects, engineers and other consultants, as may be hired by Consultant, to file any and all required documentation with the City or other governmental authorities necessary to close out the Project. Consultant shall assist the City in obtaining such documentation from all other architects, engineers, or other consultants.

9. AS-BUILT DRAWINGS.

During the as-built drawings phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

9.1 As-Built Drawings and Specifications. Not later than thirty (30) days after substantial completion of the Project, before receipt of final payment, Consultant shall review and forward the Final Working Drawings and Specifications, indicating on them all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing an "as-built" set of Final Working Drawings and Specifications ("As-Built Drawings and Specifications"). The As-Built Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. Consultant shall personally review and certify that the As-Built Drawings and Specifications are a correct representation of the information supplied to Consultant by any inspectors and the contractor, and shall obtain certifications from any inspectors and the contractor that the drawings are correct.

9.2 Approval. Once City provides Consultant with specific written approval of the As-Built Drawings and Specifications, Consultant shall forward to City the complete set of original As-Built Drawings and Specifications or a complete set of reproducible duplicate As-Built Drawings and Specifications. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

9.3 Documents for Final Payment. Prior to the receipt of Consultant's final payment, Consultant shall forward to City all of the following: (1) one clear and legible set of reproductions of the computations; (2) the original copy of the specifications; (3) the As-Built Drawings and Specifications as required herein; and (4) Consultant's Certificate of Completion.

10. WARRANTY PERIOD.

During the warranty period phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

10.1 Advice. Consultant shall provide advice to City on apparent deficiencies in the Project during any applicable warranty periods for the Project.

EXHIBIT "B"
COMPENSATION RATES AND REIMBURSABLE EXPENSES

1. HOURLY COMPENSATION RATES.

See schedule below

2. REIMBURSABLE EXPENSES.

See schedule below

3. ADDITIONAL SERVICES.

Additional Services shall be computed at the actual hourly rates listed above.

4. ADDITIONAL CONSULTANTS.

If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the Consultant's actual hourly rates with no mark-up. Owner shall have the authority to review and approve the rates of any such consultants.

STC Traffic • Fee Schedule

Executive/Management Classifications	Hourly Rate
Principal-In-Charge	$290
Senior Principal Manager	$270
Principal Manager	$260
Senior Project Manager	$240
Project Manager III	$220
Project Manager II	$210
Project Manager I	$200
Professional Engineering Classifications	
Principal Engineer	$230
Senior Project Engineer	$210
Project Engineer III	$190
Project Engineer II	$160
Project Engineer I	$140
Professional Planning Classifications	
Principal Planner	$200
Senior Project Planner	$180
Project Planner III	$170
Project Planner II	$140
Project Planner I	$120
Technical/Specialized Classifications	
Senior Systems Engineer/Technical Specialist	$220
Systems Engineer / Technical Specialist III	$200
Systems Engineer / Technical Specialist II	$170

Systems Engineer / Technical Specialist I	$150
Construction Manager	$240
Senior Construction Engineer/Inspector	$220
Construction Engineer/Inspector III	$190
Construction Engineer/Inspector II	$160
Construction Engineer/Inspector I	$140
Senior Drafter	$160
Drafter III	$150
Drafter II	$130
Drafter I	$110
Other Classifications	
Intern	$100
Expert Witness	$400

STC Traffic is a local business and there are no direct costs for mileage.
Outsourced reimbursable expenses such as printing and reproduction, deliveries and overnight shipping, computerized plotting, materials, etc., will be charged to the client at the consultant's cost without mark-up.

EXHIBIT "C"
SAMPLE TASK ORDER FORM

Task Order No. _____

Agreement: DESIGN SERVICES AGREEMENT FOR ON-CALL SERVICES

Consultant: STC Traffic, Inc.

The Consultant is hereby authorized to perform the following services subject to the provisions of the Agreement identified above:

List any attachments: (Please provide if any.)

Dollar Amount of Task Order: Not to exceed $_____,_____.00

Completion Date: _____

The undersigned Consultant hereby agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted above, and perform all services for the work above specified in accordance with the Agreement identified above and will accept as full payment therefore the amount shown above.

CITY OF ONTARIO	**STC Traffic, Inc.**
Dated: _____	Dated: _____
By: _____	By: _____

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
DESIGN SERVICES AGREEMENT
FOR ON-CALL SERVICES

1. PARTIES AND DATE.

This Agreement is made and entered into as of _____, by and between the City of Ontario, a municipal corporation organized and operating 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 Iteris, Inc., a Delaware Corporation with its principal place of business at 1700 Carnegie Avenue, Suite 100; Santa Ana, CA 92705 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 City. City is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Consultant**.** Consultant desires to perform and assume responsibility for the provision of certain professional engineering design services required by the City on the terms and conditions set forth in this Agreement. Consultant warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Consultant is a corporation or other organization, the Project Consultant designated pursuant to Section 3.2, and not the Consultant itself, shall be fully licensed to practice as an engineer in the State of California.

2.3 Project**.** City desires to engage Consultant to render such services for the On-Call Transportation Planning & Traffic Engineering Design Services ("Project") as set forth in this Agreement.

3. TERMS

3.1 Employment of Consultant.

3.1.1 Scope of Services. Consultant promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional engineering and related services necessary for the full and adequate completion of the Project described in Exhibit "A" attached hereto and incorporated herein by reference ("Services"). The Services shall be more particularly described in the individual Task Order issued by the City or its designee. No Services shall be performed unless authorized by a fully executed Task Order in the form attached hereto as Exhibit "C". All Services

shall be subject to, and performed in accordance with, this Agreement, each Task Order, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Consultant shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld.

3.1.2 Term. The term of this Agreement shall be from April 2, 2024 to April 2, 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.

3.2 Project Consultant; Key Personnel.

3.2.1 Engineer of Record. Consultant shall name a specific individual to act as Project Consultant, subject to the approval of City. Consultant hereby designates Deepak Kaushik, PE (#72838) to act as the Engineer of Record for the Project. The Engineer of Record shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the Engineer of Record shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Engineer of Record shall be of at least equal competence as the prior Engineer of Record. In the event that City and Consultant cannot agree as to the substitution of a new Engineer of Record, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Engineer of Record, Consultant has represented to the City that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Consultant may substitute others of at least equal competence upon written approval of the City. In the event that City and Consultant cannot agree as to the substitution of key personnel, engineers or consultants, City shall be entitled to terminate this Agreement for cause. The key additional personnel, engineers and consultants for performance of this Agreement are as follows: Braulio Ramirez, PE (#85189) Associate Vice President and Ted Huynh, PE (#80087), TE (#2778) Senior Manager.

3.3 Hiring of Consultants and Personnel.

3.3.1 Right to Hire or Employ. Consultant shall have the option, unless City objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Consultant may delegate without relieving Consultant from administrative or other responsibility under this Agreement. Consultant shall be responsible for the coordination and cooperation of Consultant's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by City in its sole and reasonable discretion. Consultant shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work to allow City to review their qualifications and approve to their participation on the Project in its sole and reasonable discretion.

3.3.2 Qualification and License. All architects, engineers, experts and other consultants retained by Consultant in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.3.3 Standards and Insurance. All architects, engineers, experts and other consultants hired by Consultant shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the City in writing. Unless changes are approved in writing by the City, Consultant's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.3.4 Assignments or Staff Changes. Consultant shall promptly obtain written City approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Consultant's consultants and key personnel shall be subject to approval by City.

3.3.5 Draftsman and Clerical Support. Draftsmen and clerical personnel shall be retained by Consultant at Consultant's sole expense.

3.4 Standard of Care.

3.4.1 Standard of Care. 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 qualified to perform the Services in the same discipline in the State of California, and shall be responsible to City for damages sustained by the City and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Consultant shall be fully responsible to the City for any increased costs incurred by the City as a result of any such delays in the design or construction of the Project. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants and represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, 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.

3.4.2 Performance of Employees. Any employee or consultant 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 or consultant 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.

3.5 Laws and Regulations.

3.5.1 Knowledge and Compliance. Consultant shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Consultant by law. Consultant shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. Consultant shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.5.2 Drawings and Specifications. Consultant shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Consultant. Consultant shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto. For the preparation of all such drawings and specifications, the Consultant shall use Computer Aided Design Drafting ("CADD") (e.g., AutoCAD) or other technology acceptable to the Consultant and City.

3.5.3 Americans with Disabilities Act. Consultant will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Consultant shall inform City of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide the City with its interpretation of such inconsistencies and conflicting interpretations. Unless Consultant brings such inconsistencies and conflicting interpretations to the attention of the City and requests City's direction on how to proceed, the Consultant's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Consultant, and the Consultant shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Consultant request's City's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Consultant shall be responsible to the City only pursuant to the indemnification provisions of this Agreement.

3.5.4 Permits, Approvals and Authorizations. Consultant shall provide City with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Consultant shall then assist the City in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the City.

3.5.5 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 (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant shall 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. Failure to comply with laws, regulations, and ordinances listed in this Section is a violation of federal and state law.

3.6 Independent Contractor.

3.6.1 Control and Payment of Subordinates. City retains Consultant on an independent contractor basis and Consultant is not an employee of City. Consultant is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City's employees. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City, and shall at all times be under Consultant's exclusive direction and control. 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.

3.7 Schedule of Services.

3.7.1 Consultant Services. Consultant shall fully and adequately complete the Services described in this Agreement, each individual Task Order issued by the City, and in Exhibit "A" attached hereto and incorporated herein by reference.

3.7.2 Timely Performance Standard. Consultant shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Consultant shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the City and within any completion schedules adopted for the Project. Consultant agrees to coordinate with City's staff, contractors and consultants in the performance of the Services, and shall be available to City's staff, contractors and consultants at all reasonable times.

3.7.3 Performance Schedule. Consultant shall prepare an estimated time schedule for the performance of Consultant's Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the City's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for City's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If City and Consultant cannot mutually agree on a performance schedule, City shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Consultant without the prior written approval of City. If the Consultant's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the City will suffer damage for which the Consultant will be responsible.

3.7.4 Excusable Delays. Any delays in Consultant's work caused by the following may be added to the time for completion of any obligations of Consultant: (1) the actions

of City or its employees; (2) the actions of those in direct contractual relationship with City; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control of the Consultant; and (5) any Force Majeure Event (as defined herein) or other unforeseen occurrence not due to any fault or negligence on the part of Consultant. Neither the City nor the Consultant shall be liable for damages, liquidated or otherwise, to the other on account of such delays.

3.7.5 Force Majeure Events. 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. Should a Force Majeure Event occur, the non-performing Party shall, within fifteen (15) calendar days of the beginning of an Force Majeure Event, 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 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.

3.7.6 Request for Excusable Delay Credit. The Consultant shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify the City in writing of the causes of delay (unless City grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). City will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The City's findings of fact thereon shall be final and conclusive on the Parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Consultant for extensions of time shall be an extension of the performance time at no cost to the City. If Additional Services are required as a result of an excusable delay, the Parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Consultant make an application for an extension of time, Consultant shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

3.8 Additional Services.

3.8.1 Request for Services. At City's request, Consultant may be asked to perform services not otherwise included in this Agreement, not included within the basic services listed in Exhibit "A" attached hereto, and/or not customarily furnished in accordance with generally accepted architectural practice.

3.8.2 Definition. As used herein, "Additional Services" mean: (1) 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 for the Consultant to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit "A" attached hereto. Consultant shall not perform, nor be compensated for, Additional Services without prior written authorization from City and without an agreement between the City and Consultant as to the compensation to be paid for such services. City shall pay Consultant for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Consultant pursuant to the indemnification provision of this Agreement.

3.8.3 Examples of Additional Services. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Consultant was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

(a) Separately Bid Portions of Project. Plan preparation and/or administration of work on portions of the Project separately bid.

(b) Furniture and Interior Design. Assistance to City, if requested, for the selection of moveable furniture, equipment or articles which are not included in the Construction Documents.

(c) Fault of Contractor. Services caused by delinquency, default or insolvency of contractor, or by major defects in the work of the contractor, provided that any such services made necessary by the failure of Consultant to detect and report such matters when it reasonably should have done so shall not be compensated.

(d) Inconsistent Approvals or Instructions. Revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Consultant.

(e) Legal Proceedings. Serving as an expert witness on City's behalf or attending legal proceedings to which the Consultant is not a party.

(f) Damage Repair. Supervision of repair of damages to any structure.

(g) Extra Environmental Services. Additional work required for environmental conditions (e.g. asbestos or site conditions) not already contemplated within the Consultant's services for the Project.

3.9 City Responsibilities. City's responsibilities shall include the following:

3.9.1 Data and Information. City shall make available to Consultant all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and criteria. As part of the budget limitation information, the City shall provide the Consultant with a preliminary construction budget ("City's Preliminary Construction Budget").

3.9.2 Project Survey. If required pursuant to the scope of the Project and if requested by Consultant, City shall furnish Consultant with, or direct Consultant to procure at City's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.

3.9.3 Bid Phase. Distribute Construction Documents to bidders and conduct the opening and review of bids for the Project.

3.9.4 Testing. Retain consultant(s) to conduct chemical, mechanical, soils, geological or other tests required for proper design of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.

3.9.5 Required Inspections and Tests. Retain consultant(s) to conduct materials testing and inspection or environmental/hazardous materials testing and inspection pursuant to any applicable laws, rules or regulations.

3.9.6 Fees of Reviewing or Licensing Agencies. Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

3.9.7 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates Jay Bautista, Transportation Manager, or his or her designee, as the City's contact for the implementation of the Services hereunder. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.9.8 Review and Approved Documents. Review all documents submitted by Consultant, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Consultant of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

3.10 Compensation.

3.10.1 Consultant's Compensation for Basic Services. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The maximum compensation for Services to be provided pursuant to each Task Order shall be set forth in the relevant Task Order. The total compensation for all Task Orders issued hereunder shall not exceed **Two Hundred Thousand Dollars and Zero Cents ($200,000.00)** without written approval of the City Council or City Manager, as applicable. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

3.10.2 Payment for Additional Services. At any time during the term of this Agreement, City may request that Consultant perform Additional Services. As used herein,

Additional Services 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. Any additional work in excess of this amount must be approved by the City. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "B" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the rates and in the manner set forth in Exhibit "B" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. City shall have the authority to review and approve the rates of any such consultants. In addition, Consultant shall be reimbursed for any expenses incurred by such consultants pursuant to the terms and conditions of Section 3.10.3.

3.10.3 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the Services and Additional Services. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, which approval may be evidenced by inclusion in Exhibit "B" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Consultant in the interest of the Project. Consultant shall be required to acquire prior written consent in order to obtain reimbursement for the following: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of $1,000; and (5) other costs, fees and expenses in excess of $1,000.

3.10.4 Payment to Consultant. Consultant's compensation and reimbursable expenses shall be paid by City to Consultant no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the compensation rates indicated in Exhibit "B" attached hereto and incorporated herein by reference. In order to receive payment, Consultant shall present to City an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid. The statement 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 statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Consultant shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit "B", attached hereto. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the Parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Consultant shall present to City an itemized statement which indicates the Additional Services performed, percentage of Additional Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Consultant shall be compensated as

set forth in the termination provision herein.

3.10.5 Withholding Payment to Consultant. The City may withhold payment, in whole or in part, to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under the indemnification provisions of this Agreement. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which Consultant is liable under the Agreement or state law. Payments to the Consultant for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Consultant shall not be withheld, postponed, or made contingent upon receipt by the City of offsetting reimbursement or credit from Parties not within the Consultant's reasonable control.

3.10.6 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. 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 and to require its consultants 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 shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Consultant or its consultants to comply with the Prevailing Wage Laws.

(a) Registration/DIR Compliance. If the Services are being performed as part of an applicable "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 performing such Services 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. 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 Department of Industrial Relations 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 Department of Industrial Relations against Consultant or any subconsultant.

3.11 Notice to Proceed.

Consultant shall not proceed with performance of any Services under this Agreement unless and until the City provides a written notice to proceed.

3.12 Termination, Suspension and Abandonment.

3.12.1 Grounds for Termination; Consultant's Termination for Cause. City hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Consultant shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Consultant shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by City as a result of the default, if any, by Consultant. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, abandonment or termination. Consultant may terminate this Agreement for substantial breach of performance by the City such as failure to make payment to Consultant as provided in this Agreement.

3.12.2 City's Suspension of Work. If Consultant's Services are suspended by City, City may require Consultant to resume such Services within ninety (90) days after written notice from City. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the City and Consultant.

3.12.3 Documents and Other Data. Upon suspension, abandonment or termination, Consultant shall provide to City all preliminary studies, sketches, working drawings, specifications, computations, and all other Project Documents, as defined below, to which City would have been entitled at the completion of Consultant's Services under this Agreement. Upon payment of the amount required to be paid to Consultant pursuant to the termination provisions of this Agreement, City shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Consultant under this Agreement. Consultant shall make such documents available to City upon request and without additional compensation other than as may be approved as a reimbursable expense.

3.12.4 Employment of other Consultants. 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.

3.13 Ownership and Use of Documents; Confidentiality.

3.13.1 Ownership. All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, architectural

presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes (hereinafter referred to as the "Project Documents") shall be and remain the property of City. Although the official copyright in all Project Documents shall remain with the Consultant or other applicable subcontractors or consultants, the Project Documents shall be the property of City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Consultant shall provide to City copies of all Project Documents required by City. In addition, Consultant shall retain copies of all Project Documents 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 reasonable duplication costs. Before destroying the Project Documents following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.13.2 Right to Use. Consultant grants to City the right to use and reuse all or part of the Project Documents, at City's sole discretion and with no additional compensation to Consultant, for the following purposes:

(a) The construction of all or part of this Project.

(b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;

(c) The construction of another project by or on behalf of the City for its ownership and use;

City is not bound by this Agreement to employ the services of Consultant in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Consultant or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Consultant.

Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Consultant shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall remove the Consultant's seal from the Project Documents and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

3.13.3 License. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Consultant shall require any and all subcontractors and consultants to agree in writing that City is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.13.4 Right to License. Consultant represents and warrants that Consultant has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Consultant prepares or causes to be prepared pursuant to this Agreement. Consultant shall indemnify and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Consultant makes no such

representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Consultant and provided to Consultant by City.

3.13.5 Confidentiality. All Project Documents, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Project Documents 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 written consent of City.

3.14 Indemnification.

3.14.1 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.

3.14.2 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.

3.15 Insurance. 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.

3.15.1 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, Consultant shall, at its expense, procure and maintain in full force and effect for the duration 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.

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

3.15.3 Commercial General Liability

(a) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(b) Coverage for Commercial General Liability insurance shall be at least as broad as the following: Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent. Commercial General Liability Insurance must include coverage for the following:

(i) Bodily Injury and Property Damage

(ii) Personal Injury/Advertising Injury

(iii) Premises/Operations Liability

(iv) Products/Completed Operations Liability

(v) Aggregate Limits that Apply per Project

(vi) Explosion, Collapse and Underground (UCX) exclusion deleted

(vii) Contractual Liability with respect to this Contract

(viii) Broad Form Property Damage

(ix) Independent Consultants Coverage

(c) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(d) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(e) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

3.15.4 Automobile Liability

(a) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(b) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(c) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status.

(d) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

3.15.5 Workers' Compensation/Employer's Liability

(a) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(b) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this Section.

3.15.6 Professional Liability (Errors and Omissions)

(a) At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. 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 must include a provision establishing the insurer's duty to defend.

3.15.7 Minimum Policy Limits Required

(a) The following insurance limits are required for the Agreement:

Coverage	Combined Single Limit
Commercial General Liability	$2,000,000 per occurrence/ $4,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	$2,000,000 per occurrence for bodily injury and property damage
Employer's Liability	$1,000,000 per occurrence
Professional Liability	$2,000,000 per claim and aggregate (errors and omissions)

(b) Defense costs shall be payable in addition to the limits.

(c) Requirements of specific coverage or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

3.15.8 Evidence Required

(a) Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

3.15.9 Policy Provisions Required

(a) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(b) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any 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.

(c) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced

past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(d) 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.

(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.

3.15.10 Qualifying Insurers

(a) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements: 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 admitted to transact in the 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.

3.15.11 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 the City Council, nor any member of the City Council, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

3.15.12 Subconsultant Insurance Requirements

(a) Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

3.16 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 five (5) years from the date of final payment under this Agreement.

3.17 Standardized Manufactured Items.

Consultant shall cooperate and consult with City in the use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items shall be standardized to City's criteria to the extent such criteria do not interfere with building design.

3.18 Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other City site, will be covered by, and be the subject of, a separate Agreement for engineering services between City and the Consultant chosen therefor by City.

3.19 Mediation.

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the Parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the Parties.

3.20 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

3.21 Asbestos Certification.

Consultant shall certify to City, in writing and under penalty of perjury, that to the best of

its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Consultant prepares for the Project. Consultant shall require all consultants who prepare any other documents for the Project to submit the same written certification. Consultant shall also assist the City in ensuring that contractors provide City with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Consultant shall include statements in its specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

3.22 No Third Party Rights.

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

3.23 Governing Law.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in San Bernardino County.

3.24 Exhibits and Recitals.

All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth.

3.25 Severability.

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

3.26 Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

3.27 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 its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

3.28 Harassment Policy.

Consultant shall provide a copy of the City's Harassment Policy to each of its employees assigned to perform the tasks under this Agreement. Consultant shall submit to the City's Personnel Manager a statement signed by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of City's Harassment Policy and certifying that they have read the Harassment Policy. A finding by the City that any of Consultant's

employees has harassed a City employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request.

3.29 Delivery of Notices.

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

CITY:	CONSULTANT:
City of Ontario	Iteris, Inc.
303 East “B” Street	1700 Carnegie Avenue, Suite 100
Ontario, CA 91764	Santa Ana, CA 92705
Attn: Craig Cruz, Engineering	Attn: Iteris Legal Department

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.

3.30 Time of Essence.

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

3.31 City’s Right to Employ Other Consultants.

City reserves right to employ other consultants, including designers, in connection with this Project or other projects.

3.32 Prohibited Interests.

3.32.1 Solicitation. 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. Further, 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. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

3.32.2 Conflict of Interest. For the term of this Agreement, no director, official, 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.

3.33 Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. 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.

3.34 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.

3.35 Subcontracting.

As specified in this Agreement, 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 each and every provision of this Agreement.

3.36 Supplemental Conditions.

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

3.37 Entire Agreement.

This Agreement, with its exhibits, contains the entire agreement of the Parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the Parties hereto. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all Parties hereto.

SIGNATURES ON FOLLOWING PAGE

Signature Page for Design Services Agreement
Between the City of Ontario
and ITERIS, INC.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

Iteris, Inc.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

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

EXHIBIT "A"
SCOPE OF SERVICES

The City of Ontario is seeking proposals from qualified consulting engineers (the Consultant) to provide On-Call Services for three (3) years, with an option of renewing for two (2) consecutive one (1) year terms for services in transportation planning & traffic engineering design with the intention of maintaining a list of multiple qualified prime engineering firms, with subconsultant support services as needed. Task orders will be issued to firms on a competitive basis based on the qualifications and expertise of the firm and their subconsultants. There is no designated minimum nor maximum value of services to be awarded to any one consultant.

The Consultant is expected to furnish all services as required to complete the scope of services described below for task order projects and to manage and control costs and resources, and complete work in adherence to the agreed upon Project schedule. The Consultant will assign a Project Manager who will act as the City's primary contact and will be entirely responsible for project management activities throughout the duration of an awarded task (including subconsultant work, if applicable). The following is a suggested breakdown of Project tasks and should be incorporated into the fee schedule under the appropriate activities.

TRANSPORTATION AND TRAFFIC ENGINEERING PROJECT DESIGN SERVICES

The City of Ontario is seeking a Request for Qualifications from firms for Professional Services:

Consultant shall be aware that certain labor categories above may be subject to prevailing wage rates as identified in the California Labor Code commencing Section 1770 et. Seq.
Determination of whether or not Prevailing Wages shall apply will be determined when the City's project manager identifies the scope of specific task orders. Please refer to Paragraph I.10 "Prevailing Wage" of this RFQ, and Paragraph 3.10.6 "Prevailing Wages" of the DSA for further requirements.

Expected services to be provided under this on-call contract will be performed under a task order system and may include:

1) Transportation Planning

Development Support Services

- Traffic Study Preparation and Review
- Parking Analysis Preparation and Review
- Trip Generation Analysis Preparation and Review
- VMT Analysis Preparation and Review
- SB743 Analysis Preparation and Review
- Traffic Simulations
- On-site circulation analysis
- Data Collection and Analysis
- Traffic Model Support
- On-Site "extension to staff" support services

Long Range Planning

- General Plan Support
- Specific Plan Support
- Active Transportation Plans and Programs
- Context Sensitive Solutions
- Maintain and Update City Traffic Study Guidelines
- Transit Studies
- Corridor Studies
- On-Site “extension to staff” support services
- Coordination with outside agencies
- Support for funding and grant applications

2) <u>Traffic Engineering</u>

- Traffic Design Plan (including civil work) and Cost Estimate Preparation and Review
- Traffic Signal Plan and Cost Estimate Preparation and Review
- Pedestrian Hybrid Beacon Plan and Cost Estimate Preparation and Review
- Street Light Plan and Cost Estimate Preparation and Review
- Traffic Studies for Capital Projects
- Support for funding and grant applications
- Intelligent Transportation Systems Design
- Traffic Signal Timing and Coordination Studies
- Traffic Control Plan Design and Review
- Technical services and support for non-motorized capital projects
- Active Transportation Design and Review
- Traffic Calming Support
- Traffic Calming Plan Design and Review
- On-Site “extension to staff” support services
- Traffic Counts Support
- Engineering and Traffic Surveys
- Warrant Analyses
- Coordination with outside agencies (Caltrans, railroads, neighboring cities, etc.)
- Signing and Striping Support

Project Design/Plans, Specifications, and Estimates (PS&E) Preparation

Firms shall be capable of performing the following tasks:

- Land Surveying & Mapping
- Civil Engineering Design
- Detailed Engineering/Cost Estimation
- Preparation of construction bid documents and specifications
- Any other work required to complete project design

Consultant shall perform research of records including utility companies and other agency records as necessary to secure information required to identify, locate, and accurately layout all existing improvements and right-of-way within project limits that may interfere with the proposed

improvements. Consultant will identify estimated number of potholes required for a project in their cost proposal for each individual task order.

Consultant shall conduct a site visit to observe the topography and visualize the proposed improvements at the project location and review available subsurface data from nearby structures or published geologic maps to determine general subsurface conditions at the project site.

General Requirements and Project Deliverables

All surveys shall be performed by Consultant in accordance with accepted professional surveying standards. Consultant shall obtain applicable encroachment permits from the City of Ontario, Railroad, Caltrans, and neighboring cities prior to beginning any field investigation. Additionally, if a traffic control plan is required, Consultant shall prepare the plan. Such documents shall be forwarded to the respective permit issuing agency, for review and concurrence prior to beginning any field investigation.

The Consultant shall complete a topographic survey map of the site to prepare a base map for the construction plans. This includes, but is not limited to:

1. Horizontal and vertical control, drainage surveys, topographical surveys within the right-of-way, cross sections, grid grades, open-ended traverses, profile data sheets and required documentation. (Horizontal Control shall be based on NAD 83; Vertical Control shall be based on NAVD 88).

2. Establish street centerlines, right-of-way lines existing and proposed, and all easements from available record information.

3. Provide the basis-of-bearing and benchmark information used for the survey and necessary for construction.

4. Locate and tie any features that would affect the design or construction.

5. Obtain Record of Surveys, benchmark and centerline tie information.

The City will provide the title block and specification boiler plate to the Consultant. All drawings shall utilize AutoCAD 2021 or later and shall utilize the City of Ontario standard title block. For interim submittals, the City may opt to receive only PDF versions of the plans for reviewing purposes. If so, the Consultant team will provide plans and/or specifications accordingly. All original plan sheets, the title sheet of the specifications, calculations, and reports shall be signed and stamped by the Consultants' licensed professional engineer responsible/in-charge of the project.

The Consultant will be expected to revise the documents within a revised schedule set by the City. There will be no additional compensation necessary for the consultant to complete the work to the satisfaction of the City for required revisions. The Consultant's services for plan specifications and estimating (PS&E) for engineering project preparation and special studies/investigations shall include and be in conformance with the latest editions of the Greenbook Standard Specifications for Public Works Construction and the City of Ontario standards, unless otherwise specified. Latest editions of the Caltrans Standards and Specifications shall be used for traffic signal design.

For the City plan check process, the Consultant will be required to submit one PDF electronic copy for all submittals. Consultant shall also be responsible for submitting plans and reports for plan check and approval/permit issuance to any affected agencies.

Permitting

- Prepare and file all necessary documents and apply for all required permits or provide support including, but not limited to:

  i. Federal, Caltrans, Railroad, environmental, and utility permits

  ii. Valet parking review

  iii. Permit Parking review

  iv. On-Site "extension to staff" support services

Consultant shall coordinate permits and any other issues with the City, other agencies, and all utility companies as required. At the direction of the City, the Consultant shall be the liaison with affected agencies.

3) Construction Support and Other Tasks

Firms shall be capable of performing the following tasks:

- Project presentations and meetings
- Construction Support Services
- Any other work required to successfully plan for projects and adequately assess project feasibility

During the bidding process and construction, the Consultant shall assist in answering questions regarding the technical specifications, design drawings or conflicts in the design, respond to City staff and/or contractor RFI's for any technical design clarification or design conflicts that arise during construction, review and recommend materials submittals and shop drawings for concurrence with plans and specifications, attend milestone meetings and pre-con meetings, and prepare record drawings that incorporate redlines comments prepared by the contractor and City Staff. One (1) bond set of the record drawings shall be submitted and all drawings shall be provided to the City electronically, as a PDF file and with the latest AutoCAD file format.

Change Orders (Change to Scope of Work)

All changes must be submitted in writing for City approval. The Consultant shall submit a cost fee proposal for all changes. The City will evaluate and issue a Notice to Proceed for each Change Order separately

1. GENERAL REQUIREMENTS.

1.1 Basic Services. Consultant agrees to perform all the necessary professional architectural, engineering (e.g. mechanical, electrical, plumbing, structural, site engineering, and any other necessary engineering services mutually agreeable to the Parties) and construction

administration services for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

1.2 Exclusions from Basic Services. The following services shall be excluded from the basic services listed above: N/A

1.3 Additional Services. Consultant shall perform the following Additional Services for the Project: N/A

1.4 Communication with City. Consultant shall participate in consultations and conferences with authorized representatives of City and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications and documents in accordance with the applicable standards and requirements of law and the City. Such consultations and conferences shall continue throughout the planning and construction of the Project and the contractor's warranty period. Consultant shall take direction only from the City's Representative, or any other representative specifically designated by the City for this Project, including any construction manager hired by the City.

1.5 Coordination and Cooperation with Construction Manager. The City may hire a construction manager to administer and coordinate all or any part of the Project on its behalf. If the City does so, it shall provide a copy of its agreement with the construction manager so that the Consultant will be fully aware of the duties and responsibilities of the construction manager. The Consultant shall cooperate with the construction manager and respond to any requests or directives authorized by the City to be made or given by the construction manager. The Consultant shall request clarification from the City in writing if the Consultant should have any questions regarding the authority of the construction manager.

2. INITIAL PLANNING PHASE.

During the initial planning phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

2.1 Project Feasibility. Provide advice and assistance to City in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

2.2 Meeting Budget and Project Goals. Consultant shall notify City in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially impact the Project budget and time line, including the City's Preliminary Construction Budget. Consultant shall use its best judgment in determining the balance between the size, type and quality of construction to achieve a satisfactory solution within the Project's budget and construction allowance. It shall be the duty of the Consultant to design the Project within budget. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by the stated amount, Consultant may be required to make the necessary changes in the drawing and specifications, at its sole cost and expense, to bring the bids within the required budget.

2.3 Permits, Approvals and Authorizations. As indicated in Section 3.5.4 of the Agreement, Consultant shall assist City in securing easements, encroachment permits, rights of

way, dedications, infrastructures and road improvements, as well as coordinating with utilities and adjacent property owners.

3. SCHEMATIC PLAN PHASE.

During the schematic plan phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

3.1 Funding Documents. Consultant shall provide a site plan and all other Project-related information necessary and required for an application by City to any federal, state, regional, or local agencies for funds to finance the construction Project.

3.2 Schematic Plans. In cooperation with City, Consultant shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development at the site, and the proposed architectural concept of the buildings ("Schematic Plans"). Consultant shall incorporate the functional requirements of City into the Schematic Plans. The Schematic Plans shall meet all laws, rules and regulations of the State of California. The Schematic Plans shall show all rooms incorporated in each building of the Project in single-line drawings, and shall include all revisions required by City or by any federal, state, regional or local agency having jurisdiction over the Project. All architectural drawings for the Project shall be in a form suitable for reproduction.

3.3 Preliminary Project Budget. Consultant shall use the City's Preliminary Construction Budget and its own expertise and experience with the Project to establish a preliminary project budget or allowance in a format required by City ("Consultant's Preliminary Project Budget"). The purpose of the Consultant's Preliminary Project Budget is to show the probable Project cost in relation to City's Preliminary Construction Budget and the construction standards of any applicable funding agency. If Consultant perceives site considerations which render the Project expensive or cost prohibitive, Consultant shall disclose such conditions in writing to City immediately. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by more than the stated amount, Consultant may be required to make the necessary changes in the drawings and specifications, at its sole cost and expense, to bring the bids within the required budget Consultant shall provide a preliminary written time schedule for the performance of all construction work on the Project.

3.4 Copies of Schematic Plans and Other Documents. Consultant, at its own expense, shall provide a complete set of the Schematic Plans described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4. DESIGN DEVELOPMENT PHASE.

During the design development phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

4.1 Design Development Documents. Once City provides Consultant with specific written approval of the Schematic Plans described herein, Consultant shall prepare design development documents consisting of: (1) site and floor plans; (2) elevations; and (3) any other drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the size and character of the Project's structural, mechanical and electrical systems, and to

outline the Project specifications ("Design Development Documents"). The Design Development Documents shall be prepared in sufficient form to present to the City Council for approval.

4.2 Copies of Design Development and Other Documents. Consultant, at its own expense, shall provide a complete set of the Design Development Documents described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4.3 Updated Project Budget. Consultant shall use its Preliminary Project Budget and expertise and experience with the Project to establish an updated estimate of probable construction costs, containing detail consistent with the Design Development Documents as set forth herein and containing a breakdown based on types of materials and specifications identified herein ("Consultant's Updated Project Budget").

4.4 Timetable. Consultant shall provide a written timetable for full and adequate completion of the Project to City.

4.5 Application for Approvals. Consultant shall assist City in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned with the Project. Consultant shall furnish and process all architectural and engineering information required to prepare and process applications to applicable utilities in order to secure priorities and materials, to aid in the construction of the Project and to obtain final Project approval and acceptance by any of the above agencies as may be required.

4.6 Color and Other Aesthetic Issues. Consultant shall provide, for City's review and approval, a preliminary schedule of all color materials and selections of textures, finishes and other matters involving an aesthetic decision about the Project.

5. FINAL WORKING DRAWINGS AND SPECIFICATIONS.

During the final working drawings and specifications phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

5.1 Final Working Drawings and Specifications. Once City provides Consultant with specific written approval of the Design Development Documents described herein, Consultant shall prepare such complete working drawings and specifications as are necessary for developing complete bids and for properly executing the Project work in an efficient and thorough manner ("Final Working Drawings and Specifications"). Such Final Working Drawings and Specifications shall be developed from the Schematic Plans and Design Development Documents approved by City. The Final Working Drawings and Specifications shall set forth in detail all of the following: (1) the Project construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems; and (3) the utility service connection equipment and site work. As indicated in Section 3.9.2 of the Agreement, City may be requested to supply Consultant with the necessary information to determine the proper location of all improvements on and off site, including record drawings ("as-built drawings") in City's possession. Consultant will make a good-faith effort to verify the accuracy of such information by means of a thorough interior and exterior visual survey of site conditions. City shall also make a good-faith effort to verify the accuracy of the as-built

drawings and provide any supplemental information to Consultant which may not be shown on the as-built drawings.

5.2 Form. The Final Working Drawings and Specifications must be in such form as will enable Consultant and City to secure the required permits and approvals from all federal, state, regional or local agencies concerned with the Project. In addition, the Final Working Drawings and Specifications must be in such form as will enable City to obtain, by competitive bidding, a responsible and responsive bid within the applicable budgetary limitations and cost standards. The Final Working Drawings and Specifications shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Consultant.

5.3 Approval and Revisions. City shall review, study, and check the Final Working Drawings and Specifications presented to it by Consultant, and request any necessary revisions or obtain any necessary approvals by the City Council, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications at no additional cost, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. Consultant shall bring any such conflicts and/or inconsistencies to the attention of City. The Parties agree that Consultant, and not the City, possesses the requisite expertise to determine the constructability of the Final Working Drawings and Specifications. However, the City reserves the right to conduct one or more constructability review processes with the Final Working Drawings and Specifications, and to hire an independent architect or other consultant to perform such reviews. Any such independent constructability review shall be at City's expense. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications which may result from any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. If such changes, additions, deletions or corrections are inconsistent with prior City direction, Consultant shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.

5.4 Costs of Construction. It is understood by Consultant that should the Final Working Drawings and Specifications be ordered by City, City shall specify the sum of money set aside to cover the total cost of construction of the work, exclusive of Consultant's fees. Should it become evident that the total construction cost will exceed the specified sum, Consultant shall at once present a statement in writing to the City's Representative setting forth this fact and giving a full statement of the cost estimates on which the conclusion is based.

5.5 Copies of Final Working Drawings and Specifications and Other Documents. Consultant, at its own expense, shall provide a complete set of the Final Working Drawings and Specifications described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

6. CONSTRUCTION CONTRACT DOCUMENTS.

During the construction contract documents phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

6.1 Bid and Contract Documents. If so required by City, Consultant shall assist City in the completion of all bid and construction documents, including but not limited to, the Notice Inviting Bids, Instructions to Bidders, Contract Bid Forms (including Alternate Bids as requested by City), `Contract, General Conditions, Supplementary General Conditions, Special Conditions, DVBE and other applicable affirmative action documents, Performance Bond, Payment Bond, Escrow Agreement for Security Deposits, and any other certifications and documents required by federal, state and local laws, rules and regulations which may be reasonably required in order to obtain bids responsive to the specifications and drawings. All such documents shall be subject to the approval of City and City's legal counsel.

6.2 Final Estimate. At the time of delivery of these bid and construction documents, which shall include the Final Working Drawings and Specifications (collectively referred to herein as the "Construction Documents"), Consultant shall provide City with its final estimate of probable construction cost ("Consultant's Final Estimate"). As discussed herein, including in Section 7.3, it shall be the Consultant's duty to design the Project within budget.

7. BID PHASE.

During the bid phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

7.1 Reproducible Construction Documents. Once City provides Consultant with specific written approval of the Construction Documents and Consultant's Final Estimate, Consultant shall provide to City one set of reproducible Construction Documents.

7.2 Distribution of Contract Documents and Review of Bids. Consultant shall assist City in distributing the Construction Documents to bidders and conducting the opening and review of bids for the Project.

7.3 Over Budget. If the apparent lowest responsive and responsible bid on the Project exceeds the Consultant's Final Estimate by more than five percent (5%), City may request Consultant to amend, at Consultant's sole cost and expense, the Final Drawings and Specifications in order to rebid the Project and receive a lowest responsive and responsible bid equal to or less than the Consultant's Final Estimate. All revisions necessary to bring the lowest responsible and responsive bid within the Consultant's Final Estimate, including any omissions, deferrals or alternates, shall be made in consultation with, and subject to the approval of, the City.

8. CONSTRUCTION PHASE.

During the construction phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

8.1 Observation. The Project Consultant shall observe work executed from the Final Working Drawings and Specifications in person, provided that City may, in its discretion, consent to such observation by another competent representative of Consultant.

8.2 General Administration. Consultant shall provide general administration of the Construction Documents and the work performed by the contractors.

8.3 Pre-Construction Meeting. Consultant shall conduct one or more pre-construction meetings, as the City determines is needed for the Project, with all interested Parties.

8.4 Site Visits of Contractor's Work. Consultant shall conduct site visits to observe each contractors' work for general conformance with the Construction Documents and with any approved construction schedules or milestones. Such site visits shall be conducted as often as are necessary and appropriate to the stage of construction, according to the City's sole discretion, but in no event less than weekly.

8.5 Site Visits of Inspector's Work. Consultant shall conduct site visits to communicate and observe the activities of the City inspectors. Such site visits shall be conducted as often as is mutually acceptable to Consultant and City. Consultant shall direct the City inspectors and the Project contractors to coordinate the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.

8.6 Coordination of Subconsultants. Consultant shall cause all architects, engineers and other consultants, as may be hired by Consultant or City, to observe the work completed under their disciplines as required, and approve and review all test results for general conformance with the Construction Documents.

8.7 Reports. Consultant shall make regular reports as may be required by applicable federal, state or local laws, rules or regulations, as well as the federal, state, regional or local agencies concerned with the Project.

8.8 Construction Meetings; Minutes. Consultant shall attend all construction meetings and provide written reports/minutes to the City after each construction meeting in order to keep City informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the Project work, according to the City's sole discretion, but no less than weekly.

8.9 Written Reports. Consultant shall make written reports to City as necessary to inform City of problems arising during construction, changes contemplated as a result of each such problems, and progress of the Project work.

8.10 Written Records. Consultant shall keep accurate written records of the progress and quality of the Project work and the time schedules, and shall advise the contractors and City of any deviations from the time schedule which could delay timely completion of the Project.

8.11 Material and Test Reports. Consultant shall check and process, in a timely manner, all required material and test reports for the Project work. In addition, Consultant shall provide notice of any deficiencies in material or work reflected in such reports, as well as its recommendation for correction of such deficiencies, to the contractors and City.

8.12 Review and Response to Submissions. Consultant shall review and respond, in a timely manner, to all schedules, submittals, shop drawings, samples, information requests, change requests, and other submissions of the contractor and subcontractors for compliance with, or alterations and additions to, the Construction Documents. Consultant's review and response shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.13 Rejection of Work. Consultant shall promptly reject, as discussed with City, work or materials which do not conform to the Construction Documents. Consultant shall immediately notify the City and contractor(s) of such rejections. Consultant shall also have the authority to

recommend to the City that additional inspection or testing of the work be performed, whether or not such work is fabricated, installed or completed.

8.14 Substitutions. Consultant shall consult with City, in a timely manner, with regard to substitution of materials, equipment and laboratory reports thereof, prior to the City's final written approval of such substitutions. Consultant's consultation shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.15 Revised Documents and Drawings. Consultant shall prepare, at no additional expense to City, all documents and/or drawings made necessary by errors and omissions in the originally approved Construction Documents.

8.16 Change Requests and Material Changes. Consultant shall evaluate and advise City, in a timely manner and in writing, of any change requests and material change(s) which may be requested or necessary in the Project plans and specifications. Consultant shall provide the City with its opinion as to whether such change requests should be approved, denied or revised. If the City has not hired a construction manager or other person to do so, the Consultant shall prepare and execute all change orders and submit them to the City for authorization. If the City has designated a construction manager or other person to prepare all change orders, the Consultant shall review all change orders prepared by such person, execute them and deliver them to the City for authorization if they meet with the Consultant's approval, or submit them to the City with recommendations for revision or denial if necessary. Consultant shall not order contractors to make any changes affecting the contract price without approval by City of such a written change order, pursuant to the terms of the Construction Documents. Consultant may order, on its own responsibility and pending City Council approval, changes necessary to meet construction emergencies, if written approval of City's Representative is first secured.

8.17 Applications for Payment. Consultant shall examine, verify and approve contractor's applications for payment, and shall issue certificates for payment in amounts approved by the City's inspector.

8.18 Final Color and Product Selection. Consultant shall coordinate final color and product selection with City's original design concept.

8.19 Substantial Completion. Consultant shall determine the date of substantial completion, in consultation with the City.

8.20 Punch List. After determining that the Project is substantially complete, Consultant shall participate in the inspection of the Project and shall review all remaining deficiencies and minor items needed to be corrected or completed on the Project, including those identified on the punch list prepared by the contractor ("Punch List Items"). Consultant shall notify contractor in writing that all Punch List Items must be corrected prior to final acceptance of the Project and final payment. Consultant shall also notify City of all Punch List Items.

8.21 Warranties. Consultant shall review materials assembled by the contractor and subcontractors with regard to all written warranties, guarantees, owners' manuals, instruction books, diagrams, record "as built" drawings, and any other materials required from the contractors and subcontractors pursuant to the Construction Documents. Consultant shall coordinate and provide these materials to the City.

8.22 Certificate of Completion. Consultant shall participate in any further inspections of the Project necessary to issue Consultant's Certificate of Completion and final certificate for payment.

8.23 Documents for Project Close-Out. Consultant shall cause all other architects, engineers and other consultants, as may be hired by Consultant, to file any and all required documentation with the City or other governmental authorities necessary to close out the Project. Consultant shall assist the City in obtaining such documentation from all other architects, engineers, or other consultants.

9. AS-BUILT DRAWINGS.

During the as-built drawings phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

9.1 As-Built Drawings and Specifications. Not later than thirty (30) days after substantial completion of the Project, before receipt of final payment, Consultant shall review and forward the Final Working Drawings and Specifications, indicating on them all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing an "as-built" set of Final Working Drawings and Specifications ("As-Built Drawings and Specifications"). The As-Built Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. Consultant shall personally review and certify that the As-Built Drawings and Specifications are a correct representation of the information supplied to Consultant by any inspectors and the contractor, and shall obtain certifications from any inspectors and the contractor that the drawings are correct.

9.2 Approval. Once City provides Consultant with specific written approval of the As-Built Drawings and Specifications, Consultant shall forward to City the complete set of original As-Built Drawings and Specifications or a complete set of reproducible duplicate As-Built Drawings and Specifications. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

9.3 Documents for Final Payment. Prior to the receipt of Consultant's final payment, Consultant shall forward to City all of the following: (1) one clear and legible set of reproductions of the computations; (2) the original copy of the specifications; (3) the As-Built Drawings and Specifications as required herein; and (4) Consultant's Certificate of Completion.

10. WARRANTY PERIOD.

During the warranty period phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

10.1 Advice. Consultant shall provide advice to City on apparent deficiencies in the Project during any applicable warranty periods for the Project.

EXHIBIT "B"
COMPENSATION RATES AND REIMBURSABLE EXPENSES

1. HOURLY COMPENSATION RATES.

STAFF CLASSIFICATION	Through 3/31/2025	
	Min	Max
Assistant Engineer/Planner	$120	$145
Associate Engineer/Planner	$140	$160
Engineer/Planner	$150	$185
Senior Engineer/Planner	$190	$240
Senior Manager/Principal Engineer	$225	$275
Associate Vice President	$255	$340
Vice President	$340	$375

2. REIMBURSABLE EXPENSES.

Mileage at $0.62/mile

3. ADDITIONAL SERVICES.

Additional Services shall be computed at the actual hourly rates listed above.

4. ADDITIONAL CONSULTANTS.

If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the Consultant's actual hourly rates plus 10%. Owner shall have the authority to review and approve the rates of any such consultants.

EXHIBIT "C"
SAMPLE TASK ORDER FORM

Task Order No. _____

Agreement: DESIGN SERVICES AGREEMENT FOR ON-CALL SERVICES

Consultant: [INSERT NAME OF CONSULTANT]

The Consultant is hereby authorized to perform the following services subject to the provisions of the Agreement identified above:

List any attachments: (Please provide if any.)

Dollar Amount of Task Order: Not to exceed $_____,_____.00

Completion Date: _____

The undersigned Consultant hereby agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted above, and perform all services for the work above specified in accordance with the Agreement identified above and will accept as full payment therefore the amount shown above.

CITY OF ONTARIO	**[INSERT NAME OF CONSULTANT]**
Dated: _____	Dated: _____
By: _____	By: _____

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
AD

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
DESIGN SERVICES AGREEMENT
FOR ON-CALL SERVICES

1. PARTIES AND DATE.

This Agreement is made and entered into as of _____, by and between the City of Ontario, a municipal corporation organized and operating 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 ADVANTEC CONSULTING ENGINEERS INC., a CALIFORNIA CORPORATION with its principal place of business at 1200 ROOSEVELT, IRVINE, CA 92620 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 City. City is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Consultant**.** Consultant desires to perform and assume responsibility for the provision of certain professional engineering design services required by the City on the terms and conditions set forth in this Agreement. Consultant warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Consultant is a corporation or other organization, the Project Consultant designated pursuant to Section 3.2, and not the Consultant itself, shall be fully licensed to practice as an engineer in the State of California.

2.3 Project**.** City desires to engage Consultant to render such services for the On-Call Transportation Planning & Traffic Engineering Design Services ("Project") as set forth in this Agreement.

3. TERMS

3.1 Employment of Consultant.

3.1.1 Scope of Services. Consultant promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional engineering and related services necessary for the full and adequate completion of the Project described in Exhibit "A" attached hereto and incorporated herein by reference ("Services"). The Services shall be more particularly described in the individual Task Order issued by the City or its designee. No Services shall be performed unless authorized by a fully executed Task Order in the form attached hereto as Exhibit "C". All Services

shall be subject to, and performed in accordance with, this Agreement, each Task Order, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Consultant shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld.

3.1.2 Term. The term of this Agreement shall be from April 2, 2024 to April 2, 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.

3.2 Project Consultant; Key Personnel.

3.2.1 Engineer of Record. Consultant shall name a specific individual to act as Project Consultant, subject to the approval of City. Consultant hereby designates Carlos Oritz, PE, TE, PTOE (License No. Civil Engineer, CA, 57535, Traffic Engineer, CA, TR2025, PTOE, US, 426) to act as the Engineer of Record for the Project. The Engineer of Record shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the Engineer of Record shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Engineer of Record shall be of at least equal competence as the prior Engineer of Record. In the event that City and Consultant cannot agree as to the substitution of a new Engineer of Record, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Engineer of Record, Consultant has represented to the City that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Consultant may substitute others of at least equal competence upon written approval of the City. In the event that City and Consultant cannot agree as to the substitution of key personnel, engineers or consultants, City shall be entitled to terminate this Agreement for cause. The key additional personnel, engineers and consultants for performance of this Agreement are as follows: Carlos Ortiz, PE, TE, PTOE, Project Director, Civil Engineer, CA, 57535, Traffic Engineer, CA, TR2025, PTOE, US, 426; John Dorado, PE, Project Manager/Task Leader: Traffic & Transportation Studies, Civil Engineer, CA 74405; Madeleine Ortiz, Assistant Project Manager/Lead Project Engineer, Engineer-in-Training, CA, 161349; Armando Solis, PE, Key Personnel/Task Leader: Traffic Engineering PS&E, Civil Engineer, CA 72012; Jose Guedes, TE, Key Personnel/Task Leader: Traffic Signal Timing & Operations, Traffic Engineering, CA TR1861; Keith Rand, PE, TE, Key Personnel/Task Leader: Developer/Plan Check Review, Civil Engineer, CA 60090, Traffic Engineer, CA TR2103; Chris Buscarino, Key Personnel/Task Leader: Civil Engineering, Civil Engineer, CA 54878; John Cox, Key Personnel/Task Leader: Traffic Signal/ Communications/ITS PS&E, Lawrence Tai, TE, Key Personnel/Task Leader: Safety Studies, Grants, Traffic Engineer, CA TR1437; and Dean Arizabal, Key Personnel/Task Leader for Transportation Planning.

3.3 Hiring of Consultants and Personnel.

3.3.1 Right to Hire or Employ. Consultant shall have the option, unless City objects in writing after notice, to employ at its expense architects, engineers, experts or other

consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Consultant may delegate without relieving Consultant from administrative or other responsibility under this Agreement. Consultant shall be responsible for the coordination and cooperation of Consultant's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by City in its sole and reasonable discretion. Consultant shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work to allow City to review their qualifications and approve to their participation on the Project in its sole and reasonable discretion.

3.3.2 Qualification and License. All architects, engineers, experts and other consultants retained by Consultant in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.3.3 Standards and Insurance. All architects, engineers, experts and other consultants hired by Consultant shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the City in writing. Unless changes are approved in writing by the City, Consultant's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.3.4 Assignments or Staff Changes. Consultant shall promptly obtain written City approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Consultant's consultants and key personnel shall be subject to approval by City.

3.3.5 Draftsman and Clerical Support. Draftsmen and clerical personnel shall be retained by Consultant at Consultant's sole expense.

3.4 Standard of Care.

3.4.1 Standard of Care. 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 qualified to perform the Services in the same discipline in the State of California, and shall be responsible to City for damages sustained by the City and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Consultant shall be fully responsible to the City for any increased costs incurred by the City as a result of any such delays in the design or construction of the Project. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants and represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, 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.

3.4.2 Performance of Employees. Any employee or consultant 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 or consultant 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.

3.5 Laws and Regulations.

3.5.1 Knowledge and Compliance. Consultant shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Consultant by law. Consultant shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. Consultant shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.5.2 Drawings and Specifications. Consultant shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Consultant. Consultant shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto. For the preparation of all such drawings and specifications, the Consultant shall use Computer Aided Design Drafting ("CADD") (e.g., AutoCAD) or other technology acceptable to the Consultant and City.

3.5.3 Americans with Disabilities Act. Consultant will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Consultant shall inform City of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide the City with its interpretation of such inconsistencies and conflicting interpretations. Unless Consultant brings such inconsistencies and conflicting interpretations to the attention of the City and requests City's direction on how to proceed, the Consultant's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Consultant, and the Consultant shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Consultant request's City's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Consultant shall be responsible to the City only pursuant to the indemnification provisions of this Agreement.

3.5.4 Permits, Approvals and Authorizations. Consultant shall provide City with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Consultant shall then

assist the City in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the City.

3.5.5 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 (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant shall 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. Failure to comply with laws, regulations, and ordinances listed in this Section is a violation of federal and state law.

3.6 Independent Contractor.

3.6.1 Control and Payment of Subordinates. City retains Consultant on an independent contractor basis and Consultant is not an employee of City. Consultant is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City's employees. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City, and shall at all times be under Consultant's exclusive direction and control. 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.

3.7 Schedule of Services.

3.7.1 Consultant Services. Consultant shall fully and adequately complete the Services described in this Agreement, each individual Task Order issued by the City, and in Exhibit "A" attached hereto and incorporated herein by reference.

3.7.2 Timely Performance Standard. Consultant shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Consultant shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the City and within any completion schedules adopted for the Project. Consultant agrees to coordinate with City's staff, contractors and consultants in the performance of the Services, and shall be available to City's staff, contractors and consultants at all reasonable times.

3.7.3 Performance Schedule. Consultant shall prepare an estimated time schedule for the performance of Consultant's Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the City's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for City's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If City and Consultant cannot mutually agree on a performance schedule,

City shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Consultant without the prior written approval of City. If the Consultant's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the City will suffer damage for which the Consultant will be responsible.

3.7.4 Excusable Delays. Any delays in Consultant's work caused by the following may be added to the time for completion of any obligations of Consultant: (1) the actions of City or its employees; (2) the actions of those in direct contractual relationship with City; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control of the Consultant; and (5) any Force Majeure Event (as defined herein) or other unforeseen occurrence not due to any fault or negligence on the part of Consultant. Neither the City nor the Consultant shall be liable for damages, liquidated or otherwise, to the other on account of such delays.

3.7.5 Force Majeure Events. 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. Should a Force Majeure Event occur, the non-performing Party shall, within fifteen (15) calendar days of the beginning of an Force Majeure Event, 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 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.

3.7.6 Request for Excusable Delay Credit. The Consultant shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify the City in writing of the causes of delay (unless City grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). City will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The City's findings of fact thereon shall be final and conclusive on the Parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Consultant for extensions of time shall be an extension of the performance time at no cost to the City. If Additional Services are required as a result of an excusable delay, the Parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Consultant make an application for an extension of time, Consultant shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

3.8 Additional Services.

3.8.1 Request for Services. At City's request, Consultant may be asked to perform services not otherwise included in this Agreement, not included within the basic services listed in Exhibit "A" attached hereto, and/or not customarily furnished in accordance with generally accepted architectural practice.

3.8.2 Definition. As used herein, "Additional Services" mean: (1) 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 for the Consultant to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit "A" attached hereto. Consultant shall not perform, nor be compensated for, Additional Services without prior written authorization from City and without an agreement between the City and Consultant as to the compensation to be paid for such services. City shall pay Consultant for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Consultant pursuant to the indemnification provision of this Agreement.

3.8.3 Examples of Additional Services. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Consultant was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

(a) Separately Bid Portions of Project. Plan preparation and/or administration of work on portions of the Project separately bid.

(b) Furniture and Interior Design. Assistance to City, if requested, for the selection of moveable furniture, equipment or articles which are not included in the Construction Documents.

(c) Fault of Contractor. Services caused by delinquency, default or insolvency of contractor, or by major defects in the work of the contractor, provided that any such services made necessary by the failure of Consultant to detect and report such matters when it reasonably should have done so shall not be compensated.

(d) Inconsistent Approvals or Instructions. Revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Consultant.

(e) Legal Proceedings. Serving as an expert witness on City's behalf or attending legal proceedings to which the Consultant is not a party.

(f) Damage Repair. Supervision of repair of damages to any structure.

(g) Extra Environmental Services. Additional work required for environmental conditions (e.g. asbestos or site conditions) not already contemplated within the Consultant's services for the Project.

3.9 City Responsibilities. City's responsibilities shall include the following:

3.9.1 Data and Information. City shall make available to Consultant all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and criteria. As part of the budget limitation information, the City shall provide the Consultant with a preliminary construction budget ("City's Preliminary Construction Budget").

3.9.2 Project Survey. If required pursuant to the scope of the Project and if requested by Consultant, City shall furnish Consultant with, or direct Consultant to procure at City's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.

3.9.3 Bid Phase. Distribute Construction Documents to bidders and conduct the opening and review of bids for the Project.

3.9.4 Testing. Retain consultant(s) to conduct chemical, mechanical, soils, geological or other tests required for proper design of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.

3.9.5 Required Inspections and Tests. Retain consultant(s) to conduct materials testing and inspection or environmental/hazardous materials testing and inspection pursuant to any applicable laws, rules or regulations.

3.9.6 Fees of Reviewing or Licensing Agencies. Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

3.9.7 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates Jay Bautista, Transportation Manager, or his or her designee, as the City's contact for the implementation of the Services hereunder. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.9.8 Review and Approved Documents. Review all documents submitted by Consultant, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Consultant of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

3.10 Compensation.

3.10.1 Consultant's Compensation for Basic Services. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The maximum compensation for Services to be provided pursuant to each Task Order

shall be set forth in the relevant Task Order. The total compensation for all Task Orders issued hereunder shall not exceed **Two Hundred Thousand Dollars and Zero Cents ($200,000.00)** without written approval of the City Council or City Manager, as applicable. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

3.10.2 Payment for Additional Services. At any time during the term of this Agreement, City may request that Consultant perform Additional Services. As used herein, Additional Services 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. Any additional work in excess of this amount must be approved by the City. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "B" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the rates and in the manner set forth in Exhibit "B" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. City shall have the authority to review and approve the rates of any such consultants. In addition, Consultant shall be reimbursed for any expenses incurred by such consultants pursuant to the terms and conditions of Section 3.10.3.

3.10.3 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the Services and Additional Services. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, which approval may be evidenced by inclusion in Exhibit "B" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Consultant in the interest of the Project. Consultant shall be required to acquire prior written consent in order to obtain reimbursement for the following: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of $1,000; and (5) other costs, fees and expenses in excess of $1,000.

3.10.4 Payment to Consultant. Consultant's compensation and reimbursable expenses shall be paid by City to Consultant no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the compensation rates indicated in Exhibit "B" attached hereto and incorporated herein by reference. In order to receive payment, Consultant shall present to City an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid. The statement 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 statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Consultant shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit "B", attached hereto. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the Parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Consultant shall present to City an itemized statement which indicates the Additional Services performed, percentage of Additional

Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Consultant shall be compensated as set forth in the termination provision herein.

3.10.5 Withholding Payment to Consultant. The City may withhold payment, in whole or in part, to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under the indemnification provisions of this Agreement. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which Consultant is liable under the Agreement or state law. Payments to the Consultant for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Consultant shall not be withheld, postponed, or made contingent upon receipt by the City of offsetting reimbursement or credit from Parties not within the Consultant's reasonable control.

3.10.6 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. 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 and to require its consultants 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 shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Consultant or its consultants to comply with the Prevailing Wage Laws.

(a) Registration/DIR Compliance. If the Services are being performed as part of an applicable "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 performing such Services 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. 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 Department of Industrial Relations 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 Department of Industrial Relations against Consultant or any subconsultant.

3.11 Notice to Proceed.

Consultant shall not proceed with performance of any Services under this Agreement unless and until the City provides a written notice to proceed.

3.12 Termination, Suspension and Abandonment.

3.12.1 Grounds for Termination; Consultant's Termination for Cause. City hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Consultant shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Consultant shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by City as a result of the default, if any, by Consultant. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, abandonment or termination. Consultant may terminate this Agreement for substantial breach of performance by the City such as failure to make payment to Consultant as provided in this Agreement.

3.12.2 City's Suspension of Work. If Consultant's Services are suspended by City, City may require Consultant to resume such Services within ninety (90) days after written notice from City. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the City and Consultant.

3.12.3 Documents and Other Data. Upon suspension, abandonment or termination, Consultant shall provide to City all preliminary studies, sketches, working drawings, specifications, computations, and all other Project Documents, as defined below, to which City would have been entitled at the completion of Consultant's Services under this Agreement. Upon payment of the amount required to be paid to Consultant pursuant to the termination provisions of this Agreement, City shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Consultant under this Agreement. Consultant shall make such documents available to City upon request and without additional compensation other than as may be approved as a reimbursable expense.

3.12.4 Employment of other Consultants. 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.

3.13 Ownership and Use of Documents; Confidentiality.

3.13.1 Ownership. All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, architectural presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes (hereinafter referred to as the "Project Documents") shall be and remain the property of City. Although the official copyright in all Project Documents shall remain with the Consultant or other applicable subcontractors or consultants, the Project Documents shall be the property of City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Consultant shall provide to City copies of all Project Documents required by City. In addition, Consultant shall retain copies of all Project Documents 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 reasonable duplication costs. Before destroying the Project Documents following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.13.2 Right to Use. Consultant grants to City the right to use and reuse all or part of the Project Documents, at City's sole discretion and with no additional compensation to Consultant, for the following purposes:

(a) The construction of all or part of this Project.

(b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;

(c) The construction of another project by or on behalf of the City for its ownership and use;

City is not bound by this Agreement to employ the services of Consultant in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Consultant or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Consultant.

Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Consultant shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall remove the Consultant's seal from the Project Documents and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

3.13.3 License. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Consultant shall require any and all subcontractors and consultants to agree in

writing that City is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.13.4 Right to License. Consultant represents and warrants that Consultant has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Consultant prepares or causes to be prepared pursuant to this Agreement. Consultant shall indemnify and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Consultant makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Consultant and provided to Consultant by City.

3.13.5 Confidentiality. All Project Documents, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Project Documents 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 written consent of City.

3.14 Indemnification.

3.14.1 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.

3.14.2 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.

3.15 Insurance. 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.

3.15.1 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, Consultant shall, at its expense, procure and maintain in full force and effect for the duration 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.

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

3.15.3 Commercial General Liability

(a) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(b) Coverage for Commercial General Liability insurance shall be at least as broad as the following: Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent. Commercial General Liability Insurance must include coverage for the following:

(i) Bodily Injury and Property Damage

(ii) Personal Injury/Advertising Injury

(iii) Premises/Operations Liability

(iv) Products/Completed Operations Liability

(v) Aggregate Limits that Apply per Project

(vi) Explosion, Collapse and Underground (UCX) exclusion deleted

(vii) Contractual Liability with respect to this Contract

(viii) Broad Form Property Damage

(ix) Independent Consultants Coverage

(c) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(d) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(e) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

3.15.4 Automobile Liability

(a) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(b) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(c) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status.

(d) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

3.15.5 Workers' Compensation/Employer's Liability

(a) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(b) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this Section.

3.15.6 Professional Liability (Errors and Omissions)

(a) At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. 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 must include a provision establishing the insurer's duty to defend.

3.15.7 Minimum Policy Limits Required

(a) The following insurance limits are required for the Agreement:

Coverage	Combined Single Limit
Commercial General Liability	$2,000,000 per occurrence/ $4,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	$2,000,000 per occurrence for bodily injury and property damage
Employer's Liability	$1,000,000 per occurrence
Professional Liability	$2,000,000 per claim and aggregate (errors and omissions)

(b) Defense costs shall be payable in addition to the limits.

(c) Requirements of specific coverage or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

3.15.8 Evidence Required

(a) Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

3.15.9 Policy Provisions Required

(a) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(b) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any 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.

(c) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(d) 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.

(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.

3.15.10 Qualifying Insurers

(a) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements: 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 admitted to transact in the 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.

3.15.11 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 the City Council, nor any member of the City Council, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

3.15.12 Subconsultant Insurance Requirements

(a) Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

3.16 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 five (5) years from the date of final payment under this Agreement.

3.17 Standardized Manufactured Items.

Consultant shall cooperate and consult with City in the use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items shall be standardized to City's criteria to the extent such criteria do not interfere with building design.

3.18 Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other City site, will be covered by, and be the subject of, a separate Agreement for engineering services between City and the Consultant chosen therefor by City.

3.19 Mediation.

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the Parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the Parties.

3.20 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However,

Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

3.21 Asbestos Certification.

Consultant shall certify to City, in writing and under penalty of perjury, that to the best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Consultant prepares for the Project. Consultant shall require all consultants who prepare any other documents for the Project to submit the same written certification. Consultant shall also assist the City in ensuring that contractors provide City with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Consultant shall include statements in its specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

3.22 No Third Party Rights.

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

3.23 Governing Law.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in San Bernardino County.

3.24 Exhibits and Recitals.

All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth.

3.25 Severability.

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

3.26 Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

3.27 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 its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

3.28 Harassment Policy.

Consultant shall provide a copy of the City's Harassment Policy to each of its employees assigned to perform the tasks under this Agreement. Consultant shall submit to the City's Personnel Manager a statement signed by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of City's Harassment Policy and certifying that they have read the Harassment Policy. A finding by the City that any of Consultant's employees has harassed a City employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request.

3.29 Delivery of Notices.

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

CITY:	CONSULTANT:
City of Ontario	ADVANTEC Consulting Engineers Inc.
303 East “B” Street	1200 Roosevelt
Ontario, CA 91764	Irvine, CA 92620
Attn: Craig Cruz, Engineering	Attn: Carlos Ortiz, CEO

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.

3.30 Time of Essence.

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

3.31 City’s Right to Employ Other Consultants.

City reserves right to employ other consultants, including designers, in connection with this Project or other projects.

3.32 Prohibited Interests.

3.32.1 Solicitation. 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. Further, 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. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

3.32.2 Conflict of Interest. For the term of this Agreement, no director, official, 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.

3.33 Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. 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.

3.34 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.

3.35 Subcontracting.

As specified in this Agreement, 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 each and every provision of this Agreement.

3.36 Supplemental Conditions.

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

3.37 Entire Agreement.

This Agreement, with its exhibits, contains the entire agreement of the Parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the Parties hereto. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all Parties hereto.

SIGNATURES ON FOLLOWING PAGE

Signature Page for Design Services Agreement
Between the City of Ontario
and ADVANTEC Consulting Engineers Inc.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

ADVANTEC Consulting Engineers Inc.

By: _____

Its: Corporate Secretary

Printed Name: Pauline Yip

By: _____

Its: CEO

Printed Name: Carlos Ortiz

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

EXHIBIT "A"
SCOPE OF SERVICES

The City of Ontario is seeking proposals from qualified consulting engineers (the Consultant) to provide On-Call Services for three (3) years, with an option of renewing for two (2) consecutive one (1) year terms for services in transportation planning & traffic engineering design with the intention of maintaining a list of multiple qualified prime engineering firms, with subconsultant support services as needed. Task orders will be issued to firms on a competitive basis based on the qualifications and expertise of the firm and their subconsultants. There is no designated minimum nor maximum value of services to be awarded to any one consultant.

The Consultant is expected to furnish all services as required to complete the scope of services described below for task order projects and to manage and control costs and resources, and complete work in adherence to the agreed upon Project schedule. The Consultant will assign a Project Manager who will act as the City's primary contact and will be entirely responsible for project management activities throughout the duration of an awarded task (including subconsultant work, if applicable). The following is a suggested breakdown of Project tasks and should be incorporated into the fee schedule under the appropriate activities.

TRANSPORTATION AND TRAFFIC ENGINEERING PROJECT DESIGN SERVICES

The City of Ontario is seeking a Request for Qualifications from firms for Professional Services:

Consultant shall be aware that certain labor categories above may be subject to prevailing wage rates as identified in the California Labor Code commencing Section 1770 et. Seq.
Determination of whether or not Prevailing Wages shall apply will be determined when the City's project manager identifies the scope of specific task orders. Please refer to Paragraph I.10 "Prevailing Wage" of this RFQ, and Paragraph 3.10.6 "Prevailing Wages" of the DSA for further requirements.

Expected services to be provided under this on-call contract will be performed under a task order system and may include:

1) Transportation Planning

Development Support Services

- Traffic Study Preparation and Review
- Parking Analysis Preparation and Review
- Trip Generation Analysis Preparation and Review
- VMT Analysis Preparation and Review
- SB743 Analysis Preparation and Review
- Traffic Simulations
- On-site circulation analysis
- Data Collection and Analysis
- Traffic Model Support
- On-Site "extension to staff" support services

Long Range Planning

- General Plan Support
- Specific Plan Support
- Active Transportation Plans and Programs
- Context Sensitive Solutions
- Maintain and Update City Traffic Study Guidelines
- Transit Studies
- Corridor Studies
- On-Site “extension to staff” support services
- Coordination with outside agencies
- Support for funding and grant applications

2) <u>Traffic Engineering</u>

- Traffic Design Plan (including civil work) and Cost Estimate Preparation and Review
- Traffic Signal Plan and Cost Estimate Preparation and Review
- Pedestrian Hybrid Beacon Plan and Cost Estimate Preparation and Review
- Street Light Plan and Cost Estimate Preparation and Review
- Traffic Studies for Capital Projects
- Support for funding and grant applications
- Intelligent Transportation Systems Design
- Traffic Signal Timing and Coordination Studies
- Traffic Control Plan Design and Review
- Technical services and support for non-motorized capital projects
- Active Transportation Design and Review
- Traffic Calming Support
- Traffic Calming Plan Design and Review
- On-Site “extension to staff” support services
- Traffic Counts Support
- Engineering and Traffic Surveys
- Warrant Analyses
- Coordination with outside agencies (Caltrans, railroads, neighboring cities, etc.)
- Signing and Striping Support

Project Design/Plans, Specifications, and Estimates (PS&E) Preparation

Firms shall be capable of performing the following tasks:

- Land Surveying & Mapping
- Civil Engineering Design
- Detailed Engineering/Cost Estimation
- Preparation of construction bid documents and specifications
- Any other work required to complete project design

Consultant shall perform research of records including utility companies and other agency records as necessary to secure information required to identify, locate, and accurately layout all existing improvements and right-of-way within project limits that may interfere with the proposed

improvements. Consultant will identify estimated number of potholes required for a project in their cost proposal for each individual task order.

Consultant shall conduct a site visit to observe the topography and visualize the proposed improvements at the project location and review available subsurface data from nearby structures or published geologic maps to determine general subsurface conditions at the project site.

General Requirements and Project Deliverables

All surveys shall be performed by Consultant in accordance with accepted professional surveying standards. Consultant shall obtain applicable encroachment permits from the City of Ontario, Railroad, Caltrans, and neighboring cities prior to beginning any field investigation. Additionally, if a traffic control plan is required, Consultant shall prepare the plan. Such documents shall be forwarded to the respective permit issuing agency, for review and concurrence prior to beginning any field investigation.

The Consultant shall complete a topographic survey map of the site to prepare a base map for the construction plans. This includes, but is not limited to:

1. Horizontal and vertical control, drainage surveys, topographical surveys within the right-of-way, cross sections, grid grades, open-ended traverses, profile data sheets and required documentation. (Horizontal Control shall be based on NAD 83; Vertical Control shall be based on NAVD 88).

2. Establish street centerlines, right-of-way lines existing and proposed, and all easements from available record information.

3. Provide the basis-of-bearing and benchmark information used for the survey and necessary for construction.

4. Locate and tie any features that would affect the design or construction.

5. Obtain Record of Surveys, benchmark and centerline tie information.

The City will provide the title block and specification boiler plate to the Consultant. All drawings shall utilize AutoCAD 2021 or later and shall utilize the City of Ontario standard title block. For interim submittals, the City may opt to receive only PDF versions of the plans for reviewing purposes. If so, the Consultant team will provide plans and/or specifications accordingly. All original plan sheets, the title sheet of the specifications, calculations, and reports shall be signed and stamped by the Consultants' licensed professional engineer responsible/in-charge of the project.

The Consultant will be expected to revise the documents within a revised schedule set by the City. There will be no additional compensation necessary for the consultant to complete the work to the satisfaction of the City for required revisions. The Consultant's services for plan specifications and estimating (PS&E) for engineering project preparation and special studies/investigations shall include and be in conformance with the latest editions of the Greenbook Standard Specifications for Public Works Construction and the City of Ontario standards, unless otherwise specified. Latest editions of the Caltrans Standards and Specifications shall be used for traffic signal design.

For the City plan check process, the Consultant will be required to submit one PDF electronic copy for all submittals. Consultant shall also be responsible for submitting plans and reports for plan check and approval/permit issuance to any affected agencies.

Permitting

- Prepare and file all necessary documents and apply for all required permits or provide support including, but not limited to:

  i. Federal, Caltrans, Railroad, environmental, and utility permits

  ii. Valet parking review

  iii. Permit Parking review

  iv. On-Site "extension to staff" support services

Consultant shall coordinate permits and any other issues with the City, other agencies, and all utility companies as required. At the direction of the City, the Consultant shall be the liaison with affected agencies.

3) Construction Support and Other Tasks

Firms shall be capable of performing the following tasks:

- Project presentations and meetings
- Construction Support Services
- Any other work required to successfully plan for projects and adequately assess project feasibility

During the bidding process and construction, the Consultant shall assist in answering questions regarding the technical specifications, design drawings or conflicts in the design, respond to City staff and/or contractor RFI's for any technical design clarification or design conflicts that arise during construction, review and recommend materials submittals and shop drawings for concurrence with plans and specifications, attend milestone meetings and pre-con meetings, and prepare record drawings that incorporate redlines comments prepared by the contractor and City Staff. One (1) bond set of the record drawings shall be submitted and all drawings shall be provided to the City electronically, as a PDF file and with the latest AutoCAD file format.

Change Orders (Change to Scope of Work)

All changes must be submitted in writing for City approval. The Consultant shall submit a cost fee proposal for all changes. The City will evaluate and issue a Notice to Proceed for each Change Order separately

1. GENERAL REQUIREMENTS.

1.1 Basic Services. Consultant agrees to perform all the necessary professional architectural, engineering (e.g. mechanical, electrical, plumbing, structural, site engineering, and any other necessary engineering services mutually agreeable to the Parties) and construction

administration services for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

1.2 Exclusions from Basic Services. The following services shall be excluded from the basic services listed above: N/A

1.3 Additional Services. Consultant shall perform the following Additional Services for the Project: N/A

1.4 Communication with City. Consultant shall participate in consultations and conferences with authorized representatives of City and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications and documents in accordance with the applicable standards and requirements of law and the City. Such consultations and conferences shall continue throughout the planning and construction of the Project and the contractor's warranty period. Consultant shall take direction only from the City's Representative, or any other representative specifically designated by the City for this Project, including any construction manager hired by the City.

1.5 Coordination and Cooperation with Construction Manager. The City may hire a construction manager to administer and coordinate all or any part of the Project on its behalf. If the City does so, it shall provide a copy of its agreement with the construction manager so that the Consultant will be fully aware of the duties and responsibilities of the construction manager. The Consultant shall cooperate with the construction manager and respond to any requests or directives authorized by the City to be made or given by the construction manager. The Consultant shall request clarification from the City in writing if the Consultant should have any questions regarding the authority of the construction manager.

2. INITIAL PLANNING PHASE.

During the initial planning phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

2.1 Project Feasibility. Provide advice and assistance to City in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

2.2 Meeting Budget and Project Goals. Consultant shall notify City in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially impact the Project budget and time line, including the City's Preliminary Construction Budget. Consultant shall use its best judgment in determining the balance between the size, type and quality of construction to achieve a satisfactory solution within the Project's budget and construction allowance. It shall be the duty of the Consultant to design the Project within budget. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by the stated amount, Consultant may be required to make the necessary changes in the drawing and specifications, at its sole cost and expense, to bring the bids within the required budget.

2.3 Permits, Approvals and Authorizations. As indicated in Section 3.5.4 of the Agreement, Consultant shall assist City in securing easements, encroachment permits, rights of

way, dedications, infrastructures and road improvements, as well as coordinating with utilities and adjacent property owners.

3. SCHEMATIC PLAN PHASE.

During the schematic plan phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

3.1 Funding Documents. Consultant shall provide a site plan and all other Project-related information necessary and required for an application by City to any federal, state, regional, or local agencies for funds to finance the construction Project.

3.2 Schematic Plans. In cooperation with City, Consultant shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development at the site, and the proposed architectural concept of the buildings ("Schematic Plans"). Consultant shall incorporate the functional requirements of City into the Schematic Plans. The Schematic Plans shall meet all laws, rules and regulations of the State of California. The Schematic Plans shall show all rooms incorporated in each building of the Project in single-line drawings, and shall include all revisions required by City or by any federal, state, regional or local agency having jurisdiction over the Project. All architectural drawings for the Project shall be in a form suitable for reproduction.

3.3 Preliminary Project Budget. Consultant shall use the City's Preliminary Construction Budget and its own expertise and experience with the Project to establish a preliminary project budget or allowance in a format required by City ("Consultant's Preliminary Project Budget"). The purpose of the Consultant's Preliminary Project Budget is to show the probable Project cost in relation to City's Preliminary Construction Budget and the construction standards of any applicable funding agency. If Consultant perceives site considerations which render the Project expensive or cost prohibitive, Consultant shall disclose such conditions in writing to City immediately. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by more than the stated amount, Consultant may be required to make the necessary changes in the drawings and specifications, at its sole cost and expense, to bring the bids within the required budget Consultant shall provide a preliminary written time schedule for the performance of all construction work on the Project.

3.4 Copies of Schematic Plans and Other Documents. Consultant, at its own expense, shall provide a complete set of the Schematic Plans described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4. DESIGN DEVELOPMENT PHASE.

During the design development phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

4.1 Design Development Documents. Once City provides Consultant with specific written approval of the Schematic Plans described herein, Consultant shall prepare design development documents consisting of: (1) site and floor plans; (2) elevations; and (3) any other drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the size and character of the Project's structural, mechanical and electrical systems, and to

outline the Project specifications ("Design Development Documents"). The Design Development Documents shall be prepared in sufficient form to present to the City Council for approval.

4.2 Copies of Design Development and Other Documents. Consultant, at its own expense, shall provide a complete set of the Design Development Documents described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4.3 Updated Project Budget. Consultant shall use its Preliminary Project Budget and expertise and experience with the Project to establish an updated estimate of probable construction costs, containing detail consistent with the Design Development Documents as set forth herein and containing a breakdown based on types of materials and specifications identified herein ("Consultant's Updated Project Budget").

4.4 Timetable. Consultant shall provide a written timetable for full and adequate completion of the Project to City.

4.5 Application for Approvals. Consultant shall assist City in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned with the Project. Consultant shall furnish and process all architectural and engineering information required to prepare and process applications to applicable utilities in order to secure priorities and materials, to aid in the construction of the Project and to obtain final Project approval and acceptance by any of the above agencies as may be required.

4.6 Color and Other Aesthetic Issues. Consultant shall provide, for City's review and approval, a preliminary schedule of all color materials and selections of textures, finishes and other matters involving an aesthetic decision about the Project.

5. FINAL WORKING DRAWINGS AND SPECIFICATIONS.

During the final working drawings and specifications phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

5.1 Final Working Drawings and Specifications. Once City provides Consultant with specific written approval of the Design Development Documents described herein, Consultant shall prepare such complete working drawings and specifications as are necessary for developing complete bids and for properly executing the Project work in an efficient and thorough manner ("Final Working Drawings and Specifications"). Such Final Working Drawings and Specifications shall be developed from the Schematic Plans and Design Development Documents approved by City. The Final Working Drawings and Specifications shall set forth in detail all of the following: (1) the Project construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems; and (3) the utility service connection equipment and site work. As indicated in Section 3.9.2 of the Agreement, City may be requested to supply Consultant with the necessary information to determine the proper location of all improvements on and off site, including record drawings ("as-built drawings") in City's possession. Consultant will make a good-faith effort to verify the accuracy of such information by means of a thorough interior and exterior visual survey of site conditions. City shall also make a good-faith effort to verify the accuracy of the as-built

drawings and provide any supplemental information to Consultant which may not be shown on the as-built drawings.

5.2 Form. The Final Working Drawings and Specifications must be in such form as will enable Consultant and City to secure the required permits and approvals from all federal, state, regional or local agencies concerned with the Project. In addition, the Final Working Drawings and Specifications must be in such form as will enable City to obtain, by competitive bidding, a responsible and responsive bid within the applicable budgetary limitations and cost standards. The Final Working Drawings and Specifications shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Consultant.

5.3 Approval and Revisions. City shall review, study, and check the Final Working Drawings and Specifications presented to it by Consultant, and request any necessary revisions or obtain any necessary approvals by the City Council, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications at no additional cost, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. Consultant shall bring any such conflicts and/or inconsistencies to the attention of City. The Parties agree that Consultant, and not the City, possesses the requisite expertise to determine the constructability of the Final Working Drawings and Specifications. However, the City reserves the right to conduct one or more constructability review processes with the Final Working Drawings and Specifications, and to hire an independent architect or other consultant to perform such reviews. Any such independent constructability review shall be at City's expense. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications which may result from any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. If such changes, additions, deletions or corrections are inconsistent with prior City direction, Consultant shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.

5.4 Costs of Construction. It is understood by Consultant that should the Final Working Drawings and Specifications be ordered by City, City shall specify the sum of money set aside to cover the total cost of construction of the work, exclusive of Consultant's fees. Should it become evident that the total construction cost will exceed the specified sum, Consultant shall at once present a statement in writing to the City's Representative setting forth this fact and giving a full statement of the cost estimates on which the conclusion is based.

5.5 Copies of Final Working Drawings and Specifications and Other Documents. Consultant, at its own expense, shall provide a complete set of the Final Working Drawings and Specifications described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

6. CONSTRUCTION CONTRACT DOCUMENTS.

During the construction contract documents phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

6.1 Bid and Contract Documents. If so required by City, Consultant shall assist City in the completion of all bid and construction documents, including but not limited to, the Notice Inviting Bids, Instructions to Bidders, Contract Bid Forms (including Alternate Bids as requested by City), `Contract, General Conditions, Supplementary General Conditions, Special Conditions, DVBE and other applicable affirmative action documents, Performance Bond, Payment Bond, Escrow Agreement for Security Deposits, and any other certifications and documents required by federal, state and local laws, rules and regulations which may be reasonably required in order to obtain bids responsive to the specifications and drawings. All such documents shall be subject to the approval of City and City's legal counsel.

6.2 Final Estimate. At the time of delivery of these bid and construction documents, which shall include the Final Working Drawings and Specifications (collectively referred to herein as the "Construction Documents"), Consultant shall provide City with its final estimate of probable construction cost ("Consultant's Final Estimate"). As discussed herein, including in Section 7.3, it shall be the Consultant's duty to design the Project within budget.

7. BID PHASE.

During the bid phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

7.1 Reproducible Construction Documents. Once City provides Consultant with specific written approval of the Construction Documents and Consultant's Final Estimate, Consultant shall provide to City one set of reproducible Construction Documents.

7.2 Distribution of Contract Documents and Review of Bids. Consultant shall assist City in distributing the Construction Documents to bidders and conducting the opening and review of bids for the Project.

7.3 Over Budget. If the apparent lowest responsive and responsible bid on the Project exceeds the Consultant's Final Estimate by more than five percent (5%), City may request Consultant to amend, at Consultant's sole cost and expense, the Final Drawings and Specifications in order to rebid the Project and receive a lowest responsive and responsible bid equal to or less than the Consultant's Final Estimate. All revisions necessary to bring the lowest responsible and responsive bid within the Consultant's Final Estimate, including any omissions, deferrals or alternates, shall be made in consultation with, and subject to the approval of, the City.

8. CONSTRUCTION PHASE.

During the construction phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

8.1 Observation. The Project Consultant shall observe work executed from the Final Working Drawings and Specifications in person, provided that City may, in its discretion, consent to such observation by another competent representative of Consultant.

8.2 General Administration. Consultant shall provide general administration of the Construction Documents and the work performed by the contractors.

8.3 Pre-Construction Meeting. Consultant shall conduct one or more pre-construction meetings, as the City determines is needed for the Project, with all interested Parties.

8.4 Site Visits of Contractor's Work. Consultant shall conduct site visits to observe each contractors' work for general conformance with the Construction Documents and with any approved construction schedules or milestones. Such site visits shall be conducted as often as are necessary and appropriate to the stage of construction, according to the City's sole discretion, but in no event less than weekly.

8.5 Site Visits of Inspector's Work. Consultant shall conduct site visits to communicate and observe the activities of the City inspectors. Such site visits shall be conducted as often as is mutually acceptable to Consultant and City. Consultant shall direct the City inspectors and the Project contractors to coordinate the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.

8.6 Coordination of Subconsultants. Consultant shall cause all architects, engineers and other consultants, as may be hired by Consultant or City, to observe the work completed under their disciplines as required, and approve and review all test results for general conformance with the Construction Documents.

8.7 Reports. Consultant shall make regular reports as may be required by applicable federal, state or local laws, rules or regulations, as well as the federal, state, regional or local agencies concerned with the Project.

8.8 Construction Meetings; Minutes. Consultant shall attend all construction meetings and provide written reports/minutes to the City after each construction meeting in order to keep City informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the Project work, according to the City's sole discretion, but no less than weekly.

8.9 Written Reports. Consultant shall make written reports to City as necessary to inform City of problems arising during construction, changes contemplated as a result of each such problems, and progress of the Project work.

8.10 Written Records. Consultant shall keep accurate written records of the progress and quality of the Project work and the time schedules, and shall advise the contractors and City of any deviations from the time schedule which could delay timely completion of the Project.

8.11 Material and Test Reports. Consultant shall check and process, in a timely manner, all required material and test reports for the Project work. In addition, Consultant shall provide notice of any deficiencies in material or work reflected in such reports, as well as its recommendation for correction of such deficiencies, to the contractors and City.

8.12 Review and Response to Submissions. Consultant shall review and respond, in a timely manner, to all schedules, submittals, shop drawings, samples, information requests, change requests, and other submissions of the contractor and subcontractors for compliance with, or alterations and additions to, the Construction Documents. Consultant's review and response shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.13 Rejection of Work. Consultant shall promptly reject, as discussed with City, work or materials which do not conform to the Construction Documents. Consultant shall immediately notify the City and contractor(s) of such rejections. Consultant shall also have the authority to

recommend to the City that additional inspection or testing of the work be performed, whether or not such work is fabricated, installed or completed.

8.14 Substitutions. Consultant shall consult with City, in a timely manner, with regard to substitution of materials, equipment and laboratory reports thereof, prior to the City's final written approval of such substitutions. Consultant's consultation shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.15 Revised Documents and Drawings. Consultant shall prepare, at no additional expense to City, all documents and/or drawings made necessary by errors and omissions in the originally approved Construction Documents.

8.16 Change Requests and Material Changes. Consultant shall evaluate and advise City, in a timely manner and in writing, of any change requests and material change(s) which may be requested or necessary in the Project plans and specifications. Consultant shall provide the City with its opinion as to whether such change requests should be approved, denied or revised. If the City has not hired a construction manager or other person to do so, the Consultant shall prepare and execute all change orders and submit them to the City for authorization. If the City has designated a construction manager or other person to prepare all change orders, the Consultant shall review all change orders prepared by such person, execute them and deliver them to the City for authorization if they meet with the Consultant's approval, or submit them to the City with recommendations for revision or denial if necessary. Consultant shall not order contractors to make any changes affecting the contract price without approval by City of such a written change order, pursuant to the terms of the Construction Documents. Consultant may order, on its own responsibility and pending City Council approval, changes necessary to meet construction emergencies, if written approval of City's Representative is first secured.

8.17 Applications for Payment. Consultant shall examine, verify and approve contractor's applications for payment, and shall issue certificates for payment in amounts approved by the City's inspector.

8.18 Final Color and Product Selection. Consultant shall coordinate final color and product selection with City's original design concept.

8.19 Substantial Completion. Consultant shall determine the date of substantial completion, in consultation with the City.

8.20 Punch List. After determining that the Project is substantially complete, Consultant shall participate in the inspection of the Project and shall review all remaining deficiencies and minor items needed to be corrected or completed on the Project, including those identified on the punch list prepared by the contractor ("Punch List Items"). Consultant shall notify contractor in writing that all Punch List Items must be corrected prior to final acceptance of the Project and final payment. Consultant shall also notify City of all Punch List Items.

8.21 Warranties. Consultant shall review materials assembled by the contractor and subcontractors with regard to all written warranties, guarantees, owners' manuals, instruction books, diagrams, record "as built" drawings, and any other materials required from the contractors and subcontractors pursuant to the Construction Documents. Consultant shall coordinate and provide these materials to the City.

8.22 Certificate of Completion. Consultant shall participate in any further inspections of the Project necessary to issue Consultant's Certificate of Completion and final certificate for payment.

8.23 Documents for Project Close-Out. Consultant shall cause all other architects, engineers and other consultants, as may be hired by Consultant, to file any and all required documentation with the City or other governmental authorities necessary to close out the Project. Consultant shall assist the City in obtaining such documentation from all other architects, engineers, or other consultants.

9. AS-BUILT DRAWINGS.

During the as-built drawings phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

9.1 As-Built Drawings and Specifications. Not later than thirty (30) days after substantial completion of the Project, before receipt of final payment, Consultant shall review and forward the Final Working Drawings and Specifications, indicating on them all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing an "as-built" set of Final Working Drawings and Specifications ("As-Built Drawings and Specifications"). The As-Built Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. Consultant shall personally review and certify that the As-Built Drawings and Specifications are a correct representation of the information supplied to Consultant by any inspectors and the contractor, and shall obtain certifications from any inspectors and the contractor that the drawings are correct.

9.2 Approval. Once City provides Consultant with specific written approval of the As-Built Drawings and Specifications, Consultant shall forward to City the complete set of original As-Built Drawings and Specifications or a complete set of reproducible duplicate As-Built Drawings and Specifications. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

9.3 Documents for Final Payment. Prior to the receipt of Consultant's final payment, Consultant shall forward to City all of the following: (1) one clear and legible set of reproductions of the computations; (2) the original copy of the specifications; (3) the As-Built Drawings and Specifications as required herein; and (4) Consultant's Certificate of Completion.

10. WARRANTY PERIOD.

During the warranty period phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

10.1 Advice. Consultant shall provide advice to City on apparent deficiencies in the Project during any applicable warranty periods for the Project.

EXHIBIT "B"
COMPENSATION RATES AND REIMBURSABLE EXPENSES

Please see following sheet.

ADVANTEC Consulting Engineers

Hourly Rates

Effective January 2024

Classification	Rate
Project Director	$375 / hour
Senior Project Manager VIII	$315 / hour
Senior Project Manager VII	$250 / hour
Project Manager/ Senior Engineer VI	$220 / hour
Project Manager/ Engineer V-3	$200 / hour
Project Manager/ Engineer V-2	$180 / hour
Project Manager/ Engineer V-1	$160 / hour
Associate Engineer IV	$145 / hour
Associate Engineer III	$135 / hour
Assistant Engineer II	$125 / hour
Assistant Engineer I	$110 / hour
Administrative III	$140 / hour
Administrative II	$120 / hour
Administrative I	$100 / hour

Direct Costs

Effective January 2024

Mileage	Current Rate per IRS
In House Plotting (Mylar)	$20.00 per D-size sheet
In House Plotting (Bond)	$10.00 per D-size sheet
Other Direct Costs	At Cost + 10% admin

1200 Roosevelt | Irvine | CA 92620
T 949.861.4999 F 949.502.5522 www.advantec-usa.com

EXHIBIT "C"
SAMPLE TASK ORDER FORM

Task Order No. _____

Agreement: DESIGN SERVICES AGREEMENT FOR ON-CALL SERVICES

Consultant: **ADVANTEC Consulting Engineers Inc.**

The Consultant is hereby authorized to perform the following services subject to the provisions of the Agreement identified above:

List any attachments: (Please provide if any.)

Dollar Amount of Task Order: Not to exceed $_____,_____.00

Completion Date: _____

The undersigned Consultant hereby agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted above, and perform all services for the work above specified in accordance with the Agreement identified above and will accept as full payment therefore the amount shown above.

CITY OF ONTARIO	**ADVANTEC Consulting Engineers Inc.**
Dated: _____	Dated: _____
By: _____	By: _____

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
DESIGN SERVICES AGREEMENT
FOR ON-CALL SERVICES

1. PARTIES AND DATE.

This Agreement is made and entered into as of _____, by and between the City of Ontario, a municipal corporation organized and operating 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 Kimley-Horn and Associates, Inc., a North Carolina Corporation with its principal place of business at 1100 W Town & Country Road, Suite 700, Orange, CA 92868 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 City. City is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Consultant**.** Consultant desires to perform and assume responsibility for the provision of certain professional engineering design services required by the City on the terms and conditions set forth in this Agreement. Consultant warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Consultant is a corporation or other organization, the Project Consultant designated pursuant to Section 3.2, and not the Consultant itself, shall be fully licensed to practice as an engineer in the State of California.

2.3 Project**.** City desires to engage Consultant to render such services for the On-Call Transportation Planning & Traffic Engineering Design Services ("Project") as set forth in this Agreement.

3. TERMS

3.1 Employment of Consultant.

3.1.1 Scope of Services. Consultant promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional engineering and related services necessary for the full and adequate completion of the Project described in Exhibit "A" attached hereto and incorporated herein by reference ("Services"). The Services shall be more particularly described in the individual Task Order issued by the City or its designee. No Services shall be performed unless

authorized by a fully executed Task Order in the form attached hereto as Exhibit "C". All Services shall be subject to, and performed in accordance with, this Agreement, each Task Order, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Consultant shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld.

3.1.2 Term. The term of this Agreement shall be from April 2, 2024 to April 2, 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.

3.2 Project Consultant; Key Personnel.

3.2.1 Engineer of Record. Consultant shall name a specific individual to act as Project Consultant, subject to the approval of City. Consultant hereby designates Jason Melchor (CA License No. 65218) to act as the Engineer of Record for the Project. The Engineer of Record shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the Engineer of Record shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Engineer of Record shall be of at least equal competence as the prior Engineer of Record. In the event that City and Consultant cannot agree as to the substitution of a new Engineer of Record, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Engineer of Record, Consultant has represented to the City that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Consultant may substitute others of at least equal competence upon written approval of the City. In the event that City and Consultant cannot agree as to the substitution of key personnel, engineers or consultants, City shall be entitled to terminate this Agreement for cause. The key additional personnel, engineers and consultants for performance of this Agreement are as follows:

Jason Melchor, P.E. #65218 – Project Manager

3.3 Hiring of Consultants and Personnel.

3.3.1 Right to Hire or Employ. Consultant shall have the option, unless City objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Consultant may delegate without relieving Consultant from administrative or other responsibility under this Agreement. Consultant shall be responsible for the coordination and cooperation of Consultant's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by City in its sole and reasonable discretion. Consultant shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work to allow City to review their qualifications and approve to their participation on the Project in its sole and reasonable discretion.

3.3.2 Qualification and License. All architects, engineers, experts and other consultants retained by Consultant in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.3.3 Standards and Insurance. All architects, engineers, experts and other consultants hired by Consultant shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the City in writing. Unless changes are approved in writing by the City, Consultant's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.3.4 Assignments or Staff Changes. Consultant shall promptly obtain written City approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Consultant's consultants and key personnel shall be subject to approval by City.

3.4 Standard of Care.

3.4.1 Standard of Care. 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 qualified to perform the Services in the same discipline in the State of California, and shall be responsible to City for damages sustained by the City and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Consultant shall be fully responsible to the City for any increased costs incurred by the City as a result of any such delays in the design or construction of the Project. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants and represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, 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.

3.4.2 Performance of Employees. Any employee or consultant 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 or consultant 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.

3.5 Laws and Regulations.

3.5.1 Knowledge and Compliance. Consultant shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Consultant by law. Consultant shall be liable, pursuant to the standard of care and

indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. Consultant shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.5.2 Drawings and Specifications. Consultant shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Consultant. Consultant shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto. For the preparation of all such drawings and specifications, the Consultant shall use Computer Aided Design Drafting ("CADD") (e.g., AutoCAD) or other technology acceptable to the Consultant and City.

3.5.3 Americans with Disabilities Act. Consultant will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Consultant shall inform City of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide the City with its interpretation of such inconsistencies and conflicting interpretations. Unless Consultant brings such inconsistencies and conflicting interpretations to the attention of the City and requests City's direction on how to proceed, the Consultant's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Consultant, and the Consultant shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Consultant request's City's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Consultant shall be responsible to the City only pursuant to the indemnification provisions of this Agreement.

3.5.4 Permits, Approvals and Authorizations. Consultant shall provide City with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Consultant shall then assist the City in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the City.

3.5.5 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 (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant shall 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. Failure to

comply with laws, regulations, and ordinances listed in this Section is a violation of federal and state law.

3.6 Independent Contractor.

3.6.1 Control and Payment of Subordinates. City retains Consultant on an independent contractor basis and Consultant is not an employee of City. Consultant is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City's employees. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City, and shall at all times be under Consultant's exclusive direction and control. 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.

3.7 Schedule of Services.

3.7.1 Consultant Services. Consultant shall fully and adequately complete the Services described in this Agreement, each individual Task Order issued by the City, and in Exhibit "A" attached hereto and incorporated herein by reference.

3.7.2 Timely Performance Standard. Consultant shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Consultant shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the City and within any completion schedules adopted for the Project. Consultant agrees to coordinate with City's staff, contractors and consultants in the performance of the Services, and shall be available to City's staff, contractors and consultants at all reasonable times.

3.7.3 Performance Schedule. Consultant shall prepare an estimated time schedule for the performance of Consultant's Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the City's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for City's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If City and Consultant cannot mutually agree on a performance schedule, City shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Consultant without the prior written approval of City. If the Consultant's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the City will suffer damage for which the Consultant will be responsible.

3.7.4 Excusable Delays. Any delays in Consultant's work caused by the following may be added to the time for completion of any obligations of Consultant: (1) the actions of City or its employees; (2) the actions of those in direct contractual relationship with City; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control of the Consultant; and (5) any Force Majeure Event (as defined herein) or other unforeseen occurrence not due to any fault or negligence on the part of

Consultant. Neither the City nor the Consultant shall be liable for damages, liquidated or otherwise, to the other on account of such delays.

3.7.5 Force Majeure Events. 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. Should a Force Majeure Event occur, the non-performing Party shall, within fifteen (15) calendar days of the beginning of an Force Majeure Event, 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 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.

3.7.6 Request for Excusable Delay Credit. The Consultant shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify the City in writing of the causes of delay (unless City grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). City will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The City's findings of fact thereon shall be final and conclusive on the Parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Consultant for extensions of time shall be an extension of the performance time at no cost to the City. If Additional Services are required as a result of an excusable delay, the Parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Consultant make an application for an extension of time, Consultant shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

3.8 Additional Services.

3.8.1 Request for Services. At City's request, Consultant may be asked to perform services not otherwise included in this Agreement, not included within the basic services listed in Exhibit "A" attached hereto, and/or not customarily furnished in accordance with generally accepted architectural practice.

3.8.2 Definition. As used herein, "Additional Services" mean: (1) 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 for the Consultant to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit "A" attached hereto. Consultant shall not perform, nor be compensated for, Additional Services without prior

written authorization from City and without an agreement between the City and Consultant as to the compensation to be paid for such services. City shall pay Consultant for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Consultant pursuant to the indemnification provision of this Agreement.

3.8.3 Examples of Additional Services. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Consultant was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

(a) Separately Bid Portions of Project. Plan preparation and/or administration of work on portions of the Project separately bid.

(b) Furniture and Interior Design. Assistance to City, if requested, for the selection of moveable furniture, equipment or articles which are not included in the Construction Documents.

(c) Fault of Contractor. Services caused by delinquency, default or insolvency of contractor, or by major defects in the work of the contractor, provided that any such services made necessary by the failure of Consultant to detect and report such matters when it reasonably should have done so shall not be compensated.

(d) Inconsistent Approvals or Instructions. Revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Consultant.

(e) Legal Proceedings. Serving as an expert witness on City's behalf or attending legal proceedings to which the Consultant is not a party.

(f) Damage Repair. Supervision of repair of damages to any structure.

(g) Extra Environmental Services. Additional work required for environmental conditions (e.g. asbestos or site conditions) not already contemplated within the Consultant's services for the Project.

3.9 City Responsibilities. City's responsibilities shall include the following:

3.9.1 Data and Information. City shall make available to Consultant all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and criteria. As part of the budget limitation information, the City shall provide the Consultant with a preliminary construction budget ("City's Preliminary Construction Budget").

3.9.2 Project Survey. If required pursuant to the scope of the Project and if requested by Consultant, City shall furnish Consultant with, or direct Consultant to procure at City's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.

3.9.3 Bid Phase. Distribute Construction Documents to bidders and conduct the opening and review of bids for the Project.

3.9.4 Testing. Retain consultant(s) to conduct chemical, mechanical, soils, geological or other tests required for proper design of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.

3.9.5 Required Inspections and Tests. Retain consultant(s) to conduct materials testing and inspection or environmental/hazardous materials testing and inspection pursuant to any applicable laws, rules or regulations.

3.9.6 Fees of Reviewing or Licensing Agencies. Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

3.9.7 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates Jay Bautista, Transportation Manager, or his or her designee, as the City's contact for the implementation of the Services hereunder. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.9.8 Review and Approved Documents. Review all documents submitted by Consultant, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Consultant of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

3.10 Compensation.

3.10.1 Consultant's Compensation for Basic Services. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The maximum compensation for Services to be provided pursuant to each Task Order shall be set forth in the relevant Task Order. The total compensation for all Task Orders issued hereunder shall not exceed **Two Hundred Thousand Dollars and Zero Cents ($200,000.00)** without written approval of the City Council or City Manager, as applicable. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

3.10.2 Payment for Additional Services. At any time during the term of this Agreement, City may request that Consultant perform Additional Services. As used herein, Additional Services 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. Any additional work in excess of this amount must be approved by the City. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "B" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall

be compensated therefore at the rates and in the manner set forth in Exhibit "B" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. City shall have the authority to review and approve the rates of any such consultants. In addition, Consultant shall be reimbursed for any expenses incurred by such consultants pursuant to the terms and conditions of Section 3.10.3.

3.10.3 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the Services and Additional Services. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, which approval may be evidenced by inclusion in Exhibit "B" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Consultant in the interest of the Project. Consultant shall be required to acquire prior written consent in order to obtain reimbursement for the following: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of $1,000; and (5) other costs, fees and expenses in excess of $1,000.

3.10.4 Payment to Consultant. Consultant's compensation and reimbursable expenses shall be paid by City to Consultant no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the compensation rates indicated in Exhibit "B" attached hereto and incorporated herein by reference. In order to receive payment, Consultant shall present to City an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid. The statement 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 statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Consultant shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit "B", attached hereto. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the Parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Consultant shall present to City an itemized statement which indicates the Additional Services performed, percentage of Additional Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Consultant shall be compensated as set forth in the termination provision herein.

3.10.5 Withholding Payment to Consultant. The City may withhold payment, in whole or in part, to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under

the indemnification provisions of this Agreement. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which Consultant is liable under the Agreement or state law. Payments to the Consultant for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Consultant shall not be withheld, postponed, or made contingent upon receipt by the City of offsetting reimbursement or credit from Parties not within the Consultant's reasonable control.

3.10.6 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. 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 and to require its consultants 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 shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Consultant or its consultants to comply with the Prevailing Wage Laws.

(a) Registration/DIR Compliance. If the Services are being performed as part of an applicable "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 performing such Services 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. 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 Department of Industrial Relations 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 Department of Industrial Relations against Consultant or any subconsultant.

3.11 Notice to Proceed.

Consultant shall not proceed with performance of any Services under this Agreement unless and until the City provides a written notice to proceed.

3.12 Termination, Suspension and Abandonment.

3.12.1 Grounds for Termination; Consultant's Termination for Cause. City hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Consultant shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Consultant shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by City as a result of the default, if any, by Consultant. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, abandonment or termination. Consultant may terminate this Agreement for substantial breach of performance by the City such as failure to make payment to Consultant as provided in this Agreement.

3.12.2 City's Suspension of Work. If Consultant's Services are suspended by City, City may require Consultant to resume such Services within ninety (90) days after written notice from City. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the City and Consultant.

3.12.3 Documents and Other Data. Upon suspension, abandonment or termination, Consultant shall provide to City all preliminary studies, sketches, working drawings, specifications, computations, and all other Project Documents, as defined below, to which City would have been entitled at the completion of Consultant's Services under this Agreement. Upon payment of the amount required to be paid to Consultant pursuant to the termination provisions of this Agreement, City shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Consultant under this Agreement. Consultant shall make such documents available to City upon request and without additional compensation other than as may be approved as a reimbursable expense.

3.12.4 Employment of other Consultants. 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.

3.13 Ownership and Use of Documents; Confidentiality.

3.13.1 Ownership. All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, architectural presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes (hereinafter referred to as the "Project Documents") shall be and remain the property of City. Although the official copyright in all Project Documents

shall remain with the Consultant or other applicable subcontractors or consultants, the Project Documents shall be the property of City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Consultant shall provide to City copies of all Project Documents required by City. In addition, Consultant shall retain copies of all Project Documents 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 reasonable duplication costs. Before destroying the Project Documents following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.13.2 Right to Use. Consultant grants to City the right to use and reuse all or part of the Project Documents, at City's sole discretion and with no additional compensation to Consultant, for the following purposes:

(a) The construction of all or part of this Project.

(b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;

(c) The construction of another project by or on behalf of the City for its ownership and use;

City is not bound by this Agreement to employ the services of Consultant in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Consultant or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Consultant.

Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Consultant shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall remove the Consultant's seal from the Project Documents and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

3.13.3 License. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Consultant shall require any and all subcontractors and consultants to agree in writing that City is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.13.4 Right to License. Consultant represents and warrants that Consultant has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Consultant prepares or causes to be prepared pursuant to this Agreement. Consultant shall indemnify and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Consultant makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Consultant and provided to Consultant by City.

3.13.5 Confidentiality. All Project Documents, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Project Documents 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 written consent of City.

3.14 Indemnification.

3.14.1 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 to the extent arising out of, pertaining to, or incident to any negligent 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.

3.14.2 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.

3.15 Insurance. 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.

3.15.1 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, Consultant shall, at its expense, procure and maintain in full force and effect for the duration of the Agreement the following policies of insurance.

3.15.2 Additional Insured. The City of Ontario, its officials, officers, employees, agents, and volunteers shall be named as additional insureds on Consultant's and its

subconsultants' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

3.15.3 Commercial General Liability

(a) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(b) Coverage for Commercial General Liability insurance shall be at least as broad as the following: Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent. Commercial General Liability Insurance must include coverage for the following:

(i) Bodily Injury and Property Damage

(ii) Personal Injury/Advertising Injury

(iii) Premises/Operations Liability

(iv) Products/Completed Operations Liability

(v) Aggregate Limits that Apply per Project

(vi) Explosion, Collapse and Underground (UCX) exclusion deleted

(vii) Contractual Liability with respect to this Contract

(viii) Broad Form Property Damage

(ix) Independent Consultants Coverage

(c) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(d) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(e) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

3.15.4 Automobile Liability

(a) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and

property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(b) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(c) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status.

(d) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

3.15.5 Workers' Compensation/Employer's Liability

(a) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(b) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this Section.

3.15.6 Professional Liability (Errors and Omissions)

(a) At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be written on a policy form coverage specifically designed to protect against negligent 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 must include a provision establishing the insurer's duty to defend.

3.15.7 Minimum Policy Limits Required

(a) The following insurance limits are required for the Agreement:

Coverage	Combined Single Limit

Commercial General Liability	$2,000,000 per occurrence/ $4,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	$2,000,000 per occurrence for bodily injury and property damage
Employer's Liability	$1,000,000 per occurrence
Professional Liability	$2,000,000 per claim and aggregate (errors and omissions)

(b) Defense costs shall be payable in addition to the limits.

(c) Requirements of specific coverage or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

3.15.8 Evidence Required

(a) Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

3.15.9 Policy Provisions Required

(a) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(b) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any 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.

(c) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the

policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(d) 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.

(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.

3.15.10 Qualifying Insurers

(a) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements: 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 admitted to transact in the 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.

3.15.11 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 the City Council, nor any member of the City Council, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

3.15.12 Subconsultant Insurance Requirements

(a) Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

3.16 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 five (5) years from the date of final payment under this Agreement.

3.17 Standardized Manufactured Items.

Consultant shall cooperate and consult with City in the use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items shall be standardized to City's criteria to the extent such criteria do not interfere with building design.

3.18 Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other City site, will be covered by, and be the subject of, a separate Agreement for engineering services between City and the Consultant chosen therefor by City.

3.19 Mediation.

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the Parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the Parties.

3.20 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

3.21 Asbestos Certification.

Consultant shall certify to City, in writing and under penalty of perjury, that to the

best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Consultant prepares for the Project. Consultant shall require all consultants who prepare any other documents for the Project to submit the same written certification. Consultant shall also assist the City in ensuring that contractors provide City with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Consultant shall include statements in its specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

3.22 No Third Party Rights.

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

3.23 Governing Law.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in San Bernardino County.

3.24 Exhibits and Recitals.

All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth.

3.25 Severability.

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

3.26 Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

3.27 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 its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

3.28 Harassment Policy.

Consultant shall provide a copy of the City's Harassment Policy to each of its employees assigned to perform the tasks under this Agreement. Consultant shall submit

to the City's Personnel Manager a statement signed by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of City's Harassment Policy and certifying that they have read the Harassment Policy. A finding by the City that any of Consultant's employees has harassed a City employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request.

3.29 Delivery of Notices.

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

CITY:	CONSULTANT:
City of Ontario	Kimley-Horn and Associates, Inc.
303 East "B" Street	1100 W Town & Country Rd, Suite 700
Ontario, CA 91764	Orange, CA 92868
Attn: Craig Cruz, Engineering	Attn: Jason Melchor

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.

3.30 Time of Essence.

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

3.31 City's Right to Employ Other Consultants.

City reserves right to employ other consultants, including designers, in connection with this Project or other projects.

3.32 Prohibited Interests.

3.32.1 Solicitation. 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. Further, 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. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

3.32.2 Conflict of Interest. For the term of this Agreement, no director, official, 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.

3.33 Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. 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.

3.34 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.

3.35 Subcontracting.

As specified in this Agreement, 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 each and every provision of this Agreement.

3.36 Supplemental Conditions.

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

3.37 Entire Agreement.

This Agreement, with its exhibits, contains the entire agreement of the Parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the Parties hereto. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all Parties hereto.

SIGNATURES ON FOLLOWING PAGE

Signature Page for Design Services Agreement
Between the City of Ontario
and Kimley-Horn and Associates, Inc.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF ONTARIO	**KIMLEY-HORN AND ASSOCIATES, INC.**
Approved By:	
_____	By: _____
Scott Ochoa City Manager	Its: _____
Approved as to Form:	Printed Name: _____
_____	By: _____
Best Best & Krieger LLP City Attorney	Its: _____
	Printed Name: _____
Attested By:	[If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED]
_____	
City Clerk	

EXHIBIT "A"
SCOPE OF SERVICES

The City of Ontario is seeking proposals from qualified consulting engineers (the Consultant) to provide On-Call Services for three (3) years, with an option of renewing for two (2) consecutive one (1) year terms for services in transportation planning & traffic engineering design with the intention of maintaining a list of multiple qualified prime engineering firms, with subconsultant support services as needed. Task orders will be issued to firms on a competitive basis based on the qualifications and expertise of the firm and their subconsultants. There is no designated minimum nor maximum value of services to be awarded to any one consultant.

The Consultant is expected to furnish all services as required to complete the scope of services described below for task order projects and to manage and control costs and resources, and complete work in adherence to the agreed upon Project schedule. The Consultant will assign a Project Manager who will act as the City's primary contact and will be entirely responsible for project management activities throughout the duration of an awarded task (including subconsultant work, if applicable). The following is a suggested breakdown of Project tasks and should be incorporated into the fee schedule under the appropriate activities.

TRANSPORTATION AND TRAFFIC ENGINEERING PROJECT DESIGN SERVICES

The City of Ontario is seeking a Request for Qualifications from firms for Professional Services:

Consultant shall be aware that certain labor categories above may be subject to prevailing wage rates as identified in the California Labor Code commencing Section 1770 et. Seq.
Determination of whether or not Prevailing Wages shall apply will be determined when the City's project manager identifies the scope of specific task orders. Please refer to Paragraph I.10 "Prevailing Wage" of this RFQ, and Paragraph 3.10.6 "Prevailing Wages" of the DSA for further requirements.

Expected services to be provided under this on-call contract will be performed under a task order system and may include:

1) Transportation Planning

Development Support Services

- Traffic Study Preparation and Review
- Parking Analysis Preparation and Review
- Trip Generation Analysis Preparation and Review
- VMT Analysis Preparation and Review
- SB743 Analysis Preparation and Review
- Traffic Simulations
- On-site circulation analysis
- Data Collection and Analysis
- Traffic Model Support
- On-Site "extension to staff" support services

Long Range Planning

- General Plan Support
- Specific Plan Support
- Active Transportation Plans and Programs
- Context Sensitive Solutions
- Maintain and Update City Traffic Study Guidelines
- Transit Studies
- Corridor Studies
- On-Site “extension to staff” support services
- Coordination with outside agencies
- Support for funding and grant applications

2) <u>Traffic Engineering</u>

- Traffic Design Plan (including civil work) and Cost Estimate Preparation and Review
- Traffic Signal Plan and Cost Estimate Preparation and Review
- Pedestrian Hybrid Beacon Plan and Cost Estimate Preparation and Review
- Street Light Plan and Cost Estimate Preparation and Review
- Traffic Studies for Capital Projects
- Support for funding and grant applications
- Intelligent Transportation Systems Design
- Traffic Signal Timing and Coordination Studies
- Traffic Control Plan Design and Review
- Technical services and support for non-motorized capital projects
- Active Transportation Design and Review
- Traffic Calming Support
- Traffic Calming Plan Design and Review
- On-Site “extension to staff” support services
- Traffic Counts Support
- Engineering and Traffic Surveys
- Warrant Analyses
- Coordination with outside agencies (Caltrans, railroads, neighboring cities, etc.)
- Signing and Striping Support

Project Design/Plans, Specifications, and Estimates (PS&E) Preparation

Firms shall be capable of performing the following tasks:

- Land Surveying & Mapping
- Civil Engineering Design
- Detailed Engineering/Cost Estimation
- Preparation of construction bid documents and specifications
- Any other work required to complete project design

Consultant shall perform research of records including utility companies and other agency records as necessary to secure information required to identify, locate, and accurately layout all existing improvements and right-of-way within project limits that may interfere with the proposed

improvements. Consultant will identify estimated number of potholes required for a project in their cost proposal for each individual task order.

Consultant shall conduct a site visit to observe the topography and visualize the proposed improvements at the project location and review available subsurface data from nearby structures or published geologic maps to determine general subsurface conditions at the project site.

General Requirements and Project Deliverables

All surveys shall be performed by Consultant in accordance with accepted professional surveying standards. Consultant shall obtain applicable encroachment permits from the City of Ontario, Railroad, Caltrans, and neighboring cities prior to beginning any field investigation. Additionally, if a traffic control plan is required, Consultant shall prepare the plan. Such documents shall be forwarded to the respective permit issuing agency, for review and concurrence prior to beginning any field investigation.

The Consultant shall complete a topographic survey map of the site to prepare a base map for the construction plans. This includes, but is not limited to:

1. Horizontal and vertical control, drainage surveys, topographical surveys within the right-of-way, cross sections, grid grades, open-ended traverses, profile data sheets and required documentation. (Horizontal Control shall be based on NAD 83; Vertical Control shall be based on NAVD 88).

2. Establish street centerlines, right-of-way lines existing and proposed, and all easements from available record information.

3. Provide the basis-of-bearing and benchmark information used for the survey and necessary for construction.

4. Locate and tie any features that would affect the design or construction.

5. Obtain Record of Surveys, benchmark and centerline tie information.

The City will provide the title block and specification boiler plate to the Consultant. All drawings shall utilize AutoCAD 2021 or later and shall utilize the City of Ontario standard title block. For interim submittals, the City may opt to receive only PDF versions of the plans for reviewing purposes. If so, the Consultant team will provide plans and/or specifications accordingly. All original plan sheets, the title sheet of the specifications, calculations, and reports shall be signed and stamped by the Consultants' licensed professional engineer responsible/in-charge of the project.

The Consultant will be expected to revise the documents within a revised schedule set by the City. There will be no additional compensation necessary for the consultant to complete the work to the satisfaction of the City for required revisions. The Consultant's services for plan specifications and estimating (PS&E) for engineering project preparation and special studies/investigations shall include and be in conformance with the latest editions of the Greenbook Standard Specifications for Public Works Construction and the City of Ontario

standards, unless otherwise specified. Latest editions of the Caltrans Standards and Specifications shall be used for traffic signal design.

For the City plan check process, the Consultant will be required to submit one PDF electronic copy for all submittals. Consultant shall also be responsible for submitting plans and reports for plan check and approval/permit issuance to any affected agencies.

Permitting

- Prepare and file all necessary documents and apply for all required permits or provide support including, but not limited to:

  i. Federal, Caltrans, Railroad, environmental, and utility permits

  ii. Valet parking review

  iii. Permit Parking review

  iv. On-Site "extension to staff" support services

Consultant shall coordinate permits and any other issues with the City, other agencies, and all utility companies as required. At the direction of the City, the Consultant shall be the liaison with affected agencies.

3) Construction Support and Other Tasks

Firms shall be capable of performing the following tasks:

- Project presentations and meetings
- Construction Support Services
- Any other work required to successfully plan for projects and adequately assess project feasibility

During the bidding process and construction, the Consultant shall assist in answering questions regarding the technical specifications, design drawings or conflicts in the design, respond to City staff and/or contractor RFI's for any technical design clarification or design conflicts that arise during construction, review and recommend materials submittals and shop drawings for concurrence with plans and specifications, attend milestone meetings and pre-con meetings, and prepare record drawings that incorporate redlines comments prepared by the contractor and City Staff. One (1) bond set of the record drawings shall be submitted and all drawings shall be provided to the City electronically, as a PDF file and with the latest AutoCAD file format.

Change Orders (Change to Scope of Work)

All changes must be submitted in writing for City approval. The Consultant shall submit a cost fee proposal for all changes. The City will evaluate and issue a Notice to Proceed for each Change Order separately

1. GENERAL REQUIREMENTS.

1.1 Basic Services. Consultant agrees to perform all the necessary professional architectural, engineering (e.g. mechanical, electrical, plumbing, structural, site engineering, and any other necessary engineering services mutually agreeable to the Parties) and construction administration services for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

1.2 Exclusions from Basic Services. The following services shall be excluded from the basic services listed above: N/A

1.3 Additional Services. Consultant shall perform the following Additional Services for the Project: N/A

1.4 Communication with City. Consultant shall participate in consultations and conferences with authorized representatives of City and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications and documents in accordance with the applicable standards and requirements of law and the City. Such consultations and conferences shall continue throughout the planning and construction of the Project and the contractor's warranty period. Consultant shall take direction only from the City's Representative, or any other representative specifically designated by the City for this Project, including any construction manager hired by the City.

1.5 Coordination and Cooperation with Construction Manager. The City may hire a construction manager to administer and coordinate all or any part of the Project on its behalf. If the City does so, it shall provide a copy of its agreement with the construction manager so that the Consultant will be fully aware of the duties and responsibilities of the construction manager. The Consultant shall cooperate with the construction manager and respond to any requests or directives authorized by the City to be made or given by the construction manager. The Consultant shall request clarification from the City in writing if the Consultant should have any questions regarding the authority of the construction manager.

2. INITIAL PLANNING PHASE.

During the initial planning phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

2.1 Project Feasibility. Provide advice and assistance to City in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

2.2 Meeting Budget and Project Goals. Consultant shall notify City in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially impact the Project budget and time line, including the City's Preliminary Construction Budget. Consultant shall use its best judgment in determining the balance between the size, type and quality of construction to achieve a satisfactory solution within the Project's budget and construction allowance. It shall be the duty of the Consultant to design the Project within budget. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by the stated amount, Consultant may be required to make the

necessary changes in the drawing and specifications, at its sole cost and expense, to bring the bids within the required budget.

2.3 Permits, Approvals and Authorizations. As indicated in Section 3.5.4 of the Agreement, Consultant shall assist City in securing easements, encroachment permits, rights of way, dedications, infrastructures and road improvements, as well as coordinating with utilities and adjacent property owners.

3. SCHEMATIC PLAN PHASE.

During the schematic plan phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

3.1 Funding Documents. Consultant shall provide a site plan and all other Project-related information necessary and required for an application by City to any federal, state, regional, or local agencies for funds to finance the construction Project.

3.2 Schematic Plans. In cooperation with City, Consultant shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development at the site, and the proposed architectural concept of the buildings ("Schematic Plans"). Consultant shall incorporate the functional requirements of City into the Schematic Plans. The Schematic Plans shall meet all laws, rules and regulations of the State of California. The Schematic Plans shall show all rooms incorporated in each building of the Project in single-line drawings, and shall include all revisions required by City or by any federal, state, regional or local agency having jurisdiction over the Project. All architectural drawings for the Project shall be in a form suitable for reproduction.

3.3 Preliminary Project Budget. Consultant shall use the City's Preliminary Construction Budget and its own expertise and experience with the Project to establish a preliminary project budget or allowance in a format required by City ("Consultant's Preliminary Project Budget"). The purpose of the Consultant's Preliminary Project Budget is to show the probable Project cost in relation to City's Preliminary Construction Budget and the construction standards of any applicable funding agency. If Consultant perceives site considerations which render the Project expensive or cost prohibitive, Consultant shall disclose such conditions in writing to City immediately. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by more than the stated amount, Consultant may be required to make the necessary changes in the drawings and specifications, at its sole cost and expense, to bring the bids within the required budget Consultant shall provide a preliminary written time schedule for the performance of all construction work on the Project.

3.4 Copies of Schematic Plans and Other Documents. Consultant, at its own expense, shall provide a complete set of the Schematic Plans described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4. DESIGN DEVELOPMENT PHASE.

During the design development phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

4.1 Design Development Documents. Once City provides Consultant with specific written approval of the Schematic Plans described herein, Consultant shall prepare design development documents consisting of: (1) site and floor plans; (2) elevations; and (3) any other drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the size and character of the Project's structural, mechanical and electrical systems, and to outline the Project specifications ("Design Development Documents"). The Design Development Documents shall be prepared in sufficient form to present to the City Council for approval.

4.2 Copies of Design Development and Other Documents. Consultant, at its own expense, shall provide a complete set of the Design Development Documents described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4.3 Updated Project Budget. Consultant shall use its Preliminary Project Budget and expertise and experience with the Project to establish an updated estimate of probable construction costs, containing detail consistent with the Design Development Documents as set forth herein and containing a breakdown based on types of materials and specifications identified herein ("Consultant's Updated Project Budget").

4.4 Timetable. Consultant shall provide a written timetable for full and adequate completion of the Project to City.

4.5 Application for Approvals. Consultant shall assist City in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned with the Project. Consultant shall furnish and process all architectural and engineering information required to prepare and process applications to applicable utilities in order to secure priorities and materials, to aid in the construction of the Project and to obtain final Project approval and acceptance by any of the above agencies as may be required.

4.6 Color and Other Aesthetic Issues. Consultant shall provide, for City's review and approval, a preliminary schedule of all color materials and selections of textures, finishes and other matters involving an aesthetic decision about the Project.

5. FINAL WORKING DRAWINGS AND SPECIFICATIONS.

During the final working drawings and specifications phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

5.1 Final Working Drawings and Specifications. Once City provides Consultant with specific written approval of the Design Development Documents described herein, Consultant shall prepare such complete working drawings and specifications as are necessary for developing complete bids and for properly executing the Project work in an efficient and thorough manner ("Final Working Drawings and Specifications"). Such Final Working Drawings and Specifications shall be developed from the Schematic Plans and Design Development Documents approved by City. The Final Working Drawings and Specifications shall set forth in detail all of the following: (1) the Project construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems; and (3) the utility service connection equipment and site work. As indicated in Section 3.9.2 of the Agreement, City may be requested to supply Consultant with the necessary information to determine the proper location of all improvements on and off site, including record

drawings ("as-built drawings") in City's possession. Consultant will make a good-faith effort to verify the accuracy of such information by means of a thorough interior and exterior visual survey of site conditions. City shall also make a good-faith effort to verify the accuracy of the as-built drawings and provide any supplemental information to Consultant which may not be shown on the as-built drawings.

5.2 Form. The Final Working Drawings and Specifications must be in such form as will enable Consultant and City to secure the required permits and approvals from all federal, state, regional or local agencies concerned with the Project. In addition, the Final Working Drawings and Specifications must be in such form as will enable City to obtain, by competitive bidding, a responsible and responsive bid within the applicable budgetary limitations and cost standards. The Final Working Drawings and Specifications shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Consultant.

5.3 Approval and Revisions. City shall review, study, and check the Final Working Drawings and Specifications presented to it by Consultant, and request any necessary revisions or obtain any necessary approvals by the City Council, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications at no additional cost, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. Consultant shall bring any such conflicts and/or inconsistencies to the attention of City. The Parties agree that Consultant, and not the City, possesses the requisite expertise to determine the constructability of the Final Working Drawings and Specifications. However, the City reserves the right to conduct one or more constructability review processes with the Final Working Drawings and Specifications, and to hire an independent architect or other consultant to perform such reviews. Any such independent constructability review shall be at City's expense. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications which may result from any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. If such changes, additions, deletions or corrections are inconsistent with prior City direction, Consultant shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.

5.4 Costs of Construction. It is understood by Consultant that should the Final Working Drawings and Specifications be ordered by City, City shall specify the sum of money set aside to cover the total cost of construction of the work, exclusive of Consultant's fees. Should it become evident that the total construction cost will exceed the specified sum, Consultant shall at once present a statement in writing to the City's Representative setting forth this fact and giving a full statement of the cost estimates on which the conclusion is based.

5.5 Copies of Final Working Drawings and Specifications and Other Documents. Consultant, at its own expense, shall provide a complete set of the Final Working Drawings and Specifications described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or

local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

6. CONSTRUCTION CONTRACT DOCUMENTS.

During the construction contract documents phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

6.1 Bid and Contract Documents. If so required by City, Consultant shall assist City in the completion of all bid and construction documents, including but not limited to, the Notice Inviting Bids, Instructions to Bidders, Contract Bid Forms (including Alternate Bids as requested by City), `Contract, General Conditions, Supplementary General Conditions, Special Conditions, DVBE and other applicable affirmative action documents, Performance Bond, Payment Bond, Escrow Agreement for Security Deposits, and any other certifications and documents required by federal, state and local laws, rules and regulations which may be reasonably required in order to obtain bids responsive to the specifications and drawings. All such documents shall be subject to the approval of City and City's legal counsel.

6.2 Final Estimate. At the time of delivery of these bid and construction documents, which shall include the Final Working Drawings and Specifications (collectively referred to herein as the "Construction Documents"), Consultant shall provide City with its final estimate of probable construction cost ("Consultant's Final Estimate"). As discussed herein, including in Section 7.3, it shall be the Consultant's duty to design the Project within budget.

7. BID PHASE.

During the bid phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

7.1 Reproducible Construction Documents. Once City provides Consultant with specific written approval of the Construction Documents and Consultant's Final Estimate, Consultant shall provide to City one set of reproducible Construction Documents.

7.2 Distribution of Contract Documents and Review of Bids. Consultant shall assist City in distributing the Construction Documents to bidders and conducting the opening and review of bids for the Project.

7.3 Over Budget. If the apparent lowest responsive and responsible bid on the Project exceeds the Consultant's Final Estimate by more than five percent (5%), City may request Consultant to amend, at Consultant's sole cost and expense, the Final Drawings and Specifications in order to rebid the Project and receive a lowest responsive and responsible bid equal to or less than the Consultant's Final Estimate. All revisions necessary to bring the lowest responsible and responsive bid within the Consultant's Final Estimate, including any omissions, deferrals or alternates, shall be made in consultation with, and subject to the approval of, the City.

8. CONSTRUCTION PHASE.

During the construction phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

8.1 Observation. The Project Consultant shall observe work executed from the Final Working Drawings and Specifications in person, provided that City may, in its discretion, consent to such observation by another competent representative of Consultant.

8.2 General Administration. Consultant shall provide general administration of the Construction Documents and the work performed by the contractors.

8.3 Pre-Construction Meeting. Consultant shall conduct one or more pre-construction meetings, as the City determines is needed for the Project, with all interested Parties.

8.4 Site Visits of Contractor's Work. Consultant shall conduct site visits to observe each contractors' work for general conformance with the Construction Documents and with any approved construction schedules or milestones. Such site visits shall be conducted as often as are necessary and appropriate to the stage of construction, according to the City's sole discretion, but in no event less than weekly.

8.5 Site Visits of Inspector's Work. Consultant shall conduct site visits to communicate and observe the activities of the City inspectors. Such site visits shall be conducted as often as is mutually acceptable to Consultant and City. Consultant shall direct the City inspectors and the Project contractors to coordinate the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.

8.6 Coordination of Subconsultants. Consultant shall cause all architects, engineers and other consultants, as may be hired by Consultant or City, to observe the work completed under their disciplines as required, and approve and review all test results for general conformance with the Construction Documents.

8.7 Reports. Consultant shall make regular reports as may be required by applicable federal, state or local laws, rules or regulations, as well as the federal, state, regional or local agencies concerned with the Project.

8.8 Construction Meetings; Minutes. Consultant shall attend all construction meetings and provide written reports/minutes to the City after each construction meeting in order to keep City informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the Project work, according to the City's sole discretion, but no less than weekly.

8.9 Written Reports. Consultant shall make written reports to City as necessary to inform City of problems arising during construction, changes contemplated as a result of each such problems, and progress of the Project work.

8.10 Written Records. Consultant shall keep accurate written records of the progress and quality of the Project work and the time schedules, and shall advise the contractors and City of any deviations from the time schedule which could delay timely completion of the Project.

8.11 Material and Test Reports. Consultant shall check and process, in a timely manner, all required material and test reports for the Project work. In addition, Consultant shall provide notice of any deficiencies in material or work reflected in such reports, as well as its recommendation for correction of such deficiencies, to the contractors and City.

8.12 Review and Response to Submissions. Consultant shall review and respond, in a timely manner, to all schedules, submittals, shop drawings, samples, information requests, change requests, and other submissions of the contractor and subcontractors for compliance with, or alterations and additions to, the Construction Documents. Consultant's review and response shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.13 Rejection of Work. Consultant shall promptly reject, as discussed with City, work or materials which do not conform to the Construction Documents. Consultant shall immediately notify the City and contractor(s) of such rejections. Consultant shall also have the authority to recommend to the City that additional inspection or testing of the work be performed, whether or not such work is fabricated, installed or completed.

8.14 Substitutions. Consultant shall consult with City, in a timely manner, with regard to substitution of materials, equipment and laboratory reports thereof, prior to the City's final written approval of such substitutions. Consultant's consultation shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.15 Revised Documents and Drawings. Consultant shall prepare, at no additional expense to City, all documents and/or drawings made necessary by errors and omissions in the originally approved Construction Documents.

8.16 Change Requests and Material Changes. Consultant shall evaluate and advise City, in a timely manner and in writing, of any change requests and material change(s) which may be requested or necessary in the Project plans and specifications. Consultant shall provide the City with its opinion as to whether such change requests should be approved, denied or revised. If the City has not hired a construction manager or other person to do so, the Consultant shall prepare and execute all change orders and submit them to the City for authorization. If the City has designated a construction manager or other person to prepare all change orders, the Consultant shall review all change orders prepared by such person, execute them and deliver them to the City for authorization if they meet with the Consultant's approval, or submit them to the City with recommendations for revision or denial if necessary. Consultant shall not order contractors to make any changes affecting the contract price without approval by City of such a written change order, pursuant to the terms of the Construction Documents. Consultant may order, on its own responsibility and pending City Council approval, changes necessary to meet construction emergencies, if written approval of City's Representative is first secured.

8.17 Applications for Payment. Consultant shall examine, verify and approve contractor's applications for payment, and shall issue certificates for payment in amounts approved by the City's inspector.

8.18 Final Color and Product Selection. Consultant shall coordinate final color and product selection with City's original design concept.

8.19 Substantial Completion. Consultant shall determine the date of substantial completion, in consultation with the City.

8.20 Punch List. After determining that the Project is substantially complete, Consultant shall participate in the inspection of the Project and shall review all remaining deficiencies and minor items needed to be corrected or completed on the Project, including those identified on the punch list prepared by the contractor ("Punch List Items"). Consultant shall notify

contractor in writing that all Punch List Items must be corrected prior to final acceptance of the Project and final payment. Consultant shall also notify City of all Punch List Items.

8.21 Warranties. Consultant shall review materials assembled by the contractor and subcontractors with regard to all written warranties, guarantees, owners' manuals, instruction books, diagrams, record "as built" drawings, and any other materials required from the contractors and subcontractors pursuant to the Construction Documents. Consultant shall coordinate and provide these materials to the City.

8.22 Certificate of Completion. Consultant shall participate in any further inspections of the Project necessary to issue Consultant's Certificate of Completion and final certificate for payment.

8.23 Documents for Project Close-Out. Consultant shall cause all other architects, engineers and other consultants, as may be hired by Consultant, to file any and all required documentation with the City or other governmental authorities necessary to close out the Project. Consultant shall assist the City in obtaining such documentation from all other architects, engineers, or other consultants.

9. AS-BUILT DRAWINGS.

During the as-built drawings phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

9.1 As-Built Drawings and Specifications. Not later than thirty (30) days after substantial completion of the Project, before receipt of final payment, Consultant shall review and forward the Final Working Drawings and Specifications, indicating on them all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing an "as-built" set of Final Working Drawings and Specifications ("As-Built Drawings and Specifications"). The As-Built Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. Consultant shall personally review and certify that the As-Built Drawings and Specifications are a correct representation of the information supplied to Consultant by any inspectors and the contractor, and shall obtain certifications from any inspectors and the contractor that the drawings are correct.

9.2 Approval. Once City provides Consultant with specific written approval of the As-Built Drawings and Specifications, Consultant shall forward to City the complete set of original As-Built Drawings and Specifications or a complete set of reproducible duplicate As-Built Drawings and Specifications. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

9.3 Documents for Final Payment. Prior to the receipt of Consultant's final payment, Consultant shall forward to City all of the following: (1) one clear and legible set of reproductions of the computations; (2) the original copy of the specifications; (3) the As-Built Drawings and Specifications as required herein; and (4) Consultant's Certificate of Completion.

10. WARRANTY PERIOD.

During the warranty period phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

10.1 Advice. Consultant shall provide advice to City on apparent deficiencies in the Project during any applicable warranty periods for the Project.

EXHIBIT "B"
COMPENSATION RATES AND REIMBURSABLE EXPENSES

1. HOURLY COMPENSATION RATES.

Classification	Rate
Analyst I	$130 - $160
Analyst II	$165 - $195
Professional	$195 - $230
Senior Professional I	$235 - $315
Senior Professional II	$320 - $410
Senior Technical Support	$165 - $290
Technical Support	$105 - $165
Support Staff	$85 - $145

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Rates valid through 12/31/24. Subject to annual adjustment thereafter

2. REIMBURSABLE EXPENSES.

Internal Reimbursable Expenses will be charged at 4.6% of Labor Billings

External Reimbursable Expenses will be charged at 10% mark-up, or per the Contract.

3. ADDITIONAL SERVICES.

Additional Services shall be computed at the actual hourly rates listed above.

4. ADDITIONAL CONSULTANTS.

If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the Consultant's actual hourly rates plus 10% mark-up. Owner shall have the authority to review and approve the rates of any such consultants.

EXHIBIT "C"
SAMPLE TASK ORDER FORM

Task Order No. _____

Agreement: DESIGN SERVICES AGREEMENT FOR ON-CALL SERVICES

Consultant: [INSERT NAME OF CONSULTANT]

The Consultant is hereby authorized to perform the following services subject to the provisions of the Agreement identified above:

List any attachments: (Please provide if any.)

Dollar Amount of Task Order: Not to exceed $_____,_____.00

Completion Date: _____

The undersigned Consultant hereby agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted above, and perform all services for the work above specified in accordance with the Agreement identified above and will accept as full payment therefore the amount shown above.

CITY OF ONTARIO	**[INSERT NAME OF CONSULTANT]**
Dated: _____	Dated: _____
By: _____	By: _____

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
DESIGN SERVICES AGREEMENT
FOR ON-CALL SERVICES

1. PARTIES AND DATE.

This Agreement is made and entered into as of _____, by and between the City of Ontario, a municipal corporation organized and operating 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 Fehr & Peers, an S Corporation with its principal place of business at 100 Pringle Avenue, Suite 600, Walnut Creek, CA 94596 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 City. City is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Consultant**.** Consultant desires to perform and assume responsibility for the provision of certain professional engineering design services required by the City on the terms and conditions set forth in this Agreement. Consultant warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Consultant is a corporation or other organization, the Project Consultant designated pursuant to Section 3.2, and not the Consultant itself, shall be fully licensed to practice as an engineer in the State of California.

2.3 Project**.** City desires to engage Consultant to render such services for the On-Call Transportation Planning & Traffic Engineering Design Services ("Project") as set forth in this Agreement.

3. TERMS

3.1 Employment of Consultant.

3.1.1 Scope of Services. Consultant promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to supply the professional engineering and related services necessary for the Project described in Exhibit "A" attached hereto and incorporated herein by reference ("Services"). The Services shall be more particularly described in the individual Task Order issued by the City or its designee. No Services shall be performed unless authorized by a fully executed Task Order in the form attached hereto as Exhibit "C". All Services shall be subject to, and performed in accordance with, this

Agreement, each Task Order, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Consultant shall be subject to the sole approval of the City, which approval shall not be unreasonably withheld.

3.1.2 Term. The term of this Agreement shall be from April 2, 2024 to April 2, 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.

3.2 Project Consultant; Key Personnel.

3.2.1 Engineer of Record. Consultant shall name a specific individual to act as Project Consultant, subject to the approval of City. Consultant hereby designates Jason D. Pack, (License No. TR2402) to act as the Engineer of Record for the Project. The Engineer of Record shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the Engineer of Record shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Engineer of Record shall be of at least equal competence as the prior Engineer of Record. In the event that City and Consultant cannot agree as to the substitution of a new Engineer of Record, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Engineer of Record, Consultant has represented to the City that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Consultant may substitute others of at least equal competence upon written approval of the City. In the event that City and Consultant cannot agree as to the substitution of key personnel, engineers or consultants, City shall be entitled to terminate this Agreement for cause. The key additional personnel, engineers and consultants for performance of this Agreement are as follows: **Fehr & Peers**: Jason Pack, Principal TR2402; Paul Herrmann, Senior Associate, TR2797 & Claude Strayer, Senior Associate CA #86774. **Mark Thomas**: Josh Cosper, CA QSD 00709, CA PLS 8774 & CA PE C71667.

3.3 Hiring of Consultants and Personnel.

3.3.1 Right to Hire or Employ. Consultant shall have the option, unless City objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Consultant may delegate without relieving Consultant from administrative or other responsibility under this Agreement. Consultant shall be responsible for the coordination and cooperation of Consultant's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by City in its sole and reasonable discretion. Consultant shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work to allow City to review their qualifications and approve to their participation on the Project in its sole and reasonable discretion.

3.3.2 Qualification and License. All architects, engineers, experts and other consultants retained by Consultant in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.3.3 Standards and Insurance. All architects, engineers, experts and other consultants hired by Consultant shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the City in writing. Unless changes are approved in writing by the City, Consultant's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.3.4 Assignments or Staff Changes. Consultant shall promptly obtain written City approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Consultant's consultants and key personnel shall be subject to approval by City.

3.3.5 Draftsman and Clerical Support. Draftsmen and clerical personnel shall be retained by Consultant at Consultant's sole expense.

3.4 Standard of Care.

3.4.1 Standard of Care. Consultant shall perform all Services under this Agreement in accordance with the care, skill, and diligence ordinarily exercised by professionals providing similar services in the same or similar locale and under similar circumstances to that of Consultant under this Agreement. Consultant shall be responsible to City for damages sustained by the City and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Consultant shall be fully responsible to the City for any increased costs incurred by the City as a result of any such delays in the design or construction of the Project caused by Consultant's failure to perform its services in accordance with the standard of care specified above in this Section 3.4.1. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, 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.

3.4.2 Performance of Employees. Any employee or consultant 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 or consultant 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.

3.5 Laws and Regulations.

3.5.1 Knowledge and Compliance. Consultant shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Consultant by law. Consultant shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. Consultant shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.5.2 Drawings and Specifications. Consultant shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Consultant. Consultant shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto. For the preparation of all such drawings and specifications, the Consultant shall use Computer Aided Design Drafting ("CADD") (e.g., AutoCAD) or other technology acceptable to the Consultant and City.

3.5.3 Americans with Disabilities Act. Consultant will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Consultant shall inform City of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide the City with its interpretation of such inconsistencies and conflicting interpretations. Unless Consultant brings such inconsistencies and conflicting interpretations to the attention of the City and requests City's direction on how to proceed, the Consultant's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Consultant, and the Consultant shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Consultant request's City's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Consultant shall be responsible to the City only pursuant to the indemnification provisions of this Agreement.

3.5.4 Permits, Approvals and Authorizations. Consultant shall provide City with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Consultant shall then assist the City in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the City.

3.5.5 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 (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant shall 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. Failure to comply with laws, regulations, and ordinances listed in this Section is a violation of federal and state law.

3.6 Independent Contractor.

3.6.1 Control and Payment of Subordinates. City retains Consultant on an independent contractor basis and Consultant is not an employee of City. Consultant is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City's employees. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City, and shall at all times be under Consultant's exclusive direction and control. 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.

3.7 Schedule of Services.

3.7.1 Consultant Services. Consultant shall fully and adequately complete the Services described in this Agreement, each individual Task Order issued by the City, and in Exhibit "A" attached hereto and incorporated herein by reference.

3.7.2 Timely Performance Standard. Consultant shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Consultant shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the City and within any completion schedules adopted for the Project. Consultant agrees to coordinate with City's staff, contractors and consultants in the performance of the Services, and shall be available to City's staff, contractors and consultants at all reasonable times.

3.7.3 Performance Schedule. Consultant shall prepare an estimated time schedule for the performance of Consultant's Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the City's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for City's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If City and Consultant cannot mutually agree on a performance schedule, City shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Consultant without the prior written approval of City. If the Consultant's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the City will suffer damage for which the Consultant will be responsible.

3.7.4 Excusable Delays. Any delays in Consultant's work caused by the following may be added to the time for completion of any obligations of Consultant: (1) the actions

of City or its employees; (2) the actions of those in direct contractual relationship with City; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control of the Consultant; and (5) any Force Majeure Event (as defined herein) or other unforeseen occurrence not due to any fault or negligence on the part of Consultant. Neither the City nor the Consultant shall be liable for damages, liquidated or otherwise, to the other on account of such delays.

3.7.5 Force Majeure Events. 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. Should a Force Majeure Event occur, the non-performing Party shall, within fifteen (15) calendar days of the beginning of an Force Majeure Event, 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 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.

3.7.6 Request for Excusable Delay Credit. The Consultant shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify the City in writing of the causes of delay (unless City grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). City will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The City's findings of fact thereon shall be final and conclusive on the Parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Consultant for extensions of time shall be an extension of the performance time at no cost to the City. If Additional Services are required as a result of an excusable delay, the Parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Consultant make an application for an extension of time, Consultant shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

3.8 Additional Services.

3.8.1 Request for Services. At City's request, Consultant may be asked to perform services not otherwise included in this Agreement, not included within the basic services listed in Exhibit "A" attached hereto, and/or not customarily furnished in accordance with generally accepted architectural practice.

3.8.2 Definition. As used herein, "Additional Services" mean: (1) 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 for the Consultant to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit "A" attached hereto. Consultant shall not perform, nor be compensated for, Additional Services without prior written authorization from City and without an agreement between the City and Consultant as to the compensation to be paid for such services. City shall pay Consultant for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Consultant pursuant to the indemnification provision of this Agreement.

3.8.3 Examples of Additional Services. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Consultant was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

(a) Separately Bid Portions of Project. Plan preparation and/or administration of work on portions of the Project separately bid.

(b) Furniture and Interior Design. Assistance to City, if requested, for the selection of moveable furniture, equipment or articles which are not included in the Construction Documents.

(c) Fault of Contractor. Services caused by delinquency, default or insolvency of contractor, or by major defects in the work of the contractor, provided that any such services made necessary by the failure of Consultant to detect and report such matters when it reasonably should have done so shall not be compensated.

(d) Inconsistent Approvals or Instructions. Revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Consultant.

(e) Legal Proceedings. Serving as an expert witness on City's behalf or attending legal proceedings to which the Consultant is not a party.

(f) Damage Repair. Supervision of repair of damages to any structure.

(g) Extra Environmental Services. Additional work required for environmental conditions (e.g. asbestos or site conditions) not already contemplated within the Consultant's services for the Project.

3.9 City Responsibilities. City's responsibilities shall include the following:

3.9.1 Data and Information. City shall make available to Consultant all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and criteria. As part of the budget limitation information, the City shall provide the Consultant with a preliminary construction budget ("City's Preliminary Construction Budget").

3.9.2 Project Survey. If required pursuant to the scope of the Project and if requested by Consultant, City shall furnish Consultant with, or direct Consultant to procure at City's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.

3.9.3 Bid Phase. Distribute Construction Documents to bidders and conduct the opening and review of bids for the Project.

3.9.4 Testing. Retain consultant(s) to conduct chemical, mechanical, soils, geological or other tests required for proper design of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.

3.9.5 Required Inspections and Tests. Retain consultant(s) to conduct materials testing and inspection or environmental/hazardous materials testing and inspection pursuant to any applicable laws, rules or regulations.

3.9.6 Fees of Reviewing or Licensing Agencies. Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

3.9.7 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates Jay Bautista, Transportation Manager, or his or her designee, as the City's contact for the implementation of the Services hereunder. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.9.8 Review and Approved Documents. Review all documents submitted by Consultant, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Consultant of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

3.10 Compensation.

3.10.1 Consultant's Compensation for Basic Services. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The maximum compensation for Services to be provided pursuant to each Task Order shall be set forth in the relevant Task Order. The total compensation for all Task Orders issued hereunder shall not exceed **Two Hundred Thousand Dollars and Zero Cents ($200,000.00)** without written approval of the City Council or City Manager, as applicable. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

3.10.2 Payment for Additional Services. At any time during the term of this Agreement, City may request that Consultant perform Additional Services. As used herein,

Additional Services 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. Any additional work in excess of this amount must be approved by the City. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "B" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the rates and in the manner set forth in Exhibit "B" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. City shall have the authority to review and approve the rates of any such consultants. In addition, Consultant shall be reimbursed for any expenses incurred by such consultants pursuant to the terms and conditions of Section 3.10.3.

3.10.3 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the Services and Additional Services. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, which approval may be evidenced by inclusion in Exhibit "B" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Consultant in the interest of the Project. Consultant shall be required to acquire prior written consent in order to obtain reimbursement for the following: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of $1,000; and (5) other costs, fees and expenses in excess of $1,000.

3.10.4 Payment to Consultant. Consultant's compensation and reimbursable expenses shall be paid by City to Consultant no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the compensation rates indicated in Exhibit "B" attached hereto and incorporated herein by reference. In order to receive payment, Consultant shall present to City an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid. The statement 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 statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Consultant shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit "B", attached hereto. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the Parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Consultant shall present to City an itemized statement which indicates the Additional Services performed, percentage of Additional Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Consultant shall be compensated as

set forth in the termination provision herein.

3.10.5 Withholding Payment to Consultant. The City may withhold payment, in whole or in part, to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under the indemnification provisions of this Agreement. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which Consultant is liable under the Agreement or state law. Payments to the Consultant for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Consultant shall not be withheld, postponed, or made contingent upon receipt by the City of offsetting reimbursement or credit from Parties not within the Consultant's reasonable control.

3.10.6 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. 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 and to require its consultants 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 shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Consultant or its consultants to comply with the Prevailing Wage Laws.

(a) Registration/DIR Compliance. If the Services are being performed as part of an applicable "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 performing such Services 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. 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 Department of Industrial Relations 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 Department of Industrial Relations against Consultant or any subconsultant.

3.11 Notice to Proceed.

Consultant shall not proceed with performance of any Services under this Agreement unless and until the City provides a written notice to proceed.

3.12 Termination, Suspension and Abandonment.

3.12.1 Grounds for Termination; Consultant's Termination for Cause. City hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Consultant shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Consultant shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by City as a result of the default, if any, by Consultant. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, abandonment or termination. Consultant may terminate this Agreement for substantial breach of performance by the City such as failure to make payment to Consultant as provided in this Agreement.

3.12.2 City's Suspension of Work. If Consultant's Services are suspended by City, City may require Consultant to resume such Services within ninety (90) days after written notice from City. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the City and Consultant.

3.12.3 Documents and Other Data. Upon suspension, abandonment or termination, Consultant shall provide to City all preliminary studies, sketches, working drawings, specifications, computations, and all other Project Documents, as defined below, to which City would have been entitled at the completion of Consultant's Services under this Agreement. Upon payment of the amount required to be paid to Consultant pursuant to the termination provisions of this Agreement, City shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Consultant under this Agreement. Consultant shall make such documents available to City upon request and without additional compensation other than as may be approved as a reimbursable expense.

3.12.4 Employment of other Consultants. 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.

3.13 Ownership and Use of Documents; Confidentiality.

3.13.1 Ownership. All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, architectural

presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes (hereinafter referred to as the "Project Documents") shall be and remain the property of City. Although the official copyright in all Project Documents shall remain with the Consultant or other applicable subcontractors or consultants, the Project Documents shall be the property of City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Consultant shall provide to City copies of all Project Documents required by City. In addition, Consultant shall retain copies of all Project Documents 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 reasonable duplication costs. Before destroying the Project Documents following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.13.2 Right to Use. Consultant grants to City the right to use and reuse all or part of the Project Documents, at City's sole discretion and with no additional compensation to Consultant, for the following purposes:

(a) The construction of all or part of this Project.

(b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;

(c) The construction of another project by or on behalf of the City for its ownership and use;

City is not bound by this Agreement to employ the services of Consultant in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Consultant or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Consultant.

Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Consultant shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall remove the Consultant's seal from the Project Documents and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

3.13.3 License. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Consultant shall require any and all subcontractors and consultants to agree in writing that City is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.13.4 Right to License. Consultant represents and warrants that Consultant has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Consultant prepares or causes to be prepared pursuant to this Agreement. Consultant shall indemnify and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Consultant makes no such

representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Consultant and provided to Consultant by City.

3.13.5 Confidentiality. All Project Documents, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Project Documents 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 written consent of City.

3.14 Indemnification.

3.14.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's reasonable choosing), indemnify and hold the City, its officials, officers and employees, 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 negligent acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and reasonable 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 or employees.

3.14.2 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 the extent such claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.15 Insurance. 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.

3.15.1 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, Consultant shall, at its expense, procure and maintain in full force and effect for the duration 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.

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

3.15.3 Commercial General Liability

(a) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(b) Coverage for Commercial General Liability insurance shall be at least as broad as the following: Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent. Commercial General Liability Insurance must include coverage for the following:

(i) Bodily Injury and Property Damage

(ii) Personal Injury/Advertising Injury

(iii) Premises/Operations Liability

(iv) Products/Completed Operations Liability

(v) Aggregate Limits that Apply per Project

(vi) Explosion, Collapse and Underground (UCX) exclusion deleted

(vii) Contractual Liability with respect to this Contract

(viii) Broad Form Property Damage

(ix) Independent Consultants Coverage

(c) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(d) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(e) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

3.15.4 Automobile Liability

(a) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(b) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(c) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status.

(d) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

3.15.5 Workers' Compensation/Employer's Liability

(a) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(b) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this Section.

3.15.6 Professional Liability (Errors and Omissions)

(a) At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. 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 must include a provision establishing the insurer's duty to defend.

3.15.7 Minimum Policy Limits Required

(a) The following insurance limits are required for the Agreement:

Coverage	Combined Single Limit
Commercial General Liability	$2,000,000 per occurrence/ $4,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	$2,000,000 per occurrence for bodily injury and property damage
Employer's Liability	$1,000,000 per occurrence
Professional Liability	$2,000,000 per claim and aggregate (errors and omissions)

(b) Defense costs shall be payable in addition to the limits.

(c) Requirements of specific coverage or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

3.15.8 Evidence Required

(a) Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

3.15.9 Policy Provisions Required

(a) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(b) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any 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.

(c) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced

past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(d) 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.

(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.

3.15.10 Qualifying Insurers

(a) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements: 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 admitted to transact in the 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.

3.15.11 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 the City Council, nor any member of the City Council, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

3.15.12 Subconsultant Insurance Requirements

(a) Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

3.16 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 five (5) years from the date of final payment under this Agreement.

3.17 Standardized Manufactured Items.

Consultant shall cooperate and consult with City in the use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items shall be standardized to City's criteria to the extent such criteria do not interfere with building design.

3.18 Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other City site, will be covered by, and be the subject of, a separate Agreement for engineering services between City and the Consultant chosen therefor by City.

3.19 Mediation.

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the Parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the Parties.

3.20 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

3.21 Asbestos Certification.

Consultant shall certify to City, in writing and under penalty of perjury, that to the best of

its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Consultant prepares for the Project. Consultant shall require all consultants who prepare any other documents for the Project to submit the same written certification. Consultant shall also assist the City in ensuring that contractors provide City with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Consultant shall include statements in its specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

3.22 No Third Party Rights.

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

3.23 Governing Law.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in San Bernardino County.

3.24 Exhibits and Recitals.

All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth.

3.25 Severability.

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

3.26 Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

3.27 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 its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

3.28 Harassment Policy.

Consultant shall provide a copy of the City's Harassment Policy to each of its employees assigned to perform the tasks under this Agreement. Consultant shall submit to the City's Personnel Manager a statement signed by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of City's Harassment Policy and certifying that they have read the Harassment Policy. A finding by the City that any of Consultant's

employees has harassed a City employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request.

3.29 Delivery of Notices.

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

CITY:	CONSULTANT:
City of Ontario	Fehr & Peers
303 East “B” Street	3750 University, Suite 225
Ontario, CA 91764	Riverside, CA 92501
Attn: Craig Cruz, Engineering	Attn: Jason Pack

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.

3.30 Time of Essence.

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

3.31 City’s Right to Employ Other Consultants.

City reserves right to employ other consultants, including designers, in connection with this Project or other projects.

3.32 Prohibited Interests.

3.32.1 Solicitation. 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. Further, 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. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

3.32.2 Conflict of Interest. For the term of this Agreement, no director, official, 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.

3.33 Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. 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.

3.34 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.

3.35 Subcontracting.

As specified in this Agreement, 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 each and every provision of this Agreement.

3.36 Supplemental Conditions.

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

3.37 Entire Agreement.

This Agreement, with its exhibits, contains the entire agreement of the Parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the Parties hereto. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all Parties hereto.

SIGNATURES ON FOLLOWING PAGE

Signature Page for Design Services Agreement
Between the City of Ontario
and Fehr & Peers

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

Fehr & Peers

By: _____
Steven J. Brown
Senior Vice President
S.Brown@FehrandPeers.com

By: _____
Lysa Wollard
Treasurer
L.Wollard@FehrandPeers.com

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

EXHIBIT "A"
SCOPE OF SERVICES

The City of Ontario is seeking proposals from qualified consulting engineers (the Consultant) to provide On-Call Services for three (3) years, with an option of renewing for two (2) consecutive one (1) year terms for services in transportation planning & traffic engineering design with the intention of maintaining a list of multiple qualified prime engineering firms, with subconsultant support services as needed. Task orders will be issued to firms on a competitive basis based on the qualifications and expertise of the firm and their subconsultants. There is no designated minimum nor maximum value of services to be awarded to any one consultant.

The Consultant is expected to furnish all services as required to complete the scope of services described below for task order projects and to manage and control costs and resources, and complete work in adherence to the agreed upon Project schedule. The Consultant will assign a Project Manager who will act as the City's primary contact and will be entirely responsible for project management activities throughout the duration of an awarded task (including subconsultant work, if applicable). The following is a suggested breakdown of Project tasks and should be incorporated into the fee schedule under the appropriate activities.

TRANSPORTATION AND TRAFFIC ENGINEERING PROJECT DESIGN SERVICES

The City of Ontario is seeking a Request for Qualifications from firms for Professional Services:

Consultant shall be aware that certain labor categories above may be subject to prevailing wage rates as identified in the California Labor Code commencing Section 1770 et. Seq. Determination of whether or not Prevailing Wages shall apply will be determined when the City's project manager identifies the scope of specific task orders. Please refer to Paragraph I.10 "Prevailing Wage" of this RFQ, and Paragraph 3.10.6 "Prevailing Wages" of the DSA for further requirements.

Expected services to be provided under this on-call contract will be performed under a task order system and may include:

1) Transportation Planning

Development Support Services

- Traffic Study Preparation and Review
- Parking Analysis Preparation and Review
- Trip Generation Analysis Preparation and Review
- VMT Analysis Preparation and Review
- SB743 Analysis Preparation and Review
- Traffic Simulations
- On-site circulation analysis
- Data Collection and Analysis
- Traffic Model Support
- On-Site "extension to staff" support services

Long Range Planning

- General Plan Support
- Specific Plan Support
- Active Transportation Plans and Programs
- Context Sensitive Solutions
- Maintain and Update City Traffic Study Guidelines
- Transit Studies
- Corridor Studies
- On-Site “extension to staff” support services
- Coordination with outside agencies
- Support for funding and grant applications

2) <u>Traffic Engineering</u>

- Traffic Design Plan (including civil work) and Cost Estimate Preparation and Review
- Traffic Signal Plan and Cost Estimate Preparation and Review
- Pedestrian Hybrid Beacon Plan and Cost Estimate Preparation and Review
- Street Light Plan and Cost Estimate Preparation and Review
- Traffic Studies for Capital Projects
- Support for funding and grant applications
- Intelligent Transportation Systems Design
- Traffic Signal Timing and Coordination Studies
- Traffic Control Plan Design and Review
- Technical services and support for non-motorized capital projects
- Active Transportation Design and Review
- Traffic Calming Support
- Traffic Calming Plan Design and Review
- On-Site “extension to staff” support services
- Traffic Counts Support
- Engineering and Traffic Surveys
- Warrant Analyses
- Coordination with outside agencies (Caltrans, railroads, neighboring cities, etc.)
- Signing and Striping Support

Project Design/Plans, Specifications, and Estimates (PS&E) Preparation

Firms shall be capable of performing the following tasks:

- Land Surveying & Mapping
- Civil Engineering Design
- Detailed Engineering/Cost Estimation
- Preparation of construction bid documents and specifications
- Any other work required to complete project design

Consultant shall perform research of records including utility companies and other agency records as necessary to secure information required to identify, locate, and accurately layout all existing improvements and right-of-way within project limits that may interfere with the proposed

improvements. Consultant will identify estimated number of potholes required for a project in their cost proposal for each individual task order.

Consultant shall conduct a site visit to observe the topography and visualize the proposed improvements at the project location and review available subsurface data from nearby structures or published geologic maps to determine general subsurface conditions at the project site.

General Requirements and Project Deliverables

All surveys shall be performed by Consultant in accordance with accepted professional surveying standards. Consultant shall obtain applicable encroachment permits from the City of Ontario, Railroad, Caltrans, and neighboring cities prior to beginning any field investigation. Additionally, if a traffic control plan is required, Consultant shall prepare the plan. Such documents shall be forwarded to the respective permit issuing agency, for review and concurrence prior to beginning any field investigation.

The Consultant shall complete a topographic survey map of the site to prepare a base map for the construction plans. This includes, but is not limited to:

1. Horizontal and vertical control, drainage surveys, topographical surveys within the right-of-way, cross sections, grid grades, open-ended traverses, profile data sheets and required documentation. (Horizontal Control shall be based on NAD 83; Vertical Control shall be based on NAVD 88).

2. Establish street centerlines, right-of-way lines existing and proposed, and all easements from available record information.

3. Provide the basis-of-bearing and benchmark information used for the survey and necessary for construction.

4. Locate and tie any features that would affect the design or construction.

5. Obtain Record of Surveys, benchmark and centerline tie information.

The City will provide the title block and specification boiler plate to the Consultant. All drawings shall utilize AutoCAD 2021 or later and shall utilize the City of Ontario standard title block. For interim submittals, the City may opt to receive only PDF versions of the plans for reviewing purposes. If so, the Consultant team will provide plans and/or specifications accordingly. All original plan sheets, the title sheet of the specifications, calculations, and reports shall be signed and stamped by the Consultants' licensed professional engineer responsible/in-charge of the project.

The Consultant will be expected to revise the documents within a revised schedule set by the City. There will be no additional compensation necessary for the consultant to complete the work to the satisfaction of the City for required revisions. The Consultant's services for plan specifications and estimating (PS&E) for engineering project preparation and special studies/investigations shall include and be in conformance with the latest editions of the Greenbook Standard Specifications for Public Works Construction and the City of Ontario standards, unless otherwise specified. Latest editions of the Caltrans Standards and Specifications shall be used for traffic signal design.

For the City plan check process, the Consultant will be required to submit one PDF electronic copy for all submittals. Consultant shall also be responsible for submitting plans and reports for plan check and approval/permit issuance to any affected agencies.

Permitting

- Prepare and file all necessary documents and apply for all required permits or provide support including, but not limited to:

  i. Federal, Caltrans, Railroad, environmental, and utility permits

  ii. Valet parking review

  iii. Permit Parking review

  iv. On-Site "extension to staff" support services

Consultant shall coordinate permits and any other issues with the City, other agencies, and all utility companies as required. At the direction of the City, the Consultant shall be the liaison with affected agencies.

3) Construction Support and Other Tasks

Firms shall be capable of performing the following tasks:

- Project presentations and meetings
- Construction Support Services
- Any other work required to successfully plan for projects and adequately assess project feasibility

During the bidding process and construction, the Consultant shall assist in answering questions regarding the technical specifications, design drawings or conflicts in the design, respond to City staff and/or contractor RFI's for any technical design clarification or design conflicts that arise during construction, review and recommend materials submittals and shop drawings for concurrence with plans and specifications, attend milestone meetings and pre-con meetings, and prepare record drawings that incorporate redlines comments prepared by the contractor and City Staff. One (1) bond set of the record drawings shall be submitted and all drawings shall be provided to the City electronically, as a PDF file and with the latest AutoCAD file format.

Change Orders (Change to Scope of Work)

All changes must be submitted in writing for City approval. The Consultant shall submit a cost fee proposal for all changes. The City will evaluate and issue a Notice to Proceed for each Change Order separately

1. GENERAL REQUIREMENTS.

1.1 Basic Services. Consultant agrees to perform all the necessary professional architectural, engineering (e.g. mechanical, electrical, plumbing, structural, site engineering, and any other necessary engineering services mutually agreeable to the Parties) and construction

administration services for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

1.2 Exclusions from Basic Services. The following services shall be excluded from the basic services listed above: N/A

1.3 Additional Services. Consultant shall perform the following Additional Services for the Project: N/A

1.4 Communication with City. Consultant shall participate in consultations and conferences with authorized representatives of City and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications and documents in accordance with the applicable standards and requirements of law and the City. Such consultations and conferences shall continue throughout the planning and construction of the Project and the contractor's warranty period. Consultant shall take direction only from the City's Representative, or any other representative specifically designated by the City for this Project, including any construction manager hired by the City.

1.5 Coordination and Cooperation with Construction Manager. The City may hire a construction manager to administer and coordinate all or any part of the Project on its behalf. If the City does so, it shall provide a copy of its agreement with the construction manager so that the Consultant will be fully aware of the duties and responsibilities of the construction manager. The Consultant shall cooperate with the construction manager and respond to any requests or directives authorized by the City to be made or given by the construction manager. The Consultant shall request clarification from the City in writing if the Consultant should have any questions regarding the authority of the construction manager.

2. INITIAL PLANNING PHASE.

During the initial planning phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

2.1 Project Feasibility. Provide advice and assistance to City in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

2.2 Meeting Budget and Project Goals. Consultant shall notify City in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially impact the Project budget and time line, including the City's Preliminary Construction Budget. Consultant shall use its best judgment in determining the balance between the size, type and quality of construction to achieve a satisfactory solution within the Project's budget and construction allowance. It shall be the duty of the Consultant to design the Project within budget. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by the stated amount, Consultant may be required to make the necessary changes in the drawing and specifications, at its sole cost and expense, to bring the bids within the required budget.

2.3 Permits, Approvals and Authorizations. As indicated in Section 3.5.4 of the Agreement, Consultant shall assist City in securing easements, encroachment permits, rights of

way, dedications, infrastructures and road improvements, as well as coordinating with utilities and adjacent property owners.

3. SCHEMATIC PLAN PHASE.

During the schematic plan phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

3.1 Funding Documents. Consultant shall provide a site plan and all other Project-related information necessary and required for an application by City to any federal, state, regional, or local agencies for funds to finance the construction Project.

3.2 Schematic Plans. In cooperation with City, Consultant shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development at the site, and the proposed architectural concept of the buildings ("Schematic Plans"). Consultant shall incorporate the functional requirements of City into the Schematic Plans. The Schematic Plans shall meet all laws, rules and regulations of the State of California. The Schematic Plans shall show all rooms incorporated in each building of the Project in single-line drawings, and shall include all revisions required by City or by any federal, state, regional or local agency having jurisdiction over the Project. All architectural drawings for the Project shall be in a form suitable for reproduction.

3.3 Preliminary Project Budget. Consultant shall use the City's Preliminary Construction Budget and its own expertise and experience with the Project to establish a preliminary project budget or allowance in a format required by City ("Consultant's Preliminary Project Budget"). The purpose of the Consultant's Preliminary Project Budget is to show the probable Project cost in relation to City's Preliminary Construction Budget and the construction standards of any applicable funding agency. If Consultant perceives site considerations which render the Project expensive or cost prohibitive, Consultant shall disclose such conditions in writing to City immediately. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by more than the stated amount, Consultant may be required to make the necessary changes in the drawings and specifications, at its sole cost and expense, to bring the bids within the required budget Consultant shall provide a preliminary written time schedule for the performance of all construction work on the Project.

3.4 Copies of Schematic Plans and Other Documents. Consultant, at its own expense, shall provide a complete set of the Schematic Plans described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4. DESIGN DEVELOPMENT PHASE.

During the design development phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

4.1 Design Development Documents. Once City provides Consultant with specific written approval of the Schematic Plans described herein, Consultant shall prepare design development documents consisting of: (1) site and floor plans; (2) elevations; and (3) any other drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the size and character of the Project's structural, mechanical and electrical systems, and to

outline the Project specifications ("Design Development Documents"). The Design Development Documents shall be prepared in sufficient form to present to the City Council for approval.

4.2 Copies of Design Development and Other Documents. Consultant, at its own expense, shall provide a complete set of the Design Development Documents described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4.3 Updated Project Budget. Consultant shall use its Preliminary Project Budget and expertise and experience with the Project to establish an updated estimate of probable construction costs, containing detail consistent with the Design Development Documents as set forth herein and containing a breakdown based on types of materials and specifications identified herein ("Consultant's Updated Project Budget").

4.4 Timetable. Consultant shall provide a written timetable for full and adequate completion of the Project to City.

4.5 Application for Approvals. Consultant shall assist City in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned with the Project. Consultant shall furnish and process all architectural and engineering information required to prepare and process applications to applicable utilities in order to secure priorities and materials, to aid in the construction of the Project and to obtain final Project approval and acceptance by any of the above agencies as may be required.

4.6 Color and Other Aesthetic Issues. Consultant shall provide, for City's review and approval, a preliminary schedule of all color materials and selections of textures, finishes and other matters involving an aesthetic decision about the Project.

5. FINAL WORKING DRAWINGS AND SPECIFICATIONS.

During the final working drawings and specifications phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

5.1 Final Working Drawings and Specifications. Once City provides Consultant with specific written approval of the Design Development Documents described herein, Consultant shall prepare such complete working drawings and specifications as are necessary for developing complete bids and for properly executing the Project work in an efficient and thorough manner ("Final Working Drawings and Specifications"). Such Final Working Drawings and Specifications shall be developed from the Schematic Plans and Design Development Documents approved by City. The Final Working Drawings and Specifications shall set forth in detail all of the following: (1) the Project construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems; and (3) the utility service connection equipment and site work. As indicated in Section 3.9.2 of the Agreement, City may be requested to supply Consultant with the necessary information to determine the proper location of all improvements on and off site, including record drawings ("as-built drawings") in City's possession. Consultant will make a good-faith effort to verify the accuracy of such information by means of a thorough interior and exterior visual survey of site conditions. City shall also make a good-faith effort to verify the accuracy of the as-built

drawings and provide any supplemental information to Consultant which may not be shown on the as-built drawings.

5.2 Form. The Final Working Drawings and Specifications must be in such form as will enable Consultant and City to secure the required permits and approvals from all federal, state, regional or local agencies concerned with the Project. In addition, the Final Working Drawings and Specifications must be in such form as will enable City to obtain, by competitive bidding, a responsible and responsive bid within the applicable budgetary limitations and cost standards. The Final Working Drawings and Specifications shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Consultant.

5.3 Approval and Revisions. City shall review, study, and check the Final Working Drawings and Specifications presented to it by Consultant, and request any necessary revisions or obtain any necessary approvals by the City Council, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications at no additional cost, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. Consultant shall bring any such conflicts and/or inconsistencies to the attention of City. The Parties agree that Consultant, and not the City, possesses the requisite expertise to determine the constructability of the Final Working Drawings and Specifications. However, the City reserves the right to conduct one or more constructability review processes with the Final Working Drawings and Specifications, and to hire an independent architect or other consultant to perform such reviews. Any such independent constructability review shall be at City's expense. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications which may result from any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. If such changes, additions, deletions or corrections are inconsistent with prior City direction, Consultant shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.

5.4 Costs of Construction. It is understood by Consultant that should the Final Working Drawings and Specifications be ordered by City, City shall specify the sum of money set aside to cover the total cost of construction of the work, exclusive of Consultant's fees. Should it become evident that the total construction cost will exceed the specified sum, Consultant shall at once present a statement in writing to the City's Representative setting forth this fact and giving a full statement of the cost estimates on which the conclusion is based.

5.5 Copies of Final Working Drawings and Specifications and Other Documents. Consultant, at its own expense, shall provide a complete set of the Final Working Drawings and Specifications described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

6. CONSTRUCTION CONTRACT DOCUMENTS.

During the construction contract documents phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

6.1 Bid and Contract Documents. If so required by City, Consultant shall assist City in the completion of all bid and construction documents, including but not limited to, the Notice Inviting Bids, Instructions to Bidders, Contract Bid Forms (including Alternate Bids as requested by City), `Contract, General Conditions, Supplementary General Conditions, Special Conditions, DVBE and other applicable affirmative action documents, Performance Bond, Payment Bond, Escrow Agreement for Security Deposits, and any other certifications and documents required by federal, state and local laws, rules and regulations which may be reasonably required in order to obtain bids responsive to the specifications and drawings. All such documents shall be subject to the approval of City and City's legal counsel.

6.2 Final Estimate. At the time of delivery of these bid and construction documents, which shall include the Final Working Drawings and Specifications (collectively referred to herein as the "Construction Documents"), Consultant shall provide City with its final estimate of probable construction cost ("Consultant's Final Estimate"). As discussed herein, including in Section 7.3, it shall be the Consultant's duty to design the Project within budget.

7. BID PHASE.

During the bid phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

7.1 Reproducible Construction Documents. Once City provides Consultant with specific written approval of the Construction Documents and Consultant's Final Estimate, Consultant shall provide to City one set of reproducible Construction Documents.

7.2 Distribution of Contract Documents and Review of Bids. Consultant shall assist City in distributing the Construction Documents to bidders and conducting the opening and review of bids for the Project.

7.3 Over Budget. If the apparent lowest responsive and responsible bid on the Project exceeds the Consultant's Final Estimate by more than five percent (5%), City may request Consultant to amend, at Consultant's sole cost and expense, the Final Drawings and Specifications in order to rebid the Project and receive a lowest responsive and responsible bid equal to or less than the Consultant's Final Estimate. All revisions necessary to bring the lowest responsible and responsive bid within the Consultant's Final Estimate, including any omissions, deferrals or alternates, shall be made in consultation with, and subject to the approval of, the City.

8. CONSTRUCTION PHASE.

During the construction phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

8.1 Observation. The Project Consultant shall observe work executed from the Final Working Drawings and Specifications in person, provided that City may, in its discretion, consent to such observation by another competent representative of Consultant.

8.2 General Administration. Consultant shall provide general administration of the Construction Documents and the work performed by the contractors.

8.3 Pre-Construction Meeting. Consultant shall conduct one or more pre-construction meetings, as the City determines is needed for the Project, with all interested Parties.

8.4 Site Visits of Contractor's Work. Consultant shall conduct site visits to observe each contractors' work for general conformance with the Construction Documents and with any approved construction schedules or milestones. Such site visits shall be conducted as often as are necessary and appropriate to the stage of construction, according to the City's sole discretion, but in no event less than weekly.

8.5 Site Visits of Inspector's Work. Consultant shall conduct site visits to communicate and observe the activities of the City inspectors. Such site visits shall be conducted as often as is mutually acceptable to Consultant and City. Consultant shall direct the City inspectors and the Project contractors to coordinate the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.

8.6 Coordination of Subconsultants. Consultant shall cause all architects, engineers and other consultants, as may be hired by Consultant or City, to observe the work completed under their disciplines as required, and approve and review all test results for general conformance with the Construction Documents.

8.7 Reports. Consultant shall make regular reports as may be required by applicable federal, state or local laws, rules or regulations, as well as the federal, state, regional or local agencies concerned with the Project.

8.8 Construction Meetings; Minutes. Consultant shall attend all construction meetings and provide written reports/minutes to the City after each construction meeting in order to keep City informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the Project work, according to the City's sole discretion, but no less than weekly.

8.9 Written Reports. Consultant shall make written reports to City as necessary to inform City of problems arising during construction, changes contemplated as a result of each such problems, and progress of the Project work.

8.10 Written Records. Consultant shall keep accurate written records of the progress and quality of the Project work and the time schedules, and shall advise the contractors and City of any deviations from the time schedule which could delay timely completion of the Project.

8.11 Material and Test Reports. Consultant shall check and process, in a timely manner, all required material and test reports for the Project work. In addition, Consultant shall provide notice of any deficiencies in material or work reflected in such reports, as well as its recommendation for correction of such deficiencies, to the contractors and City.

8.12 Review and Response to Submissions. Consultant shall review and respond, in a timely manner, to all schedules, submittals, shop drawings, samples, information requests, change requests, and other submissions of the contractor and subcontractors for compliance with, or alterations and additions to, the Construction Documents. Consultant's review and response shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.13 Rejection of Work. Consultant shall promptly reject, as discussed with City, work or materials which do not conform to the Construction Documents. Consultant shall immediately notify the City and contractor(s) of such rejections. Consultant shall also have the authority to

recommend to the City that additional inspection or testing of the work be performed, whether or not such work is fabricated, installed or completed.

8.14 Substitutions. Consultant shall consult with City, in a timely manner, with regard to substitution of materials, equipment and laboratory reports thereof, prior to the City's final written approval of such substitutions. Consultant's consultation shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.15 Revised Documents and Drawings. Consultant shall prepare, at no additional expense to City, all documents and/or drawings made necessary by errors and omissions in the originally approved Construction Documents.

8.16 Change Requests and Material Changes. Consultant shall evaluate and advise City, in a timely manner and in writing, of any change requests and material change(s) which may be requested or necessary in the Project plans and specifications. Consultant shall provide the City with its opinion as to whether such change requests should be approved, denied or revised. If the City has not hired a construction manager or other person to do so, the Consultant shall prepare and execute all change orders and submit them to the City for authorization. If the City has designated a construction manager or other person to prepare all change orders, the Consultant shall review all change orders prepared by such person, execute them and deliver them to the City for authorization if they meet with the Consultant's approval, or submit them to the City with recommendations for revision or denial if necessary. Consultant shall not order contractors to make any changes affecting the contract price without approval by City of such a written change order, pursuant to the terms of the Construction Documents. Consultant may order, on its own responsibility and pending City Council approval, changes necessary to meet construction emergencies, if written approval of City's Representative is first secured.

8.17 Applications for Payment. Consultant shall examine, verify and approve contractor's applications for payment, and shall issue certificates for payment in amounts approved by the City's inspector.

8.18 Final Color and Product Selection. Consultant shall coordinate final color and product selection with City's original design concept.

8.19 Substantial Completion. Consultant shall determine the date of substantial completion, in consultation with the City.

8.20 Punch List. After determining that the Project is substantially complete, Consultant shall participate in the inspection of the Project and shall review all remaining deficiencies and minor items needed to be corrected or completed on the Project, including those identified on the punch list prepared by the contractor ("Punch List Items"). Consultant shall notify contractor in writing that all Punch List Items must be corrected prior to final acceptance of the Project and final payment. Consultant shall also notify City of all Punch List Items.

8.21 Warranties. Consultant shall review materials assembled by the contractor and subcontractors with regard to all written warranties, guarantees, owners' manuals, instruction books, diagrams, record "as built" drawings, and any other materials required from the contractors and subcontractors pursuant to the Construction Documents. Consultant shall coordinate and provide these materials to the City.

8.22 Certificate of Completion. Consultant shall participate in any further inspections of the Project necessary to issue Consultant's Certificate of Completion and final certificate for payment.

8.23 Documents for Project Close-Out. Consultant shall cause all other architects, engineers and other consultants, as may be hired by Consultant, to file any and all required documentation with the City or other governmental authorities necessary to close out the Project. Consultant shall assist the City in obtaining such documentation from all other architects, engineers, or other consultants.

9. AS-BUILT DRAWINGS.

During the as-built drawings phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

9.1 As-Built Drawings and Specifications. Not later than thirty (30) days after substantial completion of the Project, before receipt of final payment, Consultant shall review and forward the Final Working Drawings and Specifications, indicating on them all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing an "as-built" set of Final Working Drawings and Specifications ("As-Built Drawings and Specifications"). The As-Built Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. Consultant shall personally review and certify that the As-Built Drawings and Specifications are a correct representation of the information supplied to Consultant by any inspectors and the contractor, and shall obtain certifications from any inspectors and the contractor that the drawings are correct.

9.2 Approval. Once City provides Consultant with specific written approval of the As-Built Drawings and Specifications, Consultant shall forward to City the complete set of original As-Built Drawings and Specifications or a complete set of reproducible duplicate As-Built Drawings and Specifications. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

9.3 Documents for Final Payment. Prior to the receipt of Consultant's final payment, Consultant shall forward to City all of the following: (1) one clear and legible set of reproductions of the computations; (2) the original copy of the specifications; (3) the As-Built Drawings and Specifications as required herein; and (4) Consultant's Certificate of Completion.

10. WARRANTY PERIOD.

During the warranty period phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

10.1 Advice. Consultant shall provide advice to City on apparent deficiencies in the Project during any applicable warranty periods for the Project.

EXHIBIT "B"
COMPENSATION RATES AND REIMBURSABLE EXPENSES

1. HOURLY COMPENSATION RATES.

CITY OF ONTARIO ON-CALL

2024-2027

FEHR & PEERS HOURLY BILLING RATES

CLASSIFICATION	HOURLY RATE
Principal	$255.00 - $410.00
Senior Associate	$220.00 - $325.00
Associate	$190.00 - $290.00
Senior Engineer/Planner	$165.00 - $250.00
Engineer/Planner	$140.00 - $200.00
Senior Engineering Technician	$155.00 - $240.00
Senior Project Accountant	$175.00 - $225.00
Senior Project Coordinator	$135.00 - $205.00
Project Coordinator	$120.00 - $190.00
Technician	$135.00 - $185.00
Intern	$105.00 - $150.00

2. REIMBURSABLE EXPENSES.

Other direct costs (ODC's), traffic counts, data purchases and reimbursable expenses are invoiced at cost.

Personal auto mileage is reimbursed at the then current annually adjusted IRS approved rate. (67 cents per mile as of Jan 2024).

3. ADDITIONAL SERVICES.

Additional Services shall be computed at the actual hourly rates listed above.

4. ADDITIONAL CONSULTANTS.

If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the Consultant's actual hourly rates plus 10%. Owner shall have the authority to review and approve the rates of any such consultants.

EXHIBIT "C"
SAMPLE TASK ORDER FORM

Task Order No. _____

Agreement: DESIGN SERVICES AGREEMENT FOR ON-CALL SERVICES

Consultant: Fehr & Peers

The Consultant is hereby authorized to perform the following services subject to the provisions of the Agreement identified above:

List any attachments: (Please provide if any.)

Dollar Amount of Task Order: Not to exceed $_____,_____.00

Completion Date: _____

The undersigned Consultant hereby agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted above, and perform all services for the work above specified in accordance with the Agreement identified above and will accept as full payment therefore the amount shown above.

CITY OF ONTARIO	**Fehr & Peers**
Dated: _____	Dated: _____
By: _____	By: _____

CITY OF ONTARIO *Agenda Report* **April 2, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Broadband Operations Prepared By: Judy Witrago Staff Member Presenting: Jimmy Chang, Broadband General Manager Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 6

SUBJECT: **AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH TELCON SERVICES, LLC FOR THE ONTARIONET BROADBAND INTEGRATION TECHNICAL SERVICE PROJECT**

RECOMMENDATION: That the City Council approve Amendment No. 1 to the Professional Services Agreement with Telcon Services, LLC of Idaho, for additional broadband design, engineering, project management, and inspection services for the OntarioNet Broadband Integration Technical Service Project and ongoing expansion efforts in the amount of $680,000, plus a contingency in the amount of $180,000, for a revised not-to-exceed total of $2,060,000; and authorize the City Manager, or his designee, to execute said Agreement and future amendments within the authorization limits.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Operate in a Businesslike Manner
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 2023-24 Adopted Budget includes appropriations in the Broadband/Fiber Fund for broadband design, engineering, project management, and inspection services. The proposed Amendment No. 1 increases the Agreement amount by $680,000 plus a contingency of $180,000, for a revised not-to-exceed total of $2,060,000.

BACKGROUND & ANALYSIS: On December 7, 2021, a Professional Services Agreement was awarded to Telcon Services, LLC for broadband design, engineering, project management, and inspection services in the amount of $1,200,000 plus a contingency in the amount of $180,000, for a total expenditure of $1,380,000. Telcon Services supports the Broadband Department's Phase 1 Expansion project, approved by the City Council on July 20, 2021, and Broadband's engineering and construction activities throughout other communities within the City.

In the first year of the Agreement, the contract experienced the highest expenditures due to

changes in Phase 1 construction routes and issues in sourcing infrastructure materials, affecting the overall design and engineering plans. Consequently, the updated construction plans required extensive engineering work incorporating modifications to broadband fiber routes and material alterations to interconnect broadband fiber infrastructure.

Additionally, Telcon Services, LLC supported ongoing Broadband built-out activities in communities outside of the Phase 1 project area with services to support the connectivity between projects and build-out areas. The unforeseen expenses associated with project planning, design analysis, and engineering architecture within the various project areas elevated the use of Telcon Services, including the addition on necessary fiber splicing work.

Amendment No. 1 will provide funding to support the completion of Phase 1 Expansion design, engineering, project management and inspection services, fiber splicing, and additional work related to fiber build-out in other City areas.

CITY OF ONTARIO

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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 TELCON SERVICES, LLC.

1. Parties and Date.

This Amendment No. 1 to the Agreement (as defined herein) is made and entered as of _____, by and between the City of Ontario ("City") and Telcon Services, LLC, a Limited Liability Company. City and Telcon Services, LLC are sometimes individually referred to as "Party" and collectively as "Parties."

2. Recitals.

2.1 Agreement. The City and Telcon Services, LLC have entered into an agreement entitled "Professional Services Agreement" dated December 15, 2021("Agreement").

2.2 Amendment Purpose. The City and Telcon, LLC desire to amend the Agreement to add **Six-Hundred and Eighty Thousand Dollars ($680,000)** to the compensation amount, and increase the not-to-exceed compensation amount to **One-Million, Eight-Hundred and Eighty-Thousand Dollars ($1,880,000).**

2.3 Amendment Authority. This Amendment No. 1 is authorized pursuant to Section 3.2.4 of the Agreement.

3. Terms.

3.1 Amendment. Section 3.2.4 of the Agreement is hereby amended in its entirety to read as follows:

> "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 **One-Million, Eight-Hundred and Eighty-**

Thousand Dollars ($1,880,000) 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. 1, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 1. From and after the date of this Amendment No. 1, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 1.

3.3 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 1.

3.4 Severability. If any portion of this Amendment No. 1 is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5 Integration. This Amendment represents the entirety of the Parties' understanding relating to the subject of this Amendment, including written or verbal communications between the Parties, which shall have no relevance unless expressly incorporated herein. This is an integrated amendment.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND TELCON SERVICES, LLC

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 1 as of the day and year first above written.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

TELCON SERVICES, LLC

By: _____

Its: _____

Printed Name: _____

CITY OF ONTARIO *Agenda Report* **April 2, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Fire Department Prepared By: Janny Phan Staff Member Presenting: Mike Gerken, Fire Chief Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 7

SUBJECT: AUTHORIZE THE PURCHASE OF HAZARDOUS MATERIALS RESPONSE TRAINING PROPS WITH ADVANCED ENTERTAINMENT TECHNOLOGY FOR THE ONTARIO FIRE DEPARTMENT HAZMAT TEAM

RECOMMENDATION: That the City Council authorize the City Manager or designee to execute the purchase of Hazardous Materials Response Training Props from Advanced Entertainment Technology, of Monrovia, CA, in the amount of $451,465.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Maintain the Current High Level of Public Safety

FISCAL IMPACT: The Fiscal Year 2023- 24 Adopted Operating Budget includes appropriations in the General Fund and Grants Fund for the purchase of Hazardous Materials Response Training Props in the amount of $451,465.

BACKGROUND & ANALYSIS: The Ontario Fire Department is dedicated to providing an exceptionally high level of customer service, a direct result of consistent high-quality training of its personnel. This commitment to training has been instrumental in making the Department's Hazardous Materials Response Team (HMRT) one of the most competent and capable teams in the State. Currently, the HMRT operates as a Type 1 Resource in California, which consists of personnel who are certified through training and equipped to handle all types of hazardous material incidents identified by the California Governor's Office of Emergency Services. Due to the age and condition of the current hazardous materials training props from years of training and outdated valve assembly simulation, it is necessary to purchase new props to replace the current and position the Team for successful training with current industry standards.

The purchase of these new props will create enhanced training opportunities that will better prepare the Ontario Fire Department's HMRT to mitigate incidents in the City and region. Specifically, these new props will allow personnel to apply tools and techniques to mitigate issues associated with the industry-wide shift in modern valve assembly on rail cars, highway tankers, and plumbing in fixed facilities. Additionally, these new props will be equipped with the ability to stage various leaks created with water and pressurized air to simulate liquid or vapor releases. Through these props, the Fire Departments HMRT will be able to continue to train and prepare for

hazardous materials related incidents in the City.

In February 2024, the City solicited proposals on PlanetBids for a hazardous materials response training props and notified 536 potential bidders. One proposal was received from Advanced Entertainment Technology of Monrovia, CA. After reviewing the proposal and assessing the bidders previous project history, Staff recommends purchasing the Hazardous Materials Response Training Props from Advanced Entertainment Technology in the amount of $451,465.

CITY OF ONTARIO
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CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO

GOODS & SERVICES AGREEMENT

This Agreement is made and entered into as of _____, by and between the City of Ontario, a municipal corporation organized under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City") and **Advanced Entertainment Technology DBA Tru-Roll**, a **Corporation** with its principal place of business at **735 Los Angeles Avenue, Monrovia, CA 91016** ("Vendor"). City and Vendor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

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

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

TERMS

1. SCOPE OF SERVICES.

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

1.2 Goods. Vendor agrees to sell to City and City agrees to purchase the materials and/or equipment ("Goods") as specified and per the specifications attached hereto and incorporated herein as Exhibit "A." Unless specifically stated otherwise, the Goods shall be new and unused and of the current production year.

2. TERM.

2.1 The term of this Agreement shall be from **April 2, 2024** to **April 1, 2025**, unless earlier terminated as provided herein. Vendor shall provide all Goods and complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the work.

3. FEES AND PAYMENTS.

3.1 Compensation. Vendor shall receive compensation, including authorized reimbursements, for all Goods provided and Services rendered under this Agreement at the rates set forth in Exhibit **"A"** attached hereto and incorporated herein by reference. The total compensation shall not exceed **Four Hundred and Fifty One Thousand and Four Hundred and Sixty Five dollars ($451,465)** without written approval of **City Manager.** Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

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

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

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

4. RESPONSIBILITIES OF VENDOR.

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

4.2 Schedule of Services.

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

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

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

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

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

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

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

4.7 Warranty. In addition to all warranties which may be provided by law, Vendor warrants that the Goods delivered hereunder shall, (a) be free from defect of material or workmanship and conform strictly to the specifications, drawings, or sample specified or furnished; (b) conform to drawings, plans, specifications, samples or other descriptions furnished, specified, accepted or approved by City; and (c) be merchantable and fit for the purposes intended. The warranty shall be for a period of one (1) year, or such longer period as provided by a manufacturer's warranty or as agreed to by Vendor and City, from the date of final written acceptance of the Goods by City. This warranty shall survive any inspection, delivery, acceptance, or payment by City of the Goods. Vendor, at its own expense, shall repair or replace, at the option of City, any defective Goods within two (2) business days after receipt of notice from City or within four (4) hours in case of emergency, as determined by City. Vendor also warrants that the Goods are free and clear of all liens and encumbrances whatsoever, that Vendor is conveying good and marketable title to same, and that Vendor owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the Goods. Vendor agrees to indemnify, defend and hold City harmless against any and all third party claims resulting from the breach or inaccuracy of any of the foregoing warranties.

4.8 Reserved.

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

4.10 Laws and Regulations; Employee/Labor Certifications. Vendor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting its performance under this Agreement, including all Cal/OSHA requirements, and shall give all notices required by law. Vendor shall be liable for all violations of such laws and regulations in connection with this Agreement. If the Vendor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Vendor shall be solely responsible for all costs arising therefrom. City is a public entity

of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Agreement to the same extent as though set forth herein and will be complied with. These include but are not limited to the payment of prevailing wages, the stipulation that eight (8) hours' labor shall constitute a legal day's work and that no worker shall be permitted to work in excess of eight (8) hours during any one calendar day except as permitted by law. Vendor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

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

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

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

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

4.10.5 Equal Opportunity Employment. Vendor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or

applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Vendor shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

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

4.10.7 Water Quality.

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

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

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

5. PROJECT MANAGEMENT

5.1 City's Representative. The City hereby designates **Ryan Williams, Fire Battalion Chief,** or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement. Vendor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

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

6. INSURANCE.

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

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

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

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

6.2.3 Manufacturer of Goods. If Vendor is also the manufacturer of any equipment included in the Goods, Vendor shall carry Product Liability and/or Errors and Omissions Insurance which covers said equipment with limits of not less than $1,000,000.

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

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

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

6.3.1 General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37, or endorsements providing the exact same coverage, the City of Ontario, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Services or ongoing and complete operations performed by or on behalf of the Vendor, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Vendor's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of the City, before the City's own primary insurance, deductible, or self-insurance shall be called upon to protect it as a named insured. Any insurance, deductible, or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Vendor's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth in Section 6.2.2, any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 6.3.1.

6.3.2 Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Vendor or for which the Vendor is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Vendor's scheduled

underlying coverage. Any insurance, deductible, or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Vendor's insurance and shall not be called upon to contribute with it in any way. Policy shall contain or be endorsed to contain such provisions. Notwithstanding the minimum limits set forth in Section 6.2.2, any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 6.3.2.

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

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

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

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

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

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

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

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

7. INDEMNIFICATION.

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

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

8. CALIFORNIA LABOR CODE

8.1 Prevailing Wages. Vendor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and

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

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

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

9. SAFETY.

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

10. ACCOUNTING RECORDS.

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

11. TERMINATION OF AGREEMENT.

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

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

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

12. GENERAL PROVISIONS.

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

Vendor:

Advanced Entertainment Technology DBA Tru-Roll

735 Los Angeles Avenue

Monrovia, CA 91016

Attn: David MacMurtry, President

City:

City of Ontario
303 East "B" Street
Ontario, CA 91764-4196
Attn: **Eric Munoz, Ontario Fire Department**

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

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

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

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

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

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

12.7 Assignment or Transfer. Vendor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

12.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Vendor include all personnel, employees, agents, and subcontractors of

Vendor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

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

12.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

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

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

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

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

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

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

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

SIGNATURES ON NEXT PAGE

SIGNATURE PAGE FOR GOODS & SERVICES AGREEMENT
BETWEEN THE CITY OF ONTARIO
AND ADVANCED ENTERTAINMENT TECHNOLOGY DBA TRU-ROLL

IN WITNESS WHEREOF, the Parties have entered into this Agreement 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:

_____
Assistant City Clerk

ADVANCED ENTERTAINMENT TECHNOLOGY DBA TRU-ROLL

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

The purchase and delivery of hazardous materials response props for the Ontario Fire Department's Hazmat Team.

AET-TRP-1100 - Three Dome Railroad Tank Car Training Prop.	$192,000
Crate & Ship to 2661 E. Grand Park St.	$2,400
AET-TRP-2100 - Valve and Piping Array Training Prop	$138,600
Crate & Ship to 2661 E. Grand Park St.	$1,520
AET-TRP-9000 - DOT class MC 406 type Tanker Pup 5000gal Trailer Training Prop w/3 Compartments, w/3 Drill Plate Kits (each kit includes 50 plates) and w/3 Leaking Domes	$79,100
Crate & Ship to 2661 E. Grand Park St.	$1,520
Total before Sales Tax	**$415,140**
Sales Tax (8.75%)	$36,325
Total Fee	**$451,465**

CITY OF ONTARIO *Agenda Report* **April 2, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Broadband Operations Prepared By: Judy Witrago Staff Member Presenting: Jimmy Chang, Broadband General Manager Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 8

SUBJECT: AN AMENDMENT TO THE INTERNET SERVICE ORDER WITH CENTURYLINK COMMUNICATIONS, LLC FOR INTERNET SERVICE UPGRADES

RECOMMENDATION: That the City Council approve and authorize the City Manager, or his designee, to execute Amendment No. 1 to the Internet Service Order, with CenturyLink Communications, LLC d/b/a Lumen Technologies Group, of Louisiana, to upgrade internet backhaul bandwidth services from 1Gbps to 10Gbps for the OntarioNet network in the amount of $332,559 plus a 15% contingency of $49,884, for a total not-to-exceed contract amount of $382,443, including expenditures of $35,019 within the current term.

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

FISCAL IMPACT: The initial 36-month Internet Service Order and Master Services Agreement were executed under the City Manager's authorization limits in the amount of $144,000, not including telecommunication taxes and surcharges. Proposed Amendment No. 1 will take effect at the 7-month mark of the 36-month term. The proposed Amendment increases the authorized contract amount of $144,000 to $332,559 plus a 15% contingency of $49,884, for a new total not-to-exceed contract amount of $382,443. The Fiscal Year 2023-2024 Adopted Budget includes appropriations in the Broadband/Fiber Fund for telecommunications services.

BACKGROUND & ANALYSIS: When originally purchased in 2023, services were within the City Manager's authorization limits. After a network assessment and review of future forecasting, it was determined that additional bandwidth is required to sustain the level of services for OntarioNet operations. Increasing bandwidth services to support the growth of the network is paramount to the continued evolution of OntarioNet as a premier service to the community.

The current 1Gbps rate is $4,000 per month, plus telecommunication taxes and surcharges, for a total monthly rate of $5,775. Month one was prorated at the amount of $6,144, months two through six were billed at the total monthly rate of $5,775, for a total of $35,019. To meet the present service demands, bandwidth speeds will be increased to 10Gbps, at the new monthly rate of $7,200, plus telecommunication taxes and surcharges, for a new total monthly rate of $10,260, or $297,540 for the remaining 29 months. Including the contingency of $49,884, the new total not-

to-exceed contract amount is $382,443.

Internet backhaul service is a critical component of OntarioNet operations and services to the community. Backhaul service is a fiber-based link that connects to OntarioNet's core (or backbone) network and last-mile (or access/home) edge subnetwork before users can access the internet by accessing the subnetwork. Its role is to increase the expanse of network coverage.

Services provided by CenturyLink Communications, LLC d/b/a Lumen Technologies Group are part of a collection of backhaul services that power the OntarioNet network for resiliency and reliability. Having multiple service providers with spatial (route) diversity allows OntarioNet to deliver services in a carrier-grade professional manner. By augmenting backhaul capacity with CenturyLink Communications, LLC, services will align with forthcoming modifications to OntarioNet operations and the completion of its Phase 1 Expansion, approved by the City Council on July 20, 2021.

Customer Information and Contract Specifications

Customer Name: City of Ontario
Account Number: 2-PJLK9F

Currency: USD
Monthly Recurring Charges (MRC): $4,000.00
Non Recurring Charges (NRC): 0

Service Order

Service Address	Description	Order Type	Term (Months)	Qty	Unit MRC	Unit NRC	Total MRC	Total NRC
4000 ONTARIO CENTER PKWY ONTARIO CALIFORNIA 91764 UNITED STATES	**HSIP Service** **Related Packages** **Wavelength - IOC** - Peak Data Rate = 1000 Mbps - Routing Type = Standard Full Routes - Billing Type = Flat Rate - Service Role = Primary	New	36	1	$740.00	$0.00	$740.00	$0.00
	Subtotal						**$740.00**	**$0.00**
4000 ONTARIO CENTER PKWY ONTARIO CALIFORNIA 91764 UNITED STATES	**Wavelength - IOC** - Standard Delivery - To the MPoE (Customer Provided) - Bandwidth = 100GIG-E - Protection = Unprotected - Latency Guarantee Level = None - Circuit Diversity Required = No - Custom Route = No	New	36	1	$3,260.00	$0.00	$3,260.00	$0.00
	A-Side Access			1	$0.00	$0.00	$0.00	$0.00
	Z-Side Access			1	$0.00	$0.00	$0.00	$0.00
	IP Port			1	$0.00	$0.00	$0.00	$0.00
	Subtotal						**$3,260.00**	**$0.00**
	Totals						**$4,000.00**	**$0.00**

*If the Service Address column above is blank, no Service Address is required for the Service or the Service Address is identified as a data center in the Description column.

SLED Terms and Conditions Governing This Order

1. "Lumen" is defined for purposes of this Order as CenturyLink Communications, LLC d/b/a Lumen Technologies Group or its affiliated entities providing Services under this Order. This Order is subject to the applicable state or municipal public records laws governing Customer and is non-binding until accepted by Lumen, as set forth in section 4. Customer places this Order by signing (including electronically or digitally) or otherwise acknowledging (in a manner acceptable to Lumen) this document and returning it to Lumen. Pricing is valid for 90 calendar days from the date indicated unless otherwise specified.

2. Prior to installation, Lumen may notify Customer in writing (including by e-mail) of price increases due to off-net vendors or increased construction costs. Customer has 5 business days following notice to terminate this Order without liability; or otherwise, Customer is deemed to accept the increase.

3. If a generic demarcation point (such as a street address) is provided, the demarcation point for on-net services will be Lumen's Minimum Point of Entry (MPOE) at such location (as determined by Lumen). Off-net demarcation points will be the off-net vendor's MPOE. If this Order identifies aspects of services that are procured by Customer directly from third parties, Lumen is not liable for such services.

4. The service(s) identified in this Order (the “Service(s)”) is/are subject to the current, unexpired services agreement between Customer and Lumen ("Existing Agreement") provided that, if a service attachment describing the Services is not included in the Existing Agreement, then the current standard applicable Lumen Service Attachment(s) will apply in addition to the Existing Agreement. If Customer and Lumen do not have a current Existing Agreement, then the current applicable Lumen Master Service Agreement(s), State, Local and Education Government Agencies Version, Public Safety Version for public safety services, or E-Rate Version for E-Rate eligible services (each, a “Lumen MSA”), and applicable Service Attachment(s) for the Services described in this Order will govern, copies of which are available upon request. Customer will accept and pay all charges indicated on invoices for the Services.

Notwithstanding anything in any Existing Agreement to the contrary, Lumen will notify Customer of acceptance of requested Service in this Order by delivering (in writing or electronically) the date by which Lumen will install Service (the “Customer Commit Date”), by delivering the Service, or by the manner described in a Service Schedule. Lumen will deliver a written or electronic notice that the Service is installed (a “Connection Notice”), at which time billing will commence. At the expiration of the Service Term, Service will continue month-to-month at the existing rates, subject to adjustment by Lumen on 30 days’ written notice. If the Existing Agreement governs and does not include early termination charges and if Customer cancels or terminates Service for any reason other than Lumen’s uncured default or if Lumen terminates due to Customer’s uncured default, then Customer will pay Lumen’s standard early termination liability charges as identified in the Ancillary Fee Schedule at: http://www.lumen.com/ancillary-fees.

5. Neither party will be liable for any damages for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement service, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Order. Customer's sole remedies for any nonperformance, outages, failures to deliver or defects in Service are contained in the service levels applicable to the affected Service.

6. All transport services ordered from Lumen will be treated as interstate for regulatory purposes. Customer may certify transport service as being intrastate (for regulatory purposes only) in a format as required by Lumen, but only where the transport services are sold on a stand-alone basis, the end point's for the service are located in the same state and neither end point is a Lumen provided IP port ("Intrastate Services"). Where Customer requests that services be designated as Intrastate Services, Customer certifies to Lumen that not more than 10% of Customer's traffic utilizing the Intrastate Services will be originated or terminated outside of the state in which the Intrastate Services are provided. Such election will apply prospectively only and will apply to all Intrastate Services stated in this Order.

7. Charges for certain Services are subject to (a) a monthly property tax surcharge and (b) a monthly cost recovery fee

per month to reimburse Lumen for various governmental taxes and surcharges. Such charges are subject to change by Lumen and will be applied regardless of whether Customer has delivered a valid tax exemption certificate. For additional details on taxes and surcharges that are assessed, visit http://www.lumen.com/taxes.

8. Customer will pay Lumen's standard: (a) expedite charges (added to the NRC) if Customer requests a delivery date inside Lumen's standard interval duration (available upon request or in Control Center at https://www.centurylink.com/business/login/) and (b) unless otherwise set forth in a Service Attachment, the ancillary charges for additional activities, features or options as set forth in the Ancillary Fee Schedule, available at http://www.lumen.com/ancillary-fees. If Lumen cannot complete installation due to Customer delay or inaction, Lumen may begin charging Customer and Customer will pay such charges.

9. For certain services, equipment provided by Lumen to be located in Customer's premises ("CPE") is subject to the terms of the Customer Premise Equipment Addendum. A copy of the CPE Addendum and a list of services to which it applies is available upon request. For colocation, data center and/or hosting services, pre-arranged escorted access may be required at certain locations, and cross connect services are subject to whether facilities are available at the particular location to complete the connection.

10. Compliance with Laws. The parties comply with all laws and regulations applicable to the execution of this Order and to the provision of Services by Lumen, including, as applicable, procurement laws or regulations regarding cumulative purchases of Services by Customer.

11. E-Rate and/or RHC/HCF Funding. If Customer applies for or seeks E-Rate and/or RHC/HCF funding for the Service(s) to be provided under this Order, Customer’s Service(s) will be governed by a current eligible Existing Agreement, or if Customer and Lumen do not have a current eligible Existing Agreement, the Lumen E-Rate MSA or Lumen SLED MSA with the E-Rate and/or RHC/HCF Program Addendum will apply and must be executed contemporaneously with this Order.

12. If your network service utilizes TDM technologies, then the following apply: (a) During the Service Term and on 60 days’ prior written notice, Lumen may re-provision Customer’s off-net TDM services (“Service Re-provision”). If Customer objects to the Service Re-provision, Customer may terminate the affected service by notifying Lumen in writing within 30 days of the date of the Service Re-provision notification; and (b) During the Service Term, Lumen may increase rates for off-net TDM services. Lumen will provide Customer 60 days’ prior written notice before implementing the increase ("Rerate Notice"). If Customer objects to the increase, Customer must notify Lumen in writing within 30 days of the date of the Rerate Notice whether Customer will (i) receive the affected service on a month-to-month basis or (ii) terminate the affected service, subject to early termination liability charges. Under subsection (ii), Customer’s requested disconnect date must be within 90 days of the Rerate Notice. Unless Customer so notifies Lumen, the affected service will continue to be provided at the increased rates.

Additional Order Terms

Invoices

Single prices shown above for bundled Services, or for Services provided at multiple locations, will be allocated among the individual services for the purpose of applying Taxes and regulatory fees and also may be divided on Customer’s invoice by location served.

Activation Support

If requested by Customer, and for an additional charge, Lumen will provide assistance with activating and/or configuring equipment on Customer’s side of the Demarcation Point (“Activation Support”).

Signature Block

Customer: City of Ontario
Total MRC: $4,000.00 **Total NRC: 0**
Signature:
Name:
Title:
Date:

Customer and the individual signing above represent that such individual has the authority to bind Customer to this Agreement.

Document Generation Date: 03-01-2023

LUMEN MASTER SERVICE AGREEMENT
STATE, LOCAL AND EDUCATION GOVERNMENT AGENCIES VERSION

This Master Service Agreement ("Agreement") is between **CENTURYLINK COMMUNICATIONS, LLC D/B/A LUMEN TECHNOLOGIES GROUP** ("Lumen") and City of Ontario d/b/a OntarioNet ("Customer") and is effective on the date the last party signs it (the "Effective Date"). This Agreement provides the terms and conditions applicable to Customer's purchase of products and services ("Service") from Lumen.

1. **Term.** The term of the Agreement will commence on the Effective Date and continue until the expiration of the last Service term, unless earlier terminated in accordance with the Agreement ("Term").

2. **Service.** Lumen will provide Service in accordance with the Agreement, including all applicable Service Schedules, Service Exhibits, Statements of Work, Order(s), pricing attachment(s), and any other documents that are attached or expressly incorporated into the Agreement ("Service Attachments"). The following Service Attachments, if any, are initially attached and incorporated into the Agreement. Additional Service Attachments may be added by Amendment or by Customer placing an Order.

- **INTERNET SERVICES SERVICE SCHEDULE**
- **INTERNET SERVICES SERVICE SCHEDULE – PRICING ATTACHMENT**

3. **Order(s).** Customer may submit requests for Service in a form designated by Lumen ("Order"). The term for a Service is defined in the applicable Service Attachment ("Service Term"). Unless otherwise set forth in a Service Attachment, Service will continue month-to-month at the expiration of the Service Term at the existing rates, subject to adjustment by Lumen on 30 days' written notice. Lumen will notify Customer of acceptance of requested Service in the Order by delivering (in writing or electronically) the date by which Lumen will install Service (the "Customer Commit Date"), by delivering the Service, or by the manner described in a Service Attachment. Renewal Orders will be accepted by Lumen's continuation of Service. For moves, adds or changes agreed to by Lumen, Customer will pay Lumen's then current charges unless otherwise specifically stated in a Service Attachment. In the event any term or condition of an Order directly conflicts with this Agreement, the Order will control.

4. **Cancellation and Termination Charges**. Unless otherwise set forth in a Service Attachment:

(a) Customer may cancel an Order (or portion of an Order) prior to the delivery of a Connection Notice upon written notice to Lumen identifying the affected Order and Service. If Customer does so for any reason other than installation delay pursuant to section 7, force majeure pursuant to section 15.1, non-appropriation pursuant to section 10.4, or Lumen's Default pursuant to section 8, Customer will pay Lumen a cancellation charge equal to the sum of: (1) for "Off-net" Service, third party termination charges for the cancelled Service; (2) for "On-net" Service, one month's monthly recurring charges for the cancelled Service; (3) the non-recurring charges for the cancelled Service; and (4) Lumen's out-of-pocket costs (if any) incurred in constructing facilities necessary for Service delivery. "Off-Net" is defined as local access circuits not provided on the network owned and operated by Lumen and its affiliates. "On-Net" is defined as local access circuits provided on the network owned and operated by Lumen and its affiliates.

(b) Customer may terminate a specified Service after the delivery of a Connection Notice upon 30 days' written notice to Lumen. If Customer does so for any reason other than installation delay pursuant to section 7, force majeure pursuant to section 15.1, non-appropriation pursuant to section 10.4, or Lumen's Default pursuant to section 8, or if Service is terminated by Lumen as the result of Customer's default, Customer will pay Lumen a termination charge equal to the sum of: (1) all unpaid amounts for Service actually provided; (2) 100% of the remaining monthly recurring charges for months 1-12 of the Service Term; (3) 50% of the remaining monthly recurring charges for month 13 through the end of the Service Term; and (4) if not recovered by the foregoing, any termination liability payable to third parties resulting from the termination and any out-of-pocket costs of construction to the extent such construction was undertaken to provide Service under this Agreement. The charges in this Section represent Lumen's reasonable liquidated damages and are not a penalty.

(c) If Customer terminates an Order due to Lumen's Default as defined in section 8 below, Lumen shall reimburse Customer for any pre-paid, unused monthly service fees (excluding any non-recurring charges) attributable to such terminated Order. Customer may charge reasonable attorneys' fees and any third-party collection costs Customer incurs in collecting such amounts.

5. **Scheduled Maintenance and Local Access.** Scheduled maintenance will not normally result in Service interruption. Unless otherwise set forth in a Service Attachment, if scheduled maintenance requires Service interruption Lumen will: (1) provide Customer seven days' prior written notice, (2) work with Customer to minimize interruptions and (3) use commercially reasonable efforts to perform such maintenance between midnight and 6:00 a.m. local time. If third-party local access services are required for the Services, Customer will: (1) provide Lumen with circuit facility and firm order commitment information and design layout records to enable cross-connects to Lumen Service(s) (provided by Lumen subject to applicable charges), (2) cooperate with Lumen (including changing demarcation points and/or equipment and providing necessary LOAs) regarding circuit grooming or re-provisioning, and (3) where a related Service is disconnected, provide Lumen a written disconnection firm order commitment from the relevant third-party provider. Lumen may re-provision any local access circuits from one Off-net provider to another or to the Lumen owned and operated network (On-net), and such changes will be treated as scheduled maintenance.

6. **Service Levels**.

(a) Any "Service Level" commitments applicable to Services are contained in the Service Attachments applicable to each Service. If Lumen does not meet a Service Level, Lumen will issue to Customer a credit as stated in the applicable Service Attachment on Customer's request, except that credits will not be provided for Excused Outages. Lumen's maintenance log and trouble ticketing systems are used to calculate Service Level events. Excused Outages mean scheduled maintenance under Section 5 and force majeure events, unless otherwise defined in a Service Attachment.

(b) Unless otherwise set forth in a Service Attachment, to request a credit, Customer must contact Customer Service (contact information is located at https://www.lumen.com/en-us/home.html) or deliver a written request with sufficient detail to identify the affected Service. The request for credit must be made within 60 days after the end of the month in which the event occurred. Total monthly credits will not exceed the charges for the affected Service for that month. Customer's sole remedies for any nonperformance, outages, failures to deliver or defects in Service are contained in the Service Levels applicable to the affected Service.

7. Right of Termination for Installation Delay. Unless otherwise set forth in a Service Attachment, in lieu of installation Service Level credits, if Lumen's installation of Service is delayed by more than 30 business days beyond the Customer Commit Date, Customer may terminate the affected Service without liability upon written notice to Lumen, provided such written notice is delivered prior to Lumen delivering a Connection Notice for the affected Service. This Section will not apply where Lumen is constructing facilities to a new location not previously served by Lumen.

8. Default. If (a) Customer fails to make any payment when due and such failure continues for five business days after Lumen's written notice, or (b) either party fails to observe or perform any other material term of this Agreement and such failure continues for 30 days after the other party's written notice, then the non-defaulting party may: (i) terminate this Agreement and/or any Order, in whole or in part, and/or (ii) subject to Sections 9.1 (Damages Limitations) and 6 (Service Levels), pursue any remedies it may have at law or in equity.

9. Liabilities and Disclaimers.

9.1 Damages Limitations. Neither party will be liable for any damages for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Agreement or any Order.

9.2 Disclaimer of Warranties. LUMEN MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY APPLICABLE SERVICE ATTACHMENT.

10. Billing and Payment.

10.1 Commencement of Billing. Unless otherwise set forth in a Service Attachment, Lumen will deliver written or electronic notice (a "Connection Notice") to Customer when Service is installed, at which time billing will commence ("Service Commencement Date"). If Customer notifies Lumen within three days after delivery of the Connection Notice that Service is not functioning properly, Lumen will correct any deficiencies and, upon Customer's request, credit Customer's account in the amount of 1/30 of the applicable monthly recurring charge (MRC) for each day the Service did not function properly. If Lumen cannot complete installation due to Customer delay or inaction, Lumen may begin charging Customer for the Service, and Customer will pay such charges.

10.2 Payment of Invoices and Disputes. Unless otherwise set forth in a Service Attachment, Invoices are delivered or made available monthly and due 30 days after the invoice date. Fixed charges are billed in advance and usage-based charges are billed in arrears. Customer's payments to Lumen must be made via an ACH transfer or any Lumen approved payment portal (e.g., Control Center) in the currency stated on the invoice. Lumen may charge administrative fees where Customer's payment and invoice preferences deviate from Lumen's standard practices. Past due amounts bear interest at 1.5% per month or the highest rate allowed by law (whichever is less). Lumen may charge Customer reasonable attorneys' fees and any third-party collection costs Lumen incurs in collecting such amounts. Customer is responsible for all charges regarding the Service, even if incurred as the result of unauthorized use. If Customer disputes an invoice, Customer must pay the undisputed amount and submit written notice of the disputed amount (with details of the nature of the dispute and the Services and invoice(s) disputed). Disputes must be submitted in writing within 90 days from the date of the invoice. If Lumen determines in good faith that a disputed charge was billed correctly, Customer must pay such amounts within 10 days after Lumen provides notice of such determination. Customer may not offset disputed amounts from one invoice against payments due on the same or another account.

10.3 Taxes and Fees. Customer is responsible for all taxes and fees arising in any jurisdiction imposed on Customer, Lumen, or a Lumen affiliate incident to the provision, sale or use of Service. This includes value added, consumption, sales, use, gross receipts, withholding, excise, ad valorem, franchise or other taxes, fees, duties or surcharges (e.g., regulatory and 911 surcharges), along with similar charges stated in a Service Attachment (collectively "Taxes and Fees"). This does not include taxes based on Lumen's net income. Some Taxes and Fees, and costs of administering them, are recovered through a percentage surcharge(s) on the charges for Service. If Customer is required by law to make any deduction or withholding of withholding Taxes from any payment due under this Agreement to Lumen, then Customer must increase the gross amount payable so that, after any deduction or withholding for such withholding Taxes, the net amount paid to Lumen will not be less than Lumen would have received had no such deduction or withholding been required. Charges for Service are exclusive of Taxes and Fees. Customer may present Lumen with an exemption certificate that eliminates Lumen's obligation to pay certain Taxes and Fees. The exemption will apply prospectively. For additional details on taxes and surcharges that are assessed, visit www.lumen.com/taxes.

10.4 Non-Appropriations. Customer intends to satisfy its obligations under this Agreement for its entire Term. Customer reasonably believes that sufficient funds to discharge its obligations can and will lawfully be appropriated and made available for this purpose. In the event that Customer is appropriated insufficient funds for the Service provided under this Agreement, Customer will promptly notify Lumen not less than 30 days prior to date of termination and may terminate the Agreement without termination charges or other liability, except for payment of all services rendered and deliverables shipped up to the date of the termination. Termination shall occur on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first.

10.5 Regulatory and Legal Changes. If changes in applicable law, regulation, rule or order materially affect delivery of Service, the parties will negotiate appropriate changes to this Agreement. If the parties cannot reach agreement within 30 days after Lumen's notice requesting renegotiation, Lumen may, on a prospective basis after such 30-day period, pass any increased delivery costs on to Customer. If Lumen does so, Customer may terminate the affected Service on notice to Lumen delivered within 60 days of the cost increase taking effect.

11. Customer Premises; Title to Equipment. If access to non-Lumen facilities is required for the installation, maintenance, grooming, movement, upgrade and/or removal of Lumen network or equipment, Customer will, at its expense: (a) secure such right of access and (b) arrange for the provision and maintenance of power and HVAC as needed for the proper operation of such equipment and network. Title to Lumen-provided equipment (including software) remains with Lumen. Customer will not create or permit to be created any encumbrances on Lumen-provided equipment.

12. Acceptable Use Policy and Data Protection. Customer must comply with the Acceptable Use Policy ("AUP"), which is available at https://www.centurylink.com/aboutus/legal/acceptable-use-policy.html, for Services purchased under this Agreement. Lumen may reasonably modify this policy to ensure compliance with applicable laws and regulations and to protect Lumen's network and customers. If Customer will use the Services to process personal data subject to privacy or data protection law that requires specific terms in place with service providers, Customer is responsible for requesting such terms from Lumen.

13. Critical 9-1-1 Circuits. The Federal Communications Commission's 9-1-1 reliability rules mandate the identification and tagging of certain circuits or equivalent data paths that transport 9-1-1 calls and information ("9-1-1 Data") to public safety answering points. These circuits or equivalent data paths are defined as Critical 911 Circuits in 47 C.F.R. Section 12.4(a)(5). Lumen policies require tagging of any circuits or equivalent data paths used to transport 9-1-1 Data. Customer will cooperate with Lumen regarding compliance with these rules and policies and will notify Lumen of all Services Customer purchases under this Agreement utilized as Critical 911 Circuits or for 9-1-1 Data.

14. International Services. For Services provided outside the United States, Customer or its local affiliate may be required to enter into a separate local country addendum/agreement (as approved by local authorities) ("LCA") with the respective Lumen affiliate that provides the local Service(s). Such Lumen affiliate will invoice Customer or its local affiliate for the respective local Service(s).

15. General Terms.

15.1 Force Majeure. Neither party will be liable, nor will any credit allowance or other remedy be extended, for any failure of performance or equipment due to causes beyond such party's reasonable control ("force majeure event"). Notwithstanding the foregoing, if a force majeure event exceeds 60 days, either party may terminate the Agreement or applicable Order immediately on written notice without incurring any termination liability hereunder.

15.2 Assignment and Resale. Neither party may assign its rights or obligations under this Agreement or any Service Attachment without the prior written consent of the other party, which will not be unreasonably withheld. However, either party may assign its rights and obligations under this Agreement or any Order without the consent of the other party: (1) to any subsidiary, parent, or affiliate that controls, is controlled by, or is under common control with that party; (2) pursuant to the sale or transfer of substantially all of the business or relevant assets of that party; or (3) pursuant to any financing, merger, or reorganization of that party. This Agreement and all Service Attachments will apply to any permitted transferees or assignees. Any assignee of Customer must have a financial standing and creditworthiness equal to or better than Customer's. Unless otherwise set forth in a Service Attachment, Customer may provide Service to third parties or use the Services in connection with goods or services provided by Customer to third parties ("Customer Provided Services"). To the extent permitted under law, Customer will be responsible for any claims arising from or related to any Customer Provided Services. If Customer sells telecommunications services, Customer certifies that it has filed all required documentation and will at all times have the requisite authority with appropriate regulatory agencies respecting the same. Nothing in this Agreement confers upon any third party any right, benefit or remedy.

15.3 Affiliates. Lumen may use a Lumen affiliate or a third party to provide Service to Customer, but Lumen will remain responsible to Customer for Service delivery and performance. Customer's affiliates may purchase Service under this Agreement, and Customer will be jointly and severally liable for all claims and liabilities related to Service ordered by any Customer affiliate.

15.4 Notices. Notices will be in writing and deemed received if delivered personally, sent via facsimile, pre-paid overnight courier, electronic mail (if an e-mail address is provided below) or sent by U.S. Postal Service or First Class International Post. Unless otherwise provided for in a Service Attachment, requests for disconnection of Service (other than for default) must be submitted to Lumen via Customer's portal at https://www.centurylink.com/business/login/ or via the following website / link: https://www.lumen.com/help/en-us/disconnects.html and will be effective 30 days after receipt (or such longer period set forth in a Service Attachment). Notices for billing inquiries/disputes or requests for Service Level credits must be submitted to Lumen via Customer's portal at https://www.centurylink.com/business/login/ or via Email at: billing@lumen.com. Customer failure to follow this process and/or provide

complete information may result in continued charges that will not be credited. All legal notices will be addressed to Lumen at: 931 14th Str., #900, Denver, CO 80202; Fax: 888-778-0054; Attn.: Notice Coordinator; and to any electronic or physical address of Customer as provided in the Agreement or in its absence, to Customer's address identified on the Order or as reflected in Lumen's records, Attn. General Counsel.

15.5 Confidentiality. It is the parties' understanding that the terms of this Agreement are not confidential, and the parties do not anticipate the sharing of Confidential Information in connection with the Agreement. In the event either party shares any documents or electronic files containing Confidential Information, such documents or electronic files will be conspicuously marked so that the individual viewing or receiving the information understands the information to be confidential. Except to the extent required by an open records act or similar law, neither party will disclose or use (except as expressly permitted by, or required to achieve the purposes of, the Agreement) the Confidential Information received from the other party. A party may disclose Confidential Information if required to do so by a governmental agency, by operation of law, or if necessary in any proceeding to establish rights or obligations under the Agreement. Each party will limit disclosure and access to Confidential Information to those of its employees, contractors, attorneys or other representatives who reasonably require such access to accomplish the Agreement's purposes and who are subject to confidentiality obligations at least as restrictive as those contained in this Agreement. "Confidential Information" means any commercial or operational information disclosed by one party to the other in connection with the Agreement that has been conspicuously marked as confidential and does not include any information that: (a) is in the public domain without a breach of confidentiality; (b) is obtained from a third party without violation of any obligation of confidentiality; or (c) is independently developed by a party without reference to the Confidential Information of the other party.

15.6 Intellectual Property Ownership; Use of Name and Marks. Nothing in the Agreement or the performance of it will convey, license, or otherwise transfer any right, title, or interest in any intellectual property or other proprietary rights held by either party or its licensors. Neither party will use the name or marks of the other party or any of its affiliates for any purpose or issue any press release or public statement relating to this Agreement without the other party's prior written consent.

15.7 Governing Law; Amendment. This Agreement will be governed and construed in accordance with the laws of the State of California. Each party will comply with all applicable laws, rules and regulations associated respectively with Lumen's delivery or Customer's use of the Service under the Agreement. This Agreement, including any Service Attachments, constitutes the entire and final agreement and understanding between the parties with respect to the Service and supersedes all prior agreements relating to the Services described in Orders entered into on or after the Effective Date of this Agreement. Additionally, the parties understand that this Agreement between Lumen and Customer City of Ontario d/b/a OntarioNet does not supersede any separate agreement between Lumen and the City of Ontario acting in any capacity other than as the City of Ontario d/b/a OntarioNet. Lumen is not subject to any obligations that are not explicitly identified in this Agreement. This Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each party. No failure by either party to enforce any right(s) under this Agreement will constitute a waiver of such right(s).

15.8 Relationship and Counterparts. The relationship between the parties is not that of partners, agents, or joint venturers. This Agreement may be executed in one or more counterparts, all of which taken together will constitute one instrument. Digital signatures and electronically exchanged copies of signed documents will be sufficient to bind the parties to this Agreement.

CENTURYLINK COMMUNICATIONS, LLC D/B/A LUMEN TECHNOLOGIES GROUP	**City of Ontario d/b/a OntarioNet**
Authorized Signature	Authorized Signature
Name Typed or Printed: Alex Khanin	Name Typed or Printed
Title: offer management	Title
Date: 7/7/2023	Date:
	Customer's Address for Notice
	Customer's facsimile number (if applicable):
	Person Designated for Notices

INTERNET SERVICES SERVICE SCHEDULE

1. General. "Lumen" is defined for purposes of this Service Schedule as Centurylink Communications, LLC d/b/a Lumen Technologies Group or its affiliated entities providing Services under this Service Schedule. This Service Schedule is applicable where Customer orders Lumen Internet Services (which may also be called Dedicated Internet Access, Internet Services, High Speed IP, IP Transit Services or CenturyLink IQ Networking Internet Port ("Internet Port") on ordering, invoicing, or other documentation) or Fiber+ Internet. The Service is also subject to the Master Service Agreement executed between Lumen and Customer, and if none, Lumen's standard Master Service Agreement (the "Agreement"). Lumen may subcontract the provision of the Service in whole or part, provided that Lumen remains responsible for the Service to Customer as set forth in this Service Schedule. Capitalized terms used but not defined in this Service Schedule have the definitions given to them in the Agreement.

1.1 Additional General Terms. Service charges are exclusive of taxes and presented without reduction for any Withholding Tax, all of which are the responsibility of the Customer. "Withholding Tax" means any amount or account of tax on sources of income which a payor is obliged to deduct from payments due to a recipient and account for or to any tax authority. In the event that any payment to be made to Lumen under this Service Schedule should be subject to reduction by reason of a Withholding Tax, Customer agrees to pay Lumen such amounts as would have been necessary so that the aggregate net amount received by Lumen after application of a Withholding Tax is the same amount as would have been received by Lumen if there had been no requirement to deduct or withhold such tax. For Services provided outside the United States, Customer or its local affiliate may be required to enter into a separate local country addendum/agreement (as approved by local authorities) ("LCA") with the respective Lumen affiliate that provides the local Service(s). Such Lumen affiliate will invoice Customer or its local affiliate for the respective local Service(s).

2. Services.

2.1 Service Description. Lumen Internet Services are high speed symmetrical Internet services providing access to the Lumen IP network and the global Internet ("Service"). The Service is generally available via Ethernet connections from 10/100 Mbps ports to 100Gbps ports. Additional features and functionality may include:

a. IP Addresses. IP Address space with proper justification.

b. Primary DNS / Secondary DNS. Primary or Secondary DNS as requested.

c. Static routing / BGP peering. Static routing or BGP peering options available. BGP peering is not available for Fiber+ Internet.

d. On-line bandwidth utilization reports. On-line bandwidth utilization reports available through the customer portal.

e. Basic security service. Subject to Customer having Lumen-approved routers, included as part of the Service is a one-time per 12 month period ability to request Lumen to temporarily (i.e. for up to 24 hours): (i) apply a temporary access control list (ACL) with up to 10 rules on such routers; (ii) set up firewall filters specifying IPs, subnets, ports, and protocols; and (iii) configure null routes. Requests that exceed this duration or frequency will be charged at $1000 per hour with a minimum charge of $4000.

2.2 Billing Types.

Flat Rate. Service with flat-rate, fixed rate, or tiered billing provides a set amount of bandwidth at a flat-rate MRC. No usage element applies. Customer will not be permitted to exceed the contracted bandwidth level, provided that if Customer also orders Dynamic Capacity (where available), bandwidth and the associated charges may be adjusted as set forth in the separate terms for Dynamic Capacity.

Commit Plus Burst. For Service provided with burstable bandwidth, the MRC is based on Committed Data Rate ("CDR")/Committed Information Rate ("CIR")). The CDR/CIR is the minimum Internet bandwidth that will be billed to Customer each month regardless of actual usage. Commit Plus Burst usage is any usage in excess of CDR/CIR. Commit Plus Burst usage charges will apply on a per Mbps basis at the rate stated in the Order. Commit Plus Burst usage charges will be billed on a 95th percentile basis. Usage levels are sampled every five minutes, for the previous 5 minute period, on both inbound and outbound traffic. At the end of the bill cycle, the highest 5% of the traffic samples for each inbound and outbound will be discarded, and the higher of the resulting inbound and outbound values will be used to calculate any applicable usage. If available and identified in the applicable Order, a Peak Data Rate (PDR) or Peak Information Rate (PIR) may apply, which is the maximum available bandwidth.

Billing Arrangement. Commit Plus Burst Services may also be provided on an aggregated basis. For Billing Arrangement (or Aggregate Burstable Service, the bandwidth MRC (or Committed Monthly Usage Charge ("CMUC"), is based on the Committed Data Rate ("CDR") (or the Aggregate Committed Data Rate ("ACDR") or Aggregate Committed Information Rate ("ACIR")). The CDR/ACDR/ACIR is the minimum Internet bandwidth that will be charged to Customer each month regardless of actual usage. Burst Rate (or Aggregate Burstable Usage) is any usage in excess of CDR/ACDR/ACIR. Burst Rate/Aggregate Burstable Usage charges will apply on a per Mbps basis at the rate stated in the Order. Burst Rate/Aggregate Burstable Usage is calculated on a 95th percentile basis across all included ports. For Dedicated Internet Access, all usage in excess of the CMUC are calculated on 95th percentile basis across all included ports and charged at the rate stated in the Order.

2.3 On-Net and Off-Net Access. Access services provided entirely on the Lumen owned and operated network ("Network") are "On-Net Access Services". Additionally, Lumen may use third parties to reach Customer's site from the Lumen Network ("Off-Net Access Services"). Local Access may be provisioned utilizing one of the following service technologies: special access, ethernet local access, multi-tenant unit (MTU) access, or wavelength local access. In rare circumstances, Customers may experience bandwidth limitation on a Lumen Internet Services with a single data flow (a continuous sequence of packets from a source to a destination measured over a network link), although PDR could still be achieved over available bandwidth via additional data flows.

2.4 Converged Voice-Internet Service. Where Customer orders Internet Services bundled with Lumen Enterprise Voice SIP Based Services only, such charges will show on the invoice as Converged Voice-Internet Service. For clarification, the Converged Voice-Internet Service is treated as a single Service and if Customer wishes to unbundle or terminate a part of the Converged Voice-Internet Service, early termination liability may apply and Customer will be required to execute new orders for the desired stand-alone Service.

2.5 Lumen Arranged Third Party Procured Internet Services. For certain Service locations (including but not limited to where Lumen may lack relevant licenses to provide such service), Lumen may agree to arrange Internet Services using third party providers ("Third Party Internet Service"). Examples of such locations include, but are not limited to, service locations in China (excluding Hong Kong), India, Indonesia, Malaysia, New Zealand, Philippines, South Korea, Taiwan, Thailand, and Vietnam. Service options vary on a country by country basis and may include access to the Internet via overbooked and/or non-overbooked connections, DSL technology, private leased circuits (fixed or wireless), and/or satellite. Specific service details (access type, e.g. downstream/upstream speed, customer premises equipment requirements, and number of IP addresses) also differ on a country by country basis. Customer understands and acknowledges that Third Party Internet Service will, if requested by Customer, be provided by third party subcontractor(s) to Lumen and accordingly, is provided on an as-is basis. Notwithstanding the foregoing, Customer may report faults and/or outages in Third Party Internet Service to Lumen on a 24x7 basis and, in such circumstances, Lumen will contact the applicable third-party service provider with a view to restoring service as quickly as possible. Customer will reasonably cooperate with the requests of such providers of Third Party Internet Service to enable installation, maintenance, repair, and disconnection of Services. Commit Plus Burst and Billing Arrangement pricing methodologies, as well as on-line bandwidth utilization reports, are not available for Third Party Internet Service.

2.6 Third Party Peer Destined Traffic. If at any time Lumen's provision of High Speed IP (any port size) or Dedicated Internet Access (10G or 100G port sizes only) Service to Customer (and/or any of its Affiliates) (each a "Transit Party") results in unbalanced traffic ratios between Lumen and any other third party peer network that would negatively impact any of Lumen's peering relationships, Lumen will provide written notice to the Transit Party triggering the unbalanced traffic ratios along with a 30-day opportunity to cure such traffic imbalance ("Balance Cure Period") during which Lumen and the relevant Transit Party will cooperate to cure the traffic imbalance. Lumen will clearly identify to the Transit Party the traffic imbalance volume and location(s) of imbalance with said peer. If the Transit Party fails to cure the traffic imbalance within that Balance Cure Period, Lumen may, in good faith discussions with the Transit Party, take appropriate action, which may include termination of one or more Internet ports, to return traffic ratios to be within compliance of the peering provider. Notwithstanding the foregoing, if an emergency condition exists ("emergency condition" for purposes on this section is considered to be traffic conditions which threaten a material and adverse impact on Lumen's network or its peers' networks), which requires Lumen to balance traffic with its' peers, then Lumen may in its' sole reasonable discretion, take appropriate action without the Transit Party's consent, which may include but is not limited to, suspending traffic on the affected port(s), to remedy such emergency condition; provided, that in such event, Lumen will provide as much notice as is practicable under the particular emergency condition.

2.7 Intended Use. Any High Speed IP (any port size) or Dedicated Internet Access (10G or 100G port sizes only) Service is intended to be used for a mixture of internet destinations and not for traffic overly weighted towards individual networks. As such, if more than 25% of total traffic on those particular Services is carried across Lumen's inter-continental backbone links or more than 25% of total traffic (excluding traffic terminating to AS3356 or AS209) is sent towards an individual egress network (either third party peer networks or Lumen end customer networks), then Lumen may choose to issue written notification to Customer to remedy the imbalance, after which Customer will work with Lumen in good faith to remedy such imbalance. Notwithstanding the foregoing, if Customer fails to remedy the imbalance within ten (10) working days of such notification and such imbalance is of a nature that does or will negatively affect (i) the Lumen (or its Affiliates) network in a technical and/or operational manner or (ii) the hardware, systems or services of other orders of Lumen or any Lumen Affiliate, then Lumen, in its sole discretion, will have the right to a) charge Customer for traffic breaching the limits above at an "excess burst" rate of 1.5x the negotiated CDR rate per Mbps; or b) use technical means to withdraw access to these destinations from those Services.

2.8 Service Levels. Lumen Internet Services are subject to the Lumen Service Level Agreement available at https://www.lumen.com/en-us/about/legal/business-customer-terms-conditions.html and subject to change. If Lumen changes the Lumen Service Level Agreement and the change is material and detrimental, Customer may request and receive the last version of the Service Level Agreement in effect before the change.

3. Customer Responsibilities.

3.1 Charges. Customer will be billed non-recurring charges ("NRC") and monthly recurring charges ("MRC") for Service as set forth in an Order(s). NRC include applicable installation charges for local-access circuit, port connection, and bandwidth. MRC include local-access charges, port connection charges, and bandwidth charges. Other charges, including but not limited to usage-based charges, may apply as stated in the Order(s). The Services are available with Flat-Rate, Commit Plus Burst, or Billing Arrangement billing types. Construction charges apply if special construction is required to extend Service to the demarcation point. If Customer does not approve of the Construction charges after Lumen notifies Customer of the charges, the Service ordered will be deemed cancelled.

3.2 Additional Customer Responsibilities. Customer is solely responsible for all equipment and other facilities used in connection with the Service which are not provided by Lumen. All IP addresses, if any, assigned to Customer by Lumen will revert to Lumen upon termination of Service, and Customer will cease using such addresses as of the effective date of termination. Unless the parties otherwise agree in writing, Customer has sole responsibility for ordering, securing installation, and ensuring proper operation of any and all equipment required to enable Customer to receive the Service.

For Meraki Devices, Meraki makes warranties directly to Customer pursuant to the Meraki End Customer Agreement. Lumen does not make any representations, warranties, or any other commitments regarding Meraki or its products.

In addition to any other disclaimers of warranty stated in the Agreement, Lumen makes no warranty, guarantee, or representation, express or implied, that all security threats and vulnerabilities will be detected, that content will be blocked or allowed in accordance with Customer's policies, or that the performance of the Services will render Customer's systems invulnerable to security breaches. Customer is responsible for Customer's own network security policy and security response procedures. If any equipment or software not provided by Lumen impairs Customer's use of any Service, Customer will nonetheless be liable for payment for all Services provided by Lumen. Furthermore, Customer understands and agrees that as a consequence of the operation of the service, Lumen makes no warranty, guarantee, or representation, express or implied, that all legitimate communications will be received by Customer. Customer will ensure that its systems and networks will have up-to-date security controls and patches and that its systems and networks that connect with those included with Fiber+ Internet, or that use common network features, have appropriate security controls. Customer agrees to notify Lumen in advance of any network changes or activities that could impact Service or reasonably interfere with the monitoring of the Service, such as planned outages, configuration changes, maintenance, or systems changes.

3.3 Business Contact Information. Customer must provide to Lumen the names of and contact information ("Business Contact Information") for its employees ("Business Contacts") who have purchasing or other responsibilities relevant to Lumen's delivery of international Service under this Service Schedule. Customer consents to Lumen's and its affiliates or subcontractors' use and transfer to the United States of Business Contact Information for the purpose of: (a) fulfilling its obligations under this Service Schedule; and (b) providing information to Customer about Lumen's products and services via these Business Contacts. Customer represents that the Business Contact Information is accurate and that each Business Contact has consented to Lumen's processing of their Business Contact Information for the purposes set forth in this Service Schedule. The Business Contact Information provided by Customer has been collected, processed, and transferred in accordance with applicable laws, including, where applicable, any necessary notification to the relevant data protection authority in the territory in which Customer is established ("Authority"). Customer will notify Lumen promptly of staffing or other changes that affect Lumen's use of Business Contact Information. Lumen will have in place technical and organizational measures that ensure a level of security appropriate to the risk represented by the processing and the nature of the Business Contact Information and that protects such information against accidental or unlawful destruction or accidental loss, alteration, and unauthorized disclosure or access. Lumen will use the information only for the express purposes set forth in this Service Schedule. Lumen will identify a contact authorized to respond to inquiries concerning processing of Business Contact Information and will reasonably cooperate in good faith with Customer and the Authority concerning all such inquiries without excessive delays.

INTERNET SERVICES SERVICE SCHEDULE

PRICING ATTACHMENT

Service Address	Description	Order Type	Term (Months)	Qty	Unit MRC	Unit NRC	Total MRC	Total NRC
4000 ONTARIO CENTER PKWY ONTARIO, CA 91764	HSIP Service Related Packages Wavelength – IOC - Peak Data Rate = 1000 Mbps - Routing Type = Standard Full Routes - Billing Type = Flat Rate - Service Role = Primary	NEW	36	1	$740.00	$0.00	$740.00	$0.00
4000 ONTARIO CENTER PKWY ONTARIO, CA 91764	HSIP Service Related Packages Wavelength – IOC - Peak Data Rate = 10000 Mbps - Routing Type = Standard Full Routes - Billing Type = Flat Rate - Service Role = Primary	NEW	36	1	$3,200.00	$0.00	$3,200.00	$0.00
4000 ONTARIO CENTER PKWY ONTARIO, CA 91764	HSIP Service Related Packages Wavelength – IOC - Peak Data Rate = 20000 Mbps - Routing Type = Standard Full Routes - Billing Type = Flat Rate - Service Role = Primary	NEW	36	1	$6,400.00	$0.00	$6,400.00	$0.00

INTERNET SERVICES SERVICE SCHEDULE

PRICING ATTACHMENT

4000 ONTARIO CENTER PKWY ONTARIO, CA 91764	HSIP Service Related Packages Wavelength – IOC - Peak Data Rate = 40000 Mbps - Routing Type = Standard Full Routes - Billing Type = Flat Rate - Service Role = Primary	NEW	36	1	$9,440.00	$0.00	$9,440.00	$0.00
4000 ONTARIO CENTER PKWY ONTARIO, CA 91764	HSIP Service Related Packages Wavelength – IOC - Peak Data Rate = 60000 Mbps - Routing Type = Standard Full Routes - Billing Type = Flat Rate - Service Role = Primary	NEW	36	1	$12,720.00	$0.00	$12,720.00	$0.00
4000 ONTARIO CENTER PKWY ONTARIO, CA 91764	HSIP Service Related Packages Wavelength – IOC - Peak Data Rate = 100000 Mbps - Routing Type = Standard Full Routes - Billing Type = Flat Rate - Service Role = Primary	NEW	36	1	$15,925.00	$0.00	$15,925.00	$0.00

INTERNET SERVICES SERVICE SCHEDULE

PRICING ATTACHMENT

4000 ONTARIO CENTER PKWY ONTARIO, CA 91764	Wavelength – IOC - Standard Delivery - To the MPoE (Customer Provided) - Bandwidth = 100GIG-E - Protection = Unprotected - Latency Guarantee Level = None - Circuit Diversity Required = No - Custom Route = No	NEW	36	1	$4,000.00	$0.00	$4,000.00	$0.00
	A-Side Access			1	$0.00	$0.00	$0.00	$0.00
	Z-Side Access			1	$0.00	$0.00	$0.00	$0.00
	IP Port			1	$0.00	$0.00	$0.00	$0.00

LUMEN MASTER SERVICE AGREEMENT
STATE, LOCAL AND EDUCATION GOVERNMENT AGENCIES VERSION

This Master Service Agreement ("Agreement") is between **CENTURYLINK COMMUNICATIONS, LLC D/B/A LUMEN TECHNOLOGIES GROUP** ("Lumen") and City of Ontario d/b/a OntarioNet ("Customer") and is effective on the date the last party signs it (the "Effective Date"). This Agreement provides the terms and conditions applicable to Customer's purchase of products and services ("Service") from Lumen.

1. Term. The term of the Agreement will commence on the Effective Date and continue until the expiration of the last Service term, unless earlier terminated in accordance with the Agreement ("Term").

2. Service. Lumen will provide Service in accordance with the Agreement, including all applicable Service Schedules, Service Exhibits, Statements of Work, Order(s), pricing attachment(s), and any other documents that are attached or expressly incorporated into the Agreement ("Service Attachments"). The following Service Attachments, if any, are initially attached and incorporated into the Agreement. Additional Service Attachments may be added by Amendment or by Customer placing an Order.

- **INTERNET SERVICES SERVICE SCHEDULE**
- **INTERNET SERVICES SERVICE SCHEDULE – PRICING ATTACHMENT**

3. Order(s). Customer may submit requests for Service in a form designated by Lumen ("Order"). The term for a Service is defined in the applicable Service Attachment ("Service Term"). Unless otherwise set forth in a Service Attachment, Service will continue month-to-month at the expiration of the Service Term at the existing rates, subject to adjustment by Lumen on 30 days' written notice. Lumen will notify Customer of acceptance of requested Service in the Order by delivering (in writing or electronically) the date by which Lumen will install Service (the "Customer Commit Date"), by delivering the Service, or by the manner described in a Service Attachment. Renewal Orders will be accepted by Lumen's continuation of Service. For moves, adds or changes agreed to by Lumen, Customer will pay Lumen's then current charges unless otherwise specifically stated in a Service Attachment. In the event any term or condition of an Order directly conflicts with this Agreement, the Order will control.

4. Cancellation and Termination Charges. Unless otherwise set forth in a Service Attachment:

(a) Customer may cancel an Order (or portion of an Order) prior to the delivery of a Connection Notice upon written notice to Lumen identifying the affected Order and Service. If Customer does so for any reason other than installation delay pursuant to section 7, force majeure pursuant to section 15.1, non-appropriation pursuant to section 10.4, or Lumen's Default pursuant to section 8, Customer will pay Lumen a cancellation charge equal to the sum of: (1) for "Off-net" Service, third party termination charges for the cancelled Service; (2) for "On-net" Service, one month's monthly recurring charges for the cancelled Service; (3) the non-recurring charges for the cancelled Service; and (4) Lumen's out-of-pocket costs (if any) incurred in constructing facilities necessary for Service delivery. "Off-Net" is defined as local access circuits not provided on the network owned and operated by Lumen and its affiliates. "On-Net" is defined as local access circuits provided on the network owned and operated by Lumen and its affiliates.

(b) Customer may terminate a specified Service after the delivery of a Connection Notice upon 30 days' written notice to Lumen. If Customer does so for any reason other than installation delay pursuant to section 7, force majeure pursuant to section 15.1, non-appropriation pursuant to section 10.4, or Lumen's Default pursuant to section 8, or if Service is terminated by Lumen as the result of Customer's default, Customer will pay Lumen a termination charge equal to the sum of: (1) all unpaid amounts for Service actually provided; (2) 100% of the remaining monthly recurring charges for months 1-12 of the Service Term; (3) 50% of the remaining monthly recurring charges for month 13 through the end of the Service Term; and (4) if not recovered by the foregoing, any termination liability payable to third parties resulting from the termination and any out-of-pocket costs of construction to the extent such construction was undertaken to provide Service under this Agreement. The charges in this Section represent Lumen's reasonable liquidated damages and are not a penalty.

(c) If Customer terminates an Order due to Lumen's Default as defined in section 8 below, Lumen shall reimburse Customer for any pre-paid, unused monthly service fees (excluding any non-recurring charges) attributable to such terminated Order. Customer may charge reasonable attorneys' fees and any third-party collection costs Customer incurs in collecting such amounts.

5. Scheduled Maintenance and Local Access. Scheduled maintenance will not normally result in Service interruption. Unless otherwise set forth in a Service Attachment, if scheduled maintenance requires Service interruption Lumen will: (1) provide Customer seven days' prior written notice, (2) work with Customer to minimize interruptions and (3) use commercially reasonable efforts to perform such maintenance between midnight and 6:00 a.m. local time. If third-party local access services are required for the Services, Customer will: (1) provide Lumen with circuit facility and firm order commitment information and design layout records to enable cross-connects to Lumen Service(s) (provided by Lumen subject to applicable charges), (2) cooperate with Lumen (including changing demarcation points and/or equipment and providing necessary LOAs) regarding circuit grooming or re-provisioning, and (3) where a related Service is disconnected, provide Lumen a written disconnection firm order commitment from the relevant third-party provider. Lumen may re-provision any local access circuits from one Off-net provider to another or to the Lumen owned and operated network (On-net), and such changes will be treated as scheduled maintenance.

6. Service Levels.

(a) Any "Service Level" commitments applicable to Services are contained in the Service Attachments applicable to each Service. If Lumen does not meet a Service Level, Lumen will issue to Customer a credit as stated in the applicable Service Attachment on Customer's request, except that credits will not be provided for Excused Outages. Lumen's maintenance log and trouble ticketing systems are used to calculate Service Level events. Excused Outages mean scheduled maintenance under Section 5 and force majeure events, unless otherwise defined in a Service Attachment.

(b) Unless otherwise set forth in a Service Attachment, to request a credit, Customer must contact Customer Service (contact information is located at https://www.lumen.com/en-us/home.html) or deliver a written request with sufficient detail to identify the affected Service. The request for credit must be made within 60 days after the end of the month in which the event occurred. Total monthly credits will not exceed the charges for the affected Service for that month. Customer's sole remedies for any nonperformance, outages, failures to deliver or defects in Service are contained in the Service Levels applicable to the affected Service.

7. Right of Termination for Installation Delay. Unless otherwise set forth in a Service Attachment, in lieu of installation Service Level credits, if Lumen's installation of Service is delayed by more than 30 business days beyond the Customer Commit Date, Customer may terminate the affected Service without liability upon written notice to Lumen, provided such written notice is delivered prior to Lumen delivering a Connection Notice for the affected Service. This Section will not apply where Lumen is constructing facilities to a new location not previously served by Lumen.

8. Default. If (a) Customer fails to make any payment when due and such failure continues for five business days after Lumen's written notice, or (b) either party fails to observe or perform any other material term of this Agreement and such failure continues for 30 days after the other party's written notice, then the non-defaulting party may: (i) terminate this Agreement and/or any Order, in whole or in part, and/or (ii) subject to Sections 9.1 (Damages Limitations) and 6 (Service Levels), pursue any remedies it may have at law or in equity.

9. Liabilities and Disclaimers.

9.1 Damages Limitations. Neither party will be liable for any damages for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Agreement or any Order.

9.2 Disclaimer of Warranties. LUMEN MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY APPLICABLE SERVICE ATTACHMENT.

10. Billing and Payment.

10.1 Commencement of Billing. Unless otherwise set forth in a Service Attachment, Lumen will deliver written or electronic notice (a "Connection Notice") to Customer when Service is installed, at which time billing will commence ("Service Commencement Date"). If Customer notifies Lumen within three days after delivery of the Connection Notice that Service is not functioning properly, Lumen will correct any deficiencies and, upon Customer's request, credit Customer's account in the amount of 1/30 of the applicable monthly recurring charge (MRC) for each day the Service did not function properly. If Lumen cannot complete installation due to Customer delay or inaction, Lumen may begin charging Customer for the Service, and Customer will pay such charges.

10.2 Payment of Invoices and Disputes. Unless otherwise set forth in a Service Attachment, Invoices are delivered or made available monthly and due 30 days after the invoice date. Fixed charges are billed in advance and usage-based charges are billed in arrears. Customer's payments to Lumen must be made via an ACH transfer or any Lumen approved payment portal (e.g., Control Center) in the currency stated on the invoice. Lumen may charge administrative fees where Customer's payment and invoice preferences deviate from Lumen's standard practices. Past due amounts bear interest at 1.5% per month or the highest rate allowed by law (whichever is less). Lumen may charge Customer reasonable attorneys' fees and any third-party collection costs Lumen incurs in collecting such amounts. Customer is responsible for all charges regarding the Service, even if incurred as the result of unauthorized use. If Customer disputes an invoice, Customer must pay the undisputed amount and submit written notice of the disputed amount (with details of the nature of the dispute and the Services and invoice(s) disputed). Disputes must be submitted in writing within 90 days from the date of the invoice. If Lumen determines in good faith that a disputed charge was billed correctly, Customer must pay such amounts within 10 days after Lumen provides notice of such determination. Customer may not offset disputed amounts from one invoice against payments due on the same or another account.

10.3 Taxes and Fees. Customer is responsible for all taxes and fees arising in any jurisdiction imposed on Customer, Lumen, or a Lumen affiliate incident to the provision, sale or use of Service. This includes value added, consumption, sales, use, gross receipts, withholding, excise, ad valorem, franchise or other taxes, fees, duties or surcharges (e.g., regulatory and 911 surcharges), along with similar charges stated in a Service Attachment (collectively "Taxes and Fees"). This does not include taxes based on Lumen's net income. Some Taxes and Fees, and costs of administering them, are recovered through a percentage surcharge(s) on the charges for Service. If Customer is required by law to make any deduction or withholding of withholding Taxes from any payment due under this Agreement to Lumen, then Customer must increase the gross amount payable so that, after any deduction or withholding for such withholding Taxes, the net amount paid to Lumen will not be less than Lumen would have received had no such deduction or withholding been required. Charges for Service are exclusive of Taxes and Fees. Customer may present Lumen with an exemption certificate that eliminates Lumen's obligation to pay certain Taxes and Fees. The exemption will apply prospectively. For additional details on taxes and surcharges that are assessed, visit www.lumen.com/taxes.

complete information may result in continued charges that will not be credited. All legal notices will be addressed to Lumen at: 931 14th Str., #900, Denver, CO 80202; Fax: 888-778-0054; Attn.: Notice Coordinator; and to any electronic or physical address of Customer as provided in the Agreement or in its absence, to Customer's address identified on the Order or as reflected in Lumen's records, Attn. General Counsel.

15.5 Confidentiality. It is the parties' understanding that the terms of this Agreement are not confidential, and the parties do not anticipate the sharing of Confidential Information in connection with the Agreement. In the event either party shares any documents or electronic files containing Confidential Information, such documents or electronic files will be conspicuously marked so that the individual viewing or receiving the information understands the information to be confidential. Except to the extent required by an open records act or similar law, neither party will disclose or use (except as expressly permitted by, or required to achieve the purposes of, the Agreement) the Confidential Information received from the other party. A party may disclose Confidential Information if required to do so by a governmental agency, by operation of law, or if necessary in any proceeding to establish rights or obligations under the Agreement. Each party will limit disclosure and access to Confidential Information to those of its employees, contractors, attorneys or other representatives who reasonably require such access to accomplish the Agreement's purposes and who are subject to confidentiality obligations at least as restrictive as those contained in this Agreement. "Confidential Information" means any commercial or operational information disclosed by one party to the other in connection with the Agreement that has been conspicuously marked as confidential and does not include any information that: (a) is in the public domain without a breach of confidentiality; (b) is obtained from a third party without violation of any obligation of confidentiality; or (c) is independently developed by a party without reference to the Confidential Information of the other party.

15.6 Intellectual Property Ownership; Use of Name and Marks. Nothing in the Agreement or the performance of it will convey, license, or otherwise transfer any right, title, or interest in any intellectual property or other proprietary rights held by either party or its licensors. Neither party will use the name or marks of the other party or any of its affiliates for any purpose or issue any press release or public statement relating to this Agreement without the other party's prior written consent.

15.7 Governing Law; Amendment. This Agreement will be governed and construed in accordance with the laws of the State of California. Each party will comply with all applicable laws, rules and regulations associated respectively with Lumen's delivery or Customer's use of the Service under the Agreement. This Agreement, including any Service Attachments, constitutes the entire and final agreement and understanding between the parties with respect to the Service and supersedes all prior agreements relating to the Services described in Orders entered into on or after the Effective Date of this Agreement. Additionally, the parties understand that this Agreement between Lumen and Customer City of Ontario d/b/a OntarioNet does not supersede any separate agreement between Lumen and the City of Ontario acting in any capacity other than as the City of Ontario d/b/a OntarioNet. Lumen is not subject to any obligations that are not explicitly identified in this Agreement. This Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each party. No failure by either party to enforce any right(s) under this Agreement will constitute a waiver of such right(s).

15.8 Relationship and Counterparts. The relationship between the parties is not that of partners, agents, or joint venturers. This Agreement may be executed in one or more counterparts, all of which taken together will constitute one instrument. Digital signatures and electronically exchanged copies of signed documents will be sufficient to bind the parties to this Agreement.

CENTURYLINK COMMUNICATIONS, LLC D/B/A LUMEN TECHNOLOGIES GROUP

Authorized Signature

Alex Khanin
Name Typed or Printed

offer management
Title
Date: 7/7/2023

City of Ontario d/b/a OntarioNet

Authorized Signature

Name Typed or Printed

Title
Date:
Customer's Address for Notice
Customer's facsimile number (if applicable):
Person Designated for Notices

INTERNET SERVICES SERVICE SCHEDULE

1. General. "Lumen" is defined for purposes of this Service Schedule as Centurylink Communications, LLC d/b/a Lumen Technologies Group or its affiliated entities providing Services under this Service Schedule. This Service Schedule is applicable where Customer orders Lumen Internet Services (which may also be called Dedicated Internet Access, Internet Services, High Speed IP, IP Transit Services or CenturyLink IQ Networking Internet Port ("Internet Port") on ordering, invoicing, or other documentation) or Fiber+ Internet. The Service is also subject to the Master Service Agreement executed between Lumen and Customer, and if none, Lumen's standard Master Service Agreement (the "Agreement"). Lumen may subcontract the provision of the Service in whole or part, provided that Lumen remains responsible for the Service to Customer as set forth in this Service Schedule. Capitalized terms used but not defined in this Service Schedule have the definitions given to them in the Agreement.

1.1 Additional General Terms. Service charges are exclusive of taxes and presented without reduction for any Withholding Tax, all of which are the responsibility of the Customer. "Withholding Tax" means any amount or account of tax on sources of income which a payor is obliged to deduct from payments due to a recipient and account for or to any tax authority. In the event that any payment to be made to Lumen under this Service Schedule should be subject to reduction by reason of a Withholding Tax, Customer agrees to pay Lumen such amounts as would have been necessary so that the aggregate net amount received by Lumen after application of a Withholding Tax is the same amount as would have been received by Lumen if there had been no requirement to deduct or withhold such tax. For Services provided outside the United States, Customer or its local affiliate may be required to enter into a separate local country addendum/agreement (as approved by local authorities) ("LCA") with the respective Lumen affiliate that provides the local Service(s). Such Lumen affiliate will invoice Customer or its local affiliate for the respective local Service(s).

2. Services.

2.1 Service Description. Lumen Internet Services are high speed symmetrical Internet services providing access to the Lumen IP network and the global Internet ("Service"). The Service is generally available via Ethernet connections from 10/100 Mbps ports to 100Gbps ports. Additional features and functionality may include:

a. IP Addresses. IP Address space with proper justification.

b. Primary DNS / Secondary DNS. Primary or Secondary DNS as requested.

c. Static routing / BGP peering. Static routing or BGP peering options available. BGP peering is not available for Fiber+ Internet.

d. On-line bandwidth utilization reports. On-line bandwidth utilization reports available through the customer portal.

e. Basic security service. Subject to Customer having Lumen-approved routers, included as part of the Service is a one-time per 12 month period ability to request Lumen to temporarily (i.e. for up to 24 hours): (i) apply a temporary access control list (ACL) with up to 10 rules on such routers; (ii) set up firewall filters specifying IPs, subnets, ports, and protocols; and (iii) configure null routes. Requests that exceed this duration or frequency will be charged at $1000 per hour with a minimum charge of $4000.

2.2 Billing Types.

Flat Rate. Service with flat-rate, fixed rate, or tiered billing provides a set amount of bandwidth at a flat-rate MRC. No usage element applies. Customer will not be permitted to exceed the contracted bandwidth level, provided that if Customer also orders Dynamic Capacity (where available), bandwidth and the associated charges may be adjusted as set forth in the separate terms for Dynamic Capacity.

Commit Plus Burst. For Service provided with burstable bandwidth, the MRC is based on Committed Data Rate ("CDR")/Committed Information Rate ("CIR")). The CDR/CIR is the minimum Internet bandwidth that will be billed to Customer each month regardless of actual usage. Commit Plus Burst usage is any usage in excess of CDR/CIR. Commit Plus Burst usage charges will apply on a per Mbps basis at the rate stated in the Order. Commit Plus Burst usage charges will be billed on a 95th percentile basis. Usage levels are sampled every five minutes, for the previous 5 minute period, on both inbound and outbound traffic. At the end of the bill cycle, the highest 5% of the traffic samples for each inbound and outbound will be discarded, and the higher of the resulting inbound and outbound values will be used to calculate any applicable usage. If available and identified in the applicable Order, a Peak Data Rate (PDR) or Peak Information Rate (PIR) may apply, which is the maximum available bandwidth.

Billing Arrangement. Commit Plus Burst Services may also be provided on an aggregated basis. For Billing Arrangement (or Aggregate Burstable Service, the bandwidth MRC (or Committed Monthly Usage Charge ("CMUC"), is based on the Committed Data Rate ("CDR") (or the Aggregate Committed Data Rate ("ACDR") or Aggregate Committed Information Rate ("ACIR")). The CDR/ACDR/ACIR is the minimum Internet bandwidth that will be charged to Customer each month regardless of actual usage. Burst Rate (or Aggregate Burstable Usage) is any usage in excess of CDR/ACDR/ACIR. Burst Rate/Aggregate Burstable Usage charges will apply on a per Mbps basis at the rate stated in the Order. Burst Rate/Aggregate Burstable Usage is calculated on a 95th percentile basis across all included ports. For Dedicated Internet Access, all usage in excess of the CMUC are calculated on 95th percentile basis across all included ports and charged at the rate stated in the Order.

2.3 On-Net and Off-Net Access. Access services provided entirely on the Lumen owned and operated network ("Network") are "On-Net Access Services". Additionally, Lumen may use third parties to reach Customer's site from the Lumen Network ("Off-Net Access Services"). Local Access may be provisioned utilizing one of the following service technologies: special access, ethernet local access, multi-tenant unit (MTU) access, or wavelength local access. In rare circumstances, Customers may experience bandwidth limitation on a Lumen Internet Services with a single data flow (a continuous sequence of packets from a source to a destination measured over a network link), although PDR could still be achieved over available bandwidth via additional data flows.

2.4 Converged Voice-Internet Service. Where Customer orders Internet Services bundled with Lumen Enterprise Voice SIP Based Services only, such charges will show on the invoice as Converged Voice-Internet Service. For clarification, the Converged Voice-Internet Service is treated as a single Service and if Customer wishes to unbundle or terminate a part of the Converged Voice-Internet Service, early termination liability may apply and Customer will be required to execute new orders for the desired stand-alone Service.

2.5 Lumen Arranged Third Party Procured Internet Services. For certain Service locations (including but not limited to where Lumen may lack relevant licenses to provide such service), Lumen may agree to arrange Internet Services using third party providers ("Third Party Internet Service"). Examples of such locations include, but are not limited to, service locations in China (excluding Hong Kong), India, Indonesia, Malaysia, New Zealand, Philippines, South Korea, Taiwan, Thailand, and Vietnam. Service options vary on a country by country basis and may include access to the Internet via overbooked and/or non-overbooked connections, DSL technology, private leased circuits (fixed or wireless), and/or satellite. Specific service details (access type, e.g. downstream/upstream speed, customer premises equipment requirements, and number of IP addresses) also differ on a country by country basis. Customer understands and acknowledges that Third Party Internet Service will, if requested by Customer, be provided by third party subcontractor(s) to Lumen and accordingly, is provided on an as-is basis. Notwithstanding the foregoing, Customer may report faults and/or outages in Third Party Internet Service to Lumen on a 24x7 basis and, in such circumstances, Lumen will contact the applicable third-party service provider with a view to restoring service as quickly as possible. Customer will reasonably cooperate with the requests of such providers of Third Party Internet Service to enable installation, maintenance, repair, and disconnection of Services. Commit Plus Burst and Billing Arrangement pricing methodologies, as well as on-line bandwidth utilization reports, are not available for Third Party Internet Service.

2.6 Third Party Peer Destined Traffic. If at any time Lumen's provision of High Speed IP (any port size) or Dedicated Internet Access (10G or 100G port sizes only) Service to Customer (and/or any of its Affiliates) (each a "Transit Party") results in unbalanced traffic ratios between Lumen and any other third party peer network that would negatively impact any of Lumen's peering relationships, Lumen will provide written notice to the Transit Party triggering the unbalanced traffic ratios along with a 30-day opportunity to cure such traffic imbalance ("Balance Cure Period") during which Lumen and the relevant Transit Party will cooperate to cure the traffic imbalance. Lumen will clearly identify to the Transit Party the traffic imbalance volume and location(s) of imbalance with said peer. If the Transit Party fails to cure the traffic imbalance within that Balance Cure Period, Lumen may, in good faith discussions with the Transit Party, take appropriate action, which may include termination of one or more Internet ports, to return traffic ratios to be within compliance of the peering provider. Notwithstanding the foregoing, if an emergency condition exists ("emergency condition" for purposes on this section is considered to be traffic conditions which threaten a material and adverse impact on Lumen's network or its peers' networks), which requires Lumen to balance traffic with its' peers, then Lumen may in its' sole reasonable discretion, take appropriate action without the Transit Party's consent, which may include but is not limited to, suspending traffic on the affected port(s), to remedy such emergency condition; provided, that in such event, Lumen will provide as much notice as is practicable under the particular emergency condition.

2.7 Intended Use. Any High Speed IP (any port size) or Dedicated Internet Access (10G or 100G port sizes only) Service is intended to be used for a mixture of internet destinations and not for traffic overly weighted towards individual networks. As such, if more than 25% of total traffic on those particular Services is carried across Lumen's inter-continental backbone links or more than 25% of total traffic (excluding traffic terminating to AS3356 or AS209) is sent towards an individual egress network (either third party peer networks or Lumen end customer networks), then Lumen may choose to issue written notification to Customer to remedy the imbalance, after which Customer will work with Lumen in good faith to remedy such imbalance. Notwithstanding the foregoing, if Customer fails to remedy the imbalance within ten (10) working days of such notification and such imbalance is of a nature that does or will negatively affect (i) the Lumen (or its Affiliates) network in a technical and/or operational manner or (ii) the hardware, systems or services of other orders of Lumen or any Lumen Affiliate, then Lumen, in its sole discretion, will have the right to a) charge Customer for traffic breaching the limits above at an "excess burst" rate of 1.5x the negotiated CDR rate per Mbps; or b) use technical means to withdraw access to these destinations from those Services.

2.8 Service Levels. Lumen Internet Services are subject to the Lumen Service Level Agreement available at https://www.lumen.com/en-us/about/legal/business-customer-terms-conditions.html and subject to change. If Lumen changes the Lumen Service Level Agreement and the change is material and detrimental, Customer may request and receive the last version of the Service Level Agreement in effect before the change.

3. Customer Responsibilities.

3.1 Charges. Customer will be billed non-recurring charges ("NRC") and monthly recurring charges ("MRC") for Service as set forth in an Order(s). NRC include applicable installation charges for local-access circuit, port connection, and bandwidth. MRC include local-access charges, port connection charges, and bandwidth charges. Other charges, including but not limited to usage-based charges, may apply as stated in the Order(s). The Services are available with Flat-Rate, Commit Plus Burst, or Billing Arrangement billing types. Construction charges apply if special construction is required to extend Service to the demarcation point. If Customer does not approve of the Construction charges after Lumen notifies Customer of the charges, the Service ordered will be deemed cancelled.

3.2 Additional Customer Responsibilities. Customer is solely responsible for all equipment and other facilities used in connection with the Service which are not provided by Lumen. All IP addresses, if any, assigned to Customer by Lumen will revert to Lumen upon termination of Service, and Customer will cease using such addresses as of the effective date of termination. Unless the parties otherwise agree in writing, Customer has sole responsibility for ordering, securing installation, and ensuring proper operation of any and all equipment required to enable Customer to receive the Service.

For Meraki Devices, Meraki makes warranties directly to Customer pursuant to the Meraki End Customer Agreement. Lumen does not make any representations, warranties, or any other commitments regarding Meraki or its products.

In addition to any other disclaimers of warranty stated in the Agreement, Lumen makes no warranty, guarantee, or representation, express or implied, that all security threats and vulnerabilities will be detected, that content will be blocked or allowed in accordance with Customer's policies, or that the performance of the Services will render Customer's systems invulnerable to security breaches. Customer is responsible for Customer's own network security policy and security response procedures. If any equipment or software not provided by Lumen impairs Customer's use of any Service, Customer will nonetheless be liable for payment for all Services provided by Lumen. Furthermore, Customer understands and agrees that as a consequence of the operation of the service, Lumen makes no warranty, guarantee, or representation, express or implied, that all legitimate communications will be received by Customer. Customer will ensure that its systems and networks will have up-to-date security controls and patches and that its systems and networks that connect with those included with Fiber+ Internet, or that use common network features, have appropriate security controls. Customer agrees to notify Lumen in advance of any network changes or activities that could impact Service or reasonably interfere with the monitoring of the Service, such as planned outages, configuration changes, maintenance, or systems changes.

3.3 Business Contact Information. Customer must provide to Lumen the names of and contact information ("Business Contact Information") for its employees ("Business Contacts") who have purchasing or other responsibilities relevant to Lumen's delivery of international Service under this Service Schedule. Customer consents to Lumen's and its affiliates or subcontractors' use and transfer to the United States of Business Contact Information for the purpose of: (a) fulfilling its obligations under this Service Schedule; and (b) providing information to Customer about Lumen's products and services via these Business Contacts. Customer represents that the Business Contact Information is accurate and that each Business Contact has consented to Lumen's processing of their Business Contact Information for the purposes set forth in this Service Schedule. The Business Contact Information provided by Customer has been collected, processed, and transferred in accordance with applicable laws, including, where applicable, any necessary notification to the relevant data protection authority in the territory in which Customer is established ("Authority"). Customer will notify Lumen promptly of staffing or other changes that affect Lumen's use of Business Contact Information. Lumen will have in place technical and organizational measures that ensure a level of security appropriate to the risk represented by the processing and the nature of the Business Contact Information and that protects such information against accidental or unlawful destruction or accidental loss, alteration, and unauthorized disclosure or access. Lumen will use the information only for the express purposes set forth in this Service Schedule. Lumen will identify a contact authorized to respond to inquiries concerning processing of Business Contact Information and will reasonably cooperate in good faith with Customer and the Authority concerning all such inquiries without excessive delays.

INTERNET SERVICES SERVICE SCHEDULE

PRICING ATTACHMENT

Service Address	Description	Order Type	Term (Months)	Qty	Unit MRC	Unit NRC	Total MRC	Total NRC
4000 ONTARIO CENTER PKWY ONTARIO, CA 91764	HSIP Service Related Packages Wavelength – IOC - Peak Data Rate = 1000 Mbps - Routing Type = Standard Full Routes - Billing Type = Flat Rate - Service Role = Primary	NEW	36	1	$740.00	$0.00	$740.00	$0.00
4000 ONTARIO CENTER PKWY ONTARIO, CA 91764	HSIP Service Related Packages Wavelength – IOC - Peak Data Rate = 10000 Mbps - Routing Type = Standard Full Routes - Billing Type = Flat Rate - Service Role = Primary	NEW	36	1	$3,200.00	$0.00	$3,200.00	$0.00
4000 ONTARIO CENTER PKWY ONTARIO, CA 91764	HSIP Service Related Packages Wavelength – IOC - Peak Data Rate = 20000 Mbps - Routing Type = Standard Full Routes - Billing Type = Flat Rate - Service Role = Primary	NEW	36	1	$6,400.00	$0.00	$6,400.00	$0.00

INTERNET SERVICES SERVICE SCHEDULE

PRICING ATTACHMENT

4000 ONTARIO CENTER PKWY ONTARIO, CA 91764	HSIP Service Related Packages Wavelength – IOC - Peak Data Rate = 40000 Mbps - Routing Type = Standard Full Routes - Billing Type = Flat Rate - Service Role = Primary	NEW	36	1	$9,440.00	$0.00	$9,440.00	$0.00
4000 ONTARIO CENTER PKWY ONTARIO, CA 91764	HSIP Service Related Packages Wavelength – IOC - Peak Data Rate = 60000 Mbps - Routing Type = Standard Full Routes - Billing Type = Flat Rate - Service Role = Primary	NEW	36	1	$12,720.00	$0.00	$12,720.00	$0.00
4000 ONTARIO CENTER PKWY ONTARIO, CA 91764	HSIP Service Related Packages Wavelength – IOC - Peak Data Rate = 100000 Mbps - Routing Type = Standard Full Routes - Billing Type = Flat Rate - Service Role = Primary	NEW	36	1	$15,925.00	$0.00	$15,925.00	$0.00

INTERNET SERVICES SERVICE SCHEDULE

PRICING ATTACHMENT

4000 ONTARIO CENTER PKWY ONTARIO, CA 91764	Wavelength – IOC - Standard Delivery - To the MPoE (Customer Provided) - Bandwidth = 100GIG-E - Protection = Unprotected - Latency Guarantee Level = None - Circuit Diversity Required = No - Custom Route = No	NEW	36	1	$4,000.00	$0.00	$4,000.00	$0.00
	A-Side Access			1	$0.00	$0.00	$0.00	$0.00
	Z-Side Access			1	$0.00	$0.00	$0.00	$0.00
	IP Port			1	$0.00	$0.00	$0.00	$0.00

CITY OF ONTARIO *Agenda Report* **April 2, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Community Improvement Prepared By: Douglas J Sorel Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 9

SUBJECT: A CHANGE ORDER TO THE CONSTRUCTION AGREEMENT WITH SLS PROPERTY SOLUTIONS, INC. FOR EMERGENCY ON-CALL BOARD UPS AND ABATEMENT

RECOMMENDATION: That the City Council authorize Change Order No. 1 to the construction agreement with SLS Property Solutions, Inc. of Santa Ana, CA for emergency on-call board ups and abatements, increasing the not-to-exceed amount to $150,000 per fiscal year and the total not-to-exceed amount to $400,000 for the initial term of the agreement; and authorize the City Manager, or his designee, to execute said Agreement and future change orders within the authorization limits.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner

FISCAL IMPACT: The Fiscal Year 2023-24 Current Budget includes appropriations in the General Fund and Housing Authority Fund for emergency on-call board ups and abatements. Proposed Change Order No. 1 increases the not-to-exceed amount from $100,000 to $150,000 for Fiscal Years 2023-24 and 2024-25 and the total-not-to-exceed agreement amount from $300,000 to $400,000.

BACKGROUND & ANALYSIS: On June 21, 2022, the City Council approved a Construction Agreement with SLS Property Services, Inc. of Santa Ana, CA, to perform emergency board up services and abatements. Various City Departments utilize their services to board-up public and private buildings damaged by fire, burglary, vandalism, and other causes, and to abate nuisance conditions on vacant lots identified through the Weed Abatement Program. Proposed Change Order No. 1 addresses an increase in demand for both board-up services and vacant lot abatement by increasing the not-to-exceed amount of the Agreement from $100,000 to $150,000 for Fiscal Years 2023-24 and 2024-25, and increases the total not-to-exceed amount from $300,000 to $400,000.

CITY OF ONTARIO

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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
CHANGE ORDER

Project: EMERGENCY ON-CALL BOARD-UPS AND ABATEMENTS

Change Order Number: _____

Change Order Date: 2/7/2024

Contract Date: **7/1/2022**

To: SLS Property Solutions, Inc_919 E. Santa Ana Blvd., Santa Ana, CA 92701

THIS CHANGE ORDER FORM SHALL BE USED FOR ALL CHANGE ORDERS ASSOCIATED WITH THE WORK. NO ADDITIONS OR DELETIONS TO THIS FORM SHALL BE ALLOWED, EXCEPT WITH PERMISSION OF THE CITY OF ONTARIO.

The Contract is changed as follows:

3. 1. 1 Amount of Compensation. As consideration for performance of the Work required herein, City agrees to pay Contractor an amount not to exceed One Hundred and Fifty Thousand Dollars per fiscal year (July 1- June 30), and no more than Four Hundred Thousand Dollars ($ 400,000. 00) (" Total Contract Price") for the initial term of the Agreement, and no more than provided that such amount shall be subject to adjustment pursuant to the applicable terms of this Contract

Contractor agrees to furnish all labor, materials, equipment and services to perform the Work, modified as described herein, in accordance with the Contract Documents as revised by this Change Order.

NOT VALID UNTIL SIGNED BY OWNER

In consideration of the change(s) described above, the Contract Price is adjusted as follows:

The original Contract Price was
$300,000_____
Net change by previously authorized Change Orders
$0_____
The Contract Price prior to this Change Order was
$300,000_____
The Contract Price will be changed by this Change Order in the amount of
$100,000_____
The new Contract Price including this Change Order will be
$400,000_____

In consideration of the change(s) describe above, the Contract Time is adjusted as follows:

The Contract Time will be: increased ☐ decreased ☒ unchanged ☐ by
____0___ Days
The Contract Time prior to this Change Order was
___3____ Fiscal Years
The new Contract Time including this Change Order will be
___3____ Fiscal Years

Contractor accepts the terms and conditions stated herein as full and final settlement of any and all claims arising from this Change Order. The adjustments to the Contract Price and Contract Time in this Change Order constitutes the entire compensation and/or adjustment thereto due to Contractor, including direct, indirect, consequential, and overhead (field and home office) costs, due to Contractor arising out of or related to the change in the Work covered by this Change Order. By signing this Change Order, Contractor agrees to accept the amount of the adjustment to the Contract Price, and the adjustment of the Contract Time, as payment in full for all costs, including direct, indirect, consequential, and overhead (field and home office) costs, related to the change in the Work covered by this Change Order.

Accepted:

Sarah L Strader, President	Date

Approved:

Scott Murphy, Executive Director Community Development	Date

Approved:

Scott Ochoa, City Manager	Date

CITY OF ONTARIO *Agenda Report* **April 2, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Utilities Prepared By: Dennis Mejia Staff Member Presenting: Scott Burton, Utilities General Manager Reviewed By: Dennice Raygoza, Albert G Gastelum, Michael Sigsbee Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 10

SUBJECT: AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH GHD INC. FOR THE DESIGN OF UT1019 WELL 50 TREATMENT FACILITY PROJECT

RECOMMENDATION: That the City Council approve and authorize the City Manager or designee to execute Amendment No. 1 to Professional Services Agreement with GHD Inc., of Irvine, California, for professional design services of UT1019 Well No. 50 Treatment Facility Project in the amount of $82,908, plus a 15% contingency of $12,436, for a total amount of $95,344 for a new total not-to-exceed amount of $494,654, and a term from June 7, 2022 to June 6, 2025.

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

FISCAL IMPACT: Proposed Amendment No. 1 to GHD Inc. is for $82,908, plus a 15% contingency of $12,436, for a total amount of $95,344, and a new total not-to-exceed amount of $494,654. The Fiscal Year 2023-24 Adopted Capital Improvement Budget includes appropriations from the New Model Colony (NMC) Regional Water Development Impact Fee (DIF) Fund (DIF Project No. WT08 and Capital Improvement Program No. WA1907) for this project. There is no impact on the General Fund.

BACKGROUND & ANALYSIS: The City's water system includes 17 active wells that provide 65% of the City's potable water supply. The Water Master Plan has identified wellhead treatment as a viable long-term solution to maximize the use of Ontario's local groundwater resources and address water quality changes over time.

Well No. 50 is currently an inactive well and has a perchlorate concentration approaching the Maximum Contaminant Level (MCL) set by the State Division of Drinking Water. Water from Well No. 50 will be needed in the near future to meet the growing potable water demand in Ontario Ranch. Although the level of perchlorate does not currently exceed the State MCL, treatment of

Well No. 50 water prior to putting the water into the distribution system would help ensure this water supply as a long-term source. A Preliminary Design Report (PDR) was completed in October 2020 by GHD Inc. and recommended a treatment process that consists of an ion exchange treatment facility for Well No. 50, including an on-site sodium hypochlorite generation system, mechanical piping, electrical, and instrumentation.

A location map is provided for reference (Exhibit A).

On June 7, 2022, the City entered into a Professional Services Agreement with GHD Inc. to provide design services recommended in the PDR. The scope of the design services for the Well No. 50 Treatment Facility included new treatment equipment, reconfiguring existing electrical instrumentation and control systems, site work and piping, water treatment operations plan, water transmission main improvements, final design, and a complete bid package set of plans and specifications for construction and bid support services.

During the course of design, GHD Inc., determined that the existing controls and communication equipment should be updated to reflect the current standards utilized at other newer water production facilities. Additionally, to maintain consistency with the recently completed Well 37 and 39 Treatment Facility Project, the site layout also needs to be modified in order to conform to the configuration of the new equipment. Proposed Amendment No. 1 will add the additional scope of work that was not included in the original Agreement but deemed necessary to reflect current industry standards and availability of new equipment.

GHD Inc. is recommended to provide these services based on their knowledge of the project scope and ensure consistency in the project design.

ENVIRONMENTAL REVIEW: The project has been reviewed pursuant to the California Environmental Quality Act (CEQA) and has been determined to be categorically exempt from CEQA pursuant to Title 14 CCR Section 15301, which states that operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of Class 1 “Existing Facilities” are exempt from the requirements of CEQA. Thus, no further CEQA analysis is required.

ONTARIO MUNICIPAL UTILITIES COMPANY

EXHIBIT A
OMUC Contract No. UT1019
CITY OF ONTARIO
WELL No. 50 TREATMENT FACILITY



Location Map

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 GHD, INC.

1. Parties and Date.

This Amendment No. **1** to the Agreement (as defined herein) is made and entered as of _____, by and between the City of Ontario ("City") and **GHD, INC.**, a California 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 **June 7th, 2022** ("Agreement").

2.2 Amendment Purpose. The City and **Consultant** desire to amend this Agreement to increase the compensation by **Eighty-Two Thousand, Nine Hundred and Eight Dollars ($82,908)** for a total-not-to-exceed compensation of **Four Hundred Eighty-Two Thousand, Two Hundred and Eighteen Dollars ($482,218)** and include additional project specific proposal to the Exhibit A through Exhibit B. This increase in compensation is for the additional scope of work listed in the attached Consultants' Proposal titled "**Professional Services for the City of Ontario Project No. UT1019, Well No. 50 Treatment Facility Additional Work Budget Amendment Electrical/Controls and Mechanical Design Change of Scope**" and dated **January 11, 2024**.

2.3 Amendment Authority. This Amendment No. **1** is authorized pursuant to Section **3.2.4** of the Agreement.

3. Terms.

3.1 Amendment. Section **3.2.1, Exhibit A through Exhibit B** 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 "A"** and **Exhibit "B"** attached hereto and incorporated herein by reference. The total compensation shall not exceed **Four Hundred Eighty-Two Thousand, Two Hundred and Eighteen Dollars ($482,218)** 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.

Exhibit "A" - SCOPE OF SERVICES is hereby amended to add Attachment A which is hereto and incorporated herein by reference. All other previously added or deleted scope of services are retained in their entirety.

Exhibit "B" – SCHEDULE OF SERVICES is hereby deleted in its entirety and replaced with Attachment B attached hereto and incorporated herein by reference.

3.2 Continuing Effect of Agreement. Except as amended by this Amendment No. **1**, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. **1**. From and after the date of this Amendment No. **1**, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. **1**.

3.3 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. **1**.

3.4 Severability. If any portion of this Amendment No. **1** is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5 Integration. This Amendment represents the entirety of the Parties' understanding relating to the subject of this Amendment, including written or verbal communications between the Parties, which shall have no relevance unless expressly incorporated herein. This is an integrated amendment.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR AMENDMENT NO. 1 TO PROVIDE ON-CALL PROFESSIONAL ENGINEERING SERVICES BETWEEN THE CITY OF ONTARIO AND GHD, INC.

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 1 as of the day and year first above written.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

GHD, INC.

By:_____

Its:_____

Printed Name:_____

By:_____

Its:_____

Printed Name:_____

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

Attachment A

Exhibit "A" - SCOPE OF SERVICES –

Add scope of services proposal "**Professional Services for the City of Ontario Project No. UT1019, Well No. 50 Treatment Facility Additional Work Budget Amendment Electrical/Controls and Mechanical Design Change of Scope**"

320 Goddard Way, Suite 200
Irvine, CA 92618
United States
www.ghd.com

Your ref: UT1019
Our ref: 12576131

1 March 2024

Mr. Luke Qu, PE
Project Manager
Ontario Municipal Utilities Company (OMUC)
1425 South Bon View Avenue
Ontario, CA 91761

Re: Professional Services for the City of Ontario Project No. UT1019, Well No. 50 Treatment Facility Additional Work Budget Amendment Electrical/Controls and Mechanical Design Change of Scope

Dear Mr. Qu:

Thank you for the opportunity to submit this proposal for consideration to amend our current Engineering Services Contract to support the improvement at Well 50. This proposal includes additional effort to develop design documents and coordination for electrical and communication facility upgrades for the proposed Well No. 50 Treatment Facility. The Scope of Work defined below includes the coordination to prepare a conformed construction document package and each scope task includes effort for quality assurance and quality control.

During the Final Design the City determined that the existing PLC controls and SCADA communication equipment should be updated to current City Standards. Relocation of the cartridge filters and associated piping/valve modifications are also included in the scope of work below:

A pervious budget request for Task 6 was approved by the City and the budget expended from the existing Bid Support Services contract task. To re-establish the budget for bid support the effort for the previous amendment are included herein.

Task	Description
1. PLC Upgrades	PLC layout to be revised for 12 sheets of the drawing. I/O to be revised, including slot number, terminal number reference, and any reference to other drawings. Include sheets as appendix to specs.
2. Electrical Demolition	Site visit to collect the information of installation, study as-built, provide demo drawings, revise the drawing/add new drawing
3. SCADA Upgrade	Incorporating latest 2023 OMUC SCADA upgrade requirement with mark up from Chris Bonadurer include Obiquity antenna and ethernet switch and equipment, Note: installation of separate pole /tower for Antenna is pending OMUC direction on location.
4. Relocation of cartridge filters	Modify mechanical plans to relocate vertical filters and piping to west side of building. Revise influent and effluent piping to above grade along pipe supports without conflicting with existing curb/gutter or retaining wall. Remove filter effluent control valve and revise influent control valves features.
5. Rockwell Engineering Suggested Revisions	Modify drawings and technical specifications to incorporate the recommendation/suggestions by reviewers.
6. Access Gate Improvements	Modify drawings and technical specifications to incorporate a 30-foot driveway and 25-foot entrance gate

GHD proposes additional budget of **$82,908** to complete the Scope of Work. GHD effort will be billed on a Time and Materials basis in accordance with our current contract and the attached manhour breakdown and fee schedule.

GHD appreciates the opportunity to be of service to OMUC in this important project. We look forward to your positive response to this proposal and welcome any questions or comments you may have.

Thank you for your consideration, and please feel free to reach out at any time with questions, comments, or to discuss.

Regards,

Chris Bartleman, PE
Senior Project Manager
D 1 949 648 5269 **E** Chris.Bartleman@ghd.com

Abhay Hanamsagar, PMP
Business Group Leader
D 1 949 585 5215 **E A** Abhay.Hanamsagar@ghd.com

OMUC - Well 50 Treatment Facility UT1019 - Additional Work Request

	Description	Project Manager Chris Bartleman $243	Technical Adviser and QA/QC Rick Guggiana $263	Staff Engineer Staff $144	Electrical and I&C Lead Mehar Manik $225	Administration Staff $125	Total Hours	Labor Total	Mileage	N2W Process / Mechanical	Subs Markup	Total Subs	Disb. Fee	Total Disb.	Estimated Project Total
Task1	***PLC Upgrades***	***3***	***4***	***40***	***14***	***8***	***69***	***$11,691***	***$0***	***$0***	***$0***	***$0***	***$449***	***$449***	***$12,140***
Subtask 1.1	Design Plans (To be included in Specification)	1	2	24	8	2	37	$6,275	$0	$0	$0	$0	$241	$241	$6,516
Subtask 1.2	I/O List	0	1	8	2	2	13	$2,115	$0	$0	$0	$0	$85	$85	$2,200
Subtask 1.3	Specifications	2	1	8	4	4	19	$3,301	$0	$0	$0	$0	$124	$124	$3,425
Task2	***Electrical Demolition***	***4***	***1***	***12***	***8***	***0***	***25***	***$4,763***	***$0***	***$0***	***$0***	***$0***	***$163***	***$163***	***$4,926***
Subtask 2.1	Design Plans	4	1	12	8	0	25	$4,763	$0	$0	$0	$0	$163	$163	$4,926
Task3	***SCADA Upgrades***	***2***	***2***	***40***	***16***	***0***	***60***	***$10,372***	***$0***	***$0***	***$0***	***$0***	***$390***	***$390***	***$10,762***
Subtask 3.1	Design Plans	2	2	40	16	0	60	$10,372	$0	$0	$0	$0	$390	$390	$10,762
Task4	***Relocation of Cartridge Filters***	***16***	***1***	***40***	***18***	***0***	***75***	***$13,961***	***$0***	***$15,000***	***$2,250***	***$17,250***	***$488***	***$488***	***$31,699***
Subtask 4.1	Design Plans	16	1	40	18	0	75	$13,961	$0	$15,000	$2,250	$17,250	$488	$488	$31,699
Task5	***Rockwell Engineering Suggested Revisions***	***0***	***2***	***16***	***8***	***6***	***32***	***$5,380***	***$0***	***$0***	***$0***	***$0***	***$208***	***$208***	***$5,588***
Subtask 5.1	Plans, notes, and details	0	1	8	4	2	15	$2,565	$0	$0	$0	$0	$98	$98	$2,663
Subtask 5.2	Technical Specificaitons	0	1	8	4	4	17	$2,815	$0	$0	$0	$0	$111	$111	$2,926
Task6	***Access Gate***	***16***	***4***	***30***	***29***	***0***	***79***	***$15,785***	***$1,301***	***$0***	***$195***	***$1,496***	***$514***	***$514***	***$17,795***
Subtask 6.1	Acess gate plans, specs, cost estimate and coordination	16	4	30	29	0	79	$15,785	$1,301	$0	$195	$1,496	$514	$514	$17,795
	Total Labor Hours	*41*	*14*	*178*	*93*	*14*									
	Estimated Project Total	$9,963	$3,682	$25,632	$20,925	$1,750	340	$61,952	$1,301	$15,000	$2,445	$18,746	$2,210	$2,210	$82,908

Attachment B

Exhibit "B" – Schedule of Services

The services shall be completed within the durations specified below, which 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	Professional Services Agreement for Well No. 50 Treatment Facility (UT 1019)	3 years ending 06/06/2025	$399,310.00	00118
1.0	1.0	Professional Services for the City of Ontario Project No. UT1019, Well No. 50 Treatment Facility Additional Work Budget Amendment Electrical/Controls and Mechanical Design Change of Scope	3 years ending 06/06/2025	$82,908.00	Pending
				$482,218.00	

CITY OF ONTARIO *Agenda Report* **April 2, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Financial Services Prepared By: Cruz Torres Staff Member Presenting: Armen Harkalyan, Executive Director of Finance Reviewed By: Claudia Hernandez Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 11

SUBJECT: **A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT WITH DPIF3 CA 36 ONTARIO RANCH, LLC REGARDING COMMUNITY FACILITIES DISTRICT FORMATION FOR ASSESSOR PARCEL NUMBER (LD PARCEL 1) 0218-211-31 AND FEE IN-LIEU**

RECOMMENDATION: That the City Council consider and:

A. Adopt a Resolution Approving an Agreement regarding Community Facilities District Formation for Assessor Parcel Number (LD Parcel 1) 0218-211-31 and Fee In-Lieu (the "Agreement") between the City of Ontario and DPIF3 CA 36 Ontario Ranch, LLC (the "Developer"); and
B. Authorize the City Manager or his designee to finalize, execute, and record said Agreement.

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

FISCAL IMPACT: The Agreement will allow the City to collect $264,300 from the Developer in-lieu of the levy of the CFD special taxes for Fiscal Year 2023-24 since the formation of a community facilities district was not formed by the deadline to place the levy on the annual tax roll for Fiscal Year 2023-24. The special tax revenues will be included in the Fiscal Year 2023-24 next quarterly budget update to pay for administrative fees and municipal services. The net fiscal impact to the General Fund is revenue of approximately $244,000 to pay for City-provided services.

BACKGROUND & ANALYSIS: On June 1, 2021, the City and Rich Haven Marketplace, LLC, entered into that certain Development Agreement (File No. PDA20-002) (the "Development Agreement"). Pursuant to Section 5.1 of the Development Agreement, the Developer must form a community facilities district (the "CFD") which consists of the Property, pursuant to the Mello-Roos Community Facilities Act of 1982 (commencing with Government Code Section 53311) prior to recordation of

any parcel map and issuance of building permits. The Developer has requested to initiate the formation of the CFD for that purpose; however, such formation was not completed in time to place the levy of special taxes for the Property on the County tax rolls for Fiscal Year 2023-24.

The City and Developer desire to enter into this Agreement, which requires that the Developer pay the City an amount equal to what otherwise would have been the special tax levy amount on permitted parcels in the CFD for the Fiscal Year 2023-24 levy period, since the CFD was not formed by August 1, 2023. A CFD formation schedule has been created to establish the CFD to place future special tax levies on the County's property tax bill.

The attached Resolution approves the Agreement and authorizes its execution and recordation by the City Manager or his designee.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT REGARDING COMMUNITY FACILITIES DISTRICT FORMATION FOR ASSESSOR PARCEL NUMBERS (LD PARCEL 1) 0218-211-31 AND (LD PARCEL 2) 0218-211-30 AND FEE IN-LIEU BETWEEN THE CITY OF ONTARIO AND DPIF3 CA ONTARIO RANCH, LLC.

WHEREAS, on June 1, 2021, the City of Ontario (the "City") and Rich Haven Marketplace, LLC, entered into that certain Development Agreement (File No. PDA20-002) (the "Development Agreement") relating to the development of Assessor Parcel Numbers (LD Parcel 1) 0218-211-31 and (LD Parcel 2) 0218-211-30 (the "Property"); and

WHEREAS, pursuant to Section 5.1 of the Development Agreement, the Developer has agreed to form a community facilities district which shall be comprised of the Property, pursuant to the Mello-Roos Community Facilities Act of 1982 (commencing with Government Code Section 53311) prior to recordation of any parcel map and issuance of building permits related to the Property; and

WHEREAS, the Developer has applied to the City for the formation of a Mello-Roos community facilities district (the "CFD") which will include the Property, for the purpose of financing ongoing operations and maintenance services; and

WHEREAS, the Developer wishes to form the CFD but was unable to do so by the August 10, 2023 County of San Bernardino deadline to place the levy of the CFD special taxes on the tax assessment rolls for fiscal year 2023-24; and

WHEREAS, because the CFD has not yet been formed, the City and the Developer now desire to enter into an Agreement for the payment by Developer of an amount in-lieu of the levy of the CFD special taxes for fiscal year 2023-24 and, should the CFD not be formed by August 1, 2024, an amount in-lieu of the levy of the CFD special taxes for fiscal year 2024-25, the form of which is attached hereto as Exhibit "A" (the "Agreement").

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

SECTION 1. Recitals. The above recitals are true and correct and the City Council of the City (the "City Council") so finds and determines.

SECTION 2. Approval of Agreement. The Agreement is hereby approved by the City Council in substantially the form presented at this meeting, and attached hereto as Exhibit A, with such insertions, omissions and changes as shall be approved by the City Manager, Assistant City Manager, or either of their designees (the "Authorized Officers"), the execution of the Agreement being conclusive evidence of such approval. The execution, delivery and recording of the Agreement is hereby confirmed and ratified.

The Authorized Officers are hereby directed and authorized to execute and to cause the Agreement to be recorded in the official records of the County of San Bernardino, and to take all other necessary actions to effectuate the transaction contemplated by this Resolution.

SECTION 3. 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 2nd day of April 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 April 2, 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 April 2, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A
AGREEMENT
[attached]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Ontario
303 East "B" Street
Ontario, CA 91764
Attn: City Clerk

EXEMPT FROM RECORDING FEE PER GOV. CODE § 27383

(Space Above For Recorder's Use)

AGREEMENT REGARDING COMMUNITY FACILITIES DISTRICT FORMATION FOR ASSESSOR PARCEL NUMBERS (LD PARCEL 1) 0218-211-31 AND FEE IN-LIEU BETWEEN THE CITY OF ONTARIO AND DPIF3 CA 36 ONTARIO RANCH, LLC

1. PARTIES AND DATE.

This Agreement Regarding Community Facilities District Formation for Assessor Parcel Numbers (LD Parcel 1) 0218-211-31 and Fee In-Lieu (the "Agreement") is entered into as of this 8th day of March, 2024 (the "Effective Date"), by and between the **City of Ontario**, a California municipal corporation (hereinafter referred to as "City") and **DPIF3 CA 36 Ontario Ranch, LLC** a Delaware limited liability company or its affiliates (hereinafter referred to as "Developer").

2. RECITALS.

2.1 On June 1, 2021, the City and Rich Haven Marketplace, LLC entered into that certain Development Agreement (File No. PDA20-002) (the "Development Agreement") relating to the development of Assessor Parcel Numbers (LD Parcel 1) 0218-211-31 and (LD Parcel 2) 0218-211-30.

2.2 Pursuant to Section 5.1 of the Development Agreement, the Developer must form a community facilities district, which shall be comprised of the property described in Exhibit "A," attached hereto and incorporated herein (the "Property"), pursuant to the Mello-Roos Community Facilities Act of 1982 (commencing with Government Code Section 53311) prior to recordation of any parcel map and issuance of building permits related to the Property.

2.3 The Developer has applied to the City for the formation of a Mello-Roos community facilities district (the "CFD") which will include the Property, for the purpose of financing ongoing operations and maintenance services.

2.4 The Developer wishes to form the CFD but was unable to do so by the August 10, 2023 County of San Bernardino deadline to place the levy of the CFD special taxes on the annual tax roll for fiscal year 2023-24.

2.5 Because the CFD has not yet been formed, the City and Developer now desire to enter into this Agreement for the payment by Developer of an amount in-lieu of the levy of the CFD special taxes for fiscal year 2023-24 and, should the CFD not be formed by the CFD Formation Deadline (as defined below), an amount in-lieu of the levy of the CFD special taxes for fiscal year 2024-25.

3. AGREEMENT.

3.1 Incorporation of Recitals. The recitals set forth above are incorporated herein as if set forth in their entirety.

3.2 Formation of the CFD. The Developer shall promptly form the CFD. If requested in writing by the City, the Developer shall provide to City written evidence, by no later than the 5th day of every other month beginning in the second month after the Effective Date, of such reasonable efforts demonstrating progress towards forming the CFD. The City shall not issue and Developer shall not be granted a final Certificate of Occupancy for any building or portion thereof constructed by Developer on the Property unless and until Developer forms the CFD to include the Property. The City, may, in its sole and absolute discretion, issue a temporary Certificate of Occupancy if requested in writing by Developer prior to the formation of the CFD.

3.3 CFD Formation Deadline; Fee In-Lieu. Developer shall endeavor to form the CFD by no later than August 1, 2024 (the "CFD Formation Deadline"). If the CFD is not formed by the CFD Formation Deadline, the Developer shall pay to the City, by no later than September 1, 2024, what otherwise would have been the CFD special tax amount levied on the Property for the fiscal year 2024-25 levy period (the "CFD Fee In-Lieu"). The City shall calculate the CFD Fee In-Lieu and deliver the figure (and method of calculation) to Developer by no later than fourteen (14) days after the CFD Formation Deadline. Developer shall pay the CFD Fee In-Lieu in immediately available funds, either by check or by wire transfer.

Because the CFD was not formed in time to levy the CFD special taxes on the Property for fiscal year 2023-24, Developer shall pay to the City, by no later than the date of execution of this Agreement, what otherwise would have been the CFD special tax amount levied on the property for the fiscal year 2023-24 levy period (the "Catch-Up Fee"), which has been calculated to be the amount of $264,300.37. Developer shall pay the Catch-Up Fee in immediately available funds, either by check or by wire transfer.

3.4 Release and Indemnification. Developer hereby releases and shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless from any and all liability, including without limitation the payment of attorneys' fees, from loss, damage, costs, or injury to property or persons, including wrongful death, in any manner arising out of or incident to formation of the CFD, development of the Property, and with Developer's performance of this Agreement. Further, Developer shall defend at its own expense, including

attorneys' fees, City, its officials, officers, employees, and agents in any legal action based upon this Section.

3.5 Headings. Section headings contained in this Agreement are for convenience only and shall not have an effect in the construction or interpretation of any provision.

3.6 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:	City of Ontario Attn: City Manager 303 East "B" Street Ontario, CA 91764
With a copy to:	Ruben Duran, Esq. City Attorney Best Best & Krieger LLP 2855 E. Guasti Road, Suite 400 Ontario, CA 91761 Ruben.duran@bbklaw.com
DEVELOPER:	DPIF3 CA 36 Ontario Ranch, LLC Attn: Doug Lanning c/o Dermody Properties 5500 Equity Avenue Reno, NV 89502
With a copy to:	Debra A. Riley, Esq. Allen Matkins Leck Gamble Mallory & Natsis LLP One American Plaza 600 West Broadway, 27th Floor San Diego, CA 92101-0903

3.7 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.

3.8 Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties.

3.9 Waiver. A party's failure to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein, or the party's silence with respect to any breach by the other party hereunder, shall not relieve the breaching party of any of its obligations hereunder, whether of the same or similar type. The foregoing shall be true whether the non-breaching party's actions are intentional or unintentional. No waiver shall be effective unless in writing and signed by the party against whom waiver is asserted.

3.10 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.

3.11 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

3.12 Severability. Should any provision of this Agreement be found to be invalid or unenforceable, by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

3.13 Time. Time is of the essence in this Agreement.

3.14 Counterparts. This Agreement may be signed in several counterparts, each of which shall constitute an original and all of which shall constitute but one of the same instrument.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their duly-authorized representatives as of the Effective Date.

CITY

CITY OF ONTARIO

By:_____
Scott Ochoa, City Manager

DEVELOPER

DPIF3 CA 36 ONTARIO RANCH, LLC, a Delaware limited liability company

By:_____

Name: Matt Mexia
Title: Partner, Southern California,
Authorized Signatory

Attest

_____

By:_____
Sheila Mautz, City Clerk

Approved as to Form:

By:_____
Best Best & Krieger, City Attorney

NOTE: DEVELOPER'S SIGNATURE 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.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

State of CALIFORNIA

County of SAN BERNARDINO

On March 19, 2024 (Date) before me, Julie Astuto **NOTARY PUBLIC,**

Personally appeared Matt Mexia

(Name(s) of Signer(s))

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 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.

JULIE ASTUTO
Notary Public - California
San Bernardino County
Commission # 2463504
My Comm. Expires Oct 15, 2027

(Place Notary Seal Here)

Signature of Notary Public

EXHIBIT A

Real property in the City of Ontario, County of San Bernardino, State of California, described as follows:

PARCEL 1:

PARCEL A OF LOT LINE ADJUSTMENT NO. LLA 20-011 RECORDED JANUARY 28, 2021 AS INSTRUMENT NO. 2021-0041653 OF OFFICIAL RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING A PORTION OF THE NORTH ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SECTION 13, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH ONE-QUARTER CORNER OF SAID SECTION 13, TOWNSHIP 2 SOUTH, RANGE 7 WEST PER RECORD OF SURVEY 06-174 RECORDED IN RECORD OF SURVEYS BOOK 139, PAGES 66-70 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

THENCE SOUTH 00°17'30" EAST ALONG THE WEST LINE OF SAID NORTHEAST ONE-QUARTER OF SECTION 13 A DISTANCE OF 904.13 FEET;

THENCE LEAVING SAID WEST LINE SOUTH 89°48'37" EAST 961.31 FEET;

THENCE NORTH 89°30'40" EAST 1652.97 FEET TO A POINT IN THE WEST LINE OF HAMNER AVENUE, 30.00 FEET DISTANT WESTERLY OF CENTERLINE AS SHOWN ON SAID RECORD OF SURVEY 06-174;

THENCE NORTH 00°19'11" WEST ALONG SAID WEST LINE OF HAMNER AVENUE 890.55 FEET TO A POINT IN THE NORTH LINE OF SAID NORTHEAST ONE-QUARTER OF SECTION 13;

THENCE NORTH 89°56'30" WEST ALONG SAID NORTH LINE 2613.86 FEET TO THE POINT OF BEGINNING.

Assessor Parcel Number: (LD PARCEL 1) 0218-211-31

ACKNOWLEDGMENT

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

State of California)
County of _____)

On _____, before me, _____,
(insert name of notary)
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* **April 2, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Planning Prepared By: Diane Ayala Staff Member Presenting: Scott Murphy, Executive Director Community Development Reviewed By: Kimberly Ruddins, Henry Noh Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 12

SUBJECT: **AN ORDINANCE APPROVING FILE NO. PUD23-002, A PLANNED UNIT DEVELOPMENT FOR A 1.22-ACRE PARCEL OF LAND LOCATED AT 218 EAST D STREET; SUBMITTED BY EUCLID INVESTMENT GROUP, LLC.**

RECOMMENDATION: That the City Council consider and adopt an Ordinance Approving File No. PUD23-002, the Downtown Ontario Luxury Apartments (Phase II) Planned Unit Development, establishing development standards and design guidelines to facilitate a multiple-family residential development at 218 East D Street.

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

FISCAL IMPACT: There is not a direct fiscal impact associated with this action. Implementation of the Planned Unit Development would result in an increase in property taxes from future development and the one-time payment to the City for plan check fees and development impacts fees.

BACKGROUND & ANALYSIS: On March 19, 2024, the City Council introduced and waived further reading of an Ordinance Approving the Planned Unit Development. On July 14, 2023, Euclid Investment Group, LLC., filed a Planned Unit Development ("PUD") application, File No. PUD23-002, in conjunction with a Development Plan, File No. PDEV23-017, to facilitate the construction and operation of 69 multiple-family residential units.

The Project site is comprised of 1.22 acres of land located on the south side of D Street, west of Plum Avenue, and east of Lemon Avenue at 218 East D Street. The site is within the MU-1 (Downtown Mixed Use) zoning district and is presently improved with a paved public parking lot. The property south across the public alley is within the Civic (Civ) zoning district and is developed with the Ovitt Family Community Library. The property to the north is within the OL (Office Light) and MDR-18 (Medium Density Residential) zoning districts and is developed with a mixture of commercial and residential land uses. The property to the east is within the MU-1 (Mixed Use

Downtown) zoning district and is developed with the University of La Verne. The properties to the west are within the MU-1 (Mixed Use Downtown) zoning district and are developed with a public parking structure and the Downtown Ontario Luxury Apartments (Phase I), which is currently under construction.

The Policy Plan (General Plan) of The Ontario Plan (TOP) specifies that the development of the Downtown Mixed-Use area is to be implemented through the approval of an Area Plan or PUD prior to the development of the properties. In compliance with this requirement, the Applicant has submitted the Downtown Ontario Luxury Apartments PUD (included as Attachment A to the Ordinance), which is consistent with the vision, goals, and policies of the Policy Plan. A PUD is comparable to a Specific Plan in that it establishes development regulations that are unique to a specific area. However, unlike a Specific Plan, a Planned Unit Development is typically intended to apply to a single development project or several interrelated development projects that function together as a single, comprehensive project.

PLANNED UNIT DEVELOPMENT: Key components of the PUD include the following:

Land Use and Development Regulations — The MU-1 (Downtown Mixed Use) zoning district allows for residential development at a density of 25.1 to 75 dwelling units per acre. Consistent with the MU-1 zoning district and TOP Downtown District Place Type, the PUD allows for residential development of 30 to 91 dwelling units, with a maximum building height of 40 feet (3 stories) and up to 55 feet for architectural projections.

Landscaping — The landscaping concept is centered around the use of sustainable and low water use plant materials. As an example, varying species of evergreen and deciduous trees with interest in form and foliage color may be integrated into the landscape design. Pattern and planting should accentuate the common open space areas and create a visible connection to pedestrian pathways and sidewalks. The PUD also requires the landscaping and irrigation be drought tolerant and meet the current Water Use Classifications of Landscape Species requirements.

Parking and Circulation — In order to achieve the preferred density, the PUD encourages podium style residential development above ground floor structured parking for residents and guests.

Access to Mass Transit — An existing bus stop is located on the northeast corner of Euclid Avenue and D Street for Omnitrans Route 83. Additionally, located near Euclid Avenue on Holt Boulevard is Omnitrans Route 61 which has been identified as the future West Valley Connector Bus Rapid Transit (BRT), which is starting construction. A stop is planned for Holt Boulevard between Lemon and Plum Avenues.

Architectural Character — The PUD includes architectural design guidelines specific to the downtown location and residential building type and establishes the following design principles:

- Create an architectural character that reflects the various styles within the historic downtown by using similar proportions, building details and building material;

- New buildings should appear to fit in contextually with existing historic buildings by using similar

proportions, articulation, building details and building material;

- The overall character should feel like a modern interpretation of a traditional American small town; and

- Create compatibility between the mixed-use architecture and the residential architecture within the downtown area; the introduction of unifying elements such as similar materials and colors should be considered; however, "sameness" is discouraged. As this is Phase 2 of the Downtown Ontario Luxury Apartments PUD, the architecture will utilize many of the similar/compatible elements and colors to those planned for Phase 1.

HOUSING ELEMENT COMPLIANCE: The Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan as the Project site is not one of the properties in the Housing Element Sites contained in Tables B-1 and B-2 (Housing Element Sites Inventory) of the Housing Element Technical Report.

AIRPORT LAND USE COMPATIBILITY PLAN (ALUCP) COMPLIANCE: The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council approved and adopted the ONT ALUCP, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the decision-making body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the ONT ALUCP compatibility factors, including [1] Safety Criteria (ONT ALUCP Table 2-2) and Safety Zones (ONT ALUCP Map 2-2), [2] Noise Criteria (ONT ALUCP Table 2-3) and Noise Impact Zones (ONT ALUCP Map 2-3), [3] Airspace protection Zones (ONT ALUCP Map 2-4), and [4] Overflight Notification Zones (ONT ALUCP Map 2-5). As a result, the City Council, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ONT ALUCP.

ENVIRONMENTAL REVIEW: The Project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15332 (Class 32, In-fill Development Projects) of the CEQA Guidelines, and meets all the following conditions:

- The proposed Project is consistent with the applicable General Plan designation and all applicable General Plan policies as well as with applicable zoning designation and regulations. The proposed Project is located within the Downtown Mixed Use land use designation of the Policy Plan (General Plan) Land Use Map, and the MU-1 (Downtown Mixed Use) zoning district. The proposed Project is consistent with all applicable Policy Plan policies, as well as with the requirements of the MU-1 (Downtown Mixed Use) zoning district and the related proposed Downtown Ontario Luxury Apartments, Phase II Planned Unit Development, which, at the Project location, intends to accommodate housing units at a density of 25 to 75 du/ac.

- The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses. The Project is proposed within the established boundaries of the City of Ontario, on a project site totaling 1.22-acres of land, which is surrounded by established development on all sides and consists of a mix of multiple-family, civic, retail, and commercial land uses.

- The Project site has no value as habitat for endangered, rare, or threatened species. The site is located in an urbanized area, is devoid of any flora or fauna, is regularly used for passenger vehicle parking by library/City Hall patrons, retail customers, and neighboring residents, and, as such, is not suitable habitat for any endangered, rare, or threatened species.

- Approval of the Project would not result in any significant effects relating to traffic, noise, air quality, or water quality. The residential development is similar to, and of no greater impact than other allowed uses and development projects within the MU-1 (Downtown Mixed Use) zoning district. The Project would not result in any significant impacts through implementation of required state, regional, and local development and performance standards, and as demonstrated in the GHG and Traffic analysis, noise and parking studies, Arborist Report, and the Preliminary Water Quality Management Plan ("PWQMP") prepared for the Project.

- The site is adequately served by all required utilities and public services. All necessary wet and dry utilities are within the public street and are readily available for connection; and

- The application of the categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2.

PLANNING COMMISSION REVIEW: On February 27, 2024, the Planning Commission conducted a public hearing to consider the Project and concluded the hearing on that date. After considering all public testimony on the application, the Planning Commission voted 6-0 to approve Resolution PC24-007, recommending that the City Council approve the PUD. At the same meeting, the Planning Commission approved the related Development Plan, contingent upon City Council approval of the PUD.

ORDINANCE NO._____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PUD23-002, A PLANNED UNIT DEVELOPMENT TO ESTABLISH DEVELOPMENT STANDARDS AND DESIGN GUIDELINES FOR THE PROJECT SITE, LOCATED AT 218 EAST D STREET WITHIN THE MU-1 (MIXED USE DOWNTOWN) ZONING DISRICT AND MAKING FINDINGS IN SUPPORT THEREOF — APNS: 1048-556-01, 1048-556-02, 1048-556-03, 1048-556-04, 1048-556-05, AND 1048-556-14.

WHEREAS, Euclid Investment Group, LLC. ("Applicant") has filed an Application for the approval of a Planned Unit Development, File No. PUD23-002, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 1.22 acres of land located on the south side of D street, west of Plum Avenue, and east of Lemon Avenue at 218 East D Street, within the MU-1 (Downtown Mixed Use) zoning district, and is presently improved with a paved public parking lot; and

WHEREAS, the property south across the public alley is within the Civic zoning district and is developed with the Ovitt Family Community Library. The property to the north is within the OL (Office Light) and MDR-18 (Medium Density Residential) and is developed with a mixture of commercial and residential land uses. The property to the east is within the MU-1 (Mixed Use Downtown) and developed with the University of La Verne. The properties to the west are within the MU-1 (Mixed Use Downtown) zoning district and are developed with C Street public parking structure and the Downtown Ontario Luxury Apartments (Phase I) which is currently under construction; and

WHEREAS, an existing bus stop is located on the northeast corner of Euclid Avenue and D Street for Omnitrans Route 83. Additionally, located near Euclid Avenue on Holt Boulevard is Omnitrans Route 61 which has been identified as the future West Valley Connector Bus Rapid Transit (BRT); and

WHEREAS, the MU-1 (Mixed Use Downtown) zoning district allows for residential development at a density of 25.1 to 75 dwelling units per acre. Consistent with the MU-1 zoning district and TOP Downtown District Place Type, the Downtown Ontario Luxury Apartments (Phase II) PUD allows for residential development of 19 to 59 dwelling units, with a maximum building height of 40 feet (3 stories) and up to 55 feet for architectural projections; and

WHEREAS, the PUD requires a minimum of 1 resident parking space per bedroom and 0.20 guest parking per dwelling unit; and

WHEREAS, the PUD includes architectural design guidelines, specific to the downtown location, and establishes the following design principles:

(a) Create an architectural character that reflects the various styles within the historic downtown by using similar proportions, building details and building material.

(b) New buildings should appear to fit in contextually with existing historic buildings by using similar proportions, articulation, building details and building material.

(c) The overall character should feel like a modern interpretation of a traditional American small town.

(d) Create compatibility between the existing mixed use and commercial architecture and the new residential architecture within the downtown area; the introduction of unifying elements such as similar materials and colors should be considered; however, “sameness” is discouraged; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"); and

WHEREAS, the Project is exempt from CEQA pursuant to a categorical exemption (listed in CEQA Guidelines Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport ("ONT"), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (ALUCP), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on February 27, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the initial study, Addendum, and the Project, and concluded said hearing on that date, voting to issue Resolution No. PC24-007 recommending the City Council approve the Application; and

WHEREAS, on March 19, 2024, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) The Project is categorically exempt from environmental review pursuant to Section 15332 (Class 32, In-fill Development Projects) of the CEQA Guidelines, and meets all the following conditions:

(a) *The proposed Project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.* The proposed Project is located within the Downtown Mixed Use land use designation of the Policy Plan (general plan) Land Use Map, and the MU-1 (Downtown Mixed Use) zoning district. The proposed Project is consistent with all applicable Policy Plan policies, as well as with the requirements of the MU-1 (Downtown Mixed Use) zoning district and the related proposed Downtown Ontario Luxury Apartments, Phase II Planned Unit Development, which, at the Project location, intends to accommodate housing units at a density of 25 to 75 du/ac.

(b) *The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.* The Project is proposed within the established boundaries of the City of Ontario, on a project site totaling 1.22-acres of land, which is surrounded by established development on all sides and consists of a mix of multiple-family, civic, retail, and commercial land uses.

(c) *The Project site has no value as habitat for endangered, rare, or threatened species.* The site is located in an urbanized area, is devoid of any flora or fauna, is regularly used for passenger vehicle parking by neighboring residents, and as such not suitable habitat for any endangered, rare, or threatened species.

(d) *Approval of the Project would not result in any significant effects relating to traffic, noise, air quality, or water quality.* The residential development is similar to, and of no greater impact than other

allowed uses and development projects within the MU-1 (Downtown Mixed Use) zoning district. The Project would not result in any significant impacts through implementation of required state, regional, and local development and performance standards, and as demonstrated in the GHG and Traffic analysis, noise and parking studies, Arborist Report, and the Preliminary Water Quality Management Plan ("PWQMP") prepared for the Project.

(e) *The site is adequately served by all required utilities and public services.* All necessary wet and dry utilities are within the public street and are readily available for connection; and

(3) The application of the categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

(4) The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2: ***Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan.

(1) On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the decision-making body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the ONT ALUCP compatibility factors, including [1] Safety Criteria (ONT ALUCP Table 2-2) and Safety Zones (ONT ALUCP Map 2-2), [2] Noise Criteria (ONT ALUCP Table 2-3) and Noise Impact Zones (ONT ALUCP Map 2-3), [3] Airspace protection Zones (ONT ALUCP Map 2-4), and [4] Overflight Notification Zones (ONT ALUCP Map 2-5). As a result, the City Council, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ONT ALUCP; and

SECTION 3: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the City Council during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 2, above, the City Council hereby concludes as follows:

(1) ***The proposed PUD, or amendment thereto, is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan.*** The Project is consistent with Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan. Described within the PUD are The Ontario Plan objectives in which the Project complies with the Policy Plan goals and policies.

(2) ***The proposed PUD, or amendment thereto, would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.*** The PUD has been established to ensure that: [i] the purposes of the Planned Unit Development are maintained; [ii] the project will not endanger the public health, safety or general welfare; [iii] the project will not result in any significant environmental impacts; [iv] the project will be in harmony with the area in which it is located; and [v] the project will be in full conformity with the Vision, City Council Priorities and Policy Plan components of The Ontario Plan.

(3) ***In the case of an application affecting specific property(ies), the proposed PUD, or amendment thereto, will not adversely affect the harmonious relationship with adjacent properties and land uses.*** The Downtown Ontario Luxury Apartments (Phase II) PUD area is situated in the heart of Ontario's downtown and is adjacent to residential, commercial, educational, and civic land uses and development. The surrounding development supports the objective of the PUD for residential development. The Project does not affect the harmonious relationship with adjacent properties and land use.

(4) ***In the case of an application affecting specific property(ies), the subject site is physically suitable, including, but not limited to, parcel size, shape, access, and availability of utilities, for the request and anticipated development.*** In preparing the proposed Downtown Ontario Luxury Apartments (Phase II) PUD, a thorough review and analysis of the proposed Project and the subject site's physical suitability for the Project was completed, including analysis of the project size, shape, intensity of development, building height, building setbacks, site access, site landscaping and drainage, fences and walls, vehicle circulation, pedestrian connections, availability of mass transit, necessary street dedication and easements, public right-of-way improvements, availability of utilities and other infrastructure needs, off-street parking and circulation, building orientation and streetscapes, architectural character, building materials and color, and site signage. Based upon this review and analysis, the subject site has been deemed physically suitable, including but not limited to parcel size, shape, access, and availability of utilities, for the proposed Planned Unit Development and the proposed development.

(5) ***The proposed PUD is superior to that which could be obtained through the application of the Development Code or a specific plan.*** The Downtown Ontario Luxury Apartments (Phase II) PUD will establish minimum building setbacks, parking and open space requirements, allow on-street parking, and establish a planting palette. These standards will facilitate the residential development of 69 apartment units, parking facilities and private and common open space areas. The proposed Downtown Ontario Luxury Apartments (Phase II) PUD will allow for subsequent development that is superior to that which could be obtained through the application of the Development Code by itself.

SECTION 4: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 3, above, the City Council hereby APPROVES the herein described Planned Unit Development, attached hereto as "Attachment A," and incorporated herein by this reference.

SECTION 5: ***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 6: ***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 7: ***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 8: ***Effective Date.*** This Ordinance shall become effective 30 days following its adoption.

SECTION 9: ***Publication and Posting.*** The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within 15 days following 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 2nd day of April 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. 3272 was duly introduced at a regular meeting of the City Council of the City of Ontario held March 19, 2024 and adopted at the regular meeting held April 2, 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. 3272 duly passed and adopted by the Ontario City Council at their regular meeting held April 2, 2024 and that Summaries of the Ordinance were published on March 26, 2024 and April 9, 2024, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

File No. PUD23-002;
Downtown Ontario Luxury Apartments (Phase II) Planned Unit Development

(Document follows this page)

Downtown Ontario Luxury Apartments (Phase II) Planned Unit Development

File No. PUD23-002
Ordinance No.
February 27, 2024



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1. Introduction

The Downtown Ontario Luxury Apartments, Phase II Planned Unit Development ("PUD") is intended to function as a set of planning and design principles, development regulations, and performance standards to guide and govern the development of a 1.19-acre site that consists of six (6) parcels (APNs: 1048-556-01, -02, -03, -04,-05, -14). The Project site is located south of East D Street, west of Plum Avenue, and east of North Lemon Avenue in the City of Ontario (see *Exhibit 1-1: Project Location*). This property is situated within the City of Ontario's Downtown Civic Center District. The PUD is designed to provide highly functional development standards and design guidelines that work in tandem with The Ontario Plan (TOP) and the Ontario Development Code to facilitate the development of a high-density, multiple-family residential project that is compatible with adjacent land uses and the surrounding community character.

The Project site is located within the Ontario Plan Downtown Mixed-Use District, which requires the establishment of a Planned Unit Development (PUD) prior to development. The PUD fulfills the requirements of a Downtown Mixed-Use District Planned Unit Development (PUD), as set forth in Ontario Development Code Section 4.01.030 (Planned Unit Developments (PUD) and Amendments). Upon approval, the PUD will replace the existing zone district designations and zoning standards that apply to the affected properties. Unless otherwise defined herein, definitions and interpretations contained in the Development Code shall apply to this PUD.

City staff and private developers shall rely upon this PUD to determine whether precise plans for development ("Development Plans") will adequately meet the City's land use and design objectives. These objectives have been curated over the past 20+ years to maintain the historic character of Downtown Ontario while simultaneously promoting sustainable and innovative architectural designs that add to the beauty and functionality of this vital part of the City.



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Exhibit 1-1: Project Location



2. Objectives

2.1 The Ontario Plan Objectives

The Ontario Plan (TOP) Policy Plan (General Plan) designates the Downtown Ontario Luxury Apartments, Phase II Planned Unit Development (PUD) area as Mixed Use – Downtown (MU-Downtown). *Exhibit 2-1: TOP Land Use Plan* identifies the land use designation for the PUD area and surrounding properties. The MU-Downtown land use category accommodates an intensive vertical and horizontal mixture of retail and office uses at a maximum intensity of 2.0 floor-to-area ratio (FAR), and residential uses within a density range of 25.0 to 75.0 dwelling units per acre. Development projects within the MU-Downtown area are intended to maintain a pedestrian friendly atmosphere, while also enhancing the historic character of the area.

In addition to the MU-Downtown designation, the PUD area is also situated within the Civic Center District, which contributes to the unique character of the area. Comprised of notable buildings like City Hall, the Public Library, and the Community Center, the Civic Center District is a defining feature of the community. The Civic Center has significant outdoor spaces that can be linked with Downtown to create an enjoyable pedestrian experience, showcasing a mix of attractive open spaces and streetscapes combined with interesting shopping and dining options. Together, these elements culminate in a unique and pedestrian-friendly downtown atmosphere. A well-integrated Civic Center can serve as a valuable resource in the revitalization of Downtown.

The PUD aligns with the principles, goals, and policies outlined within The Ontario Plan's Vision, Governance, Policy Plan, and City Council Goals components. In particular, the proposed Project advances several goals and policies outlined in TOP, which include:

City Council Goals

- Invest in the Growth and Evolution of the City's Economy
- Maintain the Current High Level of Public Safety
- Focus Resources in Ontario's Commercial and Residential Neighborhoods

Vision

Dynamic Stability

- An appreciation for the "personality and charm" of this community, preserving important characteristics and values even as growth and change occur, all the while retaining a distinctive local feel where people love to be.

Distinctive Development

- Commercial and Residential Development. A demonstrated ability to attract housing in pursuit of our acknowledged responsibility to balance housing with the job growth that drives our quality of life.
- Development Quality. Superior quality and design of the built environment and open spaces through careful attention to detail at every scale, including public and private spaces and structures.

Exhibit 2-1: TOP Land Use Plan



Land Use Designation	Residential Density & Non-Residential Intensity	Intention
Low-Medium Density	5.1 to 11.0 dwelling units per acre	Single/multi-family attached and detached residences, including small lot subdivisions, townhouses, and courtyard homes.
Medium Density	11.1 to 25.0 dwelling units per acre	Single/multi-family attached and detached residences including townhouses, stacked flats, courtyard homes, and small lot single-family subdivisions.
Mixed Use - Downtown	25.0 to 75.0 dwelling units per acre 2.0 FAR for retail and office uses	Envisioned as an intensive vertical and horizontal mixture of retail, office, and residential uses in a pedestrian friendly atmosphere. The historic character is enhanced. The most intensive uses are envisioned along Euclid and Holt Avenues.
Office/Commercial	0.75 FAR	An intense mixture of professional office, supported by regional serving retail, service, tourist-serving, entertainment, dining, and supporting service uses that capitalize on strategic locations in Ontario. This designation also allows for professional offices such as financial, legal, insurance, medical, and other similar uses in a neighborhood setting and/or as adaptive reuse.
Open Space - Parkland	Not applicable	Recreational facilities, such as tot-lots, parks, golf courses, and sports complexes and joint-use facilities with schools, utilities, and drainage facilities.
Public Facility	Not applicable	Public facilities including civic centers, governmental institutions, police and fire stations, transportation facilities, museums, and public libraries.

Governance

Decision Making

- Goal G1 Decision Making: Sustained decision-making that consistently moves Ontario towards its Vision by using The Ontario Plan as a framework for assessing choices.
  - Policy G1-1: Consistency with Policies. We require that staff recommendations to the City Council be consistent with adopted City Council Priorities (Goals and Objectives) and The Policy Plan.
  - Policy G1-2: Consistency with Policies. We require that staff recommendations to the City Council be consistent with adopted City Council Priorities (Goals and Objectives) and The Policy Plan.

Policy Plan (General Plan)

Land Use Element

- Goal LU-1 Balance: A community that has a spectrum of housing types and price ranges that match the jobs in the City and that make it possible for people to live and work in Ontario and maintain a quality of life.
  - Policy LU-1.1: Strategic Growth. We concentrate growth in strategic locations that help create place and identity, maximize available and planned infrastructure, foster the development of transit, and support the expansion of the active and multimodal transportation networks throughout the City.

Housing Element

- Goal H-2 Housing Supply & Diversity: Diversity of types of quality housing that are affordable to a range of household income levels, accommodate changing demographics, and support and reinforce the economic sustainability of Ontario.
  - Policy H-2.5: Housing Design. We require architectural excellence through adherence to City design guidelines, thoughtful site planning, environmentally sustainable practices, and other best practices.
  - Policy H-2.6: Infill Development. We support the revitalization of neighborhoods through the construction of higher-density residential developments on underutilized residential and commercial sites.
- Goal H-3 Governmental Regulations: A City regulatory environment that balances the need for creativity and excellence in residential design, flexibility and predictability in the project approval process, and the provision of an adequate supply and prices of housing.
  - Policy H-3.2: Flexible Standards. We allow flexibility in the application of residential and mixed-use development standards in order to gain benefits such as exceptional design quality, economic advantages, sustainability, or other benefits that would otherwise be unrealized.
  - Policy H-3.3: Development Review. We maintain a residential development review process that provides certainty and transparency for project stakeholders and the public, yet allows for the appropriate review to facilitate quality housing development.

Community Economics Element

- Goal CE-2 Placemaking: A City of distinctive neighborhoods, districts, corridors, and centers where people choose to be.
  - Policy CE-2.1: Development Projects. We require new development and redevelopment to create unique, high-quality places that add value to the community.
  - Policy CE-2.2: Development Review. We require those proposing new development and redevelopment to demonstrate how their projects will create appropriately unique, functional, and sustainable places that will compete well with their competition within the region.
  - Policy CE-2.4: Protection of Investment. We require that new development and redevelopment protect existing investment by providing architecture and urban design of equal or greater quality.
  - Policy CE-2.5: Private Maintenance. We require adequate maintenance, upkeep, and investment in private property because proper maintenance on private property protects property values.

Community Design Element

- Goal CD-1 Image & Identity: A dynamic, progressive city containing distinct and complete places that foster a positive sense of identity and belonging among residents, visitors, and businesses.
  - Policy CD-1.1: City Identity. We take actions that are consistent with the City being a leading urban center in Southern California while recognizing, enhancing, and preserving the character of our existing viable neighborhoods.
  - Policy CD-1.2: Place Types. We establish Place Types in urban, mixed use, and transit-oriented areas to foster the City's identity as a premier community and require new development within each Place Type to incorporate prescribed urban patterns, forms, and placemaking priorities.
  - Policy CD-1.3: Existing Neighborhoods. We require the existing character of viable residential and non-residential neighborhoods be preserved, protected, and enhanced.
- Goal CD-2 Design Quality: A high level of design quality resulting in neighborhoods, commercial areas, public spaces, parks, and streetscapes that are attractive, safe, functional, human- scale, and distinct.
  - Policy CD-2.1: Quality Building Design and Architecture. We encourage all development projects to convey visual interest and character through:
    i. Building volume, massing, and height to provide context-appropriate scale and proportion;
    ii. A true architectural style which is carried out in plan, section, and elevation through all aspects of the building and site design and appropriate for its setting; and
    iii. Exterior building materials that are articulated, high quality, durable, and appropriate for the architectural style.
  - Policy CD-2.2: Neighborhood Design. We create distinct residential neighborhoods that promote a sense of community and identity by emphasizing access, connectivity, livability, and social interaction through such elements as:
    i. A pattern of smaller, walkable blocks that promote activity, safety, and access to nearby amenities and services;
    ii. Varied parcel sizes and lot configurations to accommodate a diversity of housing types;

iii. Traffic calming measures to slow traffic and promote walkability while maintaining acceptable traffic flows and emergency evacuation access;

iv. Floor plans that encourage views onto the street and de-emphasize the visual and physical dominance of garages (introducing the front porch as the "outdoor living room"), as appropriate; and

v. Landscaped parkways, with sidewalks separated from the curb and designed to maximize safety, comfort, and aesthetics for all users.

- Policy CD-2.7: Sustainability. We collaborate with the development community to design and build neighborhoods, streetscapes, sites, outdoor spaces, landscaping, and buildings to reduce energy demand through solar orientation, maximum use of natural daylight, passive solar and natural ventilation, building form, mechanical and structural systems, building materials, and construction techniques.
- Policy CD-2.8: Safe Design. We incorporate defensible space design into new and existing developments to ensure the maximum safe travel and visibility on pathways, corridors, and open space and at building entrances and parking areas by avoiding physically and visually isolated spaces, maintaining visibility and accessibility, and using lighting.
- Policy CD-2.9: Landscape Design. We encourage durable, sustainable, and drought-tolerant landscaping materials and designs that enhance the aesthetics of structures, create and define public and private spaces, and provide shade and environmental benefits.
- Policy CD-2.10: Parking Areas. We require all development, including single-family residential, to minimize the visual impact of surface, structured, and garage parking areas visible from the public realm in an aesthetically pleasing, safe and environmentally sensitive manner. Examples include:

  i. Structured parking: facade articulation, screening, appropriate lighting, and landscaping.

  ii. Garage parking: providing access to single-family residential garages through alley access, recessing garages from the frontage to emphasize front doors or active living spaces.

- Goal CD-3 Urban, Mixed Use, and Transit-Oriented Place Types: Vibrant urban environments that are organized around intense buildings, pedestrian and transit areas, public plazas, and linkages between and within developments that are conveniently located, visually appealing and safe during all hours.
  - Policy CD-3.1: Unique Identity. We promote development that heightens the unique character and identity of each Place Type by requiring compatible land uses and land planning, site design, and building design that promotes an active public realm.
  - Policy CD-3.2: Comfortable, Human-Scale Public Realm. We require that public spaces, including streets, parks, and plazas on both public and private property be designed to maximize safety, comfort and aesthetics and connect to the citywide pedestrian, vehicular, and bicycle networks.
  - Policy CD-3.4: Context-Aware and Appropriate Design. We require appropriate building and site design that complements existing development, respects the intent and identity of the Place Type, and provides appropriate transitions and connections between adjacent uses to ensure compatibility of scale, maintain an appropriate level of privacy for each use, and minimize potential conflicts.

- Policy CD-3.5: Active Frontages. We create lively pedestrian streetscapes by requiring primary building, business, and residential entrances, outdoor dining, and storefronts be located on ground floors adjacent to sidewalks or public spaces and designed to maximize safety, comfort, aesthetics, and the intended functionality (as defined by the Place Type).
- Policy CD-3.6: Managed Infrastructure. We collaborate with developers and property owners to facilitate development that realizes the envisioned character and functionality of the Place Type through the use of green and shared infrastructure within each Place Type.

- Goal CD-5 Protection of Investment: A sustained level of maintenance and improvement of properties, buildings, and infrastructure that protects the property values and encourages additional public and private investments.
  - Policy CD-5.1: Maintenance of Buildings and Property. We require all public and privately-owned buildings and property (including trails and easements) to be properly and consistently maintained.

2.2 Downtown Ontario Luxury Apartments, Phase II Planned Unit Development Objectives

The primary objective of the PUD is to establish standards and guidelines for land uses, building massing, architectural elements, landscape, open space, and parking that align with the goals of the City while also facilitating the development of a top-notch, high-density residential project. Specifically, the objectives of the PUD are as follows:

- To establish comprehensive land use and design principles that contribute towards the creation of innovative, functional, and sustainable housing.
- Promote the revitalization of the Downtown area and foster economic growth by establishing a high-density residential development within the historic Downtown setting.
- To establish harmonious connections between new development and the neighboring residential land uses.
- To integrate high-density housing development into the surrounding community in a way that respects the character and cultural diversity of the area.
- To establish quality standards that ensure long-term maintenance and aesthetics.

3. Land Use

3.1 Residential Use

The Downtown Ontario Luxury Apartments, Phase II Planned Unit Development (PUD) area will be developed with a high-density multiple-family residential development. The development will feature a podium-style building with three (3) stories of apartment-style units. This design will provide a modern, attractive, and functional living space for residents, while remaining in line with the overall layout and architectural style of the community. The first floor will contain a parking garage, along with the lobby and leasing office, and three (3) residential units. The second floor will contain residential units alongside a courtyard for residents and guests to enjoy. The third floor will contain residential units with a view of the courtyard below. In total, the development will include sixty-nine (69) units on 1.22 acres, resulting in a density of 56.6 dwelling units per acre (DU/AC). *Exhibit 3-1: Site Plan* provides an illustrative overview of the proposed development.

3.2 Permitted Uses

The permitted land uses within the Downtown Ontario Luxury Apartments, Phase II Planned Unit Development (PUD) are as follows:

- Multiple-family residential dwellings;
- Leasing/Administrative Office (for on-site property and facilities management only);
- Motor vehicle parking ancillary to a multiple-family residential development project;
- Recreation facilities ancillary to multiple-family residential development projects, for use by project residents and their guests, including, but not limited to, pools, spas, tennis courts, clubhouse or recreation building, courtyards, playgrounds or tot lots, and other similar amenities appropriate to serve a multiple-family residential development project;
- Home occupations within residential units, in accordance with the Ontario Development Code;
- Temporary uses (as permitted within the residential districts of the City of Ontario Development Code subject to an Administrative Permit).

Other land use compatible with multiple-family residential development projects, as determined appropriate by the Zoning Administrator.



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Exhibit 3-1: Site Plan



LEVEL 3



LEVEL 2

Open Space Calculations

Private Open Space

Plan	Balcony or Patio	Podium Level	Quantity	Total
P1-1	90	113	8	1624
P1-2	96	0	20	1920
P2-0	91	78	8	1352
P2-1	90	109	8	1592
P2-2	90	0	25	2250
Total Private Open Space Provided				8738

Common Open Space	
Area 1	4973
Total Common Open Space Provided	4973

* Common Open Space Per Unit 72

* REFER TO COVER SHEET A0.0 FOR COMMON AND PRIVATE OPEN SPACE SUMMARY

- Residential Units
- Circulation
- Leasing
- Parking
- Courtyard
- Paving
- Utilities and Storage
- Landscape Coverage



LEVEL 1

ktgy Architecture + Planning 1301 Von Karman Ave, Suite 200 Irvine, CA 92614 949.851.2133 ktgy.com

HUTTON COMPANIES Hutton Investment Group, LLC 2100 South State College Blvd. Anaheim, CA 92806 Mark Richardson Director of Construction (714) 921-1230 ext. 217

DOWNTOWN ONTARIO LUXURY APARTMENTS, PHASE II
ONTARIO, CA # 2022-0727

CONCEPTUAL DESIGN
DECEMBER 05, 2023

OPEN SPACE EXHIBIT

A0.1

4. Development Regulations

4.1 Project Density

Residential land uses within the Downtown Ontario Luxury Apartments, Phase II Planned Unit Development (PUD) shall be consistent with the Mixed-Use – Downtown (MU-Downtown) land use designation allowing for residential uses at a density of 25 to 75 dwelling units per acre (DU/AC) or non-residential development at a floor-to-area ratio (FAR) of up to 2.0 for retail and office uses.

4.2 Building Height

Total building height (to flat roofline) shall not exceed 40 feet above the highest existing sidewalk elevation. Architectural projections, such as parapets, roofed towers and gable roofs, or elevator towers may extend up to 55 feet above the highest existing sidewalk elevation. Any rooftop mechanical, venting, or communication equipment shall be located within the roof structure or otherwise screened to ensure that the equipment remains concealed from public sightlines or neighboring buildings.

4.3 Building Setbacks

Building setbacks for the PUD are provided in Table 4-3 below.

Table 4-3: Minimum Building Setbacks

Setback	Distance	Allowed Architectural Projection Encroachment
Minimum Street Setbacks	--	--
▪ North Lemon Ave	10 ft.	2 ft.
▪ East D St	6 ft.	2 ft.
▪ Plum Ave	4 ft.	2 ft.
Minimum Rear Setback	5 ft.	N/A

4.4 Vehicular Access

Vehicle access is provided via two (2) driveways along the southern boundary of the Downtown Ontario Luxury Apartments, Phase II Planned Unit Development (PUD) area. The driveways provide direct access to the ground-level parking garage and are located off an alley (one-way) that connects North Lemon Avenue and Plum Avenue.

4.5 On-Street and Off-Street Parking

Parking requirements are based on the number of bedrooms contained within each dwelling unit. Parking spaces shall be provided pursuant to *Table 4-5: Minimum Parking Requirements*.

Table 4-5: Minimum Parking Requirements

Use	Parking Space
Multiple-Family Dwellings – Resident Parking ▪ One-Bedroom Unit ▪ Two-Bedroom Unit	1.00 spaces per dwelling (at least one space shall be in a garage or carport) 2.00 spaces per dwelling (at least one space shall be in a garage or carport)
Multiple-Family Dwellings – Guest Parking ▪ Portion of dwellings < 100	0.20 spaces per dwelling

The Downtown Ontario Luxury Apartments, Phase II Planned Unit Development (PUD) parking requirements are as follows:

- All required resident parking spaces shall be provided on-site;
- Tandem parking spaces may be counted toward a maximum of 60 percent of the resident parking space requirement established by *Table 4-5: Minimum Parking Requirements.* Tandem spaces are limited to 2-bedroom units and will be assigned as such to eliminate competition or confusion of parking space;
- On-street parking may be utilized to satisfy guest-parking requirements, subject to the following:
  i. On-street parking may be used to satisfy guest parking requirements only, and shall not be used for required resident parking;
  ii. On-street parking shall only be counted along the public streets surrounding the project site, on the side of the street adjoining the project
  iii. All on-street parking locations shall be subject to approval by the City Engineer; and
  iv. On-street parallel parking spaces shall be calculated by the length of unobstructed curb adjacent to the project site.

4.6 Common Open Space

Common open space shall be provided at a minimum of 130 square feet per residential unit (average). This provision allows for a wide range of both passive and active, indoor and outdoor spaces, open landscaped and hardscaped areas with fountains, seating, fire pits, or play structures, pool, and an indoor fitness center.

4.7 Private Open Space

Private open space shall be provided for each residential unit at a minimum of 90 square feet per unit. This provision allows for balconies, decks, and patios, provided that the minimum dimension is no less

than 6 feet in any direction. Each private open space must also have direct access to its corresponding residential unit.

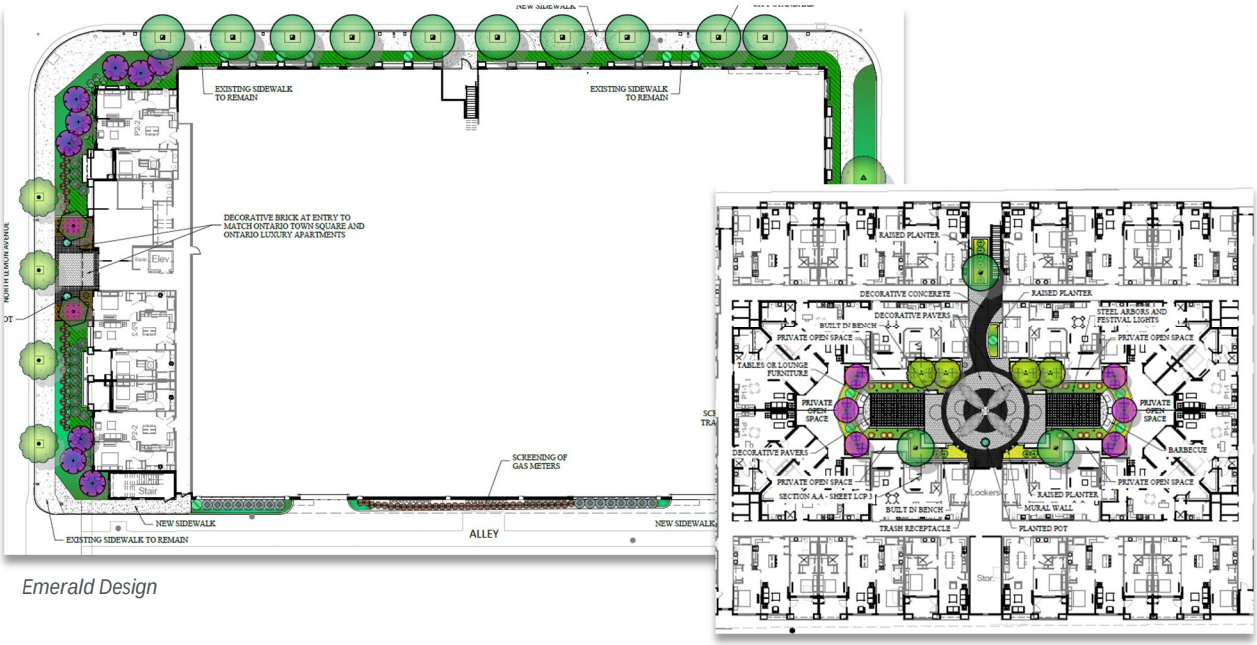
4.8 Landscaping

Landscaping shall be incorporated into new development and designed to integrate with the surrounding community by providing an aesthetically pleasing and sustainable environment. A conceptual landscape plan shall be submitted with the Development Plan for the PUD. The plan shall specify all landscape and hardscape elements for the development plan area including common open space areas, perimeter yards along the street rights-of-way, and all street trees. Landscape screening methods for ground-level utility boxes and mechanical equipment shall also be included in the plan. The minimum landscape coverage required for the PUD area is 15 percent of the total area.

All landscaping elements must be carefully chosen to provide a seamless transition between new construction and existing structures. Landscape elements should be utilized to reinforce pedestrian connections through attractive paving and planting design. Additionally, landscape pattern and planting should accentuate common open space areas within the PUD area. The use of native plant species is encouraged to minimize water consumption and promote biodiversity. Water conservation shall be considered, and low water using plant materials and water efficient irrigation shall be utilized. The landscape plan shall be drought tolerant and meet the current Water Use Classifications of Landscape Species requirements.

4.9 Tree Removal

Four (4) mature Australian Willow trees and four (4) mature Arizona Sycamore trees within the PUD area shall remain and be incorporated into the overall design of the development plan. The Australian Willow trees are currently located in the right-of-way on North Lemon Avenue and the Arizona Sycamore trees are located in the right-of-way on Plum Avenue. The additional forty-one (41) trees that are located within the existing surface parking lot will be removed and an arborist report shall be prepared for the PUD area.



Emerald Design

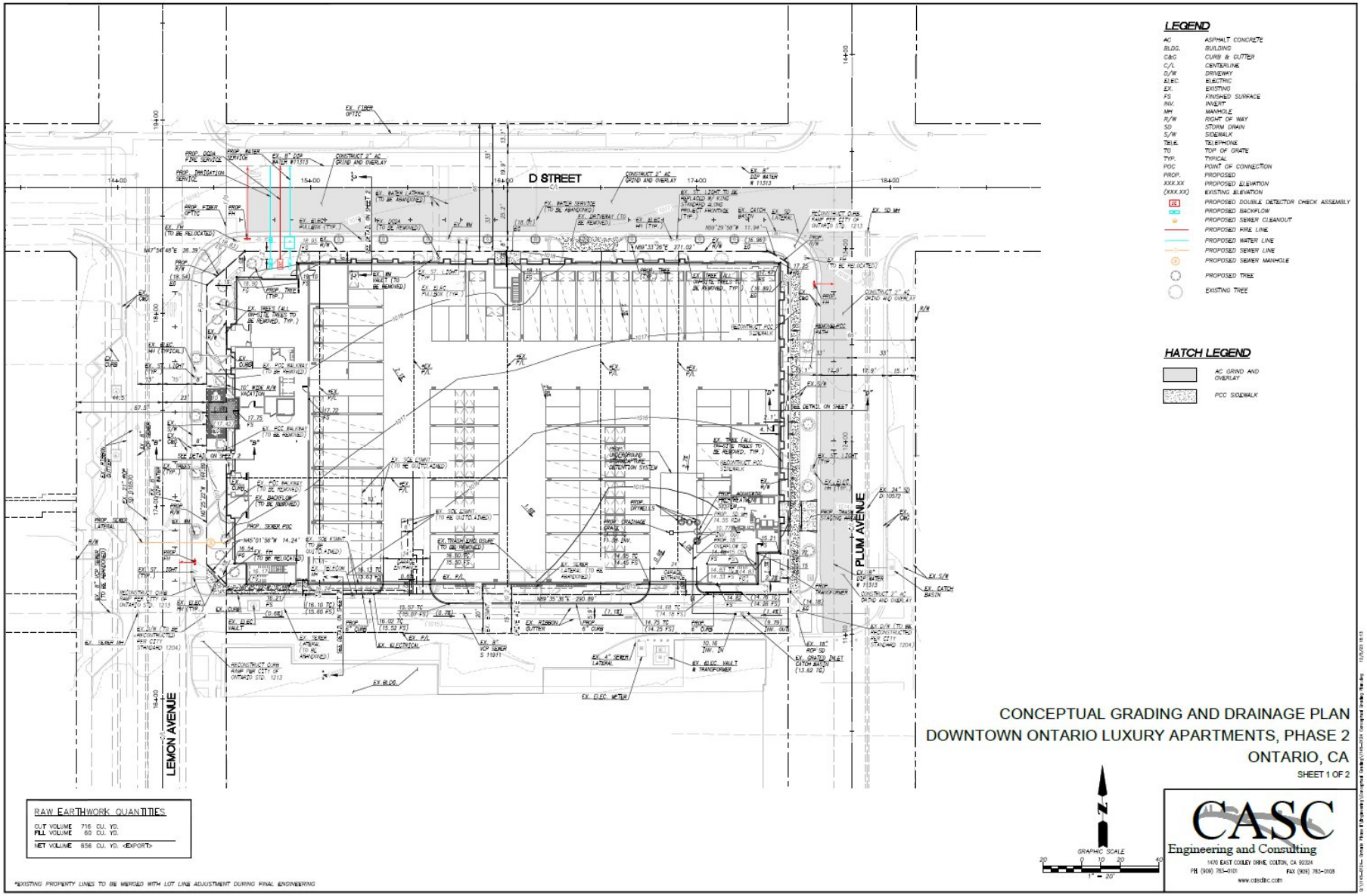
4.10 Infrastructure

Infrastructure within the Downtown Ontario Luxury Apartments, Phase II Planned Unit Development (PUD) consists of the following improvements:

- Roadway (dedications/easements)
- Drainage
- Public Utilities (water and sewer)

Roadway, drainage, and public utilities are planned as illustrated in *Exhibit 3.2: Conceptual Grading and Drainage Plan.* All proposed public improvements shall be designed and constructed pursuant to the City of Ontario guidelines and specifications and per San Bernardino County and the State of California Water Resources Control Board guidelines for stormwater treatment.

Exhibit 3-2: Conceptual Grading and Drainage Plan



5. Design Guidelines

5.1 Building Orientation and Frontages

The building shall be oriented towards North Lemon Avenue and vehicular access shall be oriented towards the southern boundary of the PUD area. Pedestrian entries may be located along East D Street and Plum Avenue provided that strong pedestrian connection is maintained through landscaped sidewalks and appropriately scaled lighting.



5.2 Architectural Character

The Downtown Ontario Luxury Apartments, Phase II Planned Unit Development (PUD) strikes an impressive balance between the sleek design features of contemporary architecture and the charm and character of the historic Downtown area. The PUD integrates traditional materials with modern design elements to create an innovative development that embraces a timeless appeal. The careful selection and utilization of traditional, durable materials reflects the rich architectural heritage of the area and speaks to the history and character of the community. By combining traditional materials with modern design features, including minimalism, clean lines, and sleek finishes, the development exudes a refined aesthetic.



5.3 Architectural Details

New development should incorporate façade articulation techniques that reduce the perceived scale of large buildings and add visual interest from all observable scales. Buildings shall:

- Incorporate architectural enhancements such as recessed windows, balconies, decorative cornices, and awnings along all street frontages.
- Incorporate rooflines that are visually dynamic in a way that complements the building and surrounding area's composition. This can be achieved through the utilization of sculpted roof forms or an attractive cornice with detailed design elements.



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5.4 Materials and Colors

A color and material board shall be submitted with the Development Plan for the PUD to ensure the following:

- Materials and color scheme shall be compatible with, and complementary to the overall style of the development project.

- A combination of dark and light colors shall be utilized to accentuate architectural features and breakup large building planes.
- Materials should include a mixture of stucco, horizontal siding, and brick veneer, in a variety of earth tone colors.

5.5 On-Site Lighting

- All lighting of facades, decorative fixtures, awnings, and signs shall be designed in accordance with the criteria set forth in Section 2D of the Downtown Ontario Design Guidelines.
- Exterior light fixtures shall be designed to complement the architectural style of the building.
- On-site lighting shall be directed away or shielded from adjacent streets and properties. All exterior lighting must be mounted in such a way that it does not project excessive light upwards, either by situating it beneath building eaves or integrating a shield such as a hood.

5.6 Signage

Signs within the PUD area shall comply with Division 8.01 (Sign Regulations) of the Ontario Development Code.

6. Administration

6.1 Applicability

All development within the Downtown Ontario Luxury Apartments, Phase II Planned Unit Development (PUD) shall be designed and constructed pursuant to the standards and guidelines herein. Where the PUD is silent on a standard, then the City of Ontario Development Code and the City's Standard Conditions of Approval (COA) for New Development Projects Resolution No. R2017-027 shall govern. In the event of a conflict between the provisions of the PUD and the provisions of the Ontario Development Code and the City's Standard COA, the PUD Standards shall supersede.

6.2 Planning Applications to Facilitate PUD Implementation

Development Plan approval, pursuant to the requirements of Ontario Development Code Section 4.02.025 (Development Plans), shall be required for the physical alteration of a lot, the construction of a building, or the addition or significant alteration of an existing building. A Development Plan application shall be submitted to the Planning Department on a City application form pursuant to the requirements of Ontario Development Code Division 2.02 (Application Filing and Processing), commencing with Subsection B (Discretionary Permits and Actions) of Section 2.02.015 (Application Processing Procedures).

6.3 Administrative Exceptions

Deviation from the development standards set forth in this document may be granted up to a maximum of ten (10%) percent by the Zoning Administrator pursuant to the Ontario Development Code.

CITY OF ONTARIO *Agenda Report* **April 2, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Planning Prepared By: Thomas Grahn Staff Member Presenting: Scott Murphy, Executive Director Community Development Reviewed By: Kimberly Ruddins, Henry Noh, Rudy Zeledon Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 13

SUBJECT: **AN ORDINANCE APPROVING THE WATERMARKE ONTARIO PLANNED UNIT DEVELOPMENT (FILE NO. PUD22-006) ON A 5.81-ACRE PROJECT SITE LOCATED AT THE NORTHEAST CORNER OF MOUNTAIN AVENUE AND FOURTH STREET, SUBMITTED BY JAT LAND DEVELOPMENT**

RECOMMENDATION: That the City Council consider and adopt an Ordinance approving the Watermarke Ontario Planned Unit Development (File No. PUD22-006).

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

FISCAL IMPACT: There is not a direct fiscal impact associated with this action. The proposed Watermarke Ontario Planned Unit Development (PUD) establishes development standards and guidelines to facilitate a mixed-use commercial and residential development. Implementation of the PUD would result in an increase in property taxes from future development and the one-time payment to the City for plan check fees and development impact fees.

BACKGROUND & ANALYSIS: On March 19, 2024, the City Council introduced and waived further reading of an Ordinance approving the Planned Unit Development. On August 16, 2022, the Ontario City Council certified The Ontario Plan 2050 (TOP 2050) Supplemental Environmental Impact Report (SEIR, State Clearinghouse No. 2021070364) in conjunction with File No. PGPA20-002. The SEIR analyzed the Project site and 1.4 acres of land to the northwest of the Project site, also located within the same mixed-use district, and established guidelines for development. These guidelines include, but are not limited to, general land use (mixed-use residential and commercial), maximum density and development intensity (20-75 dwelling units per acre and 1.0 non-residential floor area ratio ("FAR"), respectively), and assumed dwelling units and commercial square footage (251 dwelling units and 70,008 SF, respectively).

On September 8, 2022, the Applicant filed a Development Plan application (File No. PDEV22-042) to construct 357 dwelling units and 3,800 square feet of ground-floor commercial space on the 5.81-acre Project site. The request was submitted in conjunction with a Planned Unit Development ("PUD") application (File No. PUD22-006), to establish the development standards and design guidelines for the Project site.

PLANNED UNIT DEVELOPMENT: The MU-NH 8b zoning district requires the preparation and approval of a PUD to establish the development standards and design guidelines for the site. The proposed Watermarke Ontario PUD, included as Attachment A to the attached Ordinance, identifies the following components:

Objectives — The Objectives component of the PUD outlines the Project's consistency with The Ontario Plan, including its Vision, Governance Manual, Policy Plan (General Plan), City Council Priorities, Implementation, and Tracking and Feedback. The City's Policy Plan's goals and policies guide the City's continued growth. These goals extend to the Project's proposed residential and commercial land uses and the Project area's Mixed Use – Neighborhood Activity Hub (MU-NH) land use designation. The MU-NH land use designations allow for the development of low-rise mixtures of retail and residential land uses, which serve the surrounding residents.

The PUD is designed to achieve the purpose of the Policy Plan land use designations and comply with applicable goals and policies of The Ontario Plan. The PUD analyses several elements of The Ontario Plan, identifies specific policies, and reviews how the PUD is consistent with the identified policy. Specifically, the PUD analyses various goals and policies of the Land Use, Housing, Community Economics, Safety, and Community Design.

Additionally, from an economic development standpoint, the City of Ontario views this as a critical project to further serve the Ontario Vision and boost economic development activity. The City has been taking a targeted approach to revitalize underutilized shopping centers to bring in much needed housing units, as well as high-quality retail for our residents. The Project will replace dated retail space and provide a high-quality housing product with opportunity for retail spaces to provide the residents and surrounding community with food, beverage, service, and/or miscellaneous retail opportunities.

Policy Plan (General Plan) — The Policy Plan (General Plan) includes the Land Use Element, which designates the subject parcels within the PUD as "MU – Mixed-Use" to facilitate a horizontal and/or vertical mix of retail, service, office, restaurant, entertainment, cultural, and residential uses. The MU – Mixed-Use designation is further broken down into sub-categories to refine the type of mixed-use development desired by the City. The Project site is located within sub-area MU-NH – Mixed Use Neighborhood Activity Hub. This designation envisions low-rise buildings (three to five stories) with a mix of retail and residential land uses that will create identity and place and serve surrounding residents. This category allows for residential densities ranging from 20 to 75 dwelling units per acre and non-residential development intensity of 1.00 FAR. The build-out of the 7.21-acre sub-area is projected to be 251 dwelling units and 70,008 square feet of non-residential development.

The PUD regulates the redevelopment of 5.81 acres of this sub-area with the intent to create a mixed-use project providing a total of 357 dwelling units and 3,800 non-residential square feet. The remaining 1.4 acres of the sub-area is located north of the PUD's boundary and is currently being

developed with a church. The PUD would allow the total number of residential units to exceed the 251 units identified in the TOP 2050 build-out projection within this sub-area, resulting from the proposed multi-family development; however, the exceedance is offset by a significant reduction in the build-out of non-residential square footage.

Land Use Plan — The Land Use Plan briefly describes the land use designation allowing the Project to develop multifamily residential as well as multiple retail and neighborhood commercial land uses. Permitted land uses are those permitted and conditionally permitted uses allowed under the Development Code, Division 5.02 (General Land Use Provisions), Section 5.02.010 (Allowed Land Uses, Activities and Facilities), Table 5.02-1 (Land Use Matrix) for the Mixed Use (MU-8B) zoning district.

Development Regulations — The Development Regulations section establishes standards that govern development of the site, including the following topics: placement, height, and bulk of permitted buildings and structures, establish locational criteria for vehicular access to the site, parking and loading requirements, landscaping, and signage standards. These standards encourage a high-quality residential/mixed use development and also establishes flexible guidelines to encourage site development and ensure that the project meets a minimum standard of appearance and is compatible with the surrounding neighborhoods. The PUD proposes a maximum FAR of 1.0 and density of 20-75 dwelling units per acre; a maximum building height of 65 feet; minimum street and interior setbacks of 10 feet; and a minimum of 1.2 parking spaces per bedroom for residential uses and one space per 250 square feet of non-residential uses.

Design Guidelines/Landscape Standards — New development implemented under the PUD will generate new uses and design aesthetics to fulfill the design goals and policies of TOP. It will be guided by design criteria to provide articulation, dynamic materials and colors, and avoidance of bulky and monotonous elevations. Street trees and landscaped street setback areas will provide opportunities to frame the street, create and prioritize safe, attractive, and well-shaded pedestrian access from the public rights-of-way, and minimize building bulk from the public right-of-way. The proposed development will be subject to and governed by policies and goals regarding building orientation, access and parking facilities, service facilities, pedestrian linkages, architectural character, massing and scale, articulation and fenestration, architectural details, storefronts, materials and colors, roofs and rooftop equipment, non-residential outdoor dining areas, residential outdoor spaces and common recreational amenities, and landscape and hardscape elements.

COMPLIANCE WITH THE ONTARIO PLAN: The proposed Project is consistent with the principles, goals and policies contained within the Vision, Governance, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan 2050.

HOUSING ELEMENT COMPLIANCE: The Project is consistent with the Housing Element of the Policy Plan (general plan) component of The Ontario Plan, as the Project site is not one of the properties in the Housing Element Sites contained in Tables B-1 and B-2 (Housing Element Sites Inventory) of the Housing Element Technical Report.

AIRPORT LAND USE COMPATIBILITY: The California State Aeronautics Act (Public Utilities Code

Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan.

On April 19, 2011, the City Council of the City of Ontario approved and adopted the ONT ALUCP, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the decision-making body for File No. PUD22-006 for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the ONT ALUCP compatibility factors, including [1] Safety Criteria (ONT ALUCP Table 2-2) and Safety Zones (ONT ALUCP Map 2-2); [2] Noise Criteria (ONT ALUCP Table 2-3) and Noise Impact Zones (ONT ALUCP Map 2-3); [3] Airspace protection Zones (ONT ALUCP Map 2-4); and [4] Overflight Notification Zones (ONT ALUCP Map 2-5). As a result, the Planning Commission, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ONT ALUCP.

ENVIRONMENTAL REVIEW: The environmental impacts of this Project were reviewed in conjunction with an Addendum to The Ontario Plan 2050 Supplemental Environmental Impact Report (State Clearinghouse No. 2021070364), certified by the Ontario City Council on August 16, 2022, in conjunction with File No. PGPA20-002. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of Project approval and are incorporated herein by this reference.

NEIGHBORHOOD MEETING: A neighborhood meeting regarding File No. PDEV22-042 was held at the Ontario Senior Center on June 22, 2023. Several members of the public attended and requested additional information about the Project, including the Project's scope of work, conceptual site planning, building design, and traffic. City staff provided additional information to the community members at the meeting and considered their input during Project review.

PUBLIC COMMENTS: As of the preparation of this Agenda Report, Planning Department staff has not received any correspondence regarding the proposed Planned Unit Development. However, staff did receive two written communications regarding the environmental addendum and the Development Plan. Please see the attached Planning Commission Staff Report dated February 27, 2024, for details.

PLANNING COMMISSION REVIEW: On February 27, 2024, the Planning Commission conducted a public hearing and voted 6-0 to recommend that the City Council consider and approve File No. PUD22-006 and adopt an Addendum to The Ontario Plan 2050 Supplemental Environmental Impact Report, pursuant to the facts and reasons contained in the staff report and attached Ordinance, and subject to the conditions of approval.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PUD22-006, THE WATERMARKE ONTARIO PLANNED UNIT DEVELOPMENT, ESTABLISHING DEVELOPMENT STANDARDS AND DESIGN GUIDELINES FOR A 5.81 ACRE PROJECT SITE LOCATED AT THE NORTHEAST CORNER OF MOUNTAIN AVENUE AND FOURTH STREET, AND MAKING FINDINGS IN SUPPORT THEREOF— APNS: 1008-513-16, 1008-522-01, 1008-522-02, AND 1008-522-03.

WHEREAS, JAT LAND DEVELOPMENT LLC (hereinafter referred to as "Applicant") has filed an Application for the approval of the Watermarke Ontario Planned Unit Development ("PUD"), File No. PUD22-006, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 5.81 acres of land located at the northeast corner of Mountain Avenue and Fourth Street, within the Mixed Use – Neighborhood Hub 8b – Mountain and Fourth (MU-NH 8b) zoning district, and is presently improved with commercial development and post office; and

WHEREAS, the properties to the north of the Project site are within the MU-8b (Mountain/Fourth Mixed Use) and Low-Density Residential (LDR-5) zoning districts and are developed with a church (currently under construction) and existing single-family land uses, the property to the south is within the Neighborhood Commercial (CN) zoning district and is developed with commercial land uses, the properties to the east are within the Low-Density Residential (LDR-5) zoning district and is developed with single-family land uses, and the property to the west is within the Neighborhood Commercial (CN) zoning district and is developed with commercial land uses; and

WHEREAS, the Project was submitted in conjunction with a Development Plan (File No. PDEV22-042) which proposes the construction of a mixed-use building containing residential and commercial floor area, for a total of 357 apartment units and 3,800 square feet of commercial space, at a density of 61.4 dwelling units per acre and a commercial Floor Area Ratio (FAR) of 0.015; and

WHEREAS, the PUD outlines the Project's (a) objectives, including its consistency with The Ontario Plan; (b) land use plan, including zoning, phasing and build-out, and permitted land uses; (c) development regulations, including intensity and density, building envelope, vehicle access and parking facilities, parking supply and design, residential open space and common amenities, service facilities, signs, landscape and hardscape, fences and walls, public right-of-way improvements, infrastructure, and overall development standards; (d) design criteria, including those for building orientation, access and parking facilities, service facilities, pedestrian linkages, architectural character, massing and scale, articulation and fenestration, architectural details, storefronts, materials and colors, roofs and rooftop equipment, non-residential outdoor dining areas, residential outdoor space and common recreation amenities, and landscape/hardscape

elements; and (e) administration, including items not addressed in the PUD, requirements for Development Plans and other applications, and administrative exceptions; and

WHEREAS, Project approval is contingent on Planning Commission approval of the related Development Plan application and City Council approval of the Watermarke Ontario PUD; and

WHEREAS, The Ontario Plan 2050 Supplemental Environmental Impact Report (State Clearinghouse No. 2021070364) was certified on August 16, 2022, (hereinafter referred to as "Certified SEIR"), in which development and use of the Project site was discussed; and

WHEREAS, the Planning Director of the City of Ontario prepared and approved for attachment to the Certified SEIR, an Addendum to the Certified SEIR (hereinafter referred to as "SEIR Addendum") in accordance with the requirements of the California Environmental Quality Act of 1970, together with State and local guidelines implementing said Act, all as amended to date (collectively referred to as "CEQA"); and

WHEREAS, the environmental impacts of this project were thoroughly analyzed in the SEIR Addendum, which concluded that implementation of the Project could result in a number of significant effects on the environment that were previously analyzed in the Certified SEIR, and that the Certified SEIR identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

WHEREAS, the City's "Local Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act — Public Resources Code Section 21000 et seq. — (hereinafter referred to as "CEQA") and an SEIR Addendum has been prepared to determine possible environmental impacts; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the authority to review and act on the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan

(hereinafter referred to as "ALUCP"), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on January 23, 2024, the Planning Commission voted to continue the Project to the February 27, 2024, hearing date; and

WHEREAS, as the first action on the Project, on February 27, 2024, the Planning Commission voted to issue Resolution No. PC24-003 recommending the City Council adopt the SEIR Addendum, finding that the proposed Project introduces no new significant environmental impacts and applying all previously adopted mitigation measures to the Project, which were incorporated by reference; and

WHEREAS, on February 27, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, voting to issue Resolution No. PC24-004 recommending the City Council approve the Application and concluded said hearing on that date; and

WHEREAS, on March 19, 2024, the City Council of the City of Ontario conducted a hearing to consider the Addendum and the Project, and concluded said hearing on that date; and

WHEREAS, as the first action on the Project, on March 19, 2024, the City Council approved a resolution adopting an Addendum to a previous Certified SEIR prepared pursuant to CEQA, the State CEQA Guidelines and the City of Ontario Local CEQA Guidelines, which indicated that all potential environmental impacts from the Project were less than significant or could be mitigated to a level of significance; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance 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 recommending body for the Project, the City Council has reviewed and considered the information contained in the Addendum, the initial study, and the administrative record for the Project, including all written and oral evidence provided during the comment period. Based upon the facts and information contained in the Addendum, the initial study, and the administrative record, including all written and oral evidence presented, the City Council finds as follows:

(1) The environmental impacts of the Project were reviewed in conjunction with an Addendum to The Ontario Plan 2050 Supplemental Environmental Impact Report (State Clearinghouse No. 2021070364), certified by the Ontario City Council on August 16, 2022, in conjunction with File No. PGPA20-002; and

(2) The SEIR Addendum and administrative record have been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(3) The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. This Application introduces no new significant environmental impacts; and

(4) All previously adopted mitigation measures shall be a condition of project approval, as they are applicable to the Project, and are incorporated herein by this reference; and

(5) The SEIR Addendum contains a complete and accurate reporting of the environmental impacts associated with the Project, and reflects the independent judgment of the City Council; and

(6) There is no substantial evidence in the administrative record supporting a fair argument that the project may result in significant environmental impacts.

SECTION 2: ***Subsequent or Supplemental Environmental Review Not Required.*** Based on the SEIR Addendum, all related information presented to the City Council, and the specific findings set forth in Section 1, above, the City Council finds that the preparation of a subsequent or supplemental Certified SEIR is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the Certified SEIR that will require major revisions to the Certified SEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

(2) Does not constitute substantial changes with respect to the circumstances under which the Certified SEIR was prepared, that will require major revisions to the Certified SEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(3) Does not contain new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Certified SEIR was certified/adopted, that shows any of the following:

(a) The Project will have one or more significant effects not discussed in the Certified SEIR; or

(b) Significant effects previously examined will be substantially more severe than shown in the Certified SEIR; or

(c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the City declined to adopt such measures; or

(d) Mitigation measures or alternatives considerably different from those analyzed in the Certified SEIR would substantially reduce one or more significant effects on the environment, but which the City declined to adopt.

SECTION 3: ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the decision-making body for the Project, the City Council finds that based upon the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project site is not one of the properties in the Housing Element Sites Inventory contained in Tables B-1 and B-2 of the Housing Element Technical Report.

SECTION 4: ***Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan.

On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the decision-making body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the ONT ALUCP compatibility factors, including [1] Safety Criteria (ONT ALUCP Table 2-2) and Safety Zones (ONT ALUCP Map 2-2), [2] Noise Criteria (ONT ALUCP Table 2-3) and Noise Impact Zones (ONT ALUCP Map 2-3), [3] Airspace protection Zones (ONT ALUCP Map 2-4), and [4] Overflight Notification Zones (ONT ALUCP Map 2-5). As a result, the City Council finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ONT ALUCP; and

SECTION 5: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the City Council during the above-referenced hearing, and upon the specific findings set forth in Sections 1 through 4, above, the City Council hereby concludes as follows:

(1) ***The proposed PUD, or amendment thereto, is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan.*** The Project is consistent with the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan in that the mixed-use standards and guidelines specified in the PUD align with The Ontario Plan. The Watermarke Ontario Planned Unit Development ("PUD") Objectives section titled "Consistency with The Ontario Plan", describes how the PUD complies with the Policy Plan goals, policies, and plans.

(2) ***The proposed PUD, or amendment thereto, would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.*** The City Council has required certain safeguards through conditions of approval, which have been established to ensure that: [i] the purposes of the Planned Unit Development are maintained; [ii] the project will not endanger the public health, safety or general welfare; [iii] the project will not result in any significant environmental impacts; [iv] the project will be in harmony with the area in which it is located; and [v] the project will be in full conformity with the Vision, City Council Priorities and Policy Plan components of The Ontario Plan.

(3) ***In the case of an application affecting specific property(ies), the proposed PUD, or amendment thereto, will not adversely affect the harmonious relationship with adjacent properties and land uses.*** The adjacent neighborhoods consist of existing single-family dwellings and commercial development. The Watermarke Ontario Planned Unit Development was prepared to ensure that on-site development is sensitive to and complementary of the surrounding development, and the surrounding development is compatible with the proposed residential and commercial mixed-use development. Therefore, the Project does not affect the harmonious relationship with adjacent properties and land uses.

(4) ***In the case of an application affecting specific property(ies), the subject site is physically suitable, including, but not limited to, parcel size, shape, access, and availability of utilities, for the request and anticipated development.*** In preparing the PUD, a thorough review and analysis of the proposed Project and the subject site's physical suitability for the Project was completed, including analysis of the Project size and shape, intensity of development, building height and setbacks, site access, site landscaping and drainage, fences and walls, vehicle and pedestrian circulation, availability of mass transit, necessary street dedication and easements, public right-of-way improvements, availability of utilities and

other infrastructure needs, off-street parking, building orientation and streetscapes, architectural character, building materials and character, and site signage. Based upon this review and analysis, the subject site has been deemed physically suitable, including but not limited to parcel size, shape, access, and availability of utilities for the proposed PUD and proposed development.

(5) ***The proposed PUD is superior to that which could be obtained through the application of the Development Code or a specific plan.*** The PUD will establish minimum building setbacks, parking and open space requirements, private storage provisions, a planting palette, allowable land uses preferable to support the proposed development and the surrounding community, and more. These standards will facilitate the development of up to 357 dwelling units and 3,800 square feet of commercial space and accompanying improvements. The proposed PUD will allow for subsequent development that is superior to that which could be obtained through the application of the Development Code by itself, by means of facilitating the development of high-density apartments, restaurants, retail shops, and other commercial services that will serve to achieve the City's goals of economic revitalization of an underutilized commercial center. Lastly, the PUD will further serve to implement the vision of the Mixed Use – Neighborhood Hub 8b – Mountain and Fourth (MU-NH 8b) zoning district, and the Mixed Use - Neighborhood Activity Hub: 20.0 to 75.0 du/ac; 1.0 FAR office/retail (MU-NH) land use district of the Policy Plan by allowing for this vibrant and well-designed mixed-use development.

SECTION 6: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 5, above, the City Council hereby APPROVES the herein described Watermarke Ontario Planned Unit Development, attached hereto as "Attachment B", subject to each and every condition set forth in the Department reports attached hereto and incorporated herein by this reference.

SECTION 7: ***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 8: ***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 9: ***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 10: ***Effective Date.*** This Ordinance shall become effective 30 days following its adoption.

SECTION 11: ***Publication and Posting.*** The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within 15 days following 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 2nd day of April 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. 3273 was duly introduced at a regular meeting of the City Council of the City of Ontario held March 19, 2024 and adopted at the regular meeting held April 2, 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. 3273 duly passed and adopted by the Ontario City Council at their regular meeting held April 2, 2024 and that Summaries of the Ordinance were published on March 26, 2024 and April 9, 2024, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

File No. PUD22-006
Watermarke Ontario Planned Unit Development

(Document to follow this page)

WATERMARKE ONTARIO

PLANNED UNIT DEVELOPMENT



CITY OF ONTARIO SOUTHERN CALIFORNIA

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INTRODUCTION

This document is intended to function as a set of planning and design principles, development regulations and performance standards to guide and govern the development of a 5.81-acre land area located on the northeast corner of Mountain Avenue and Fourth Street.

The project site is located within The Ontario Plan (TOP) Mixed Use – Neighborhood Activity Hubs (MU- NH), which requires the establishment of a Planned Unit Development (PUD) prior to development. This PUD fulfills the requirements of Mountain/Fourth Avenue Mixed Use (MU-8b) zoning district, as set forth in Ontario Development Code Section 4.01.030 (Planned Unit Developments (PUD) and Amendments). The Watermarke Ontario Planned Unit Development (PUD) will establish development standards that apply to the affected property. Unless otherwise defined herein, definitions and interpretations contained in the Development Code shall apply. City staff and private developers will rely on this PUD to determine whether precise plans for development ("Development Plans") will adequately meet the City's land use and design objectives.

LOCATION

The Project is located in the City of Ontario in the County of San Bernardino. The PUD area occupies 5.81 acres of the northeast corner of Mountain Avenue and Fourth Street and includes four parcels (APNs 1008-513-16, 1008-522-01, 1008-522-02, and 1008-522-03). Regional access to the Project area would be facilitated through Interstate 10 (I-10) approximately 0.6 miles north of the site, and State Route 83 (SR- 83) approximately 0.9 miles east of the site.



OBJECTIVES

Consistency with the Ontario Plan

The Ontario Plan (TOP) is the primary planning document for the City and is intended to guide City growth for the next 20 years. The Ontario Plan includes six components:

1. The **Vision** component summarizes the City's major goals for the foreseeable future as well as the preferred character to be reinforced throughout the future growth.
2. The **Governance Manual** summarizes the City's guidelines regarding decision-making authorities and actions for City leadership in order to reinforce the City's intended character.
3. The **Policy Plan** acts as the City's General Plan and includes the City's goals and policies meant to guide growth through the general plan planning period.
4. The **City Council Priorities** outlines the Council's goals for a given year.
5. The **Implementation** component summarizes the methods with which the City will execute goals and policies included in the general plan.
6. The **Tracking and Feedback** component, once updated, will catalogue the City's progress in implementing the goals and policies of the Policy Plan and Vision component.

The City's Policy Plan's goals and policies are intended to guide the City's continued growth. These goals extend to the Project's proposed residential and commercial uses and the Project area's Mixed Use – Neighborhood Activity Hub (MU-NH) land use designation. The MU-NH land use designations are intended to allow for the development of low-rise mixtures of retail and residential uses which may serve the surrounding residents.

This PUD is designed to achieve the purpose of this land use designation and comply with applicable goals and policies such as the following:

2·0·5·0 THE ONTARIO PLAN

Land Use Element

Goal LU-1: A community has a spectrum of housing types and price ranges that match the jobs in the City and that make it possible for people to live and work in Ontario and maintain a quality of life.

- **Policy LU-1.1: Strategic Growth.** We concentrate growth in strategic locations that help create place and identity, maximize available and planned infrastructure, foster the development of transit, and support the expansion of the active and multimodal transportation networks throughout the City.
- **PUD Consistency.** Mountain Avenue is classified as an arterial road as well as a Class I multipurpose trail, these classifications lend themselves to high volumes of pedestrian and vehicular traffic. Additionally, mass transit bus stops are located at the southwest and northeast corners of the Mountain Avenue and Fourth Street intersection. The PUD would enable the development of multifamily residential uses adjacent to higher capacity roadways as well as available mass transit stops.
- **Policy LU-1.6: Complete Community.** We incorporate a variety of land uses and building types in our land use planning efforts that result in a complete community where residents at all stages of life, employers, workers, and visitors have a wide spectrum of choices of where they can live, work, shop and recreate within Ontario.
- **PUD Consistency.** The PUD would allow for the development of residential and retail uses within the PUD site. The requirements presented in the PUD encourage the development of neighborhood scale commercial opportunities which would serve residents within the PUD as well as surrounding areas.

Goal LU-2: Compatibility between a wide range of uses and resultant urban patterns and forms.

- **Policy LU-2.1: Land Use Decisions.** We minimize adverse impacts on adjacent properties when considering land use and zoning requests.
- **PUD Consistency.** The PUD area's MU-8b zoning designation requires that a PUD be implemented for to establish specific development standards, land use regulations and design guidelines. The permitted uses within PUD have been established to provide residential and commercial uses to serve internal residents and surrounding residential area.

Goal LU-3: Staff, regulations and processes that support and allow flexible response to conditions and circumstances in order to achieve the Vision.

- **Policy LU-3.2: Design Incentives.** We offer design incentives to help projects achieve the Vision.
- **PUD Consistency.** MU-8b zones require the creation of a PUD to establish specific development standards for a given area. Standards within a PUD may vary from the established development standards of the City's development code to achieve the City's vision more adequately or efficiently. This PUD includes design standards which strive to maintain the City's vision for stable, dynamic growth while maintaining overall quality throughout all components of the development.

Goal LU-4: Development that provides short-term value only when the opportunity to achieve our Vision can be preserved.

- **Policy LU-4.4: Shared Infrastructure.** We encourage and facilitate the use of shared infrastructure (including shared or managed parking) in urban, mixed use, and transit-oriented Place Types.
- **PUD Consistency.** The PUD area encourages the integration of residential and nonresidential uses through mixed use development. Development standards within this PUD, therefore, encourage shared infrastructure such as parking and utility facilities. The Project includes a single central parking garage which contains all parking spaces for both the residential and retail uses in the PUD area. Additionally, the Project would provide for shared garbage collection between residential and retail uses.

Housing Element

Goal H-1: Stable neighborhoods of quality housing, ample community services and public facilities, well- maintained infrastructure, and public safety that foster a positive sense of identity.

- **Policy H-1.2: Neighborhood Conditions.** We direct efforts to improve the long-term sustainability of neighborhoods through comprehensive planning, provision of neighborhood amenities, rehabilitation and maintenance of housing, and community building efforts.
- **PUD Consistency.** The PUD describes standards which can be used to develop a mixed-use residential community with attached retail uses. These standards include open space requirements which include the creation of recreational amenities. While the PUD includes designs for a specific project, this document allows for the development of other developments if the proposed Project is removed or redeveloped. The standards within this PUD would ensure that high-quality mixed-use developments can continue to be developed within the PUD area.
- **Policy H-1.3: Community Amenities.** We shall provide adequate public services, infrastructure, open space, parking and traffic management, pedestrian, bicycle, and equestrian routes and public safety for neighborhoods consistent with City master plans and neighborhood plans.
- **PUD Consistency.** The PUD includes parameters which require the development of private and community open space areas and recreational uses. The PUD also encourages the creation of a shared parking structure to serve both residents and retail customers and employees. The PUD also presents parking standards for passenger vehicles and bicycles that meet or exceed the City's current standards. Development standards specifically focused on site security and emergency access are included in this PUD.

Goal H-2: Diversity of types of quality housing that are affordable to a range of household income levels, accommodate changing demographics, and support and reinforce the economic sustainability of Ontario.

- **Policy H-2.5: Housing Design.** We require architectural excellence through adherence to City design guidelines, thoughtful site planning, environmentally sustainable practices, and other best practices.
- **PUD Consistency.** The PUD includes development standards which allow for a variety of multi-family residential units near community scale retail uses. Standards presented in this PUD are designed to enable development which remains consistent with the character of the City while maintaining a modern, visually appealing aesthetic.

Community Economics Element

Goal CE-1: A complete community that provides for all incomes and stages of life.

- **Policy CE-1.6: Diversity of Housing.** We collaborate with residents, housing providers, and the development community to provide housing opportunities for every stage of life; we plan for a variety of housing types and price points to encourage the development of housing supportive of our efforts to attract business in growing sectors of the community while being respectful of existing viable uses.
- **PUD Consistency.** The PUD would provide for the development of a multi-family mixed use development in an area of the City which currently contains single family residential uses and commercial uses. This would increase the variety of housing in the area and promote neighborhood retail uses near residents as well as mass transit bus stops and higher capacity arterial roadways.

Goal CE-2: A City of distinctive neighborhoods, districts, corridors, and centers where people choose to be.

- **Policy CE-2.1: Development Projects.** We require new development and redevelopment to create unique, high-quality places that add value to the community.
- **PUD Consistency.** The PUD will seek to ensure a mix of residential and retail uses that will provide a variety of goods and services for both the internal residents and the surrounding area. The PUD provides standards which require the development of distinctive, visually appealing structures.

Safety Element

Goal S-3: Reduced risk of death, injury, property damage and economic loss due to fires, accidents and normal everyday occurrences through prompt and capable emergency response.

- **Policy S-3.8: Fire Prevention through Environmental Design.** We require new development to incorporate fire prevention consideration in the design of streetscapes, sites, open spaces, and buildings.
- **PUD Consistency.** The PUD would incorporate fire prevention infrastructure such as fire extinguishers and smoke alarms. Additionally, the Project would provide additional fire hydrants and fire access points for fire abatement.

Goal S-7: Residential neighborhoods, commercial areas, and industrial districts that are kept safe through a multi-faceted approach of prevention, suppression, and community involvement in public safety.

- **Policy S-7.4: Crime Prevention through Environmental Design (CPTED).** We require new development to incorporate CPTED in the design of streetscapes, sites, open spaces, and buildings.
- **PUD Consistency.** The PUD requires the use of security lighting as well as the placement of a gated perimeter between existing developments bordering the Project area. Additionally, the PUD restricts access to residential neighborhoods from all entities except emergency personnel.

Community Design Element

Goal CD-1: A dynamic, progressive city containing distinct and complete places that foster a positive sense of identity and belonging among residents, visitors, and businesses.

- **Policy CD-1.2: Place Types.** We establish Place Types in urban, mixed use, and transit-oriented areas to foster the City's identity as a premier community and require new development within each Place Type to incorporate prescribed urban patterns, forms, and placemaking priorities.
- **PUD Consistency.** The PUD presents development standards which require the creation of well designed, community centric mixed-use developments. The PUD establishes standards within the PUD area which would establish quality architectural and visual consistency.

Goal CD-2: A high level of design quality resulting in neighborhoods, commercial areas, public spaces, parks, and streetscapes that are attractive, safe, functional, human- scale, and distinct.

- **Policy CD-2.1: Quality Building Design and Architecture.** We encourage all development projects to convey visual interest and character through:
  1. Building volume, massing, and height to provide context-appropriate scale and proportion;
  2. A true architectural style which is carried out in plan, section, and elevation through all aspects of the building and site design and appropriate for its setting; and
  3. Exterior building materials that are articulated, high quality, durable, and appropriate for the architectural style.
- **PUD Consistency.** The PUD will seek to accommodate the City's residential growth and enhance its economic growth by creating residential and retail opportunities within a mixed-use zone. The PUD area will be distinctive through the requirement of well-designed project(s) through standards focused on:
  - Appropriate scale and massing
  - Architectural style and design that are complementary and appropriate to for its setting.
  - The use of high-quality materials that will create visual interest, high quality, durable and appropriate for the architectural style.
  - Appropriate site planning to ensure building orientation visibility from the street, adequate number of driveways and sidewalks, building setbacks, parking lot orientation, adequate refuse storage areas and well-designed street frontages.
- **Policy CD-2.2: Neighborhood Design.** We create distinct residential neighborhoods that promote a sense of community and identity by emphasizing access, connectivity, livability, and social interaction through such elements as:
  1. A pattern of smaller, walkable blocks that promote activity, safety, and access to nearby amenities and services;
  2. Varied parcel sizes and lot configurations to accommodate a diversity of housing types;
  3. Traffic calming measures to slow traffic and promote walkability while maintaining acceptable traffic flows and emergency evacuation access;
  4. Floor plans that encourage views onto the street and de-emphasize the visual and physical dominance of garages (introducing the front porch as the "outdoor living room"), as appropriate; and
  5. Landscaped parkways, with sidewalks separated from the curb and designed to maximize safety, comfort, and aesthetics for all users.
- **PUD Consistency.** The PUD allows for the development of mixed-use residential structures at a human scale through the use of pedestrian walkways and minimal internal roadways. The PUD also requires the orientation of buildings to form along the public roadway. The PUD also includes standards which require appropriate site planning to ensure building orientation visibility from the street, an adequate number of driveways and sidewalks, building setbacks, parking lot orientation, adequate refuse storage areas and well-designed street frontages.
- **Policy CD-2.4: Urban, Mixed Use, and Transit-oriented Areas.** We establish Place Types to require mixed use, urban, and transit-oriented areas to be designed and developed as pedestrian oriented areas that are integrated with adjacent neighborhoods and promote a vibrant, comfortable, and functional environment, as defined for each Place Type.
- **PUD Consistency.** The permitted uses within PUD have been established to provide residential and retail uses to serve the City's neighborhood activity hub and surrounding residential area. The PUD will ensure a mix of residential and retail uses that can be easily accessed by internal residents as well as surrounding residents.
- **Policy CD-2.8: Safe Design.** We incorporate defensible space design into new and existing developments to ensure the maximum safe travel and visibility on pathways, corridors, and open space and at building entrances and parking areas by avoiding physically and visually isolated spaces, maintaining visibility and accessibility, and using lighting.
- **PUD Consistency.** The PUD provides for secure development through the placement of walls and fences between the PUD area, public roadways, and adjacent residential communities. Additionally, the PUD encourages the placement of pedestrian walkways in highly visible areas as well as the use of shielded exterior lighting fixtures. PUD standards allow for the visibility of access points from public vantage points while using secure barriers to prevent unauthorized entry.
- **Policy CD-2.9: Landscape Design.** We encourage durable, sustainable, and drought-tolerant landscaping materials and designs that enhance the aesthetics of structures, create and define public and private spaces, and provide shade and environmental benefits.
- **PUD Consistency.** The PUD requires the creation of a Landscape Plan which would be consistent with City regulations and would provide for the usage of native and drought-resistant foliage.

- **Policy CD-2.10: Parking Areas.** We require all development, including single-family residential, to minimize the visual impact of surface, structured, and garage parking areas visible from the public realm in an aesthetically pleasing, safe and environmentally sensitive manner. Examples include:
  1. Surface parking: Shade trees, pervious surfaces, urban run-off capture and infiltration, and pedestrian paths to guide users through the parking field.
  2. Structured parking: facade articulation, screening, appropriate lighting, and landscaping.
  3. Garage parking: providing access to single-family residential garages through alley access, recessing garages from the frontage to emphasize front doors or active living spaces.
- **PUD Consistency.** The PUD would require parking areas to be shielded from public view through the placement of parking away from public roadways and behind buildings. PUD standards require adequate lighting for all common areas, including parking areas, and the landscaping of all areas which do not have improvements. The Project proposes a central parking structure inset within the PUD area.
- **Policy CD-2.11: Entry Statements.** We encourage the inclusion of amenities, signage, and landscaping at the entry to neighborhoods, commercial centers, mixed use areas, industrial developments, and public places that reinforce them as uniquely identifiable places.
- **PUD Consistency.** The PUD would require the development of private open space amenities for residents of the PUD area as well as a clearly noted and unique frontage along Fourth Street.

Goal CD-3: Vibrant urban environments that are organized around intense buildings, pedestrian and transit areas, public plazas, and linkages between and within developments that are conveniently located, visually appealing and safe during all hours.

- **Policy CD-3.1: Unique Identity.** We promote development that heightens the unique character and identity of each Place Type by requiring compatible land uses and land planning, site design, and building design that promotes an active public realm.
- **PUD Consistency.** The PUD would encourage a sense of place by implementing design standards which provide for consistent building orientation and architectural guidelines. Additionally, the PUD provides for the creation of pedestrian accessways that allow for human scale development.
- **Policy CD-3.4: Context-Aware and Appropriate Design.** We require appropriate building and site design that complements existing development, respects the intent and identity of the Place Type, and provides appropriate transitions and connections between adjacent uses to ensure compatibility of scale, maintain an appropriate level of privacy for each use, and minimize potential conflicts.
- **PUD Consistency.** The PUD establishes standards which would encourage a sense of place within the PUD area through the use of consistent landscaping and architectural design. Buffer areas are required between the PUD area and surrounding residential uses as well as walls which further limit visibility between internal and external residents.
- **Policy CD-3.5: Active Frontages.** We create lively pedestrian streetscapes by requiring primary building, business, and residential entrances, outdoor dining, and storefronts be located on ground floors adjacent to sidewalks or public spaces and designed to maximize safety, comfort, aesthetics, and the intended functionality (as defined by the Place Type).
- **PUD Consistency.** The PUD requires the enhancement of building frontages along Fourth Street frontage through the use of visually interesting architectural features and materials as well as landscaping and pedestrian accessways. Specifically, retail uses are required to present visually appealing storefronts which complement the surrounding architecture and create a distinct entryway.

City Council Priorities

- Invest in the Growth and Evolution of the City's Economy
- Focus Resource in Ontario's Commercial and residential Neighborhoods
- Maintain the Current High Level of Public Safety





Watermarke Ontario Objectives

This PUD establishes the architectural and development standards which will be applied to the Project. Implementation of these standards will ensure a consistent quality in design throughout the planned community.

The objectives of the PUD are to:

- Create a pedestrian-scale walkable community within the City,
- Provide additional retail uses in close proximity to residential uses,
- Expand retail opportunities within the City,
- Provide a variety of high-quality residential units nearby commercial uses,
- Provide for flexible design and development standards to allow for the development of more urban walkable mixed-use development,
- Promote the redevelopment of an underutilized site and provide additional housing opportunities,
- Facilitate high-density residential development within the City for families and individuals, and
- Provide housing at different price points to accommodate multiple income levels.

LAND USE PLAN

Land Use Designation

The Project is located on parcels within the City which have been categorized with a MU-NH land use designation. This land use designation allows the Project to develop multifamily residential units as well as multiple retail and neighborhood commercial uses. The Project area is zoned with a MU-8B zoning designation.

Permitted Uses

Permitted and conditionally permitted uses shall be allowed as identified in the City of Ontario Development Code, Chapter 5.0, Table 5.02-1: Land Use Matrix.



DEVELOPMENT STANDARDS

This section sets forth the standards to govern the placement, height, and bulk of permitted buildings and structures; to establish locational criteria for vehicular access to site, parking and loading requirements, landscape, sign standards; and identify historic preservation features to be incorporated and/or considered for development plans. Unless otherwise stated herein, all development within the Project area shall meet the applicable standards and requirements of the City's Development Code for MU-8b developments.

The purpose of these standards is to encourage a high-quality residential/mixed-use development. These standards establish flexible guidelines to encourage such development, ensure that it is of a minimum standard of appearance, and compatible with the neighborhoods.

Table 1: Applicable Development Standards on the next page summarizes the City' development standards present within the entire Watermarke Ontario Project area as well as the surrounding uses. These development standards are based on those found in the Ontario Development Code. However, in the event of discrepancies between the development standards presented in this document and those in the Ontario Development Code, this document will act as the primary regulatory document.

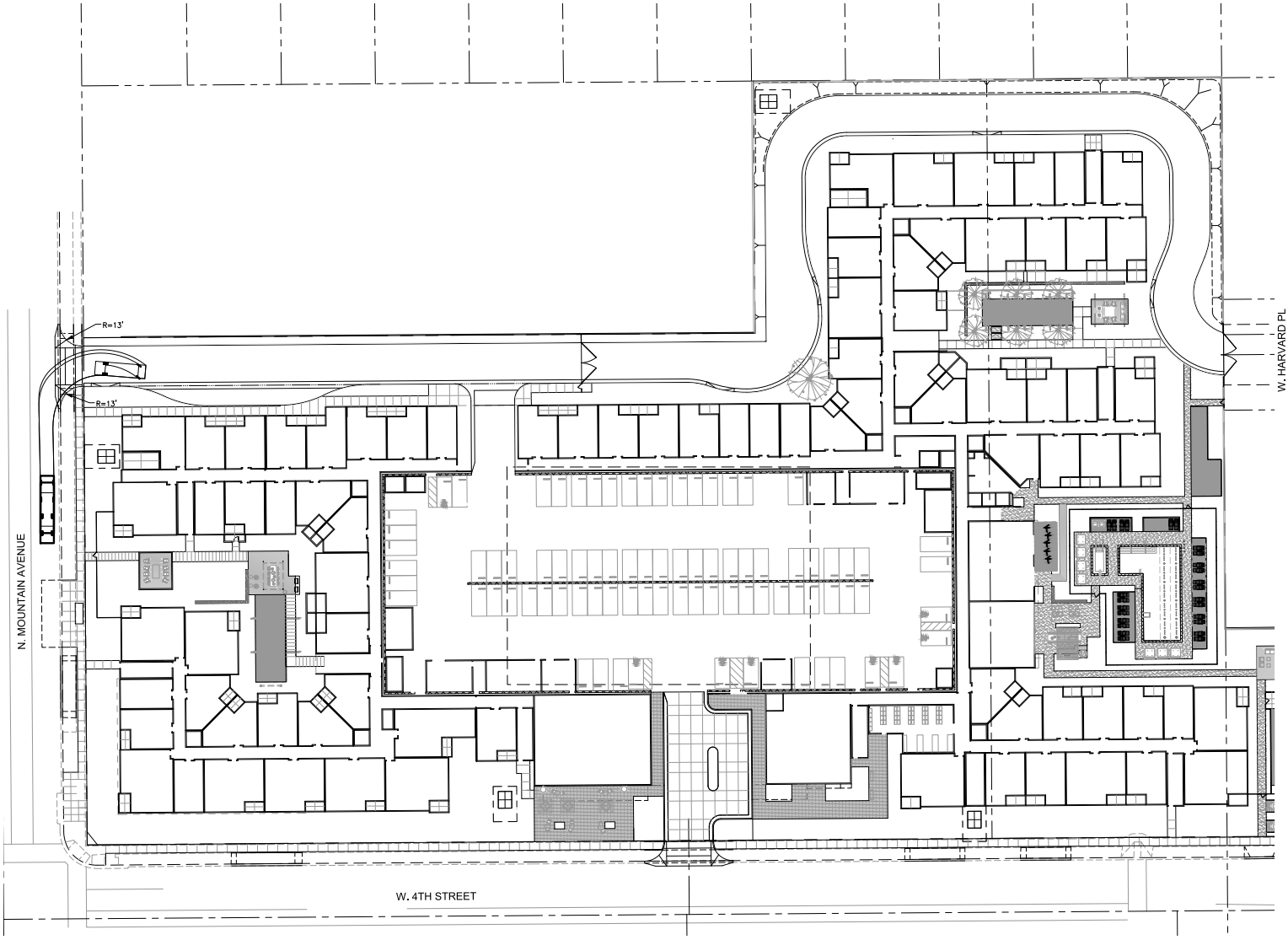


Table 1: Applicable Development Standards

Development Standard	Requirement	Consistency Discussion
Residential Density	20 – 75 du/ac	Development Strategy
Maximum Retail/Office (Nonresidential floor area)	1.0 FAR	Development Strategy
Max Building Height	5 Stories	Design Standards
Setbacks	None Specified	Design Guidelines
Min Multiple-Family Residential Parking Ratio.	1.2 spaces per bedroom 1.2 spaces per unit for studio units	Circulation
Min Retail Trade Parking Ratio	1 space per 250 sf	Circulation
Min Bicycle Parking Ratio	Residential 1 rack per 30 stalls Retail (short term) 5% of stalls (2 minimum)	Circulation
Min Landscaping	The entirety of the project site (excluding areas devoted to building area, paving, and/or outdoor loading and storage areas that are screened from public view)	Landscape Standards

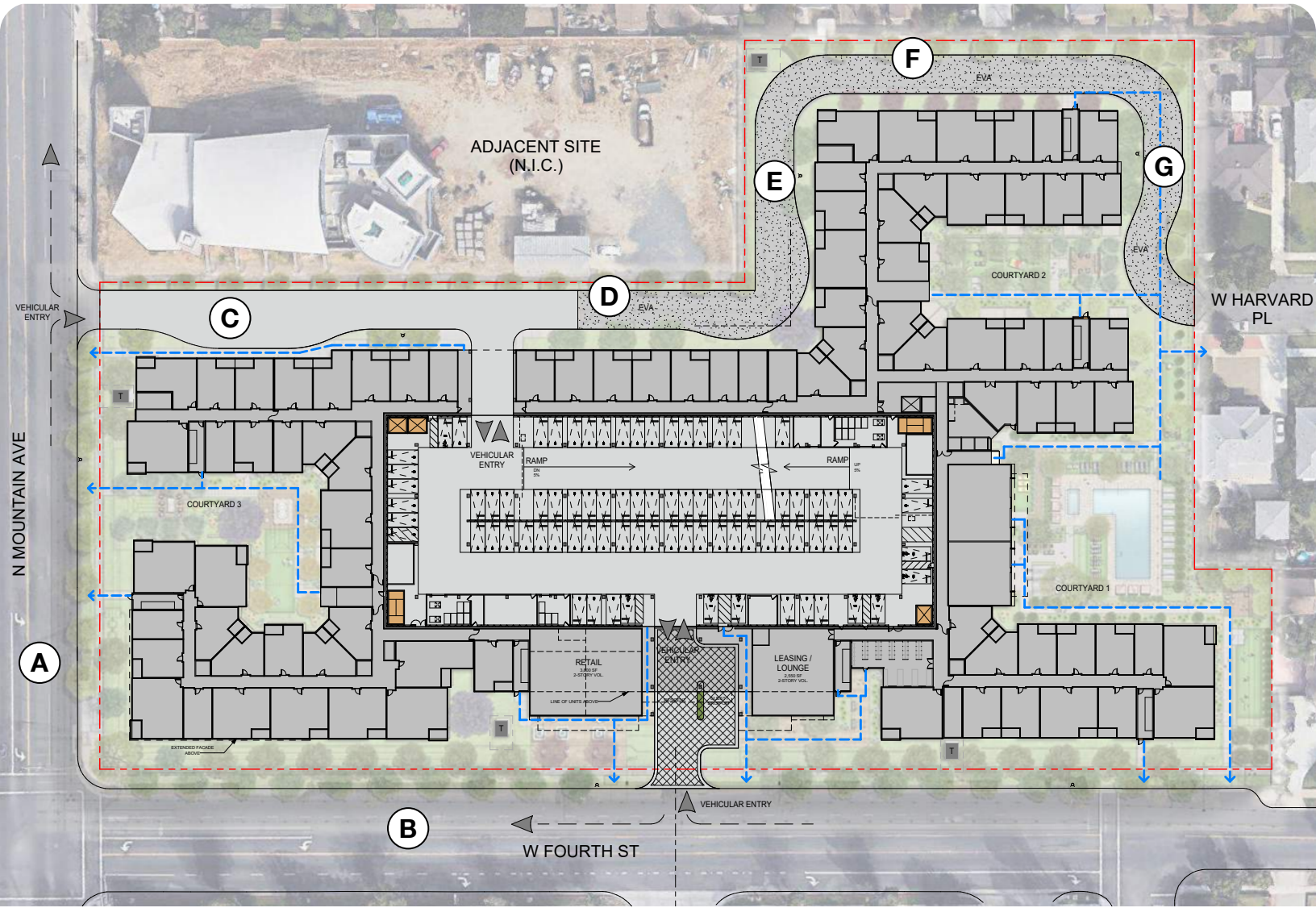
du = dwelling unit
ac = acre
FAR = Floor Area Ratio
sf = square feet

CIRCULATION

Circulation improvements within the PUD area should include adequate vehicular and pedestrian accessways throughout the PUD area. Improvements within the PUD area shall include points of access to Fourth Street and Mountain Avenue. Proposed improvements to roadways and pedestrian accessways shall be approved by the City Engineer.

The Project provides circulation improvements within the PUD area, including a primary and secondary driveway along Fourth Street and Mountain Avenue, respectively. The primary driveway consists of a two-lane gated entry along Fourth Street which leads to the southern entrance of the central parking structure. A secondary driveway connects to Mountain Avenue in the northwestern portion of the Project site and continues east toward the eastern boundary of the Project site. The secondary driveway includes a connection to the northern entrance of the central parking structure. Once past the northern entrance of the central parking structure, the secondary driveway continues east, transitioning into an Emergency Vehicle Access (EVA) lane which terminates at the eastern boundary of the Project site.

Internal circulation improvements also include a series of ramps within the central parking structure to allow vehicular access to each of the six parking levels. The ramps will allow for a bidirectional flow of traffic. The first and sixth level of the central parking structure will include a turnaround space for vehicles to change direction to either continue upwards or downwards on the ramp.



Accessible route from public right of way to building entrance

Building vehicular entry/exit

Pedestrian entry/exit

ROADWAY INFRASTRUCTURE

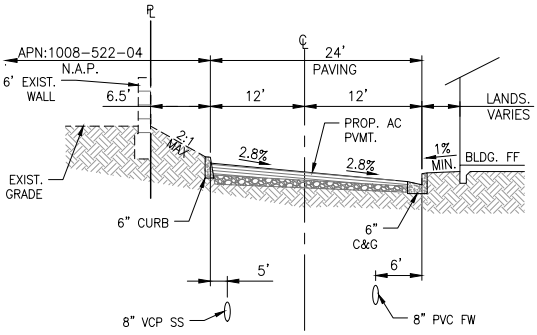
Internal Roadway Improvements

Access to the PUD site is provided through roadway connections to both Mountain Avenue and Fourth Street. External roadway access points (e.g., driveways) shall be developed at a minimum width of 24 feet. This not only allows for a bidirectional flow of passenger vehicle traffic, but also provides adequate space for the bidirectional travel for larger service vehicles (e.g., fire engines and garbage trucks).

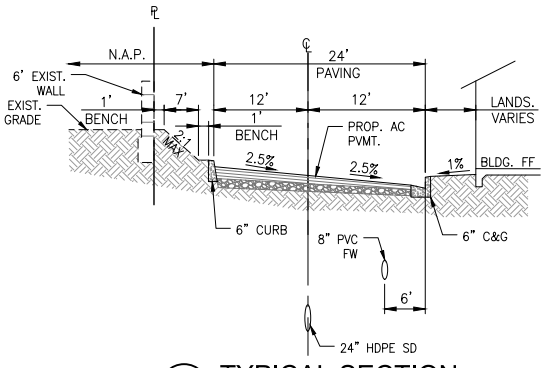
Access to the PUD site via Harvard Place shall be limited to EVA connections. EVA lane access to the PUD site shall be prohibited for non-emergency vehicles and pedestrians. EVA connections to Harvard Place shall be secured via a gated entry which shall remain closed and locked except when in use by emergency personnel.

The Project's proposed internal roadway improvements include two driveways, multiple ramps connecting the different levels of the central parking structure, and an EVA lane.

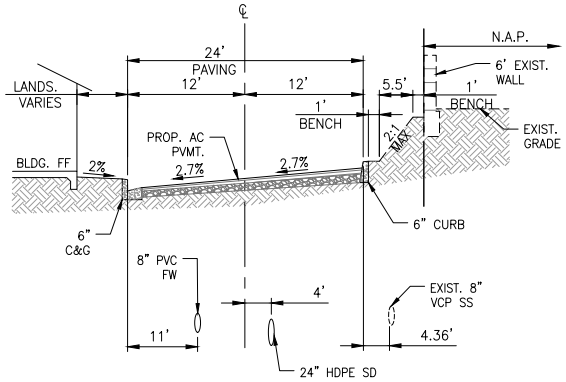
- The main entryway connects to Fourth Street via a 28.5-ft wide driveway, which continues into a 26-ft wide gated entry for the central parking structure. A 20-ft wide guest drop-off lane is attached to the main entryway. These driveways are separated by a 6-ft wide landscape island.
- The secondary entryway connects to Mountain Avenue via a 24-ft wide driveway leading to a 90-degree connection to a 24-ft wide entry into the central parking structure.
- An EVA lane will connect to the secondary entryway, continuing the 24-ft wide driveway east to Harvard Place. The EVA lane will consist of paved portions of the northeast perimeter of the Project area. The EVA lane will terminate at a 6-foot-tall gate placed at the EVA lane's point of connection to Harvard Place.
- The 6 levels of the parking structure will be connected by 24-ft wide ramps that connect each of the parking levels to the surrounding residential structure.



E TYPICAL SECTION
N.T.S.



F TYPICAL SECTION
N.T.S.

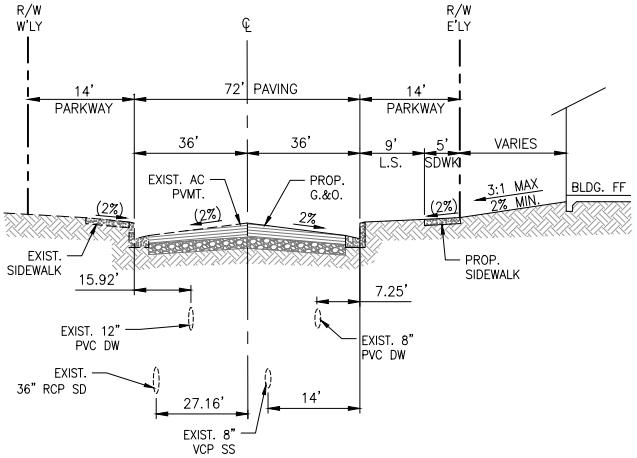


G TYPICAL SECTION
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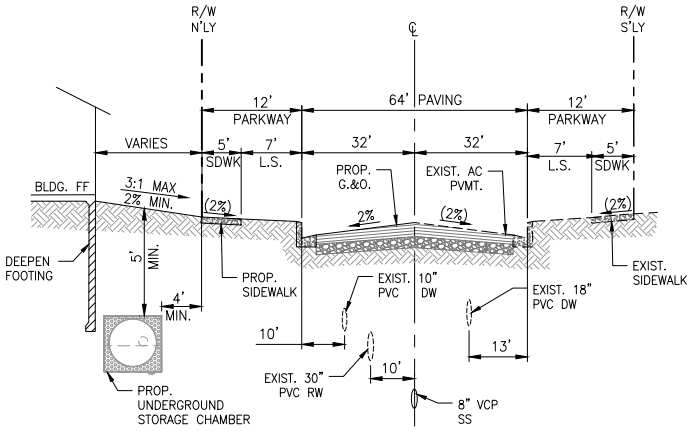
Public Right of Way Improvements

The public right-of-way improvements required are to include but are not limited to the following: street pavement, curb and gutter, parkway landscaping, parkway irrigation, public sidewalk, traffic signing and striping, streetlights, bus stop, bus shelters, and amenities.

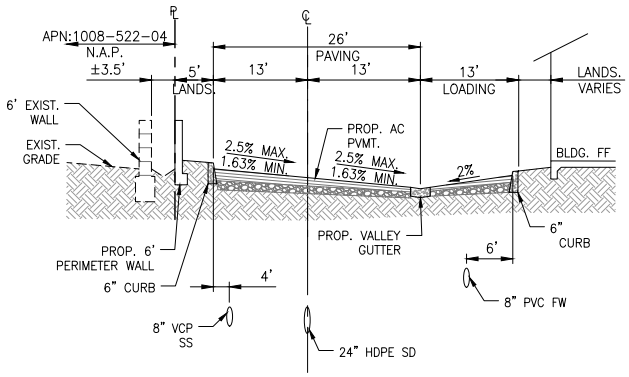
Development along public rights-of-way must be approved by the City.



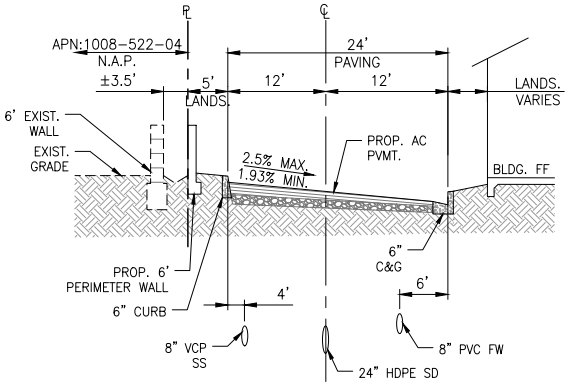
A N. MOUNTAIN AVENUE
N.T.S.



B W. FOURTH STREET
N.T.S.



C TYPICAL SECTION
N.T.S.



D TYPICAL SECTION
N.T.S.

Parking

Parking should be provided within the PUD area for residential and retail uses. Residential parking shall be provided at a rate of at least 1.2 spaces per bedroom (includes guest parking). Studio unit parking shall also be provided at a rate of 1.2 spaces per unit. Retail uses parking shall be provided at a rate of 1 parking space for each 250 sf of commercial floor area.

Parking space dimensions, drive aisles, etc. shall conform to the design standards set forth in Division 6.03 (Off-Street Parking and Loading) of the Ontario Development Code. On-street vehicular parking along Fourth Street and Mountain Avenue shall be prohibited. Fourth Street and Mountain Avenue are both public streets and may not be designated for guest parking. On-street parking may not be used to meet the requirements for on-site parking as indicated in Division 6.03 of the Ontario Development Code.

Parking requirements for each unit type are summarized in **Table 1: Applicable Development Standards**.

The Project will provide 643 residential parking spaces and 16 retail parking spaces within the central parking structure for a total of 659 parking spaces. Retail parking spaces will be located on the ground floor of the parking structure with the remaining spaces utilized for residential parking. Twenty-four bicycle parking stations will be provided based on a ratio of 1 bicycle rack per 30 parking stalls. The amount of residential provided bicycle racks will exceed the required 22 stalls based on e 643 provided residential parking stalls. **Table 2: Project Parking Consistency** summarizes the Project's proposed parking counts compared to the standards established for the PUD.

Table 2: Project Parking Consistency

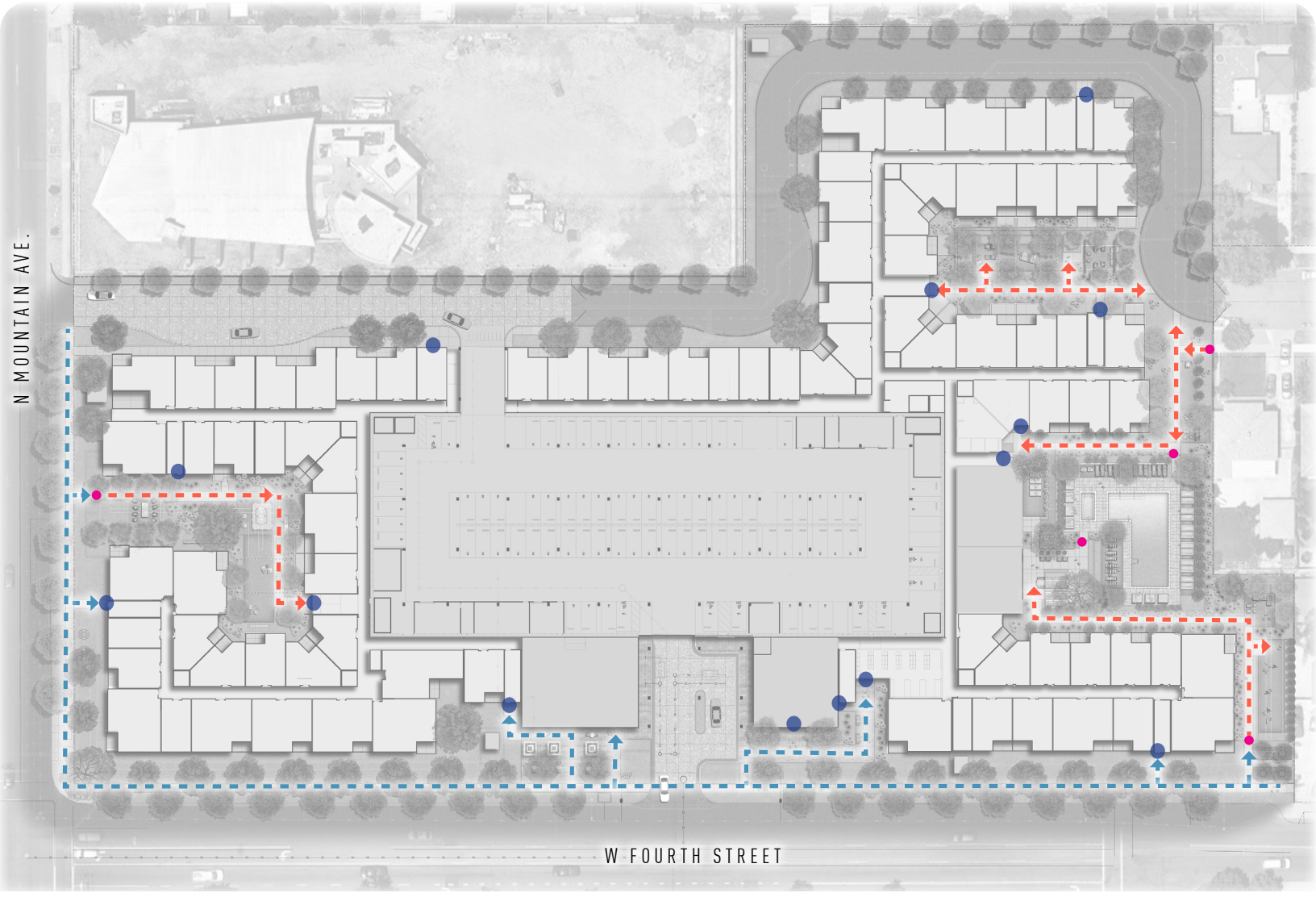
Standard	PUD Requirement	Project Consistency
Residential Parking Ratio	1.2 spaces per bedroom (1.2 spaces per studio unit)	1.4 spaces per bedroom (including studio units)
Minimum Residential Spaces	555 Spaces	643 Spaces
Minimum Retail/Office Parking Ratio	1 space per 250 sf	
Minimum Retail/Office Parking Spaces	16 Spaces	16 Spaces
Minimum Bicycle Parking Ratio	Residential: 1 rack per 30 stalls Retail (short term): 5% of stalls (2 minimum)	
Minimum Residential Bicycle Racks	22 Racks	22 Racks
Minimum Bicycle Racks	2 Racks	2 Racks

Pedestrian Connections

Pedestrian connections shall be provided to the PUD site from Mountain Avenue and Fourth Street. Private pedestrian accessways shall be developed between each building and dwelling unit within the PUD site. The PUD area shall be developed such that internal vehicular traffic is limited to parking areas and main driveways. Pedestrian accessways within the PUD area outside of parking structures should be landscaped and be made of complimentary materials to the building theme.

The Project will connect to existing pedestrian sidewalks along Fourth Street and Mountain Avenue. Internal pedestrian circulation will include pathways between buildings and dwelling units and the parking structure. Residents will be able to access all areas of Watermarke Ontario, including amenity areas, through walking paths and paved sidewalks. Vehicular traffic will be limited to the central parking structure, its entryways, and external roadways.

Pathways within the Project which are adjacent to amenities and open space areas will be created with various materials, including stone, concrete, and wood paneling to give each area of the Project site its own unique character.



Private Walks Public Walks Resident Access Gate Building Entry

INFRASTRUCTURE AND UTILITIES

Utility infrastructure within the PUD area such as water, sewer, recycled water, and electricity facilities shall connect to existing City infrastructure systems along Mountain Avenue and Fourth Street and propose new facilities within existing utility easements and rights of way. Each utility shall be buried at varying depths, based on City standard, to create a separated, identifiable system.

Telecommunications

Residential developments within the PUD shall include connections to telecommunications services either through existing overhead cable and telephone lines, through the placement of fiber optic cable, or undergrounding based on site conditions and the City's discretion.

The Project includes the placement of new fiber optic cable along the northern, southern, and western portions of the Project site with multiple connections made to each building.

Water, Sewer, and Stormwater

Domestic water connections shall be made via the existing domestic water main running below Fourth Street along the southern portion of the PUD area.

The Project includes the placement of one domestic water meter, one domestic water master meter, and one domestic water backflow in the southern portion of the Project site. The Project includes a new recycled water meter connection along the southern portion of the site which would connect to the existing recycled water main below Fourth Street.

The Project proposes a new fire water line connection to the existing domestic water line beneath Mountain Avenue via a double check detector assembly (DCDA). The Project fire water line will follow the path of the secondary driveway and EVA lane to the PUD area's eastern perimeter where it will continue south along the Project site perimeter. The Project fire water line will then connect to the existing domestic water main below Fourth Street via a DCDA. Multiple points of connection from the fire water line to Project structures will be made within the northern portion of the Project site. Additional fire hydrants will be placed along the southern and western portions of the Project site.

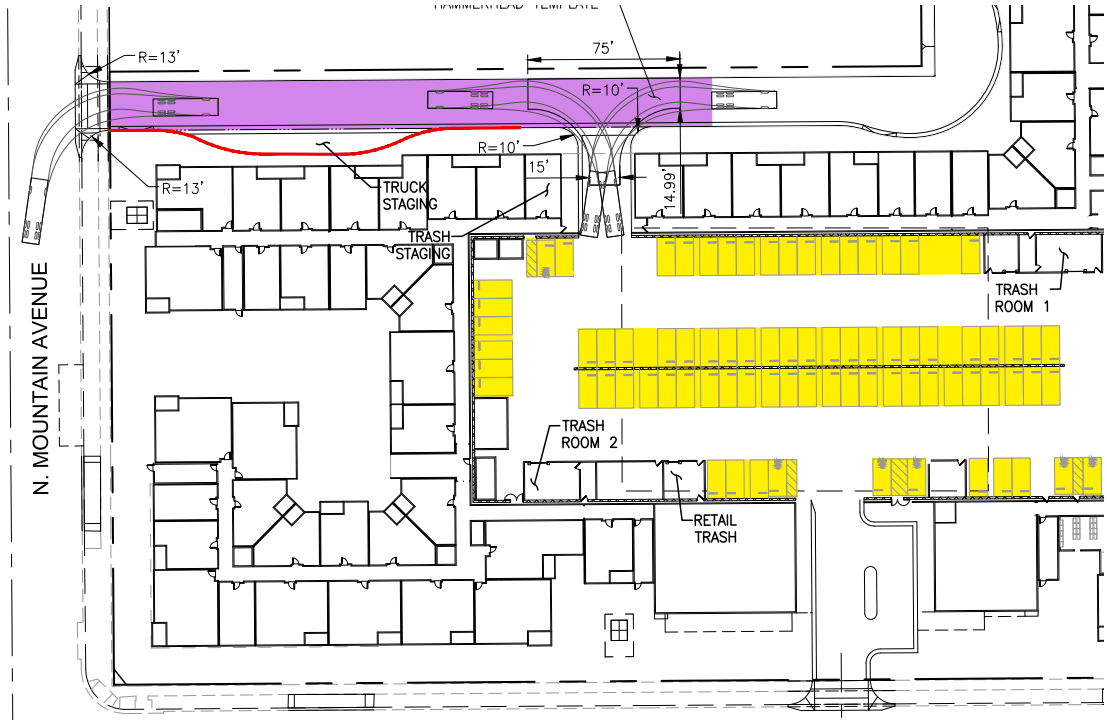
Sewer infrastructure proposed for the Project site will run along the secondary northern driveway and continue along the EVA lane before terminating at a sewer lateral on the northwester portion of the EVA lane. An additional sewer line will branch from the northern line at the secondary entrance of the central parking structure and cross the site from north to south, connecting to a proposed line below Fourth Street. The Project proposed public sewer main below Fourth Street connecting to an existing sewer main below the intersection of Mountain Avenue and Fourth Street. Multiple sewer lateral connections will be made to the existing sewer main within the sanitary sewer easement adjacent to the eastern border of the Project site. The existing sewer main runs north-south along the Project site before transitioning east between Harvard Place and Fourth Street. Multiple laterals placed along the proposed and existing sewer facilities will form connections to each unit and retail use.

Developments within the PUD area shall provide on-site stormwater drainage facilities which comply with the San Bernardino County Stormwater Program's Water Quality Management Plan (WQMP) requirements. These facilities may include vegetated swales, depressed landscaped basins, pervious concrete pavement, and underground stormwater retention/infiltration vaults. All proposed Development Plans must prepare a Preliminary Water Quality Management Plan to ensure water quality management.

One underground retarding basin and one underground infiltration chamber will be placed on the western and southwestern portions of the Project site, respectively. A dry well will be placed in the southeastern portion of the site and will connect to the proposed onsite storm drain system.

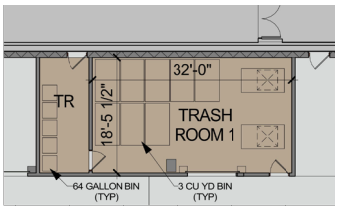
New storm drainage lines will connect to existing storm drain facilities below Mountain Avenue. The Project storm drain lines will run along the inner perimeter of the PUD area. An underground infiltration chamber will be placed below the southwestern corner of the Project site. Additionally, an underground retarding basin will be placed below Courtyard 3. A modular wetland, a pump, and a flow control structure will be placed along the southeastern portion of the PUD area.

Solid Waste



Individual refuse containers should be provided for each residential unit and collected in group waste bins within trash enclosures for pickup by City Integrated Waste Department. Refuse and recyclable materials collection facilities shall be designed consistent with the City's Building and Development Code and shall be designed to be consistent with the overall theme of the surrounding PUD area, including materials and aesthetic elements of both the specific area and the overall PUD area. Trash enclosures should be placed throughout the site to allow for waste collection and shall be shielded from pedestrian view. The PUD roadways shall be designed to allow for utility service vehicles (such as waste collection vehicles) to enter and exit the site via Mountain Avenue.

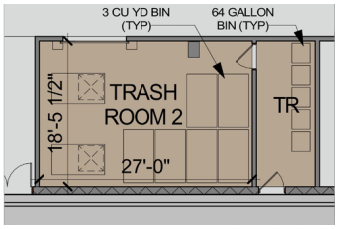
All refuse enclosures shall be located on major drives aisles within developments to achieve adequate circulation for refuse vehicles. Enclosures must be designed so that refuse and recycling containers may be accessed by the generator and serviced by the service provider without moving other bins. To encourage recycling, enclosures designed for a maximum of one (1) bin are prohibited.



ENLARGED TRASH ROOM 1
N.T.S.

All Priority Land Use (PLU) areas (areas which include mixed uses containing residential densities of at least 10 dwelling units per acre) within this Development Plan shall comply with the statewide Trash Provisions adopted by the State Water Resources Control Board (SWRCB) and trash requirements in the most current San Bernardino County Area-Wide MS4 Permit.

Individual refuse and recyclable materials collection pick up and storage locations have been designed for the project. Trash and recycling bins shall be provided for each unit. Two residential trash rooms will be placed in the northeast and southwest corner of the parking structure. First floor residents are able to dispose of their trash in either of these rooms. Each subsequent floor of the residential structure will have access to garbage chutes also located in the northeast and southwest corner of the parking structure. These chutes deposit refuse directly into the first-floor trash rooms.
A retail trash enclosure is also provided in the southwest corner of the central parking structure.



ENLARGED TRASH ROOM 2
N.T.S.

Scout trucks will be used to consistently monitor trash levels and transfer full containers to the main trash enclosure on the north side of the PUD area. The bins within the trash enclosure will be picked up by the City's Integrated Waste Department. The City's Integrated Waste Department will utilize the secondary northern driveway as site access. This process of trash retrieval will be shielded from view will be made efficient through the creation of a truck access lane attached to the secondary entrance driveway.

Utility Screening

All ground mounted equipment within the PUD area shall be screened and designed to not detract from the architecture of the Project site. Air conditioners, and other utilities, shall be screened from adjoining properties and public rights or way by a visual barrier. Water, sewer, telecommunication, and electricity utility lines shall be buried underneath roadways to not only shield them from public view, but also to ensure their protection from hazards such as precipitous weather and rodents.

Utility buildings shall be installed/designed to incorporate architectural elements or screening or to be placed in a manner to reduce visual impacts to the community. Roof mounted equipment, including ladders and antenna devices, shall be located and/or screened so that it is not visible from streets and adjacent buildings; or shall be designed to be integrated to the building's form where possible. Roof decks and rooftop mechanical units may be visible from adjacent developments and therefore shall be screened and painted to match the finish of the roofing material in order to be as unobtrusive as possible. Rooftop levels shall therefore be developed with parapets which encircles and rooftop area which contains rooftop mechanical equipment in order to further shield them from view. Rooftop parapets should be designed to match the materials and color scheme of the adjacent portion of the building. Roof decks should be designed to match or compliment materials and colors used in the adjacent portions of the building and create a sense of consistency between building components.

DEVELOPMENT STRATEGY

Nonresidential uses (i.e., retail and office), within the PUD area shall be developed at a maximum intensity of 1.0 FAR. Residential density within the PUD area shall range from a minimum of 25 du/ac to a maximum of 75 du/ac. These densities are consistent with development standards established for City's MU-8b zones.

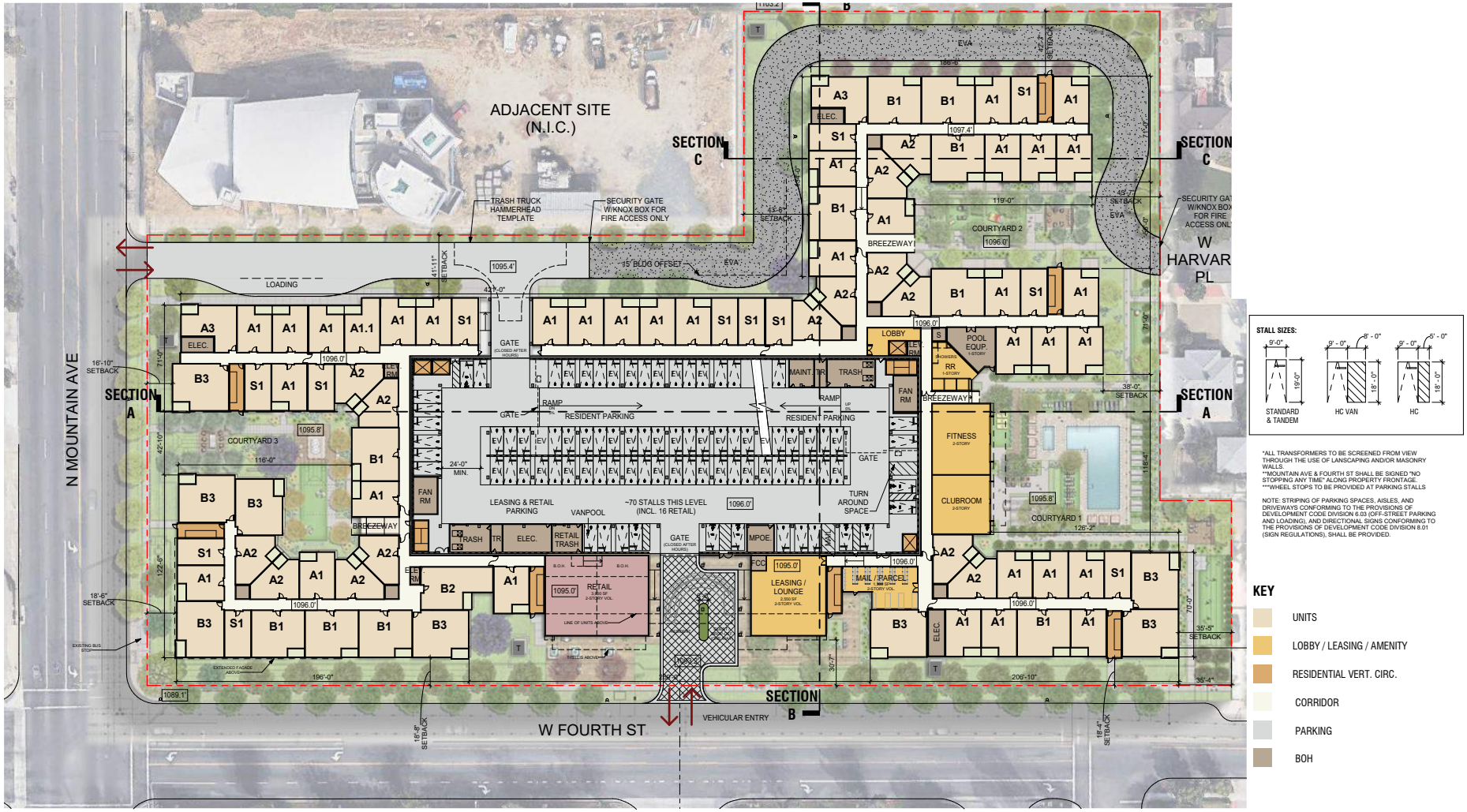
The Project proposes the creation of 3,800 square feet of retail/office space along the PUD area's Fourth Street frontage. Project retail/office uses are proposed at an intensity of 0.02 FAR. The Watermarke Ontario Project proposes the creation of 357 multifamily residential units with an overall density of 61.5 du/ac.

The Project's 357 residential units would consist of studio, 1-bedroom, and 2-bedroom apartment units. The studio units are available in one floorplan and the 1- and 2-bedroom units are available in three floorplans. The PUD floorplans range in size from 576 square feet to 1,172 square feet. **Table 3: Floor Plan Standards** details the dimensions and development standard of each of the three available floor plans.

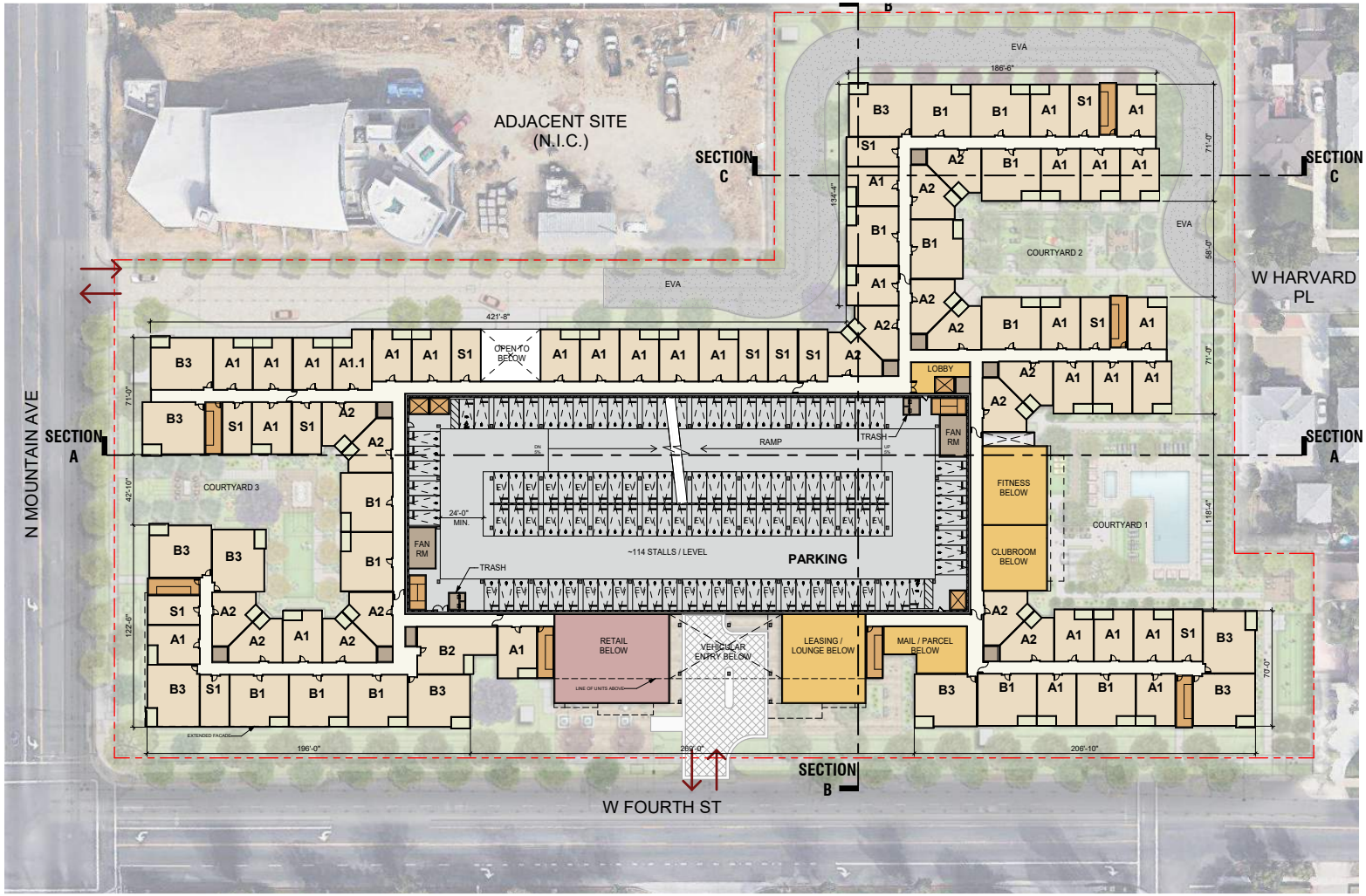
Table 3: Floor Plan Standards

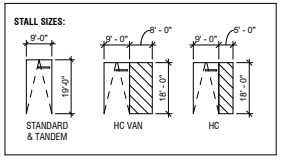
Floor Plan #		Bedrooms	Bathrooms	Square Feet	Unit Count
5	**1**	Studio	1	576	50
A	**1**	1	1	696	138
	2			707	62
	3			891	2
B	**1**	2	2	1,080	62
	2			1,172	6
	3			1,138	37

Ground-Level Building Plan



2nd Level Building Plan



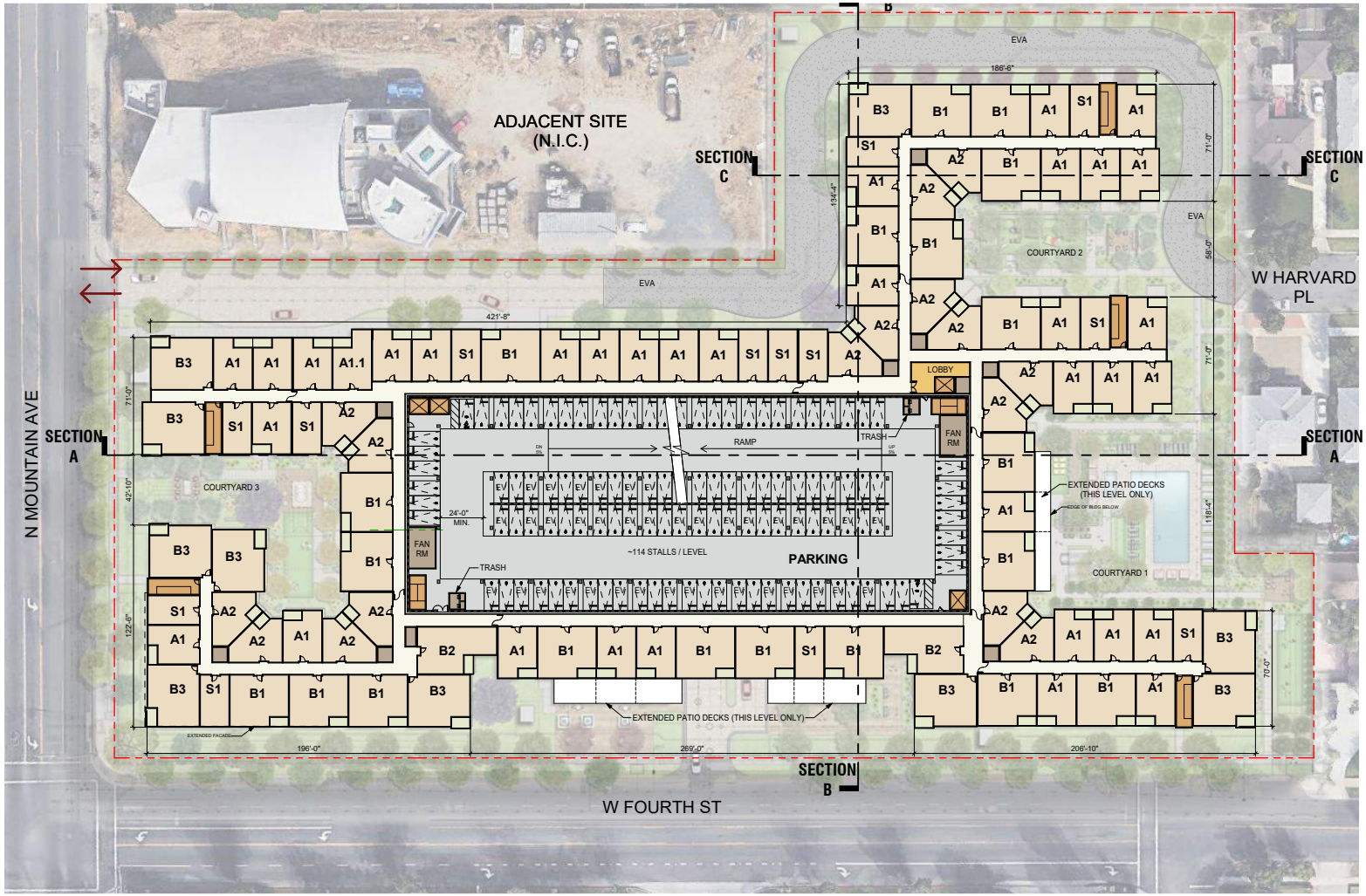


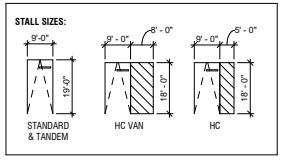
*WHEEL STOPS TO BE PROVIDED AT PARKING STALLS

KEY

- UNITS
- LOBBY / LEASING / AMENITY
- RESIDENTIAL VERT. CIRC.
- CORRIDOR
- PARKING
- BOH

3rd Level Building Plan



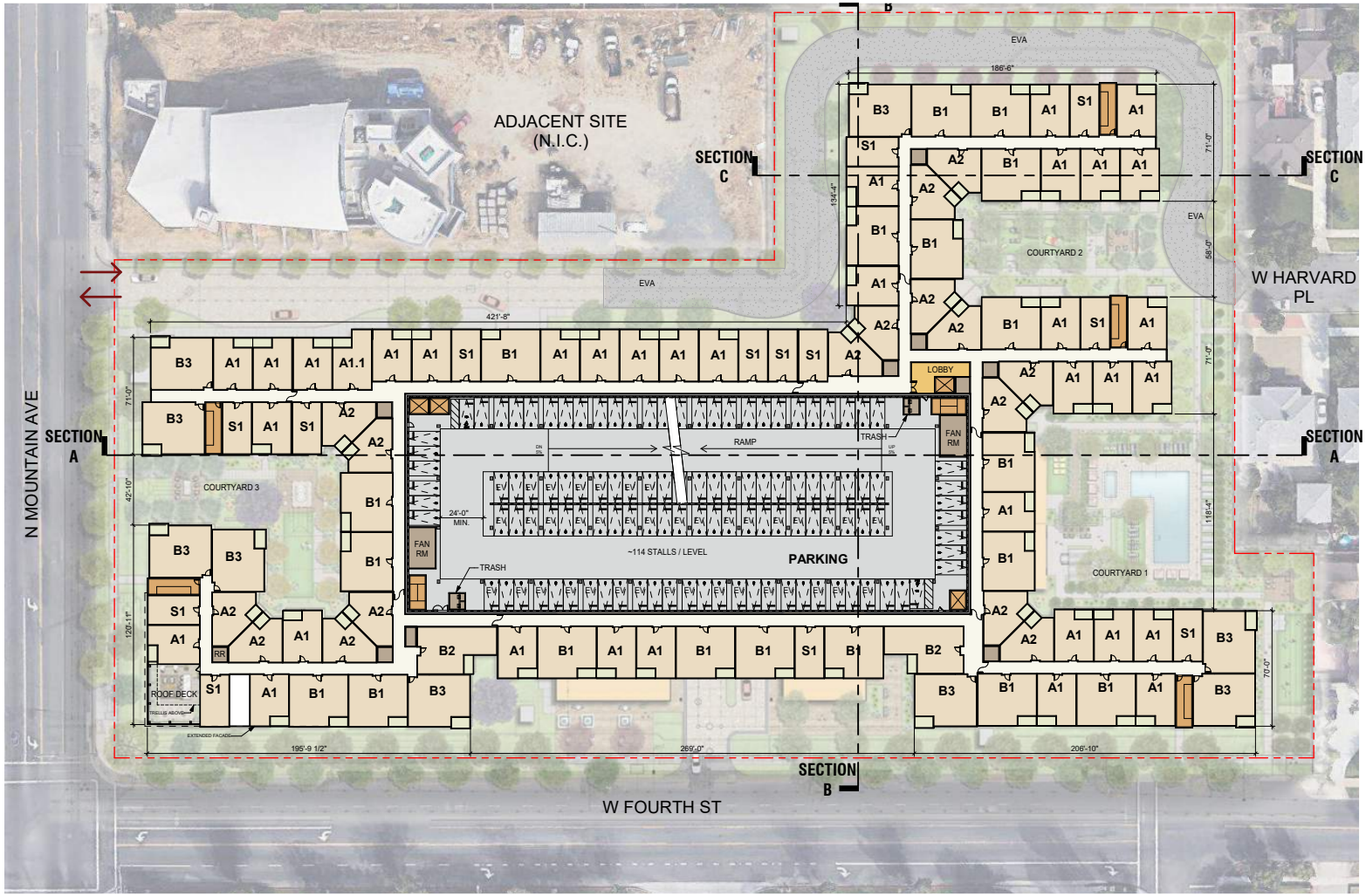


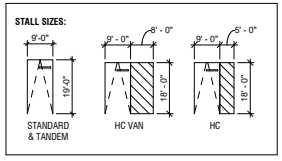
*WHEEL STOPS TO BE PROVIDED AT PARKING STALLS

KEY

- UNITS
- LOBBY / LEASING / AMENITY
- RESIDENTIAL VERT. CIRC.
- CORRIDOR
- PARKING
- BOH

4th Level Building Plan



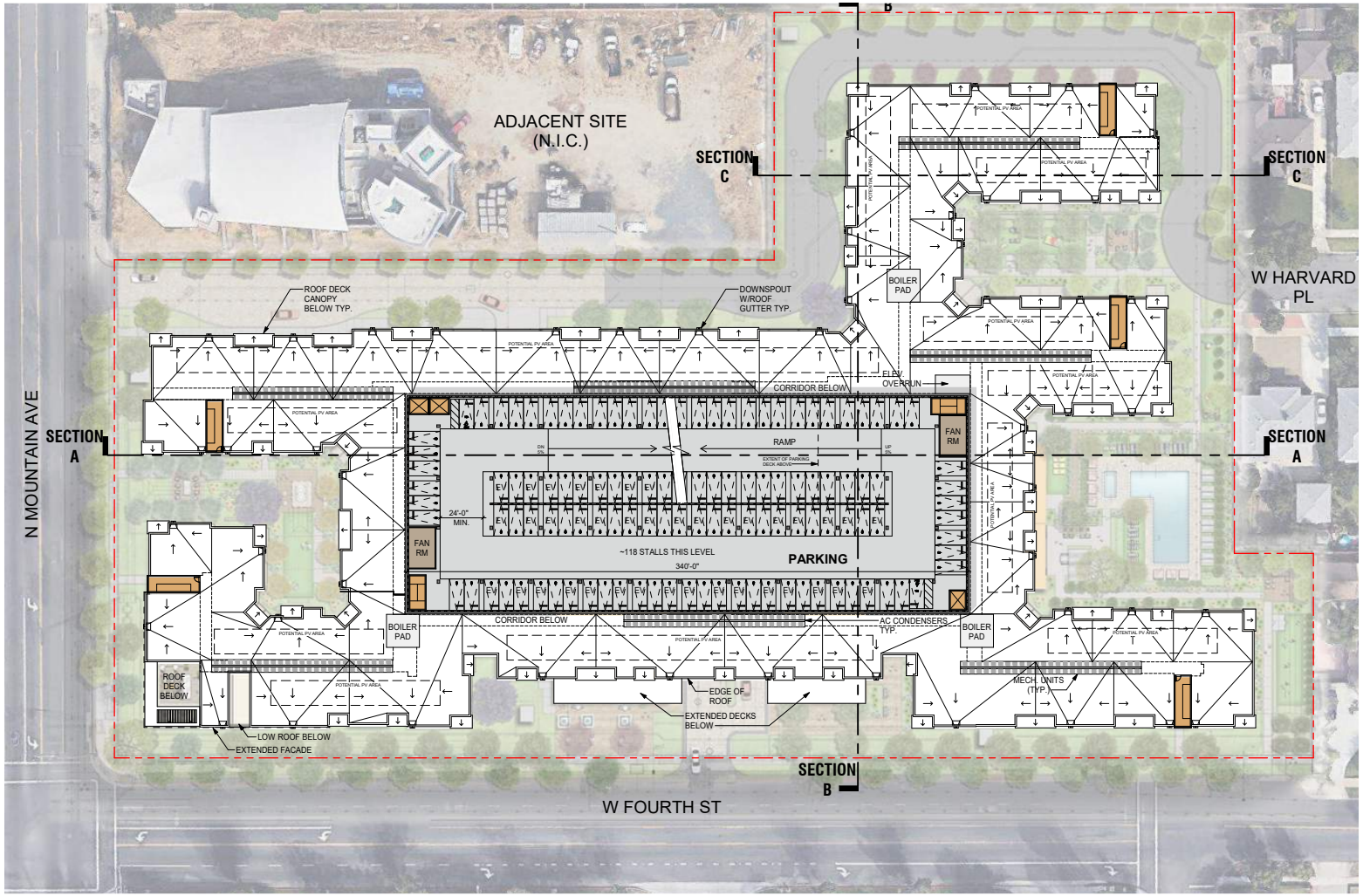


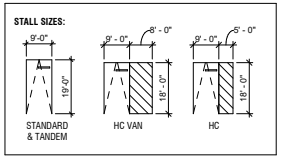
*WHEEL STOPS TO BE PROVIDED AT PARKING STALLS

KEY

- UNITS
- LOBBY / LEASING / AMENITY
- RESIDENTIAL VERT. CIRC.
- CORRIDOR
- PARKING
- BOH

5th Level Building Plan



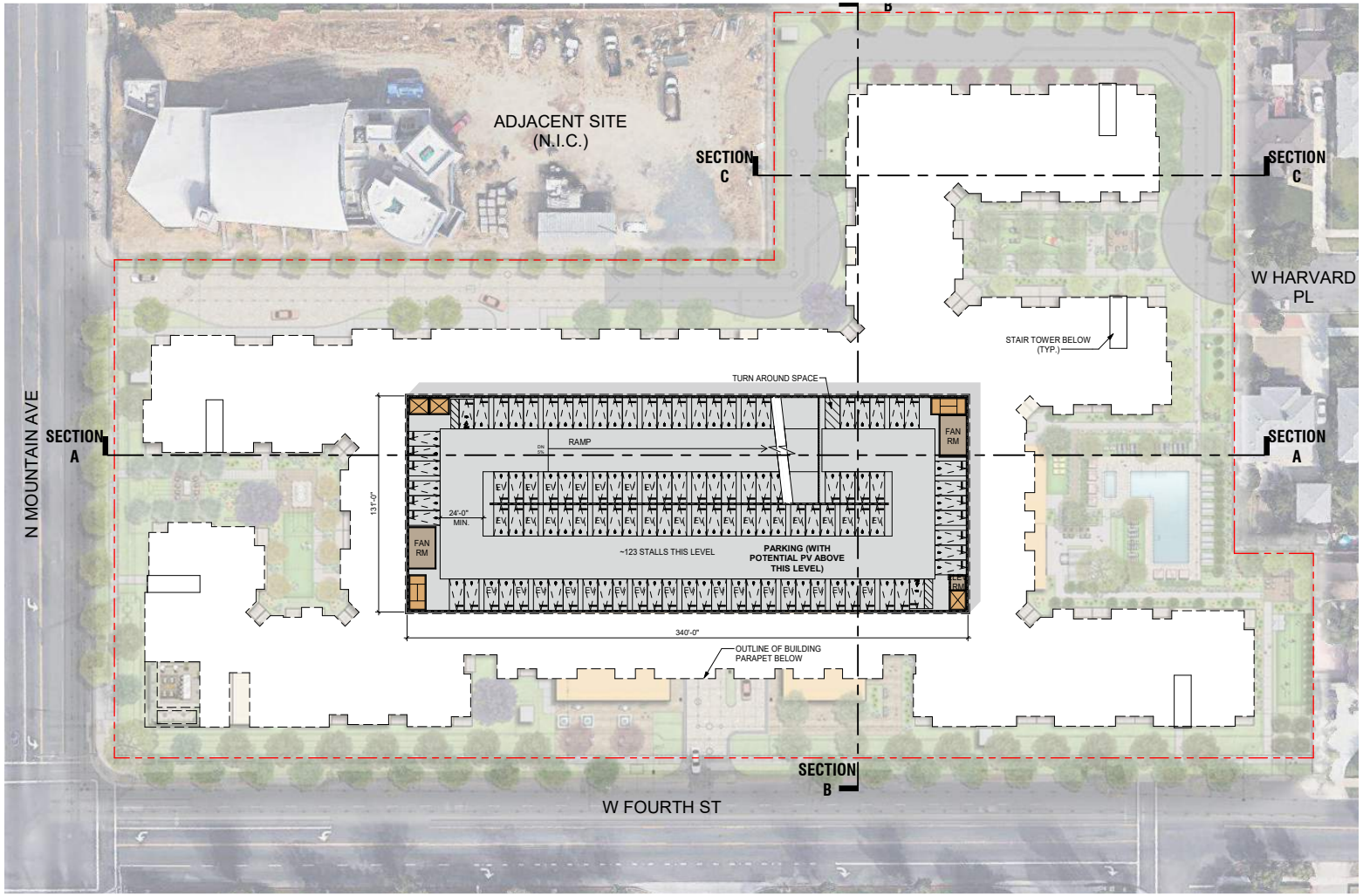


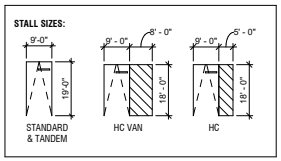
*WHEEL STOPS TO BE PROVIDED AT PARKING STALLS

KEY

- UNITS
- LOBBY / LEASING / AMENITY
- RESIDENTIAL VERT. CIRC.
- CORRIDOR
- PARKING
- BOH

6th Level Building Plan (Parking Structure Roof)



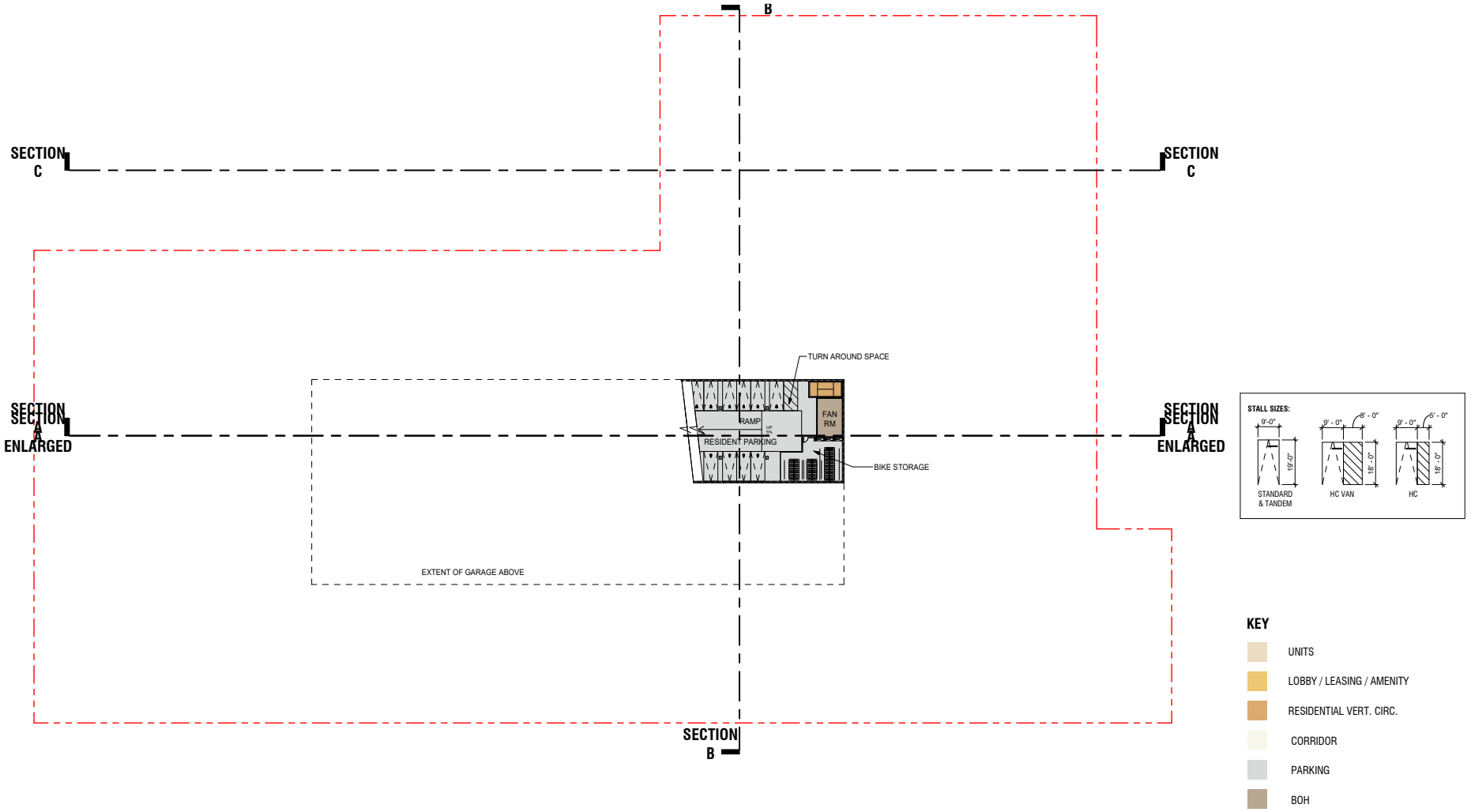


*WHEEL STOPS TO BE PROVIDED AT PARKING STALLS

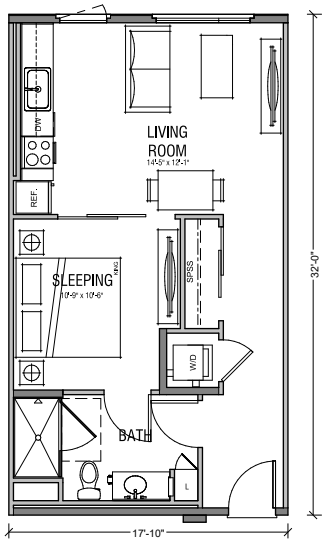
KEY

- UNITS
- LOBBY / LEASING / AMENITY
- RESIDENTIAL VERT. CIRC.
- CORRIDOR
- PARKING
- BOH

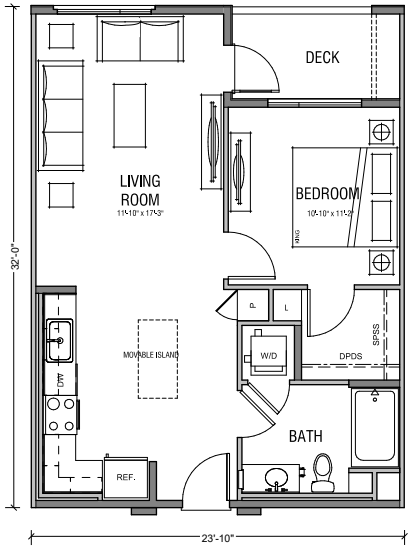
B1 Basement Level



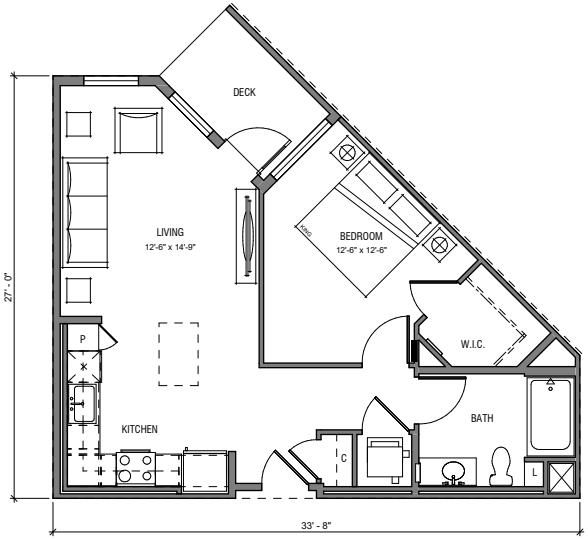
Typical Unit Plans | Studio & 1 Bed



UNIT S1
STUDIO / 1 BATH

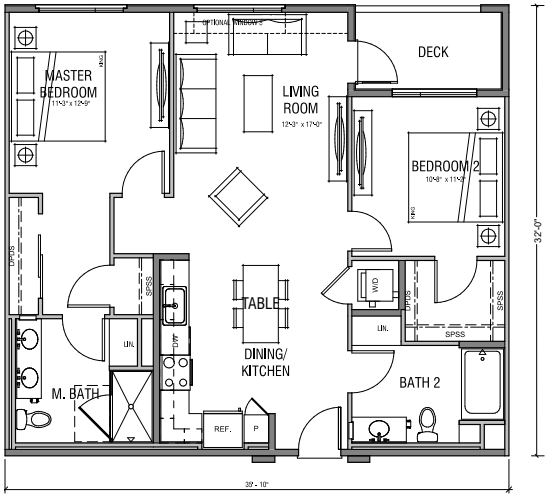


UNIT A1
1 BEDROOM / 1 BATH

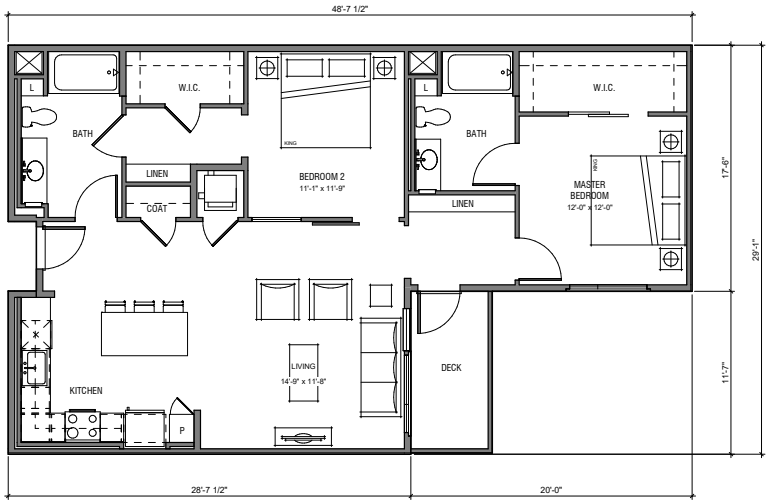


UNIT A2
1 BEDROOM / 1 BATH

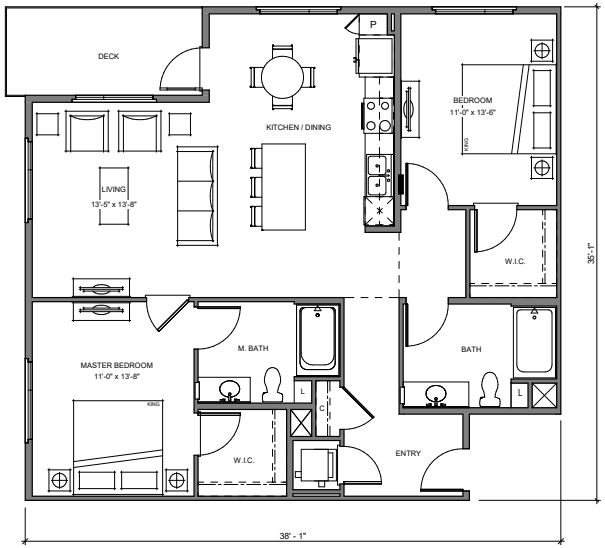
Typical Unit Plans | 2 Beds



UNIT B1
2 BEDROOM / 2 BATH



UNIT B2
2 BEDROOM / 2 BATH



UNIT B3
2 BEDROOM / 2 BATH

DESIGN GUIDELINES

The following design guidelines are intended as a reference to assist the designer in understanding the City's goals and objectives for high quality commercial development. The guidelines contained here are consistent with the standards presented in **Table 1: Applicable Development Standards** above.

The design guidelines provided in this section are designed to be compatible with the vision of the Mixed-Use Neighborhood Activity Hub and provide site specific guidance for the development of the project area. The design guidelines in this PUD are intended to provide direction to developments within the PUD area. The guidelines will be utilized during the City's development review process to encourage the highest level of design quality, while at the same time providing the flexibility necessary to encourage creativity on the part of the project designer(s).



Building Orientation

Building frontages shall be oriented towards Fourth Street. Frontages should be enhanced with entry elements, interesting architecture, enhanced materials, and pedestrian scale to provide connection between the development and the street. Fourth Street shall provide primary access to the site with Mountain Avenue acting as a secondary access point. Retail uses developed within the PUD area shall have entrances oriented toward Fourth Street. Indoor residential amenities (e.g., gyms and common areas) may be oriented towards interior pedestrian open spaces.

The Project will consist of one large multifamily building with integrated retail and parking uses. The Project will be developed as a wrapped style development with one central multilevel parking structure surrounded on all sides by residential units, retail uses, and amenities. The building will be developed with inset amenity spaces, courtyards, and additional pedestrian accessways. This will allow a natural, organic buffer to occur between the building and any surrounding roadway or development. Each side of the building will be designed to be aesthetically pleasing to any passersby; however, the main side will be oriented toward Fourth Street. The rear entry, adjacent to Mountain Avenue, will be a secondary elevation/frontage. Residential units will have their entryways oriented toward the inside of the complex with balconies and windows facing the exterior of the complex. Pathways to each unit will also be placed within the complex and connect with separate pedestrian pathways that lead to external portions of the complex.

North Elevation



Setbacks

Buildings within the PUD area shall maintain a minimum setback of 10 feet from the front and interior side PUD area boundaries. Additionally, buildings within the PUD area shall maintain a minimum setback of 10 feet from adjacent arterial, collector, and local streets.

Landscaping shall be used within each setback to soften each building's appearance as well as designed with windows or design elements. The use of a 10-foot setback for the sides of buildings adjacent to adjacent residentially zoned parcels would allow for a softer transition to nearby residential uses.

The Project will maintain a minimum setback of 10 feet for front, side, and all street setbacks. All unimproved setback areas within the Project area will be landscaped.

Architectural Character/Details

Building frontages along Fourth Street must be developed to be visually appealing with enhanced materials and landscaping. Building signage and addresses should be clearly visible from the street. Residential and Non-Residential land uses should be visually distinguishable from each other while maintaining an overall theme with the building frontage through the use of similar materials and color palette.

Buildings within the PUD area should be designed so that each side of the building is visually consistent within itself while not needing to be consistent with other sides. However, the complimentary usage of materials and color pallets should be implemented to ensure unity among each side of the building.

The Project's main building will include a break in design between the first floor and the remaining floors to create a natural separation between the mixed uses present on the ground floor and the residential uses in subsequent floors. The overall building will be designed in a contemporary modern style with aesthetically pleasing geometric symmetry between features and units as well a mixture of materials and colors.

Architectural variety will also be used in each façade through a blending of materials including cement board tiles and stone veneer and balconies with metal panel railings. Each level beyond the first story will be expanded beyond the footprint of the first level.

Important or unique portions of the building (such as the retail use or leasing office) will be emphasized through an expanded footprint and large glass frontages. The extended footprint will terminate at the third story and provide differentiation of the points of interest from the remaining residential units. The retail and leasing office will also act as the building frontage, with both on either side of the main entryway.

South Elevation



Massing and Scale

Parking areas should be inset within the PUD area and placed behind buildings. Parking areas within the PUD area shall be a maximum of two stories higher than the nearest residential building.

Taller structures should be centered within the PUD area, with shorter structures developed along the perimeter of the PUD area and the tallest structure at the center of the PUD area. Shorter structures shall not be placed behind taller structures along roadway adjacent portions of the site. This will allow for adequate shielding form views along public roadways. No buildings shall exceed a maximum height of 65 feet, inclusive of rooftop utility facilities and attachments.

Buildings shall not be placed continuously along the entirety of the PUD perimeter. The PUD perimeter shall be broken up with buildings, landscaping, courtyards, and other pedestrian features in order to encourage visual dynamism.

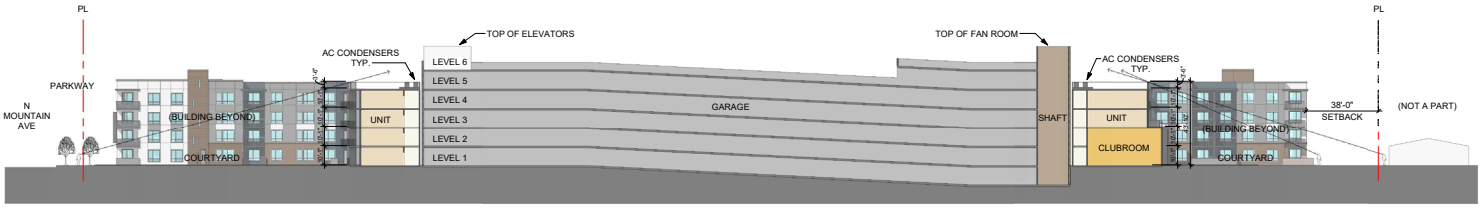
Material and/or color variations should be applied to building facades based on internal architecture. For example, balconies and stairwells should vary in design from the outer walls of residential or retail uses. These variations should be implemented through the use of complimentary materials and colors.

First story developments should be distinguishable from subsequent stories along each building through the use of separate, but complimentary design features such as materials and colors.

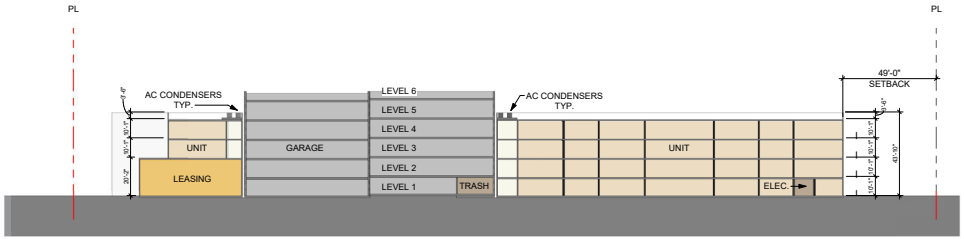
The Project will be developed as a wrapped mixed use apartment complex with a single building encircling a central multi-level parking structure. All unit entries will be accessed within a central hallway and around internal courtyards within the site and around centralized amenity spaces within the lot. All four levels of the mixed use building will present the same footprint, with the only variance being a reduced footprint for third and fourth floor units directly above the leasing office and retail use. Third floor balconies will be extended to create overhangs adjacent to the western portion of Courtyard 1 and above the leasing office and retail use.

The central parking structure will be six stories in the center of the apartment complex. The parking structure will extend beyond the overall height of the residential structures but will not expand the overall footprint. The Project's proposed central parking structure will be the tallest building on the Project site with an approximate 63-foot elevation. Ground level amenities will be within interior courtyards and along the outer perimeter of the main building. These amenities are intended to be accessed with minimal walls/structures blocking access to the facilities. Each building and amenity is designed to be accessed via pedestrian travel with vehicular access capability limited to the entry driveways and the central parking structure. Emergency vehicles may also utilize the EVA running between the Mountain Avenue entrance to Harvard Place.

Building Sections



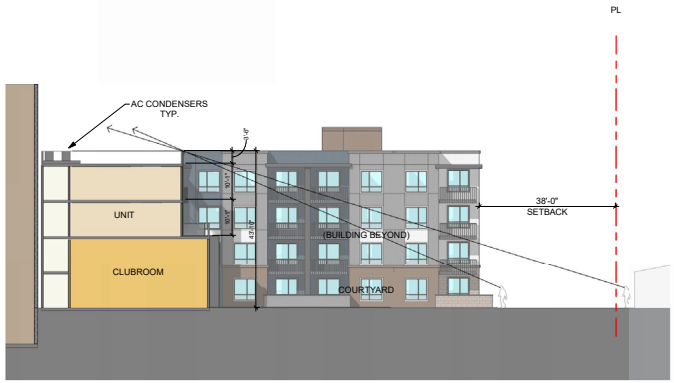
1 SECTION A
1" = 30'-0"



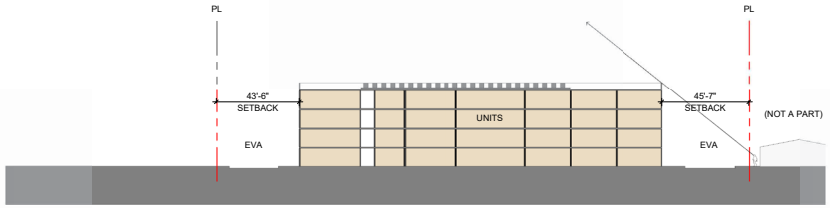
2 SECTION B
1" = 30'-0"

KEY

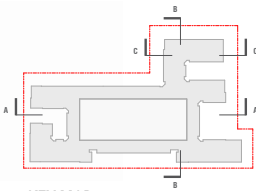
- UNITS
- LOBBY / LEASING / AMENITY
- RESIDENTIAL VERT. CIRC.
- CORRIDOR
- PARKING
- BOH



4 SECTION A ENLARGED
1/16" = 1'-0"



3 SECTION C
1" = 30'-0"



KEY MAP

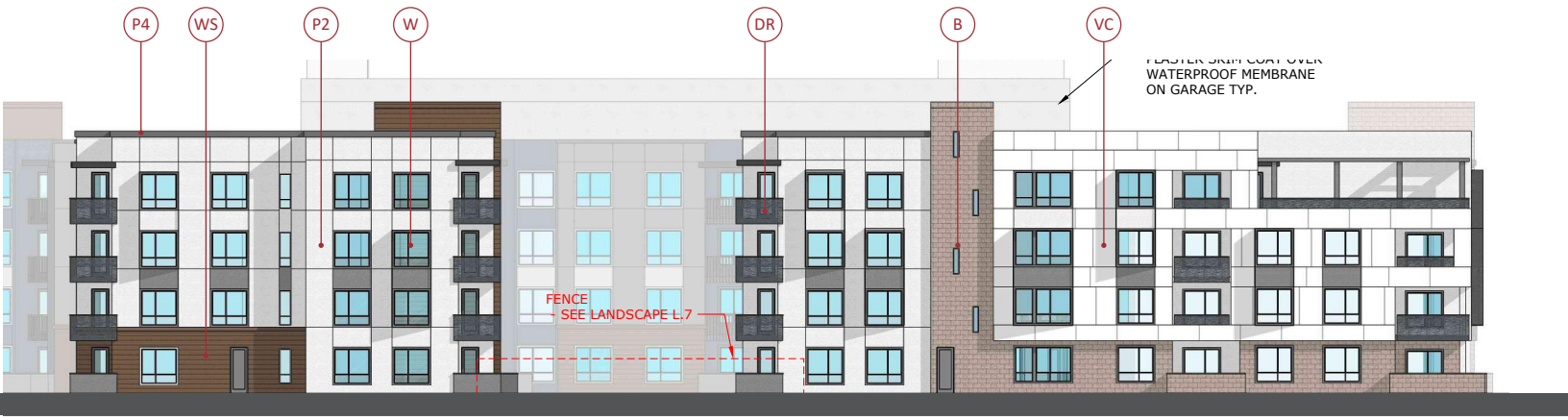
Materials and Color

Materials used within the PUD area should exhibit permanence and quality, thematically unifying a building's appearance on all sides; materials and colors should accentuate the architectural details of the building and promote visual harmony. Brick, tile, pre-cast architectural concrete, wood, stone veneers, metal grating, or stucco are preferred.

Multiple materials and colors should be used on each building façade to create a sense of visual dynamism and interest.

Materials and colors present in the Project will consist of a blending of naturally occurring colors found in organic landscaping components as well as complimentary earth tones to create a bright, visually appealing and modern structure. **Table 4: Material Palette** and **Table 5: Color Palette** and summarize both the non-landscape colors and materials present within the Project.

Partial West Elevation



Partial North Elevation

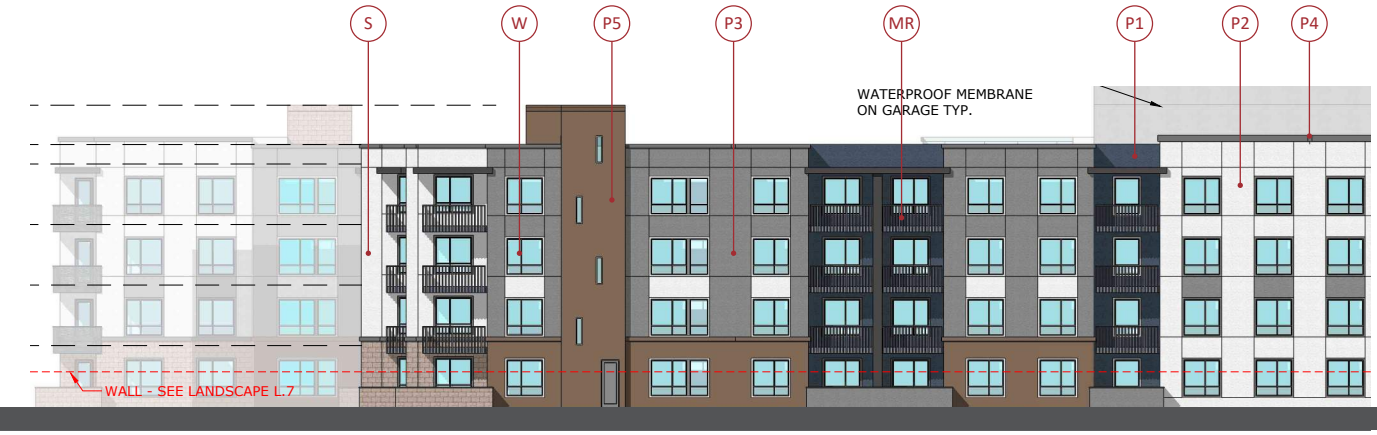


Table 4: Material Palette

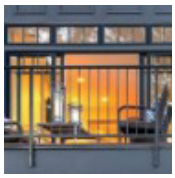
	Material	Location
	(P) Plaster	Main material; north, south, east, and west façade.
	(B) Block Veneer	Accent material; north, south, east, and west façade.
	(WS) Wood-Like Siding Accent	Accent material; west façade.
	(VC) Vertical Cement Board Tiles	Main material; south and west façade.
	(SF) Storefront	Retail use; north façade.
	(DR) Decorative Metal Panel Railing	Main material; south, east, and west units. Accent material; north façade.
	(MR)Metal Picket Railing	Main material; north, east, and west façade.

Table 5: Color Palette

	Color	Location
	(1) Needlepoint	Accent color; north and south façade.
	(2) Snowberry	Accent color; north and south façade. Main color, east and west façade.
	(3) Tin Lizzie	Accent color; east façade. Main color; north and south façade.
	(4) Grizzle Gray	Trim color; north, south, east, and west façade.
	(5) Umber Rust	Accent color; north, east, and west façade.

LANDSCAPE STANDARDS

A conceptual landscape plan shall be submitted along with the Development Plan for any project within the PUD area for review by the City Landscape Planning Division. The plan shall specify all landscaping and hardscape for the entire project site. Detailed Landscape and Irrigation Plans shall be required prior to the issuance of building permits. The detailed plans shall show location of ground mounted utility boxes and equipment, along with the methods of screening for these items from the public right-of-way and adjacent residences where possible. The irrigation system shall be designed to utilize recycled water pursuant to State and local codes, ordinances, and laws, and applicable building and plumbing codes.

The Landscape Plan should support and enhance the mixture of retail and residential uses within the PUD area. Landscaping within the PUD area should be used to accentuate transitions from adjacent uses, define circulation patterns within the PUD area, screen parking areas from the street, highlight entries, provide shade for parking areas and outdoor seating areas, and to soften the appearance of any buildings.

Landscaping shall be completed for any setback areas from public roadways and internal communal or gathering spaces, excluding areas devoted to building area, paving, and/or outdoor loading and storage areas that are screened from public view.

The Project's building design creates a series of open courtyards between each wing of the building providing a private, attractive open space area for the tenants use. These spaces are further enhanced with distinctive planting, landscape and amenity features, making them unique and enjoyable to the residents. The planting palette for the Project was chosen to establish a strong, memorable landscape while also providing a buffer between the PUD area and external uses. Exciting recreational structures and well landscaped pathways lead and invite residents to enjoy the central open space amenities or create a convenient walking path for evening exercise.



Open Space Areas

Private open space shall be provided for each dwelling consistent with development code standards and may include balconies or ground level patios. When located on the ground level, private open space shall be screened from public view by landscaping, courtyard walls or privacy fences. Common open space shall be provided to allow for passive and active types of recreation, along with site landscaping amenities for residents and their guests.

The Watermarke Ontario Project includes the following open space areas:

- Three courtyards,
- One pocket park,
- Intimate seating areas,
- A lounge deck,
- And retail frontage.



West Courtyard

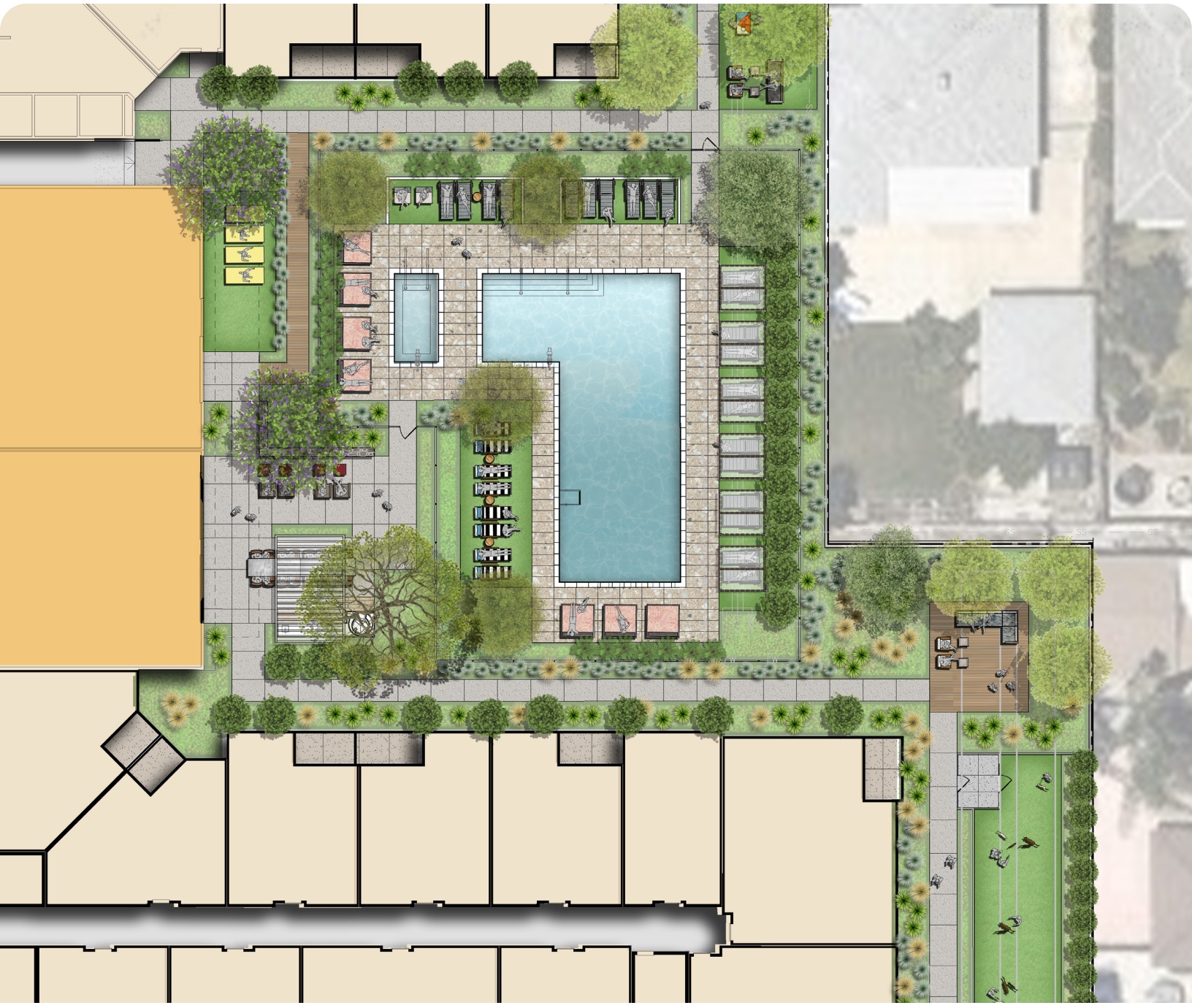
The West Courtyard functions as a communal outdoor dining space for residents. This outdoor space includes a built-in barbecue grill structure and large communal dining table. An attached yard provides multipurpose uses with lounge seating and an open lawn area that can be used for a variety of purposes. The West Courtyard is located on the western portion of the PUD area.



Pool Courtyard

The Pool Courtyard provides a private, resort style pool experience for residents to. The courtyard's pool deck includes one 60'x18' resort pool and an 8'x16' spa. The surrounding areas include lounge chairs, chaise lounges, and pool chairs. Additional amenities within the Pool Courtyard include an outdoor fitness area directly outside of the indoor fitness room, and shaded dining areas.

The pool courtyard includes an adjacent seating area for residents to sit and relax along internal pathways leading from the pool area to Fourth Street.



The Hangout Courtyard

The Hangout Courtyard provides a casual recreational setting for Project residents. This courtyard allows for recreational activity within a multi-activity game lawn. Residents may rest beneath the specimen tree grove or on other benches provided within this courtyard. Nighttime activity is encouraged through the use of festival lighting throughout this courtyard.

Pocket Parks

One pocket parks will be provided adjacent to the eastern boundary of the PUD area. The pocket park provides small open spaces for the community to access. The Game Court pocket park open space area includes a corn hole play area, a tree allee, and lounge seating. Pocket parks within the PUD are private and for resident use only.

Fourth Level Lounge

The southwest corner of the main building's fourth level will include a lounge and dining area for residents. The lounge area will include larger and smaller group seating areas. The lounge also features a built-in barbecue for meal preparation and a large banquet style island table. The outer perimeter of the lounge will be landscaped to provide a more natural aesthetic and create a sense of privacy within the lounge area. The lounge will provide residents with scenic views of the western and southern portions of the City and surrounding area.

Residents may access the lounge via a private door on the southwest corner of the fourth-floor hallway.



Retail Frontage

The retail use will include the development of an outdoor seating area with café tables and umbrellas. Retail frontage will be required to employ enhanced landscaping and decorative accents. These may include pottery decorations, and unique foliage. The retail entryway should have a unique character that remains thematically consistent with the overall development within the PUD. Seating may be provided within the retail frontage. Landscaping along the retail frontage may include potted or in-ground flowers and in-ground shrubs. Trees may not be used as a part of retail frontage, this area is intended to provide amenity space for residents and commercial visitors. Retail stores shall comply with the sign requirements as set forth in the City of Ontario Development Code.

Vegetation

Vegetation within the Watermarke Ontario PUD includes a mixture of ornamental trees, shrubs, and fruiting, edible plant species. A total of 188 trees will be utilized for open space within the PUD area. A mixture of 50 (27%) native and 138 (73%) non-native trees will be planted in the PUD area. Additionally, a mixture of large and medium shrubs will be utilized throughout the PUD site. Vegetation plans must be reviewed by the Landscape Planning Division.

Fruiting trees and shrubs are placed around the community and recreational areas to create a more natural environment for residents.

Lighting

All lighting of facades, decorative fixtures, store window interiors, awnings, and signs shall be designed in accordance with the criteria set forth in Ontario's Development Code. Exterior lighting fixtures should be decorative and reinforce the architectural style of the building. Outdoor lighting within the PUD area should consist of warm color temperatures except for security or emergency lighting in order to remain unobtrusive to surrounding residential developments and internal residential developments. Colder color temperatures would be more obtrusive to residents and would create a less organic lighting effect.

On-site lighting shall be directed away and shielded from adjacent streets and adjacent properties. All exterior lighting shall be of an indirect nature, placed/situated/etc. under eaves and canopies, or ground level within landscaped areas.

Light within the PUD's communal areas should be warm colored and unobtrusive. Light sources for the Project should be LED or metal halide.

Walls and Fencing

Walls and fencing should be used to define private and communal spaces within the PUD site. Walls can be used to enhance design, create privacy, and help maintain boundaries within the open space areas. Fences and walls within the project area shall be made of decorative materials compatible with the overall architectural character of the development. All fences and walls shall be in scale with the development to fulfill such needs as screening and security.

Fences, walls and hedges within the project area shall comply with Engineering Corner Sight Distance Standards and other applicable standards. Decorative walls, monuments and/or other similar features shall not encroach into the public street right-of-way. Walls should be an integrated design of the building architecture and feature similar finished material, reveal lines, trim, etc.

Walls shall be limited to a maximum height of 6 feet in height.

The eastern boundary of the PUD area shall be walled entirely from adjacent properties. Gated EVA access to Harvard Place shall be constructed to be 6 feet in height and shall be designed with styles and materials which completely obstruct views through the gate. Gated EVA access to Harvard Place shall always remain locked except when in use by authorized emergency personnel. Access controls for the EVA gates shall be limited to property managers and emergency responders, exclusively.

Signs

All signs for the project shall be subject to the requirements of the City Development Code.….

ADMINISTRATION

Items not Addressed in this PUD

Any terms, requirements, or regulations not addressed within the PUD document shall be governed by the City of Ontario Development Code and City Standards.

Development Applications

Development Plans for the development of each individual parcel within the PUD area, along with fees and other required items, shall be submitted for review and approval per the requirements contained in Chapter 2, Administration and Procedures, of the City of Ontario Development Code and the General Application.

Administrative Exceptions

Deviation from the development standards set forth in this document may be granted up to a maximum of ten (10%) percent by the Zoning Administrator. Any deviation that is greater than (10%) percent shall require Variance approval.

Severability

If any portion of this Planned Unit Development is held to be invalid, unconstitutional, or unenforceable by a court of competent jurisdiction, the determination shall not affect the validity of the remaining portions of this Planned Unit Development. Moreover, the decision shall not affect, impair, or nullify this Planned Unit Development, either in whole or in part, and the remainder of this Planned Unit Development shall continue in full force and effect.