CITY OF ONTARIO

Regular City Council/Housing Authority Meeting
JUNE 18, 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 6:00 p.m., Public Comment at 6:30 p.m., immediately followed by the Regular Meeting and Public Hearings. No agenda item will be introduced for consideration after 10:00 p.m. except by majority vote of the City Council.

CALL TO ORDER *(OPEN SESSION)*

ROLL CALL

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 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS:
Property: APNs: 0110-321-29, 0110-321-74, 0110-321-75, 0110-321-76, 0110-321-77; 2350-2630 East Inland Empire Boulevard; Ikea Property, Inc; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: Ikea Property, Inc. Under negotiation: Price and terms of payment.

ATTACHMENT: 20240618 Closed Session

PLEDGE OF ALLEGIANCE

Mayor pro Tem Porada

INVOCATION

Mario Tavera, Alpha and Omega Ministries

REPORT ON CLOSED SESSION

City Attorney

SPECIAL CEREMONIES

COMMUNITY IMPROVEMENT PROPERTY RECOGNITION PROGRAM AWARDS

That the City Council present the Community Improvement Property Recognition Awards to the selected recipients.

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, Housing Authority and Industrial Development Authority of May 7, 2024, and the regular meetings of the City Council, Housing Authority of May 21, 2024, and approving same as on file in the Records Management Department.

ATTACHMENT: 20240507 Meeting Minutes (Not Official Until Approved)
ATTACHMENT: 20240521 Meeting Minutes (Not Official Until Approved)

2. BILLS & PAYROLL

Bills May 17, 2024 through May 30, 2024, and Payroll May 5, 2024 through May 18, 2024.

3. ANNUAL LEVY OF ASSESSMENTS WITHIN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICT NOS. 1, 2, 3 AND 4 FOR FISCAL YEAR 2024-25

That the City Council consider and adopt:

A. Resolution ordering the preparation of the Assessment Engineer's Reports for proceedings for the annual assessment levy within Ontario Parkway Maintenance Assessment District (OPMAD) Nos. 1, 2, 3 and 4;
B. Resolution approving the Assessment Engineer's Reports for the annual levy of assessments within OPMAD Nos. 1, 2, 3 and 4; and
C. Resolution for OPMAD Nos. 1, 2 and 3, and Resolution for OPMAD No. 4, declaring the City's intention to provide for an annual levy and collection of assessments for Fiscal Year 2024-25 and set the date of July 16, 2024, for a Public Hearing on each district in accordance with the Landscaping and Lighting Act of 1972.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE PREPARATION OF THE ASSESSMENT ENGINEER'S REPORTS PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, FOR PROCEEDINGS FOR THE ANNUAL ASSESSMENT LEVY WITHIN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2, 3 AND 4 FOR FISCAL YEAR 2024-25.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE ASSESSMENT ENGINEER'S REPORTS FOR THE ANNUAL LEVY OF ASSESSMENTS WITHIN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2, 3 AND 4 FOR FISCAL YEAR 2024-25.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING ITS

INTENTION TO PROVIDE FOR AN ANNUAL LEVY AND COLLECTION OF ASSESSMENTS FOR FISCAL YEAR 2024-25 IN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2 AND 3, PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, AND SETTING A TIME AND PLACE FOR A PUBLIC HEARING THEREON.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING ITS INTENTION TO PROVIDE FOR AN ANNUAL LEVY AND COLLECTION OF ASSESSMENTS FOR FISCAL YEAR 2024-25 IN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICT NO. 4, PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, AND SETTING A TIME AND PLACE FOR A PUBLIC HEARING THEREON.

ATTACHMENT: OPMAD Levy^01 EXH A.pdf
ATTACHMENT: OPMAD Levy^02 Vicinity Maps.pdf
ATTACHMENT: OPMAD Levy 03 RESO - Ordering Engineer Report^RESO^RM
ATTACHMENT: OPMAD Levy 04 RESO - Approving Engineer Report^RESO^RM
ATTACHMENT: OPMAD Levy 05 RESO - Intention to Levy 1, 2 and 3^RESO^RM
ATTACHMENT: OPMAD Levy 06 RESO - Intention to Levy 4^RESO^RM

4. ANNUAL LEVY OF ASSESSMENTS WITHIN STREET LIGHTING MAINTENANCE DISTRICT NOS. 1 AND 2 FOR FISCAL YEAR 2024-25

That the City Council consider and adopt:

A. Resolution ordering the preparation of the Assessment Engineer's Reports for proceedings for the annual assessment levy within Street Lighting Maintenance District (SLMD) Nos. 1 and 2;
B. Resolution approving the Assessment Engineer's Reports for the annual levy of assessments within SLMD Nos. 1 and 2; and
C. Resolution for each district declaring the City's intention to provide for an annual levy and collection of assessments for Fiscal Year 2024-25 and set the date of July 16, 2024, for a Public Hearing on each district in accordance with the Landscaping and Lighting Act of 1972.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE PREPARATION OF THE ASSESSMENT ENGINEER'S REPORTS PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, FOR PROCEEDINGS FOR THE ANNUAL ASSESSMENT LEVY WITHIN ONTARIO STREET LIGHTING MAINTENANCE DISTRICTS NO. 1 AND NO. 2 FOR FISCAL YEAR 2024-25.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE ASSESSMENT ENGINEER'S REPORTS FOR THE ANNUAL LEVY OF ASSESSMENTS WITHIN ONTARIO STREET LIGHTING MAINTENANCE DISTRICTS NO. 1 AND NO. 2 FOR FISCAL YEAR 2024-25.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING ITS

INTENTION TO PROVIDE FOR AN ANNUAL LEVY AND COLLECTION OF ASSESSMENTS FOR FISCAL YEAR 2024-25 IN ONTARIO STREET LIGHTING MAINTENANCE DISTRICT NO. 1 PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, AND SETTING A TIME AND PLACE FOR A PUBLIC HEARING THEREON.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING ITS INTENTION TO PROVIDE FOR AN ANNUAL LEVY AND COLLECTION OF ASSESSMENTS FOR FISCAL YEAR 2024-25 IN ONTARIO STREET LIGHTING MAINTENANCE DISTRICT NO. 2, PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, AND SETTING A TIME AND PLACE FOR A PUBLIC HEARING THEREON.

ATTACHMENT: SLMD Levy^01 EXH A Levy Table.pdf
ATTACHMENT: SLMD Levy^02 Vicinity Maps.pdf
ATTACHMENT: SLMD Levy 03 RESO - Ordering Engineer Report^RESO^RM
ATTACHMENT: SLMD Levy 04 RESO - Approving Engineer Report^RESO^RM.docx
ATTACHMENT: SLMD Levy 05 RESO - Intention to Levy SLMD 1^RESO^RM
ATTACHMENT: SLMD Levy 06 RESO - Intention to Levy SLMD 2^RESO^RM

5. RESOLUTIONS TO CALL AND GIVE NOTICE, CONSOLIDATE AND ADOPT REGULATIONS FOR CANDIDATE STATEMENTS FOR THE GENERAL MUNICIPAL ELECTION OF NOVEMBER 5, 2024

That the City Council adopt the following Resolutions:

A. A Resolution to call and set the date of the General Municipal Election as November 5, 2024;
B. A Resolution to request the San Bernardino County Registrar of Voters to consolidate the election with the Presidential General Election; and
C. A Resolution establishing regulations pertaining to Candidate Statements

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CALLING FOR THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2024, FOR THE ELECTION OF CERTAIN OFFICERS AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2024, PURSUANT TO §10403 OF THE ELECTIONS CODE.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING REGULATIONS FOR CANDIDATES FOR ELECTIVE OFFICE PERTAINING TO CANDIDATES STATEMENT SUBMITTED TO THE VOTERS AT AN ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2024.

ATTACHMENT: Calling for Holding a General Municipal Election^RESO^01^RM

ATTACHMENT: Request to Consolidate a General Municipal Election^RESO^02^RM
ATTACHMENT: Regulations for Candidate Statements^RESO^03^RM

6. AN AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT WITH GROUP DELTA FOR MONITORING AND REPORTING SERVICES AND AN AMENDMENT TO THE LANDSCAPE MAINTENANCE SERVICES AGREEMENT WITH NATURES IMAGE FOR THE MILL CREEK WETLANDS FACILITY

That the City Council take the following actions:

A. Approve and authorize the City Manager, or his designee, to execute an amendment with Group Delta Consultants, Inc. of Irvine, California, in the amount of $151,544 for Fiscal Year 2024-25 Adopted Budget and extend the agreement for up to three additional years with future amendments consistent with City Council approved budgets up to a total five-year not-to-exceed amount of $716,474 to provide professional monitoring and reporting services for the Mill Creek Wetlands facility; and
B. Approve and authorize the City Manager, or his designee, to execute an amendment with Natures Image of Lake Forest, California, in the amount of $425,146 for Fiscal Year 2024-25 Adopted Budget and extend the agreement for up to three additional years with future amendments consistent with City Council approved budgets up to a total five-year not-to-exceed amount of $2,315,380 to provide landscape maintenance services for the Mill Creek Wetlands facility.

ATTACHMENT: 02 - Group Delta - Amendment No. 1.pdf
ATTACHMENT: 02 - Natures Image - FY24-25 Amendment No.1.pdf
ATTACHMENT: Exhibit A - FY Breakdown.pdf

7. A RESOLUTION APPROVING FINAL PARCEL MAP NO. 20587, LOCATED NEAR THE NORTHEAST CORNER OF EUCLID AVENUE AND 6TH STREET

That the City Council adopt a Resolution approving Final Parcel Map No. 20587 located near the northeast corner of Euclid Avenue and 6th Street.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FINAL PARCEL MAP NO. 20587, LOCATED NEAR THE NORTHEAST CORNER OF EUCLID AVENUE AND 6TH STREET.

ATTACHMENT: 20240618 Parcel Map 20587 01^RESO^RM
ATTACHMENT: 20240618 Parcel Map 20587 02 EXH A.pdf

8. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING A SPECIAL TAX WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 65 (FALLONCREST)

That the City Council consider and adopt an Ordinance authorizing the levy of special taxes within City of Ontario Community Facilities District No. 65 (Falloncrest).

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING

SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 65 (FALLONCREST).

ATTACHMENT: CC 8 CFD 65 Falloncrest 01^ORD^RM

9. A CONSTRUCTION CONTRACT WITH MAMCO, INC. AND AN AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT WITH KLEINFELDER, INC. FOR ON-CALL GEOTECHNICAL AND MATERIAL TESTING SERVICES FOR THE SULTANA AVENUE STORM DRAIN, STREET, AND SEWER IMPROVEMENT PROJECTS

That the City Council take the following actions:

A. Award a Construction Contract with Mamco, Inc. dba Alabbasi of Perris, California, for the Sultana Avenue Storm Drain, Street and Sewer Improvement Project in the amount o f $16,939,393 plus a ten percent (10%) contingency of $1,693,939 for a total of $18,633,332 and authorize the City Manager, or his designee, to execute said contract and all related documents, file a notice of completion at the conclusion of all construction activities; and
B. Approve Amendment No. 6 to the Professional Services Agreement with Kleinfelder, Inc. of Ontario, California, to provide on-call geotechnical and material testing services for the Sultana Avenue Storm Drain, Street, and Sewer Improvement Projects in the amount of $334,756 for a revised not-to-exceed total of $1,351,242; and authorize the City Manager, or his designee, to execute said Agreement and future amendments within the authorization limits.

ATTACHMENT: 03 - EXHIBIT A Location Map.pdf
ATTACHMENT: 02 - Mamco Contract.pdf
ATTACHMENT: 01 - Kleinfelder Amendment No. 6.pdf

10. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH ECLIPSE PRINTING AND GRAPHICS, LLC DBA JAMES LITHO, FOR PRINTING SERVICES

That the City Council authorizes the City Manager, or his designee, to execute Amendment No. 1 to the Professional Services Agreement with Eclipse Printing and Graphics, LLC dba James Litho in the amount of $100,000 for a total not-to-exceed contract amount of $300,000 and extend the contract term to June 30, 2026.

ATTACHMENT: James Litho Contract Amendment.pdf

11. DESIGN SERVICES AGREEMENTS FOR ON-CALL LANDSCAPE ARCHITECTURAL SERVICES

That the City Council authorize the City Manager, or his designee, to execute the following three-year Agreements for on-call Landscape Architectural Services for a total compensation amount of $1,000,000 over three (3) years and extend the agreements for up to two (2) additional one-year periods:

A. A Design Services Agreement with Community Works Design Group, Inc., of Riverside, California, for a total contract amount not-to-exceed $300,000;
B. A Design Services Agreement with Gruen Associates, of Los Angeles, California, for

a total contract amount not-to-exceed $100,000;

C. A Design Services Agreement with RJM Design Group, Inc., of San Juan Capistrano, California, for a total contract amount not-to-exceed $250,000;
D. An As-Needed Professional Consultant Services Agreement (subject to minor revisions, if any, approved or directed by the City Attorney) with SWA Group of Laguna Beach, California, for a total contract amount not-to-exceed $100,000; and
E. A Design Services Agreement with Withers & Sandgren, Ltd., of Chatsworth, California, for a total contract amount not-to-exceed $250,000.

ATTACHMENT: Model Design Services Agreement_Withers.pdf
ATTACHMENT: Model Design Services Agreement_RJM.pdf
ATTACHMENT: Model Design Services Agreement_Gruen.pdf
ATTACHMENT: Model Design Services Agreement_Community Works 5.30.24.pdf
ATTACHMENT: As-Needed Professional Services Agreement _ 6.11.24.pdf

12. A MAINTENANCE SERVICES AGREEMENT WITH GUARANTEED JANITORIAL SERVICES, INC. FOR CUSTODIAL MAINTENANCE SERVICES AT VARIOUS CITYWIDE LOCATIONS

That the City Council authorize the City Manager or his designee to execute a Maintenance Services Agreement with Guaranteed Janitorial Services, Inc., of Chino, California, to provide Custodial Maintenance Services for a total contract amount not-to-exceed $1,888,790 for up to five (5) years.

ATTACHMENT: MSA Custodial Maintenance Services.pdf

13. A GOODS AND SERVICES AGREEMENT WITH CONSOLIDATED ELECTRICAL DISTRIBUTORS FOR THE PURCHASE OF STREETLIGHT POLES AND LUMINARIES

That the City Council authorize the City Manager or his designee to execute a Goods and Services Agreement with Consolidated Electrical Distributors, of Ontario, California, for a total contract amount not-to-exceed $1,398,485 for up to five (5) years.

ATTACHMENT: GSA Streetlight Poles, Luminaries - CED.pdf

14. A GOODS AND SERVICES AGREEMENT WITH SCP DISTRIBUTORS, LLC DBA LINCOLN AQUATICS FOR THE PURCHASE OF SWIMMING POOL CHEMICALS

That the City Council authorize the City Manager, or his designee, to execute a Goods and Services Agreement with SCP Distributors, LLC dba Lincoln Aquatics, of Concord, California, for a total contract amount not-to-exceed $500,000 for up to five (5) years.

ATTACHMENT: GSA Swimming Pool Chemical SCP Distributors.pdf

15. A PROFESSIONAL SERVICES AGREEMENT WITH WEST YOST & ASSOCIATES INC. FOR ON-CALL CROSS-CONNECTION INSPECTION AND TESTING SERVICES

That the City Council approve and authorize the City Manager, or designee, to execute a one-year Professional Services Agreement with West Yost & Associates Inc., of Davis, California, for on-call cross-connection inspection and testing services in the amount of $250,000 for Fiscal Year 2024-25, with the option to extend the Agreement for up to four successive one-year periods (Fiscal Year 2025-26 to Fiscal Year 2028-29), with up to a 5% increase per Fiscal Year,

for a total not-to-exceed amount of $1,250,000.

ATTACHMENT: 202406018 PSA with West Yost AGMT^01.pdf

16. A PROFESSIONAL SERVICES AGREEMENT WITH NOSSAMAN LLP FOR LEGAL AND TECHNICAL SERVICES PERTAINING TO WATER AND WASTEWATER MATTERS

That the City Council approve and authorize the City Manager, or designee, to execute a two-year Professional Services Agreement with Nossaman LLP of Los Angeles, California, on file with the Records Management Department, for legal and technical services relating to water supply, water rights, and wastewater matters in the amount of $1,200,000 for FY 2024-25 and $1,200,000 for FY 2025-26 for a total not-to-exceed contract amount of $2,400,000, and a term from July 1, 2024 thru June 30, 2026.

17. A RESOLUTION APPROVING FIRE DEPARTMENT CLASSIFICATIONS BE ADDED TO THE CALIFORNIA FIRE AND RESCUE MUTUAL AID SYSTEM

That the City Council adopt a Resolution approving additional Fire Department classifications to the terms and conditions for Fire Department responses to the California Fire and Rescue Mutual Aid System requests to assist State of California and Federal Fire agencies.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE TERMS AND CONDITIONS FOR FIRE DEPARTMENT RESPONSE AWAY FROM THEIR OFFICIAL DUTY STATION AND ASSIGNED TO AN EMERGENCY INCIDENT.

ATTACHMENT: Fire Resources to CFAA Resolution - Amendment^RESO^RM

PUBLIC HEARINGS

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

Each member of the public wishing to address the City Council on Public Hearing items will be given a total of 2 minutes.

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18. A PUBLIC HEARING TO CONSIDER A RESOLUTION REGARDING THE FORMATION OF THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 68 (RICH HAVEN INDUSTRIAL SERVICES); AND INTRODUCTION OF AN ORDINANCE LEVYING SPECIAL TAXES

That the City Council consider and:

A. Adopt a Resolution of Formation of Community Facilities District No. 68 (Rich Haven Industrial Services), proposing that the community facilities district be authorized to levy

a special tax and proposing that an appropriations limit of the community facilities district be established;

B. Adopt a Resolution calling a special election for City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services);

C. Adopt a Resolution declaring the results of the special election and directing the recording of a Notice of Special Tax Lien; and

D. Introduce and waive further reading of an ordinance levying special taxes within City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services).

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF FORMATION OF THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 68 (RICH HAVEN INDUSTRIAL SERVICES), PROPOSING THAT THE COMMUNITY FACILITIES DISTRICT BE AUTHORIZED TO LEVY A SPECIAL TAX AND PROPOSING THAT AN APPRPRIATIONS LIMIT OF THE COMMUNITY FACILITIES DISTRICT BE ESTABLISHED.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CALLING SPECIAL ELECTION FOR CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 68 (RICH HAVEN INDUSTRIAL SERVICES).

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING RESULTS OF SPECIAL ELECTION AND DIRECTING RECORDING OF NOTICE OF SPECIAL TAX LIEN.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING A SPECIAL TAX WITHIN COMMUNITY FACILITIES DISTRICT NO. 68 (RICH HAVEN INDUSTRIAL SERVICES).

ATTACHMENT: CFD 68 Rich Haven Industrial Services 01 Resolution Formation^01^RESO^RM.doc
ATTACHMENT: CFD 68 Rich Haven Industrial Services^01A RMA EXH B.pdf
ATTACHMENT: CFD 68 Rich Haven Industrial Services 02 Resolution Calling Election^02^RESO^RM.doc
ATTACHMENT: CFD 68 Rich Haven Industrial Services 03 Resolution Declaring Election^03^RESO^RM
ATTACHMENT: CFD 68 Rich Haven Industrial Services 04^ORD^RM

19. A PUBLIC HEARING TO CONSIDER AN ORDINANCE ADOPTING A DEVELOPMENT CODE AMENDMENT ESTABLISHING HISTORIC PRESERVATION - ADAPTIVE REUSE PLANS, FILE NO. PDCA24-002

That the City Council introduce and waive further reading of the Ordinance Approving File No. PDCA24-002, a Development Code Amendment revising Table 2.02-1: Reviewing Matrix of Chapter 2 (Administration and Procedures) to include the Fire Marshal as an Approving Authority, and Chapters 4 (Permits Actions and Decision) and 7 (Historic Preservation) to establish Historic Preservation - Adaptive Reuse Plan of the City of Ontario Development Code.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING

FILE NO. PDCA24-002, A DEVELOPMENT CODE AMENDMENT REVISING TABLE 2.02-1: REVIEWING MATRIX OF CHAPTER 2 (ADMINISTRATION AND PROCEDURES) TO INCLUDE THE FIRE MARSHAL AS AN APPROVING AUTHORITY, AND CHAPTERS 4 (PERMITS ACTIONS AND DECISION) AND 7 (HISTORIC PRESERVATION) TO ESTABLISH HISTORIC PRESERVATION-ADAPTIVE REUSE PLAN OF THE CITY OF ONTARIO DEVELOPMENT CODE, AND MAKING FINDINGS IN SUPPORT THEREOF.

ATTACHMENT: File No. PDCA24-002^01 AR Attach A.docx
ATTACHMENT: 20240618 File No. PDCA24-002 ^PC Back-up.pdf
ATTACHMENT: File No. PDCA24-002^02^ORD^RM
ATTACHMENT: File No. PDCA24-002^03 Ordinance Attach A- clean.docx

20. A PUBLIC HEARING TO CONSIDER THE ADOPTION OF AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA21-010) BETWEEN THE CITY OF ONTARIO AND SL ONTARIO DEVELOPMENT COMPANY, LLC

That the City Council introduce and waive further reading of an Ordinance approving a Development Agreement (File No. PDA21-010) between the City of Ontario and SL Ontario Development Company, LLC.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA21-010, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND SL ONTARIO DEVELOPMENT COMPANY LLC, TO ESTABLISH THE TERMS AND CONDITIONS ASSOCIATED WITH TENTATIVE TRACT MAP 20562 (FILE NO. PMTT22-022), A 62.69 ACRE PROPERTY, LOCATED AT THE SOUTHEAST CORNER OF EUCALYPTUS AVENUE AND HAVEN AVENUE, WITHIN PLANNING AREA 32 (MIXED-RESIDENTIAL) AND PLANNING AREA 34 (SCHOOL) OF THE SUBAREA 29 SPECIFIC PLAN. (FILE NO. PSPA21-005), (APNS: 1073-171-04, 1073-171-08, 1073-171-09 AND 1073-171-10).

ATTACHMENT: File_No._PDA21-010_SL Ontario Development Co. LLC_01 EXH A&B.pdf
ATTACHMENT: 20240618 File No. PDA21-010^PC Back-up.pdf
ATTACHMENT: File No. PDA21-010 SL Ontario Development Co. LLC^02^ORD^RM
ATTACHMENT: File_No._PDA21-010_SL Ontario Development Co._LLC_03_DEV_AGR.doc

ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

21. A RESOLUTION AUTHORIZING THE ISSUANCE OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 66 (OLIVE AND OLEANDER FACILITIES) SPECIAL TAX BONDS, SERIES 2024 AND RELATED MATTERS

That the City Council take the following actions:

A. Consider and adopt a Resolution authorizing the issuance of City of Ontario Community Facilities District No. 66 (Olive and Oleander Facilities) Special Tax Bonds, Series 2024, in an aggregate principal amount not-to-exceed $12 million, authorizing the execution and

delivery of an Indenture, a Bond Purchase Agreement, a Continuing Disclosure Agreement, and an Amended and Restated Acquisition and Funding Agreement, authorizing the distribution of an Official Statement, authorizing the execution of necessary documents and certificates and related actions;

B. Consider and adopt a Resolution of the City of Ontario making a declaration of official intent to reimburse facilities expenditures with bond proceeds and related actions;
C. Authorize the issuance of special tax bonds for public improvements required to facilitate the development of the Olive and Oleander Facilities project and the Ontario Ranch development;
D. Approve the forms of the Indenture, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Amended and Restated Acquisition and Funding Agreement, and the Preliminary Official Statement;
E. Authorize a negotiated sale of the special tax bonds to Samuel A. Ramirez & Co., in accordance with the terms of the Bond Purchase Agreement; and
F. Authorize the execution of the Indenture, the Bond Purchase Agreement, the Continuing Disclosure Agreement, a deemed final certification in connection with the Preliminary Official Statement, a final Official Statement and other documents in connection with the issuance of the bonds by the City Manager or the other specified authorized officers.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE ISSUANCE OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 66 (OLIVE AND OLEANDER FACILITIES) SPECIAL TAX BONDS, SERIES 2024, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED $12,000,000, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND AN AMENDED AND RESTATED ACQUISITION AND FUNDING AGREEMENT, AUTHORIZING THE DISTRIBUTION OF AN OFFICIAL STATEMENT IN CONNECTION THEREWITH AND AUTHORIZING THE EXECUTION OF NECESSARY DOCUMENTS AND CERTIFICATES AND RELATED ACTIONS.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, MAKING A DECLARATION OF OFFICIAL INTENT TO REIMBURSE FACILITIES EXPENDITURES WITH BOND PROCEEDS AND RELATED ACTIONS.

ATTACHMENT: CFD 66 Olive and Oleander Facilities 01 Authorizing the Issuance of Bonds 01^RESO^RM

ATTACHMENT: CFD 66 Olive and Oleander Facilities 02 Declaration Intent to Reimburse Facilities Expenditures 02^RESO^RM

STAFF MATTERS

City Manager Ochoa

COUNCIL MATTERS

Mayor Leon
Mayor pro Tem Porada

Council Member Wapner
Council Member Bowman
Council Member Valencia

ADJOURNMENT

CITY OF ONTARIO
CLOSED SESSION REPORT
City Council // Housing Authority // Other // *(GC 54957.1)*
June 18, 2024

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

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

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

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS: Property: APNs: 0110-321-29, 0110-321-74, 0110-321-75, 0110-321-76, 0110-321-77; 2350-2630 East Inland Empire Boulevard; Ikea Property, Inc; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: Ikea Property, Inc. Under negotiation: Price and terms of payment.

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

Reported by:

_____
City Attorney / City Manager / Executive Director

CITY OF ONTARIO *Agenda Report* **June 18, 2024**	**SECTION:** **SPECIAL CEREMONIES**
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:

SUBJECT: COMMUNITY IMPROVEMENT PROPERTY RECOGNITION PROGRAM AWARDS

RECOMMENDATION: That the City Council present the Community Improvement Property Recognition Awards to the selected recipients.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities

FISCAL IMPACT: There is not a direct fiscal impact associated with this action.

BACKGROUND & ANALYSIS: The Community Improvement Department developed the Property Recognition Program to acknowledge residential property owners who have demonstrated outstanding maintenance or significant improvement to their properties and celebrate their dedication to beautifying Ontario and building better neighborhoods. The Neighborhood Action Team, comprised of Staff from various City Departments, considered each category and chose the following recipients:

Award Name	Property Address	Property Owner
Outstanding Property Award	225 West J Street	Nhung Thanh Bettendorf Family Trust
Outstanding Property Award	902 South Palm Avenue	Silvestre Hernandez
Outstanding Property Award	803 West Yale Street	Maribel Lopez-Tyus Living Trust
Outstanding Property Award	607 East 4th Street	Edward Lopez
Outstanding Property Award	124 West Caroline Court	Fierro Ramos Trust

ONTARIO CITY COUNCIL/
ONTARIO HOUSING AUTHORITY/
INDUSTRIAL DEVELOPMENT AUTHORITY
MINUTES
May 7, 2024
(Not Official Until Approved)

JOINT MEETINGS

The regular meetings of the Ontario City Council, Housing Authority, and the Industrial Development Authority were held on Tuesday, May 7, 2024 at Ontario City Hall, 303 E. B Street Ontario, California.

CALL TO ORDER

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

ROLL CALL

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

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

INFORMATION RELATIVE TO POSSIBLE CONFLICTS OF INTEREST

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

CLOSED SESSION

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

GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN: 1048-562-06; 212-218 North Palm Avenue; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties; Kenneth Hale; Under negotiation; Price and terms of payment

GC 54956.8, CONFERENE WITH REAL PROPERTY NEGOTIATORS
Property: APN: 1048-562-07; 210 North Palm Avenue and 222 West B Street; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: Pan de Vida Spanish Ministry of Ontario; Under negotiation: Price and terms of payment

OPEN MEETING CALLED TO ORDER

Mayor Leon reconvened the meetings at 6:34 p.m. for the regular session.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Ruben Valencia.

INVOCATION

Michelle Diaz of Alpha and Omega Ministries provided the invocation.

SPECIAL CEREMONIES

Water Conservation Poster Contest

The City Council presented the selected winners of the annual Water Conservation Poster Contest.

Recognition of Historic Preservation Month in the City of Ontario

The City Council proclaimed the Month of May 2024 as Historic Preservation Month in the City of Ontario.

PUBLIC COMMENTS

Assistant City Clerk Isbell announced there were eight written public comments.
Elizabeth Filadelfia, regarding population overcrowding in the City of Ontario.
Rafael Adame-Cano, regarding enhancing communication between patients and doctors.
John Cornejo, regarding the homeless population and city infrastructure.
Leon Arturo Salazar Jr., regarding light pollution enveloping the City.
Cynthia Crouch, regarding parking congestion along Transit Street.
Kiniko Willingham, regarding sidewalk improvements and lack of accessible roads leading to Parkview Elementary School.
Sterling Fox Cerda, regarding parking congestion near the Ontario Arts District.

Mayor Leon called upon the first speaker:

Bill Short, spoke regarding safety concerns at Brooks Street.
Carlos Chavez, spoke regarding a personal matter involving the Inland Valley Humane Society and the Ontario Police Department.
Alan Kaitz, spoke regarding community safety and the homeless population.
Brandy, spoke regarding a personal matter involving her family's living conditions.
Rafael Adame-Cano, spoke on the need to enhance better communication between patients and doctors.
Enrique Flores-Guerra, spoke regarding an open invitation to the Hispanic Chamber of Commerce's Cinco de Mayo event.

REPORT ON CLOSED SESSION

City Attorney Duran stated there was no reportable action.

AGENDA REVIEW/ANNOUNCEMENTS

City Attorney Duran conveyed that there were minor changes to Item No. 22. The revisions focus on the purchase and sale agreement and the Resolution itself. There were three revisions pertaining to the purchase and sale agreement. The first revision involves the addition of subsection (c) to Section 6 of the agreement. The second revision amends subsection 9(b) to include introductory language. The third revision amends sub-paragraph (a) of Section 10 by correcting several grammatical errors and removing the final sentence of the paragraph. There were two revisions pertaining to the Resolution. The first revision added a new Section 6 related to a Declaration of Exempt Surplus Land. The second revision re-numbered the previously existing Section 6 to Section 7.

CONSENT CALENDAR

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

1. APPROVAL OF MINUTES

Approved minutes for the regular meetings of the City Council and Housing Authority of April 2, 2024 and study session on April 5, 2024, and approving same as on file in the Records Management Department.

2. BILLS & PAYROLL

Approved Bills March 29, 2024 through April 18, 2024, in the amount of $27,754,644.80, and Payroll March 24, 2024 through April 6, 2024 in the amount of $5,109,514.62.

3. ACCEPT A WRITTEN PETITION TO CREATE A COMMUNITY FACILITIES DISTRICT AND ADOPT A RESOLUTION OF INTENTION TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 68 (RICH HAVEN INDUSTRIAL SERVICES) AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES

The City Council considered and:

A. Accepted a written petition from DPIF3 CA 36 ONTARIO RANCH, LLC ("Landowner"), to create a Community Facilities District ("CFD") and to waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982; and

B. Adopt a Resolution of Intention to establish City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services), authorize the associated levy of special taxes therein; and set a public hearing for the formation of the CFD as part of the regularly scheduled City Council meeting on Tuesday, June 18, 2024.

RESOLUTION NO. 2024-024 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF INTENTION TO ESTABLISH A COMMUNITY FACILITIES DISTRICT PROPOSED TO BE NAMED CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 65 (FALLONCREST) AND TO AUTHORIZE THE LEVY OF A SPECIAL TAX THEREIN.

4. A PROFESSIONAL SERVICES AGREEMENT FOR HAZARDOUS MATERIALS COLLECTION AND DISPOSAL SERVICES WITH GRAYMAR ENVIRONMENTAL SERVICES, INC.

The City Council authorized the City Manager, or his designee, to execute a General Services Agreement for up to five years with GrayMar Environmental Services, Inc. located in Moses Lake, Washington, for Hazardous Materials Collection and Disposal Collection Services, for an amount not-to-exceed $2,271,500.

5. A RESOLUTION APPROVING FIRE DEPARTMENT CLASSIFICATIONS BE ADDED TO THE CALIFORNIA FIRE AND RESCUE MUTUAL AID SYSTEM

The City Council adopted a Resolution approving additional Fire Department classifications to the terms and conditions for Fire Department responses to the California Fire and Rescue Mutual Aid System requests to assist State of California and Federal Fire agencies ("outside emergency support").

RESOLUTION NO. 2024-025 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE TERMS AND CONDITIONS FOR FIRE DEPARTMENT RESPONSE AWAY FROM THEIR OFFICIAL DUTY STATION AND ASSIGNED TO AN EMERGENCY INCIDENT.

6. AUTHORIZE THE PURCHASE OF WI-FI EQUIPMENT, INSTALLATION, AND SUPPORT WITH SMARTWAVE TECHNOLOGIES, LLC AS PART OF THE CITYWIDE WI-FI EXPANSION AND REFRESH PROJECT

The City Council authorized the City Manager, or his designee, to execute the purchase of equipment, installation, and support with SmartWave Technologies, LLC, of Alpharetta, Georgia, in an amount not-to-exceed $450,000.

7. AN AMENDMENT TO THE SERVICE ORDER WITH CARAHSOFT FOR THE QUALTRICS EX FOUNDATIONAL SOFTWARE

The City Council authorized the City Manager, or his designee, to execute Amendment No. 1 to the Service Order with Carahsoft, of Reston, Virginia, for the use of Qualtrics CoreXM EX Foundational software module in the amount of $86,079, with the unilateral option to extend the Service Order for up to one successive one-year period (Fiscal Year 2025-26) at a cost of $90,383, for a total not-exceed amount of $276,225 consistent with City Council approved budgets.

8. AN AMENDMENT TO THE GOODS AND SERVICES AGREEMENT WITH SLIM'S KEY SHOP FOR THE PROCUREMENT OF KEYS AND LOCKSMITH SERVICES

The City Council authorized the City Manager, or his designee, to execute Amendment No. 3 to the Goods and Services Agreement with Slim's Key Shop, of Rancho Cucamonga, California, in the amount of $70,000, for a total not-to-exceed contract amount of $219,000, and to extend the term to June 30, 2025, for the procurement of key and locksmith services.

9. AUTHORIZE THE PURCHASE OF FLEET VEHICLES WITH PEORIA FORD

The City Council took the following actions:

A. Awarded Bid No. 1765 and authorized the purchase and delivery of two (2) Ford F-250 Pickup Trucks from Peoria Ford, of Peoria, Arizona, in the amount of $196,961, plus a 10% contingency of $19,696 for a total amount not-to-exceed of $216,657 for the Fire Department; and
B. Awarded Bid No. 1767 and authorize the purchase and delivery of six (6) Ford Explorer XLT Sport Utility Vehicles (SUVs) from Peoria Ford, of Peoria, Arizona, in the amount of $317,337 plus a 10% contingency of $31,734 for a total amount not-to-exceed of $349,071 for the Fire Department.

10. APPROVAL OF A SIDE LETTER AMENDING THE MEMORANDUM OF UNDERSTANDING FOR THE ONTARIO POLICE MANAGEMENT GROUP IN ACCORDANCE WITH MODIFICATIONS REQUIRED BY CALPERS

The City Council adopted a Resolution to approve a side letter amending the City of Ontario ('City") and Ontario Police Management Group ("OPMG") Memorandum of Understanding from July 1, 2023 to June 30, 2027 in accordance with modifications required by the California Public Employees Retirement System (CalPERS) to ensure that pension benefits are properly calculated.

RESOLUTION NO. 2024-026 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A SIDE LETTER AMENDING THE MEMORANDUM OF UNDERSTANDING FOR EMPLOYEES REPRESENTED BY THE ONTARIO POLICE MANAGEMENT GROUP.

11. APPROVAL OF AMENDED COMPENSATION AND BENEFITS PROFILE FOR THE DEPARTMENT HEAD EMPLOYEE GROUP IN ACCORDANCE WITH MODIFICATIONS REQUIRED BY CALPERS

The City Council adopted a Resolution to approve an amended Compensation and Benefits Profile (Profile) for the Department Head Group in accordance with modifications required by the California Public Employees Retirement System (CALPERS) to ensure that pension benefits are properly calculated.

RESOLUTION NO. 2024-027 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN AMENDED COMPENSATION AND BENEFITS PROFILE FOR EMPLOYEES IN THE DEPARTMENT HEAD GROUP.

12. A RESOLUTION APPROVING AND ADOPTING THE CITY OF ONTARIO'S 2024 EMERGENCY OPERATIONS PLAN

The City Council adopted a Resolution approving the City of Ontario's 2024 Emergency Operations Plan (EOP) update in accordance with the Standardized Emergency Management System (SEMS) and the National Incident Management System (NIMS).

RESOLUTION NO. 2024-028 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING THE 2024 EMERGENCY OPERATIONS PLAN.

13. A MAINTENANCE SERVICES AGREEMENT WITH SUPERIOR PAVEMENT MARKINGS FOR THERMOPLASTIC TRAFFIC MARKING SERVICES

The City Council took the following actions:

A. Authorized the City Manager, or his designee, to execute a Maintenance Services Agreement for Contract No. SM 2024-2 with Superior Pavement Markings, of Cypress, California, to provide thermoplastic traffic marking services in an amount of $95,000 per year for a three-year term, for a total contract amount not-to-exceed $285,000; and
B. Authorized the City Manager, or his designee, to execute the optional two (2) one-year extensions to the Maintenance Services Agreement in a total not-to-exceed amount of $475,000 consistent with future budgets adopted by the City Council.

14. ONE-YEAR ACTION PLAN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT ("CDBG"), HOME INVESTMENT PARTNERSHIPS ("HOME"), AND EMERGENCY SOLUTIONS GRANT ("ESG") PROGRAMS FOR FISCAL YEAR 2024-25

The City Council took the following actions:

A. Approved the One-Year Action Plan for Fiscal Year 2024-25 for the Community Development Block Grant ("CDBG"), HOME Investment Partnerships ("HOME"), and Emergency Solutions Grant ("ESG") Programs (on file in the Records Management Department);
B. Directed Staff to prepare and transmit the final documents to the U.S. Department of Housing and Urban Development ("HUD"); and
C. Authorized the City Manager, or his designee, to take all actions necessary or desirable to implement the One-Year Action Plan for Fiscal Year 2024-25 and Subrecipient Agreements.

15. GOODS AND EQUIPMENT PURCHASE AGREEMENTS WITH SIERRA CONTAINER GROUP AND MCLAUGHLIN WASTE EQUIPMENT, INC. FOR 32, 64, AND 96 GALLON AUTOMATED CONTAINERS AND COMMERCIAL COLLECTION BINS

The City Council took the following actions:

A. Authorized the City Manager, or his designee, to execute a Goods and Equipment Purchase Agreement with Sierra Container Group, of Ocala, Florida, for 32, 64, and 96 Gallon Automated Containers for a total contract amount not-to-exceed $4,500,000 for up to five (5) years; and
B. Authorized the City Manager, or his designee, to execute a Goods and Equipment Purchase Agreement with McLaughlin Waste Equipment, Inc., of Lockeford, California, for Commercial Collection Bins for a total contract amount not-to-exceed $5,000,000 for up to five (5) years.

16. AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT WITH SOUTH COAST INDUSTRIAL DOOR, INC. FOR ON-CALL DOOR AND GATE MAINTENANCE AND REPAIR SERVICES

The City Council authorized the City Manager, or his designee, to execute Amendment No. 1, exercising the optional two (2) one-year extensions to the Maintenance Services Agreement with South Coast Industrial Door, Inc., of Corona, California, in the amount of $225,000, for a total not-to-exceed contract amount of $850,000. If the City desires to exercise the second option year, the total contract not-to-exceed amount will be $1,075,000.

17. PURCHASE OF ADDITIONAL SOFTWARE LICENSES WITH WORKDAY, INC.

The City Council authorized the City Manager, or his designee, to execute the purchase of additional software licenses with Workday, Inc., of Pleasanton, California, for a total not-to-exceed amount of $154,570.

18. AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT WITH WESTERN ALLIED CORPORATION FOR ON-CALL HEATING, VENTILATION, AND AIR CONDITIONING (HVAC) MAINTENANCE AND REPAIR SERVICES

The City Council authorized the City Manager, or his designee, to execute Amendment No. 2 exercising the optional two (2) one-year extensions to the Maintenance Services Agreement with Western Allied Corporation, of Santa Fe Springs, California, for on-call heating, ventilation and air conditioning (HVAC) maintenance and repair services in the amount of $600,000, for a total not-to-exceed contract amount of $2,160,000 for the first option year. If the City desires to exercise the second option year, the total not-to-exceed contract amount will be $2,760,000.

19. A WATER PURCHASE AND STORAGE LETTER AGREEMENT BETWEEN THE CITY OF ONTARIO AND WESTERN MUNICIPAL WATER DISTRICT

The City Council authorized the City Manager, or his designee, to execute a Water Purchase and Storage Letter Agreement with Western Municipal Water District (Western Water), located in Riverside, California, for the sale of 3,000 acre-feet of existing groundwater in the Chino Basin in the amount of $2,331,000.

20. PROCLAMATION OF MAY 18, 2024 AS KIDS TO PARKS DAY

The City Council proclaimed May 18, 2024 as Kids to Parks Day in the City of Ontario.

PUBLIC HEARING

21. A PUBLIC HEARING TO CONSIDER ADOPTION OF A RESOLUTION TO DESIGNATE PORTIONS OF D STREET, PLUM AVENUE, CHERRY AVENUE AND SULTANA AVENUE AS A RESIDENTIAL PERMIT PARKING ZONE

The City Council conducted a Public Hearing and adopted a Resolution to designate portions of D Street, Plum Avenue, Cherry Avenue, and Sultana Avenue as a residential permit parking zone for the benefit of adjacent residences.

RESOLUTION NO. 2024-029 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE DESIGNATION OF PORTIONS OF D STREET, PLUM AVENUE, CHERRY AVENUE, AND SULTANA AVENUE AS RESIDENTIAL PERMIT PARKING ZONE.

Notice of public hearing was duly given and affidavits of compliance are on file in the Records Management Department. There were no written communications.

Mayor Leon opened the public hearing and inquired if anyone was interested in speaking to the item. There was one comment card, but it was retracked by the submitter. No other inquiries were made to address the item. Mayor Leon closed the public hearing and opened the item for Council discussion.

MOTION: Moved by Council Member Bowman, seconded by Council Member Valenica and carried by a unanimous vote 4-0, with Mayor pro Tem Porada absent, to adopt Resolution No. 2024-029.

ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

22. RESOLUTIONS AUTHORIZING A LOAN AGREEMENT, A PURCHASE AND SALE AGREEMENT FOR LAND PARCELS AND OTHER RELATED DOCUMENTS BETWEEN THE CITY OF ONTARIO AND THE ONTARIO INDUSTRIAL DEVELOPMENT AUTHORITY

The City Council and the Ontario Industrial Development Authority took the following actions:

A. Adopted a Resolution authorizing the execution and delivery of a loan agreement, a purchase and sale agreement for land parcels and other related documents in connection with providing a loan on behalf of the City's investing funds to the Ontario Industrial Development Authority for the purpose of releasing restrictive covenants imposed by the United States Federal Aviation Administration on certain properties owned by the City and to be purchased by the Authority.
B. The Board of Directors of the Ontario Industrial Development Authority adopted a Resolution authorizing the execution and delivery of a loan agreement, a purchase and sale agreement for land parcels and other related documents in connection with borrowing money from the lending funds of the City for the acquisition of real property from the City for the purpose of releasing restrictive covenants imposed by the United States Federal Aviation Administration on certain properties owned by the City and to be purchased by the Authority.

RESOLUTION NO. 2024-030 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING EXECUTION AND DELIVERY OF A LOAN AGREEMENT, A PURCHASE AND SALE AGREEMENT FOR LAND PARCELS AND OTHER RELATED DOCUMENTS IN CONNECTION WITH PROVIDING A LOAN ON BEHALF OF ITS INVESTING FUNDS WITH THE ONTARIO INDUSTRIAL DEVELOPMENT AUTHORITY, THE SALE OF REAL PROPERTY AND CERTAIN OTHER ACTIONS RELATING THERETO.

RESOLUTION NO. OIDA-59 A RESOLUTION OF THE BOARD OF DIRECTORS OF THE ONTARIO INDUSTRIAL DEVELOPMENT AUTHORITY, OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING EXECUTION AND DELIVERY OF A LOAN AGREEMENT, A PURCHASE AND SALE AGREEMENT FOR LAND PARCELS AND OTHER RELATED DOCUMENTS IN CONNECTION WITH THE ACQUISITION OF REAL PROPERTY FROM THE CITY AND CERTAIN OTHER ACTIONS RELATING THERETO.

City Clerk Sheila Mautz announced there were no written communications.

Mayor Leon opened the opened the item for Council discussion.

MOTION: Moved by Council Member Bowman, seconded by Council Member Valenica and carried by a unanimous vote 4-0, with Mayor pro Tem Porada absent, to adopt Resolution No. 2024-030 and Resolution No. OIDA-59.

STAFF MATTERS:

City Manager Ochoa made no announcements.

COUNCIL MATTERS:

Council Member Valencia made no comments.

Council Member Bowman made no comments.

Council Member Wapner made no comments.

Mayor Leon asked consensus to adjourn the meeting in honor of his late mother-in-law. Members of the Council agreed to adjourn in honor of Joyce Huyck.

ADJOURNMENT:

Mayor Leon adjourned the meetings of the Joint Agencies at 7:06 p.m. in memory of Joyce Huyck and announced the next regular meeting was scheduled for May 21, 2024.

Respectfully submitted,

_____
SHEILA MAUTZ, CITY CLERK/SECRETARY

APPROVED:

_____
PAUL S. LEON, MAYOR

ONTARIO CITY COUNCIL/
ONTARIO HOUSING AUTHORITY
MINUTES
May 21, 2024
(Not Official Until Approved)

JOINT MEETINGS

The regular meetings of the Ontario City Council and the Housing Authority were held on Tuesday, May 21, 2024 at Ontario City Hall, 303 E. B Street Ontario, California.

OPEN MEETING CALLED TO ORDER

Mayor Leon called the joint meetings to order at 6:33 p.m.

ROLL CALL

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

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

INFORMATION RELATIVE TO POSSIBLE CONFLICTS OF INTEREST

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

PLEDGE OF ALLEGIANCE

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

INVOCATION

The invocation was led by Bishop Scott Costello of The Church of Jesus Christ of Latter-Day Saints.

SPECIAL CEREMONIES

PROCLAMATION OF THE ONTARIO MUSEUM OF HISTORY & ART AS AN ACCREDITED MUSEUM

Museum, Arts and Culture Director Marissa Kucheck provided a presentation regarding an overview of the American Alliance of Museums accreditation process.

The City Council proclaimed the Ontario Museum of History & Art as an accredited museum.

PUBLIC COMMENTS

Assistant City Clerk Isbell announced there were five written public comments:
Arianna Harrison, regarding financial divestment from the State of Israel.
Brandy Rodriguez, regarding a personal matter involving her apartment manager.
Karen Hydanus, regarding the homeless population near Mountain Avenue and G Street.
Mario R. Perez, regarding parking violations and vehicle congestion.
Niko Willingham, regarding a miscommunication during her visit to City Hall on May 8th.

Mayor Leon called upon the first speaker:

Ana Castello, spoke regarding street cleaning and parking congestion.
Karen Haughey, spoke regarding County Supervisor Curt Hagman's upcoming community events.
Brandy Rodriguez, spoke regarding a personal matter involving her apartment manager.
Karen May, spoke regarding an overview on Thrive Inland SoCal.

AGENDA REVIEW/ANNOUNCEMENTS

City Manager Ochoa made no announcements.

CONSENT CALENDAR

MOTION: Moved by Council Member Bowman, seconded by Mayor pro Tem Porada and carried by a unanimous vote 3-0, to approve the Consent Calendar, and with Council Members Wapner and Valencia absent.

1. APPROVAL OF MINUTES

Approved minutes for the regular meetings of the City Council and Housing Authority of April 16, 2024, and approving same as on file in the Records Management Department.

2. BILLS & PAYROLL

Approved bills April 19, 2024 through May 2, 2024, in the amount of $19,611,960.00, and Payroll April 7, 2024 through April 20, 2024 in the amount of $5,130,542.69.

3. ACCEPT WRITTEN PETITIONS TO CREATE A COMMUNITY FACILITIES DISTRICT; ADOPT A RESOLUTION OF INTENTION TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 71 (NEUHOUSE PHASE 2) AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES; AND ADOPT A RESOLUTION DECLARING IT NECESSARY TO INCUR BONDED INDEBTEDNESS

The City Council considered and:

A. Accepted written petitions from LS-Ontario II LLC, AG EHC II (LSEA) CA 2, L.P., and Landsea Homes of California LLC ("Landowners") to create a Community Facilities District and to waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982;
B. Authorized a 5% contingency of $10,750 per year for one (1) year to address any unforeseen issues that may arise for a total not-to-exceed contract amount of $225,750; and
C. Adopted a Resolution Declaring it Necessary for City of Ontario Community Facilities District No. 71 (Neuhouse Phase 2) to Incur Bonded Indebtedness.

RESOLUTION NO. 2024-031 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF INTENTION TO ESTABLISH A COMMUNITY FACILITIES DISTRICT PROPOSED TO BE NAMED CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 71 (NEUHOUSE PHASE 2) AND TO AUTHORIZE THE LEVY OF SPECIAL TAX THEREIN.

RESOLUTION NO. 2024-032 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING IT NECESSARY FOR THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 71 (NEUHOUSE PHASE 2) TO INCUR BONDED INDEBTEDNESS.

4. A RESOLUTION ORDERING THE SUMMARY VACATION OF AN EASEMENT FOR RAILROAD PURPOSES

The City Council adopted a Resolution ordering the summary vacation of an easement for railroad purposes located east of Cucamonga Avenue and north of Francis Street.

RESOLUTION NO. 2024-033 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF AN EASEMENT FOR RAILROAD PURPOSES LOCATED EAST OF CUCAMONGA AVENUE AND NORTH OF FRANCIS STREET.

5. A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 20599 LOCATED AT THE NORTHWEST AND NORTHEAST CORNERS OF DUESENBERG DRIVE AND CONCOURS STREET

The City Council adopted a Resolution approving an Improvement Agreement, Improvement Security and Final Tract Map No. 20599 located at the northwest and northeast corners of Duesenberg Drive and Concours Street.

RESOLUTION NO. 2024-034 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 20599 LOCATED AT THE NORTHWEST AND NORTHEAST CORNERS OF DUESNBERG DRIVE AND CONCOURS STREET

6. AN AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT FOR ON-CALL PROJECT MANAGEMENT SERVICES, AND AN AMENDMENT TO A DESIGN SERVICES AGREEMENT FOR THE SULTANA AVENUE STORM DRAIN, STREET, AND SEWER IMPROVEMENT PROJECTS

The City Council took the following actions:

A. Approved Amendment No. 7 to the Professional Services Agreement with AKM Consulting Engineers of Irvine, California, to provide construction management and inspection services for the Sultana Avenue Storm Drain, Street, and Sewer Improvement Projects in the amount of $353,850 for a revised not-to-exceed total of $1,026,549.44; and authorized the City Manager, or his designee, to execute said Agreement and future amendments within the Authorization limits.
B. Approved Amendment No. 2 to the Design Services Agreement for the Sultana Avenue Storm Drain and Street Improvements Project with Infrastructure Engineering Corporation of Poway, California, to provide additional utility coordination, sewer improvement plan implementation, and construction support in the amount of $201,600 for a revised not-to-exceed total of $1,014,205; and authorized the City Manager, or his designee, to execute said Agreement and future amendments within the authorization limits.

7. A QUITCLAIM DEED WITH LENNAR HOMES OF CALIFORNIA, LLC FOR LOT A AND LOT C OF FINAL PARCEL MAP NO. 19787

The City Council authorized the City Manager, or his designee, to execute a Quitclaim Deed to Lennar Homes of California, LLC, for fee title ownership transfer of Lot A and Lot C of Parcel Map 19787.

8. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH COMMUNICATIONS & MEDIA MANAGEMENT CONSULTANTS, INC. FOR CITYWIDE MARKETING, COMMUNICATIONS, MITIGATION AND PUBLIC RELATIONS CONSULTING SERVICES

The City Council authorized the City Manager, or his designee, to execute Amendment No. 1 to the Professional Services Agreement with Communications &

Media Management Consultants, Inc. (CMMC), of Santa Clarita, California, for the provision of citywide marketing, communications, mitigation, and public relations consulting services, in the amount of $120,000, for a total not-to-exceed contract amount of $190,000, and to extend the term to June 30, 2025.

9. A CHANGE ORDER TO THE CONSTRUCTION CONTRACT WITH HP COMMUNICATIONS, INC. FOR ON-CALL FIBER CONDUIT AND CABLE INSTALLATION

The City Council authorized Change Order No.1 to Construction Contract No. BB-2022-001 with HP Communications, Inc. of Corona, California, for on-call citywide fiber conduit installation services, in the amount of $274,071 for a revised total of $8,274,071; and authorized the City Manager, or his designee, to execute said Contract and future amendments within the authorization limits.

10. A PROFESSIONAL SERVICES AGREEMENT WITH SWA GROUP FOR THE PREPARATION OF DESIGN AND CONSTRUCTION DOCUMENTS FOR THE GRAND PARK PROJECT

The City Council took the following actions:

A. Authorized the City Manager, or his designee, to execute a Professional Services Agreement with SWA Group, of Laguna Beach, California, for the preparation of the design and construction documents for the Grand Park Project for a total not-to-exceed contract amount of $5,972,996; and
B. Authorized the City Manager, or his designee, to execute all documents required for the completion of the project including, but not limited to agreements, assessments, easements, lot line adjustments, reduction of retention accounts, contracts, and contract amendments within the authorization limits, and filing a notice of completion at the conclusion of all construction related activities.

PUBLIC HEARING

11. A PUBLIC HEARING TO CONSIDER A RESOLUTION REGARDING THE FORMATION OF THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 65 (FALLONCREST); ADOPTION OF A RESOLUTION DEEMING IT NECESSARY TO INCUR BONDED INDEBTEDNESS; AND INTRODUCTION OF AN ORDINANCE LEVYING SPECIAL TAXES

Notice of public hearing was duly given and affidavits of compliance are on file in the Records Management Department. There were no written communications or protests.

Mayor Leon opened the public hearing and inquired if anyone was interested in speaking to the item. Mayor Leon conveyed the need for additional time to review the infrastructure improvement list, costs and funding agreement associated with the

proposed Community Facilities District No. 65 (Falloncrest).

Mayor Leon requested a motion to continue the public hearing to June 4, 2024.

MOTION: Moved by Mayor pro Tem Porada, seconded by Council Member Bowman and carried by a unanimous vote 3-0, with Council Members Wapner and Valencia absent, to continue the public hearing to June 4, 2024.

12. A PUBLIC HEARING TO CONSIDER AN URGENCY ORDINANCE TO IMPLEMENT MULTIPLE-FAMILY RESIDENTIAL AND MIXED-USE RESIDENTIAL OBJECTIVE DESIGN AND DEVELOPMENT STANDARDS, FILE NO. PDCA24-001

Notice of public hearing was duly given and affidavits of compliance are on file in the Records Management Department. There was one written communication.

Loree Masonis, in opposition to the item.

Assistant City Attorney Ryan Guiboa remarked that the item requires a four-fifths of a vote because the item involved an Urgency Ordinance. As a result of two Council Members in absentia, Assistant City Attorney Ryan Guiboa suggested the Council move forward with opening the public hearing and continue the item to the June 4th Council Meeting.

Mayor Leon opened the public hearing and entertained a motion to continue the item.

MOTION: Moved by Mayor pro Tem Porada, seconded by Council Member Bowman and carried by a unanimous vote 3-0, with Council Members Wapner and Valencia absent, to continue the public hearing to June 4, 2024.

13. A PUBLIC HEARING TO CONSIDER ADOPTING A RESOLUTION OF NECESSITY FOR THE ACQUISITION BY EMINENT DOMAIN OF A FEE SIMPLE INTEREST IN CERTAIN REAL PROPERTY LOCATED AT 301 NORTH EUCLID AVENUE FOR THE GRANADA THEATER REVITALIZATION PROJECT

Notice of public hearing was duly given and affidavits of compliance are on file in the Records Management Department. There were no written communications.

Assistant City Attorney Ryan Guiboa remarked that the item required four-fifths of a vote because the item involved Eminent Domain. As a result of two Council Members in absentia, Assistant City Attorney Guiboa suggested the Council move forward with opening the public hearing and continue the item to the June 4th Council Meeting.

Mayor Leon opened the public hearing and entertained a motion to continue the item.

MOTION: Moved by Mayor pro Tem Porada, seconded by Council Member Bowman and carried by a unanimous vote 3-0, with Council Members Wapner and Valencia absent, to continue the public hearing to June 4, 2024.

STAFF MATTERS:

City Manager Ochoa made no announcements.

COUNCIL MATTERS:

Council Member Bowman made no comments.

Mayor pro Tem Porada made no comments.

Mayor Leon thanked the community for the outpour of emotional support directed at his wife and family.

ADJOURNMENT:

Mayor Leon adjourned the meetings of the Joint Agencies at 7:04 p.m. and announced the next regular meeting was scheduled for June 4, 2024.

Respectfully submitted,

_____
SHEILA MAUTZ, CITY CLERK/SECRETARY

APPROVED:

_____
PAUL S. LEON, MAYOR

CITY OF ONTARIO *Agenda Report* **June 18, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Financial Services Prepared By: Nathaniel Gibson 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: 3

SUBJECT: ANNUAL LEVY OF ASSESSMENTS WITHIN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICT NOS. 1, 2, 3 AND 4 FOR FISCAL YEAR 2024-25

RECOMMENDATION: That the City Council consider and adopt:

A. Resolution ordering the preparation of the Assessment Engineer's Reports for proceedings for the annual assessment levy within Ontario Parkway Maintenance Assessment District (OPMAD) Nos. 1, 2, 3 and 4;
B. Resolution approving the Assessment Engineer's Reports for the annual levy of assessments within OPMAD Nos. 1, 2, 3 and 4; and
C. Resolution for OPMAD Nos. 1, 2 and 3, and Resolution for OPMAD No. 4, declaring the City's intention to provide for an annual levy and collection of assessments for Fiscal Year 2024-25 and set the date of July 16, 2024, for a Public Hearing on each district in accordance with the Landscaping and Lighting Act of 1972.

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

FISCAL IMPACT: As proposed, the assessment revenue will generate approximately $665,668 from OPMAD Nos. 1, 2, 3, and 4 for Fiscal Year 2024-25. For OPMAD Nos. 1, 2, 3 (Zone 2000-1) the total estimated cost of $595,145 for administrative, operation and maintenance will exceed the assessment revenues of $264,555 by $330,590. The estimated difference of $330,590 will be funded as a transfer-in from the General Fund. The Fiscal Year 2024-25 Adopted Budget includes a funding transfer of $300,000. If additional funding is needed, it will be included in the next quarterly budget update. The assessment revenues for OPMAD No. 3 (Zone 2000-2) and OPMAD No.4 are sufficient to pay all expenses within the district.

BACKGROUND & ANALYSIS: The first of these districts was formed in 1976 pursuant to the Landscaping and Lighting Act of 1972 (the 1972 Act). Additional territories are annexed to the districts from time to time as development proceeds. The districts were formed to help minimize

the continually increasing cost of maintaining and operating the landscaping along public streets where the property owners do not have direct access to the landscaping. An assessment is levied annually on benefiting properties for the cost of operation and maintenance of certain parkway landscaping facilities within the districts. The City's Public Works Agency establishes the annual operation and maintenance costs and administers the maintenance of the landscaping. Annually, an Engineer's Report for each district must be prepared which apportions these costs to each parcel within the districts. The locations of the districts are shown on the attached maps.

OPMAD Nos. 1, 2, and 3 are comprised of single-family residential developments. Due to varying characteristics, the districts are organized into benefit zones and/or maintenance areas. Each zone/maintenance area is assessed for only the operation and maintenance of the facilities from which it receives special direct benefit. The total assessment for each maintenance area is then apportioned to its constituent parcels. The assessment revenue from OPMAD Nos. 1, 2 and 3 will generate a combined amount of $288,016. The assessed tax rates for Fiscal Year 2023-24, and the proposed and maximum tax rates for Fiscal Year 2024-25, are shown in Exhibit A.

OPMAD No. 4 is comprised of single-family residential tracts and the Ontario Mills development area. The district is organized into 6 maintenance areas. Each maintenance area is assessed for only the operation and maintenance of the facilities from which it receives direct special benefit. The total assessment for each maintenance area is then apportioned to its constituent parcels. The assessments for OPMAD No. 4 will generate a total of $377,652 and will generate sufficient revenue to pay all expenses within the district. The assessed tax rates for Fiscal Year 2023-24, and the maximum and proposed tax rates for Fiscal Year 2024-25, are shown in Exhibit A.

Pursuant to the 1972 Act, Engineer's Reports have been prepared for each district and are on file with the Records Management Department. Each report includes plans and specifications for the improvements and maintenance, an estimate of costs, a diagram of the area proposed to be assessed (boundary and inventory map), and an assessment of the costs to the various parcels within each district.

A public hearing is required for each district prior to adoption of the proposed assessments. A combined public hearing will be held on July 16, 2024 for the purpose of accepting comments and written protests. At the conclusion of the public hearing, the City Council will consider adoption of Resolutions confirming the assessments and ordering the levy of the assessments for Fiscal Year 2024-25. Notice of the public hearing for the levy of assessments will be published in the local newspaper, in accordance with the applicable statutes.

Exhibit A

Ontario Parkway Maintenance Assessment Districts 1, 2 & 3

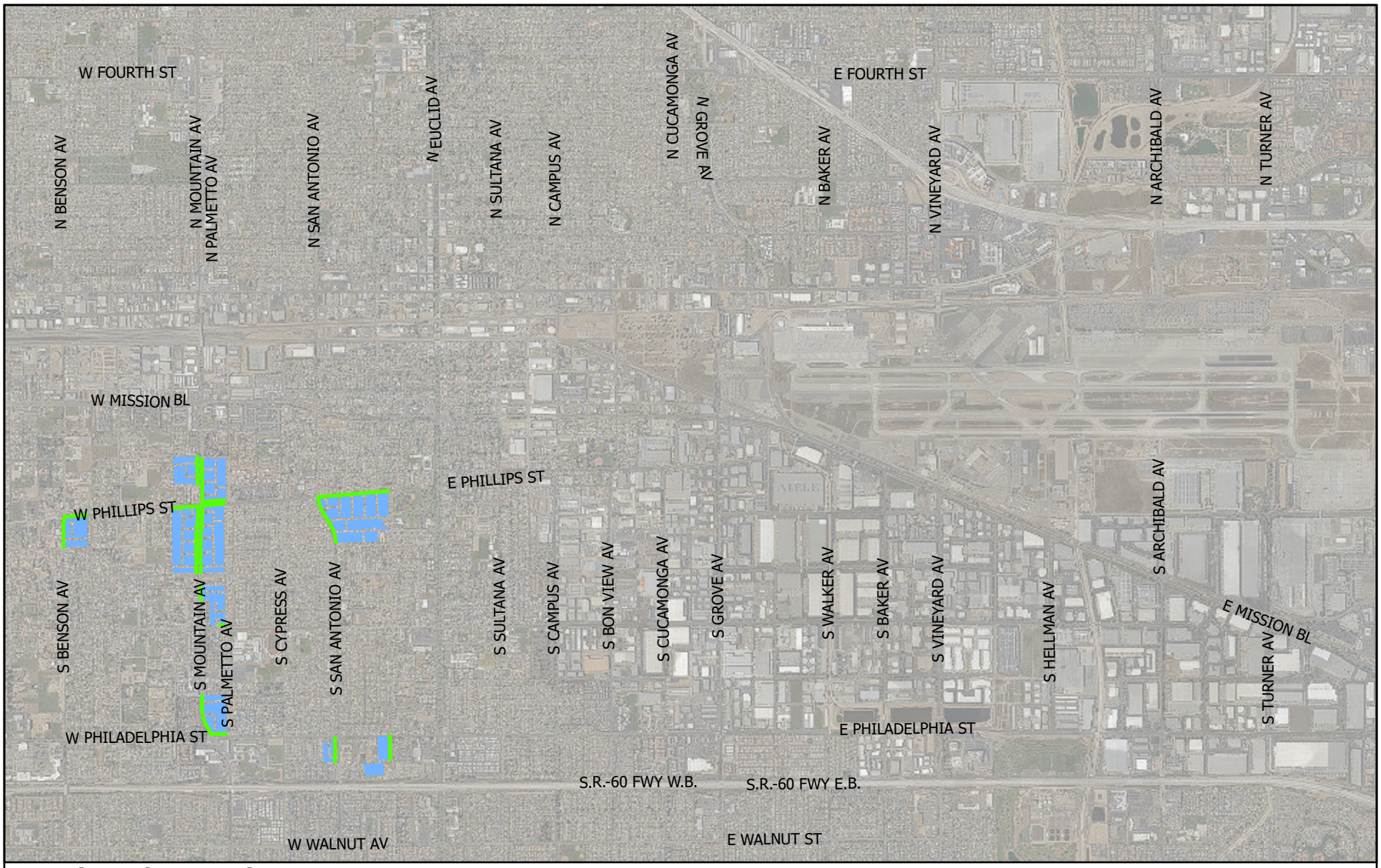
Proposed Levy Rates FY 2024-25

	Prior Year 2023-24	Maximum 2024-25	Proposed 2024-25
OPMAD No. 1	$ 66.32 per Lot	$ 66.32 per Lot	$ 66.32 per Lot
OPMAD No. 2	$ 34.04 per Lot	$ 34.04 per Lot	$ 34.04 per Lot
OPMAD No. 3, Zone 2000-1	$ 41.29 per Lot	$ 41.29 per Lot	$ 41.29 per Lot
OPMAD No. 3, Zone 2000-2	$ 201.81 per Lot	$ 294.38 per Lot	$ 207.62 per Lot

Ontario Parkway Maintenance Assessment District 4

Proposed Levy Rates FY 2024-25

	Prior Year 2023-24	Maximum 2024-25	Proposed 2024-25
MA#99-1	$ 60.26 per Lot	$ 71.63 per Lot	$ 61.99 per Lot
MA#99-2	$ 392.59 per Lot	$ 451.83 per Lot	$ 403.89 per Lot
MA#99-3	$ 1,219.90 per Acre	$ 1,622.43 per Acre	$ 1,255.02 per Acre
MA#00-1	$ 286.77 per Lot	$ 444.99 per Lot	$ 295.02 per Lot
MA#04-1	$ 1,153.51 per Lot	$ 2,834.50 per Lot	$ 1,186.71 per Lot
MA#05-1	$ 1,584.77 per Lot	$ 3,513.51 per Lot	$ 1,630.38 per Lot



Ontario Parkway Maintenance District No. 1 Vicinity Map

CITY OF ONTARIO

Legend

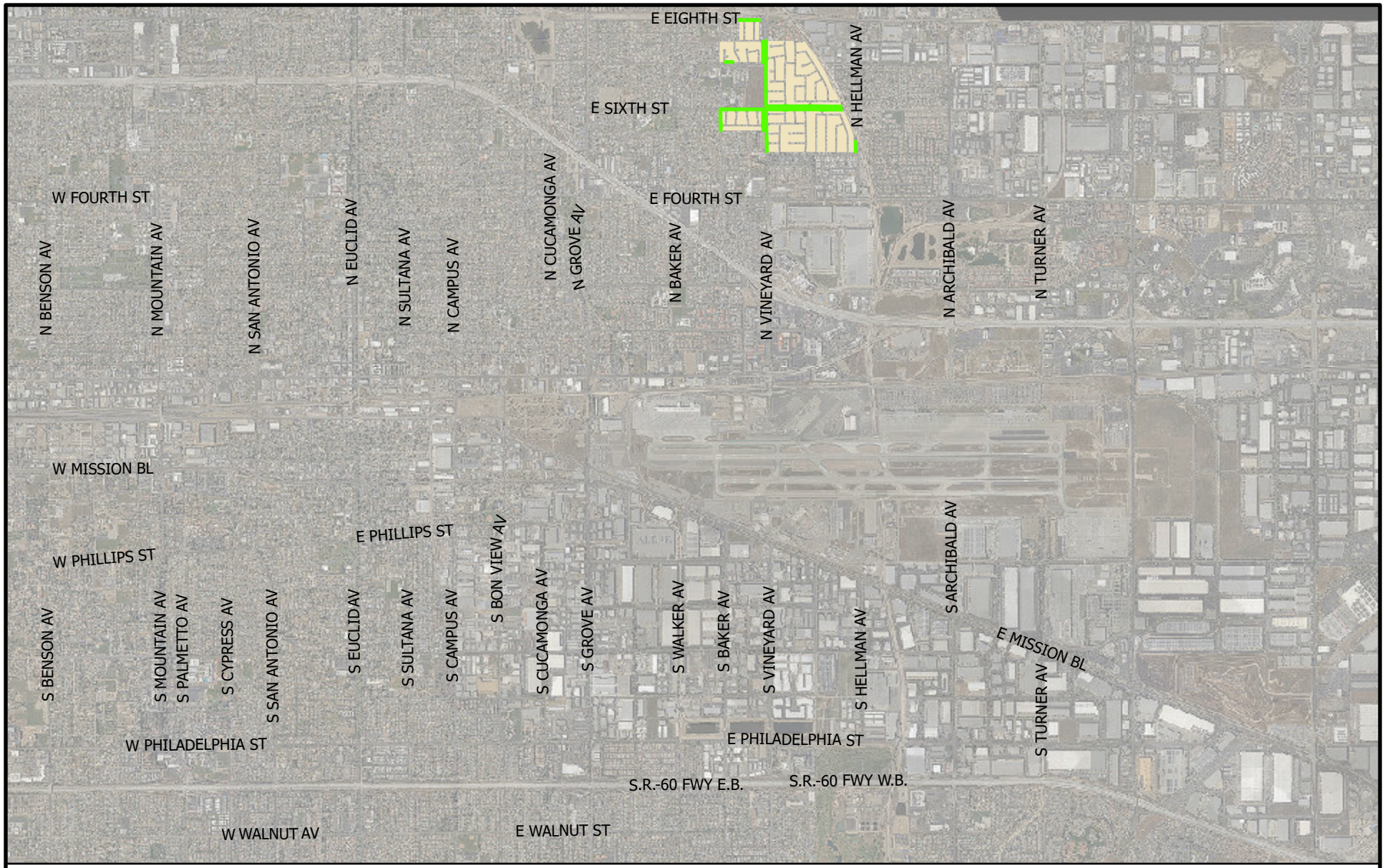
- Areas Maintained
- Boundary of Area Assessed

N
W E
S

0 0.38 0.75 Miles

Note: Reference is hereby made to the Maps of the Assessor of the County of San Bernardino, California. For detailed descriptions of the lines and dimensions of the parcels shown hereon.

Date: 5/8/2024



Ontario Parkway Maintenance District No. 2 Vicinity Map

Legend

- Areas Maintained
- Boundary of Area Assessed

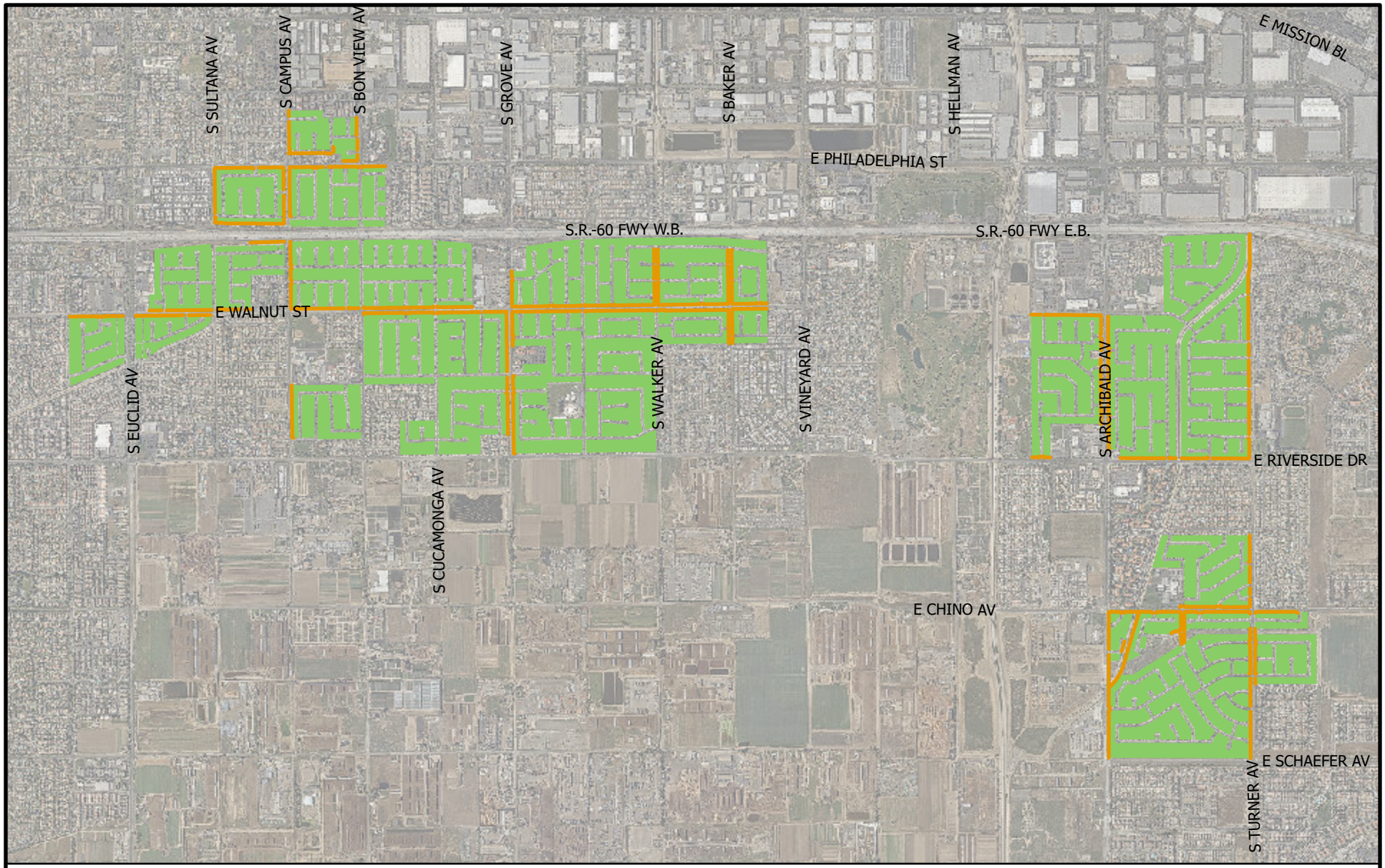
N
W E
S

0 0.47 0.95 Miles

Note: Reference is hereby made to the Maps of the Assessor of the County of San Bernardino, California. For detailed descriptions of the lines and dimensions of the parcels shown hereon.

Date: 5/8/2024

CITY OF ONTARIO



Ontario Parkway Maintenance District No. 3 Vicinity Map

CITY OF ONTARIO

Legend

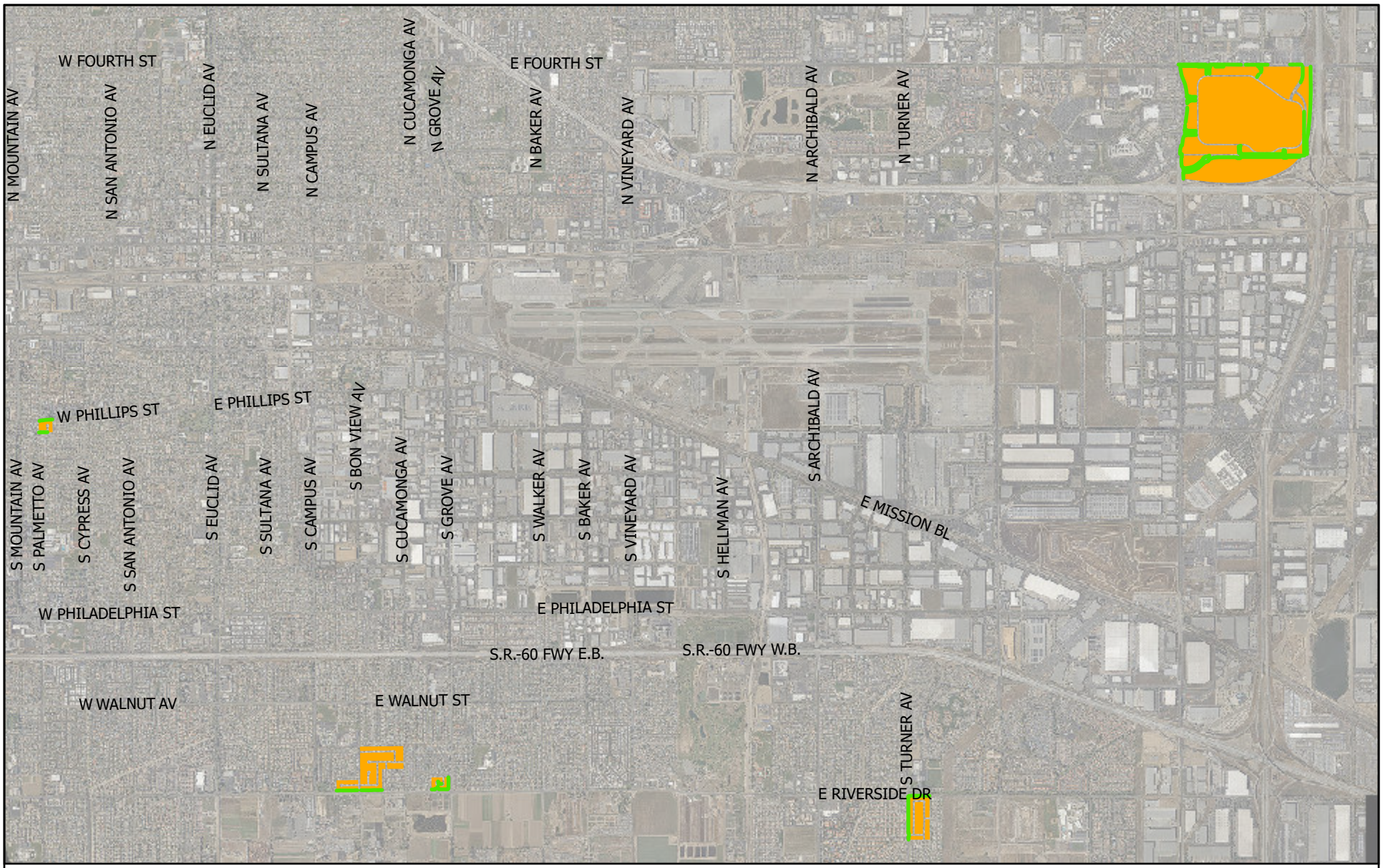
- Areas Maintained
- Boundary of Zone 2000-1

N W E S

0 0.28 0.55 Miles

Note: Reference is hereby made to the Maps of the Assessor of the County of San Bernardino, California. For detailed descriptions of the lines and dimensions of the parcels shown hereon.

Date: 5/8/2024



Ontario Parkway Maintenance District No. 4 Vicinity Map

Legend

- Areas Maintained
- MA - # Boundary and Maintenance Area #

N
W E
S

0 0.42 0.85 Miles

Note: Reference is hereby made to the Maps of the Assessor of the County of San Bernardino, California. For detailed descriptions of the lines and dimensions of the parcels shown hereon.

Date: 5/8/2024

CITY OF ONTARIO

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE PREPARATION OF THE ASSESSMENT ENGINEER'S REPORTS PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, FOR PROCEEDINGS FOR THE ANNUAL ASSESSMENT LEVY WITHIN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2, 3 AND 4 FOR FISCAL YEAR 2024-25.

WHEREAS, the City Council of the City of Ontario, California, previously formed maintenance districts pursuant to the terms and provisions of the "Landscaping and Lighting Act of 1972," being Division 15, Part 2, of the Streets and Highways Code of the State of California (the "1972 Act"), known and designated as

CITY OF ONTARIO
PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2, 3 AND 4

(the "Districts"); and

WHEREAS, at this time the City Council desires to initiate proceedings to provide for the annual levy of assessments for the ensuing fiscal year to provide for the annual costs for maintenance of improvements within the Districts; and

WHEREAS, the proceedings for the annual levy of assessments shall relate to the fiscal year commencing July 1, 2024, and ending June 30, 2025; and

WHEREAS, there has been submitted to this City Council for its consideration at this time, maps showing the boundaries of the area affected by the levy of the assessment for the above-referenced fiscal year, and inventory maps showing and describing in general the works of improvement proposed to be maintained in said Districts, said description being sufficient to identify the works of improvement and the areas proposed to be assessed for said maintenance thereof.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

SECTION 1. That the above recitals are all true and correct.

SECTION 2. That the maps entitled

CITY OF ONTARIO
PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2, 3 AND 4
BOUNDARY AND INVENTORY MAPS

attached hereto, as submitted to this City Council, showing the boundaries of the proposed areas to be assessed and showing the works of improvement to be maintained, are hereby approved, and a copy thereof shall be on file in the Records Management Department and open to public inspection. The parcels and properties within said area

are those proposed to be assessed to pay the costs and expenses for said maintenance work.

SECTION 3. That the proposed maintenance work within the area proposed to be assessed shall be for certain landscaping and appurtenant improvements, as said maintenance work is set forth in the Reports to be presented to this City Council for consideration.

SECTION 4. That the Assessment Engineer, Harris & Associates, is hereby ordered to prepare and file with this City Council the Assessment Engineer's Reports relating to said annual assessment and levy in accordance with the provisions of 1972 Act, Article XIIID of the Constitution of the State of California ("Article XIIID"), and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750 and following) (the "Implementation Act") (the 1972 Act, Article XIIID and the Implementation Act are referred to collectively as the "Assessment Law").

SECTION 5. That upon completion, said Assessment Engineer's Reports shall be filed with the City Clerk, who shall then submit the same to this City Council for its consideration pursuant to the Assessment Law.

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

PASSED, APPROVED, AND ADOPTED this 18th day of June, 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 June 18, 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 June 18, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE ASSESSMENT ENGINEER'S REPORTS FOR THE ANNUAL LEVY OF ASSESSMENTS WITHIN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2, 3 AND 4 FOR FISCAL YEAR 2024-25.

WHEREAS, the City Council of the City of Ontario, California, pursuant to the provisions of Division 15, Part 2, of the Streets and Highways Code of the State of California (the "1972 Act"), Article XIIID of the Constitution of the State of California ("Article XIIID"), and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750 and following) (the "Implementation Act") (the 1972 Act, Article XIIID and the Implementation Act are referred to collectively as the "Assessment Law"), did, by previous Resolution, order the preparation of the Assessment Engineer's Reports for the annual levy of assessments for the referenced Fiscal Year in the maintenance assessment districts known and designated as

CITY OF ONTARIO
PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2, 3 AND 4
(the "Districts"); and

WHEREAS, there has now been presented to this City Council the Assessment Engineer's Reports as required by the Assessment Law and as previously directed by Resolution; and

WHEREAS, this City Council has now examined and reviewed the Assessment Engineer's Reports as presented, and is satisfied with each and all of the items and documents as set forth therein, and is satisfied that the assessments on a preliminary basis, have been spread in accordance with the special benefits received from the improvements to be maintained, as set forth in said Assessment Engineer's Reports.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

SECTION 1. That the above recitals are all true and correct.

SECTION 2. That the Assessment Engineer's Reports as presented, consisting of the following:

A. Plans and specifications describing the general nature, location, and extent of the improvements to be maintained and the extent of such maintenance;

B. An estimate of the cost of the maintenance of the improvements for the Districts for the referenced fiscal year;

C. A diagram for each District, showing the area and properties proposed to be assessed; and

D. An annual assessment for the referenced Fiscal Year of the estimated costs of the maintenance of those improvements to be maintained during such Fiscal Year, assessing the net amount upon all assessable lots and/or parcels within the Districts in proportion to the special benefits received;

are hereby approved on a preliminary basis and are ordered to be filed in the Records Management Department as a permanent record and to remain open to public inspection.

SECTION 3. That the City Clerk shall certify to the passage and adoption of this Resolution, and the minutes of this meeting shall so reflect the presentation of the Assessment Engineer's Reports.

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

PASSED, APPROVED, AND ADOPTED this 18th day of June, 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 June 18, 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 June 18, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING ITS INTENTION TO PROVIDE FOR AN ANNUAL LEVY AND COLLECTION OF ASSESSMENTS FOR FISCAL YEAR 2024-25 IN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2 AND 3, PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, AND SETTING A TIME AND PLACE FOR A PUBLIC HEARING THEREON.

WHEREAS, the City Council of the City of Ontario, California, has previously formed landscaping maintenance assessment districts pursuant to the terms and provisions of the "Landscaping and Lighting Act of 1972," being Division 15, Part 2, of the Streets and Highways Code of the State of California, in what is known and designated as

CITY OF ONTARIO
PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2 AND 3

(hereinafter referred to as the Districts); and

WHEREAS, at this time, this City Council desires to conduct proceedings to provide for the annual levy of assessments for the ensuing fiscal year, to provide for the costs and expenses necessary for continual maintenance of improvements within said Districts; and

WHEREAS, at this time, there has been presented and approved by this City Council, the Engineer's Reports as required by law, and this City Council desires to conduct the proceedings for said annual levy.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

SECTION 1. That the above recitals are all true and correct.

SECTION 2. That the public interest and convenience requires, and it is the intention of this City Council, to undertake proceedings for the annual levy and collection of special assessments for the continual maintenance of certain improvements, all to service and benefit said Districts as said area is shown and delineated on the maps as previously approved by this City Council and on file in the Records Management Department, open to public inspection, and herein so referenced and made a part hereof, and proposed changes thereto are set forth in the Engineer’s Reports, incorporated herein as a part hereof.

REPORT

SECTION 3. That the Engineer's Reports regarding the annual levy for said Districts, which Reports are for maintenance for said fiscal year, are hereby approved and are directed to be filed in the Records Management Department.

ASSESSMENT

SECTION 4. That the public interest and convenience requires, and it is the intention of this City Council to order the annual assessment levy for the Districts as set forth and described in said Engineer's Reports, and further it is determined to be in the best public interest and convenience to levy and collect annual assessments to pay the costs and expenses of said maintenance and improvement as estimated in said Reports.

DESCRIPTION OF MAINTENANCE

SECTION 5. The assessments levied and collected shall be for the maintenance of certain parkway landscaping and appurtenant improvements, as set forth in the Engineer's Reports, referenced and so incorporated herein.

COUNTY AUDITOR

SECTION 6. The County Auditor shall enter on the County Assessment Roll the amount of the assessments, and the County Tax Collector shall collect said assessments at the time and in the same manner as County taxes are collected. After collection by the County, the net amount of the assessments, after the deduction of any compensation due to the County for collection, shall be paid to the Treasurer for purposes of paying for the costs and expenses of said Districts.

SPECIAL FUND

SECTION 7. That all monies collected shall be deposited in a special fund. Payment shall be made out of said fund only for the purpose provided for in this Resolution, and in order to expedite the making of this maintenance and improvement, the City Council may transfer into said fund as it may deem necessary to expedite the proceedings. Any such transfer shall be repaid out of the proceeds of the assessments provided for in this Resolution.

BOUNDARIES OF DISTRICTS

SECTION 8. Said contemplated maintenance work is in the opinion of this City Council, of direct benefit to the properties within the boundaries of the Districts, and this City Council makes the costs and expenses of said maintenance chargeable upon the Districts, which Districts said City Council hereby declares to be the Districts benefited by said improvement and maintenance, and to be further assessed to pay the costs and expenses thereof. Said Districts shall include each and every parcel of land within the boundaries of said Districts, as said Districts are shown on the maps as approved by this City Council and on file in the Records Management Department.

PUBLIC PROPERTY

SECTION 9. Any lots or parcels of land known as public property, as the same are defined in Section 22663 of Division 15, Part 2, of the Streets and Highways Code of the State of California, which are included within the boundaries of the Districts, shall be omitted and exempt from any assessment to be made under these proceedings to cover any of the costs and expenses of said improvement and maintenance work.

PUBLIC HEARING

SECTION 10. NOTICE IS HEREBY GIVEN THAT A PUBLIC HEARING WILL BE HELD THE 16th DAY OF JULY, 2024, AT THE HOUR OF 6:30 O'CLOCK P.M., IN THE REGULAR MEETING OF THE CITY COUNCIL, BEING IN THE COUNCIL CHAMBERS, WHICH IS THE TIME AND PLACE FIXED BY THIS CITY COUNCIL FOR THE HEARING OF PROTESTS OR OBJECTIONS IN REFERENCE TO THE ANNUAL LEVY OF ASSESSMENTS, TO THE EXTENT OF THE MAINTENANCE, BY PROPERTY OWNERS AFFECTED HEREBY AND ANY OTHER MATTERS CONTAINED IN THIS RESOLUTION; PROVIDED, THAT, IN THE EVENT THE JULY 16, 2024 CITY COUNCIL MEETING IS HELD VIA TELECONFERENCE AND/OR VIDEO CONFERENCE ONLY, THE MEANS BY WHICH THE PUBLIC MAY OBSERVE SUCH PUBLIC HEARING AND OFFER PUBLIC COMMENT SHALL BE PRESCRIBED IN THE NOTICE AND AGENDA FOR SUCH CITY COUNCIL MEETING. ANY PERSONS WHO WISH TO OBJECT TO THE PROCEEDINGS FOR THE ANNUAL LEVY SHOULD FILE A WRITTEN PROTEST WITH THE CITY CLERK PRIOR TO THE TIME SET AND SCHEDULED FOR SAID PUBLIC HEARING.

NOTICE

SECTION 11. That the City Clerk is hereby authorized and directed to publish, pursuant to Government Code Section 6061, a copy of this Resolution in the INLAND VALLEY DAILY BULLETIN, a newspaper of general circulation within said City, said publication shall be made one time and not less than ten (10) days before the date set for the Public Hearing.

SECTION 12. That this Resolution shall take effect immediately upon its adoption.

SECTION 13. For any and all information relating to the proceedings, protest procedure, any documentation and/or information of a procedural or technical nature, your attention is directed to the below listed person at the local agency or department so designated:

Claudia Hernandez
City of Ontario
303 East “B” Street
Ontario, California 91764
(909) 395-2261

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

PASSED, APPROVED, AND ADOPTED this 18th day of June, 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 June 18, 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 June 18, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING ITS INTENTION TO PROVIDE FOR AN ANNUAL LEVY AND COLLECTION OF ASSESSMENTS FOR FISCAL YEAR 2024-25 IN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICT NO. 4, PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, AND SETTING A TIME AND PLACE FOR A PUBLIC HEARING THEREON.

WHEREAS, the City Council of the City of Ontario, California, has previously formed a landscaping maintenance assessment district, and authorized the levy of assessments therein pursuant to the terms and provisions of the "Landscaping and Lighting Act of 1972," being Division 15, Part 2, of the Streets and Highways Code of the State of California (the "1972 Act"), Article XIIID of the Constitution of the State of California ("Article XIIID"), and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750 and following) (the "Implementation Act") (the 1972 Act, Article XIIID and the Implementation Act are referred to collectively as the "Assessment Law") in what is known and designated as

CITY OF ONTARIO
PARKWAY MAINTENANCE ASSESSMENT DISTRICT NO. 4

(the "District"); and

WHEREAS, the City Council previously undertook proceedings as required by the Assessment Law to consider the approval of the levy of (a) maximum annual assessments to finance the estimated costs of the maintenance of all of the improvements to ultimately be maintained upon the completion and acceptance thereof for maintenance, assessing the net amount upon all assessable lots and/or parcels within the District in proportion to the special benefits received; together with a formula pursuant to which such maximum assessment may be adjusted annually for inflation, and (b) an initial annual assessment of the estimated costs of the maintenance of those improvements to be maintained during such Fiscal Year, assessing the net amount upon all assessable lots and/or parcels within the District in proportion to the special benefits received; and

WHEREAS, upon the conclusion of the public hearing related to the proposed levy of the maximum annual assessments referred to in the preceding recital, the assessment ballots submitted in favor of the maximum annual assessments and the assessment ballots received in opposition to the levy of the maximum annual assessments were tabulated with assessment ballots weighted according to the proportional financial obligation of the affected properties; and

WHEREAS, as a result of the tabulation of the assessment ballots submitted, it was determined that the assessment ballots submitted, and not withdrawn, in favor of the proposed maximum annual assessment exceeded the assessment ballots submitted, and not withdrawn, in opposition to the levy of the maximum annual assessment; and

WHEREAS, this City Council has initiated proceedings to provide for the annual levy of assessments for the referenced Fiscal Year, to finance the costs and expenses necessary for continual maintenance of improvements within said District; and

WHEREAS, at this time, there has been presented and approved by this City Council, the Assessment Engineer's Report as required by the Assessment Law, and this City Council desires to conduct the proceedings to authorize said annual levy; and

WHEREAS, the proposed annual assessments for the referenced Fiscal Year as set forth in the Assessment Engineer's Report do not exceed the maximum annual assessments as previously authorized to be levied and, therefore, the proposed levy of assessments for the referenced Fiscal Year are not deemed to be "increased" over the maximum annual assessments.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

RECITALS

SECTION 1. That the above recitals are all true and correct.

IMPROVEMENTS AND MAINTENANCE

SECTION 2. That the public interest and convenience requires, and it is the intention of this City Council, to undertake proceedings for the annual levy and collection of special assessments for the continual maintenance of the improvements described below, all to service and specially benefit the properties within said District as said area is shown and delineated on a map as previously approved by this City Council and on file in the Records Management Department, open to public inspection, and herein so referenced and made a part hereof.

The improvements to be maintained include the landscaping, planting, shrubbery, trees, irrigation systems, hardscapes, fixtures, sidewalks within designated medians, parkways, other public rights-of-way and dedicated easements specially benefiting the properties within the District.

The maintenance of such landscaping shall include the furnishing of services and materials for the ordinary and usual maintenance and servicing of the improvements, including:

(a) Repair, removal, or replacement of all or any part of any improvement;

(b) Providing for the life, growth, health, and beauty of the improvements, including cultivation, irrigation, trimming, spraying, fertilizing, and/or treating for disease and injury; and

(c) The removal of trimmings, rubbish, and debris.

The annual assessment for the referenced Fiscal Year shall be levied only for those improvements completed or projected to be completed and accepted by this City Council for maintenance prior to or during said Fiscal Year.

ASSESSMENT ENGINEER'S REPORT

SECTION 3. That the Assessment Engineer's Report regarding the annual levy for said District, which Report is for maintenance for the said Fiscal Year, is hereby approved and is directed to be filed in the Records Management Department. Reference is made to such Report for a full and detailed description of the improvements to be maintained, the boundaries of the District and any zones therein, and the proposed assessments upon assessable lots and parcels of land within the District.

ASSESSMENT

SECTION 4. That the public interest and convenience requires, and it is the intention of this City Council to order the annual assessment levy for the District as set forth and described in said Assessment Engineer's Report, and further it is determined to be in the best public interest and convenience to levy and collect annual assessments to pay the costs and expenses of said maintenance and improvement as estimated in the Assessment Engineer's Report.

BOUNDARIES OF DISTRICT

SECTION 5. Said contemplated maintenance work is in the opinion of this City Council, of direct benefit to the properties within the boundaries of the District, and this City Council makes the costs and expenses of said maintenance chargeable upon a District, which District said City Council hereby declares to be the District benefited by said improvement and maintenance, and to be further assessed to pay the costs and expenses thereof. Said District shall include each and every parcel of land within the boundaries of said District, as said District is shown on a map as approved by this City Council and on file in the Records Management Department, and so designated by the name of the District.

PUBLIC HEARING

SECTION 6. NOTICE IS HEREBY GIVEN THAT A PUBLIC HEARING WILL BE HELD THE 16th DAY OF JULY, 2024, AT THE HOUR OF 6:30 O'CLOCK P.M., IN THE REGULAR MEETING OF THE CITY COUNCIL, BEING IN THE COUNCIL CHAMBERS, WHICH IS THE TIME AND PLACE FIXED BY THIS CITY COUNCIL FOR THE HEARING OF PROTESTS OR OBJECTIONS IN REFERENCE TO THE ANNUAL LEVY OF ASSESSMENTS, TO THE EXTENT OF THE MAINTENANCE, BY ANY INTERESTED PERSON AND ANY OTHER MATTERS CONTAINED IN THIS RESOLUTION; PROVIDED, THAT, IN THE EVENT THE JULY 16, 2024 CITY COUNCIL MEETING IS HELD VIA TELECONFERENCE AND/OR VIDEO CONFERENCE ONLY, THE MEANS BY WHICH THE PUBLIC MAY OBSERVE SUCH PUBLIC HEARING AND OFFER PUBLIC COMMENT SHALL BE PRESCRIBED IN THE NOTICE AND AGENDA FOR SUCH CITY COUNCIL MEETING. ANY PERSONS WHO WISH TO OBJECT TO THE PROCEEDINGS FOR THE ANNUAL LEVY SHOULD FILE A WRITTEN PROTEST WITH THE CITY CLERK PRIOR TO THE TIME SET AND SCHEDULED FOR SAID PUBLIC HEARING.

NOTICE

SECTION 7. That the City Clerk is hereby authorized and directed to publish, pursuant to Government Code Section 6061, a copy of this Resolution in the INLAND VALLEY DAILY BULLETIN, a newspaper of general circulation within said City, said publication shall be made one time and not less than ten (10) days before the date set for the Public Hearing.

EFFECTIVE DATE OF RESOLUTION

SECTION 8. That this Resolution shall take effect immediately upon its adoption.

PROCEEDING INQUIRIES

SECTION 9. For any and all information relating to the proceedings, protest procedure, any documentation and/or information of a procedural or technical nature, your attention is directed to the below listed person at the local agency or department so designated:

Claudia Hernandez
City of Ontario
303 East “B” Street
Ontario, California 91764
(909) 395-2261

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

PASSED, APPROVED, AND ADOPTED this 18th day of June, 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 June 18, 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 June 18, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **June 18, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Financial Services Prepared By: Nathaniel Gibson 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: 4

SUBJECT: ANNUAL LEVY OF ASSESSMENTS WITHIN STREET LIGHTING MAINTENANCE DISTRICT NOS. 1 AND 2 FOR FISCAL YEAR 2024-25

RECOMMENDATION: That the City Council consider and adopt:

A. Resolution ordering the preparation of the Assessment Engineer's Reports for proceedings for the annual assessment levy within Street Lighting Maintenance District (SLMD) Nos. 1 and 2;
B. Resolution approving the Assessment Engineer's Reports for the annual levy of assessments within SLMD Nos. 1 and 2; and
C. Resolution for each district declaring the City's intention to provide for an annual levy and collection of assessments for Fiscal Year 2024-25 and set the date of July 16, 2024, for a Public Hearing on each district in accordance with the Landscaping and Lighting Act of 1972.

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

FISCAL IMPACT: As proposed, special assessment revenue will be generated in the amount of $350,101 from SLMD No. 1 and $104,778 from SLMD No. 2 during Fiscal Year 2024-25. A portion of the facilities within SLMD No. 1 provide a general benefit to the public at large and cannot be funded with the assessment. The amount of the general benefit is $6,771. This amount will be provided from the General Fund and will be included in the Fiscal Year 2024-25 Budget.

BACKGROUND & ANALYSIS: Street Lighting Maintenance District No. 1 was formed in 1984, and Street Lighting Maintenance District No. 2 was formed in 1999, pursuant to the Landscaping and Lighting Act of 1972 (the 1972 Act), to help minimize the continually increasing cost for maintaining and operating the City's street lighting system. A special assessment is levied annually on benefiting properties for the cost of maintenance and operation of certain street lighting facilities within the districts. The locations of the districts are shown on the attached maps.

The City's Public Works Agency establishes the annual maintenance costs and maintains the street lighting system. An Engineer's Report for each district must be prepared annually, apportioning the costs to each parcel within the districts. The districts are comprised of commercial, industrial and some multi-family residential properties. Due to varying characteristics, the districts are organized into benefit zones and/or maintenance areas. Each zone/maintenance area is assessed for only the operation and maintenance of the facilities from which it receives direct special benefit. The total assessment for each zone/maintenance area is then apportioned to its constituent parcels. Therefore, the assessments are unique and specific to each individual parcel of property.

In 2021, the City contracted with Harris and Associates to perform a Capital Replacement Study for SLMD Nos. 1 and 2. The study established a capital replacement plan to determine the funding requirement for upcoming upgrades and normal replacement cycles. The capital replacement cost for Fiscal Year 2024-25 is $275,043 and was apportioned as follows: $171,457 for SLMD No. 1 (Zone 2000-1); $27,154 for SLMD No. 1 (Zone 2000-2); and $76,432 for SLMD No. 2.

The total assessment during Fiscal Year 2023-24 was $339,815 in SLMD No. 1, and $102,417 in SLMD No. 2. The City's proposed Fiscal Year 2024-25 assessment for the two street light maintenance districts is based on the previous year's actual expenses. The proposed total assessments for Fiscal Year 2024-25 are $350,101 in SLMD No. 1, and $104,778 in SLMD No. 2. A portion of the facilities within SLMD No. 1 provide general benefit to the public at large and cannot be funded with the assessment. The amount of this general benefit is $6,771 for Fiscal Year 2024-25. The general benefit will rely on a General Fund subsidy and is included in the City's adopted budget for Fiscal Year 2024-25. The assessed tax rates for Fiscal Year 2023-24, and the proposed and maximum tax rates for Fiscal Year 2024-25, are shown in Exhibit A.

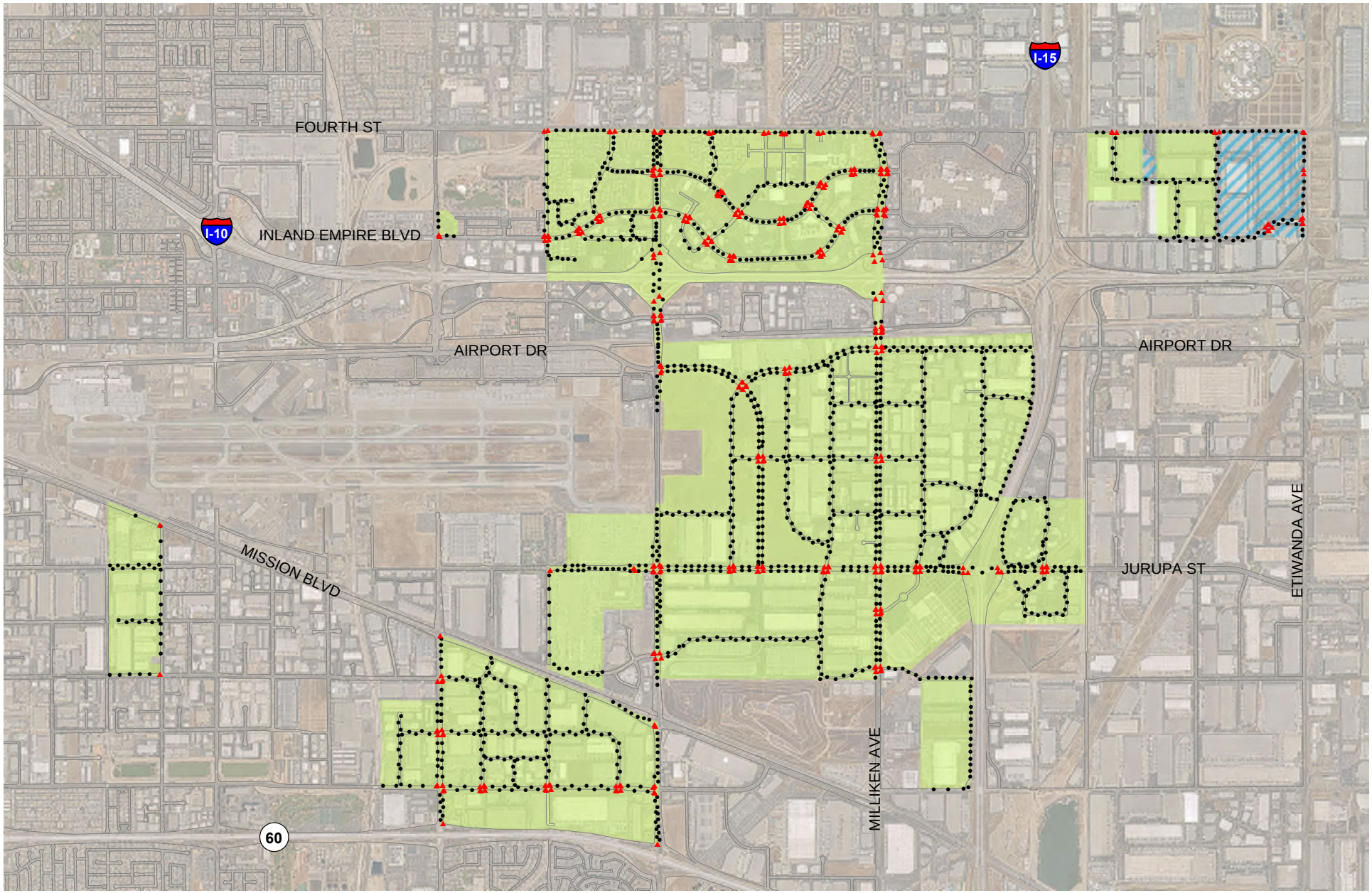
Pursuant to the 1972 Act, Engineer's Reports have been prepared for each district, and are on file with the Records Management Department. Each report includes plans and specifications for the improvements being operated and maintained, an estimate of costs, a diagram of the area proposed to be assessed (boundary and inventory map), and an assessment of the costs to the various parcels within the districts.

A public hearing is required for each district prior to adoption of the proposed assessments. A combined public hearing will be held on July 16, 2024, for the purpose of accepting comments and written protests for both districts. At the conclusion of the public hearing the City Council will consider adoption of Resolutions confirming the assessments and ordering the levy of the assessments for Fiscal Year 2024-25. Notice of the public hearing for the levy of assessments will be published in the local newspaper, in accordance with the applicable statutes.

EXHIBIT A

Street Light Maintenance Districts Proposed Levy Rates FY 2024-25

		Prior Year 2023-24	Maximum 2024-25	Proposed 2024-25
SLMD No. 1, Zone 2000-1	per AU	$ 116.00	$ 190.00	$ 119.00
SLMD No. 1, Zone 2000-2	per AU	$ 67.00	$ 156.00	$ 69.00
SLMD No. 2, MA# 99-1		$ 4,677.00	$ 13,571.00	$ 3,895.00
SLMD No. 2, MA# 99-2		$ 2,503.00	$ 6,748.00	$ 2,498.00
SLMD No. 2, MA# 99-3		$ 5,006.00	$ 11,246.00	$ 4,389.00
SLMD No. 2, MA# 99-4		$ 1,642.00	$ 4,504.00	$ 1,638.00
SLMD No. 2, MA# 99-5		$ 1,376.00	$ 4,222.00	$ 2,387.00
SLMD No. 2, MA# 99-6		$ 13,483.00	$ 39,410.00	$ 14,158.00
SLMD No. 2, MA# 99-7		$ 453.00	$ 1,219.00	$ 945.00
SLMD No. 2, MA# 99-8		$ 3,338.00	$ 8,997.00	$ 3,330.00
SLMD No. 2, MA# 00-1		$ 3,046.00	$ 4,140.00	$ 3,862.00
SLMD No. 2, MA# 00-2		$ 1,668.00	$ 2,762.00	$ 1,665.00
SLMD No. 2, MA# 00-3		$ 9,174.00	$ 15,181.00	$ 9,155.00
SLMD No. 2, MA# 00-4		$ 56,053.00	$ 86,929.00	$ 56,856.00



Street Light Maintenance District No.1
Vicinity Map

Legend

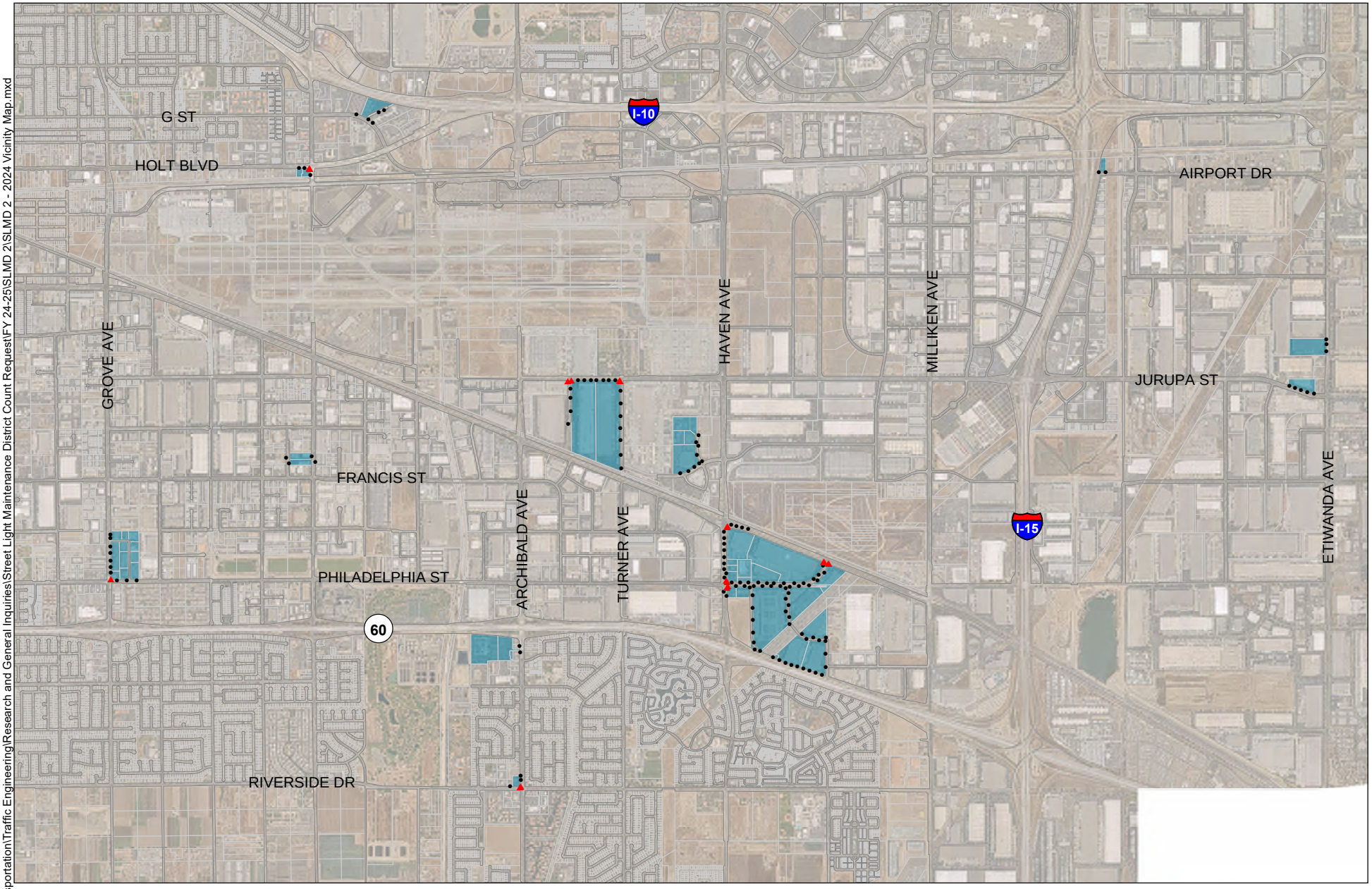
- Safety Light (339)
- Conventional (1,422)
- Zone 2000-1
- Zone 2000-2

N
W E
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Note: Reference is hereby made to the Maps of The Assessor of the County of San Berndardino, California, for a detailed description of the lines and dimensions of the parcels shown hereon.

Date: 4/30/2024

S:\Engineering\Traffic & Transportation\Traffic Engineering\Research and General Inquiries\Street Light Maintenance District Count Request\FY 24-25\SLMD 1\SLMD 1 - 2024 Vicinity Map.mxd



Street Light Maintenance District No. 2
Vicinity Map

CITY OF ONTARIO
SOUTHERN CALIFORNIA

Legend

- Safety Light (19)
- Conventional (134)
- Maintenance District 2

N
W E
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Note: Reference is hereby made to the Maps of The Assessor of the County of San Berndardino, California, for a detailed description of the lines and dimensions of the parcels shown hereon.

Date: 4/30/2024

S:\Engineering\Traffic & Transportation\Traffic Engineering\Research and General Inquiries\Street Light Maintenance District Count Request\FY 24-25\SLMD 2\SLMD 2 - 2024 Vicinity Map.mxd

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE PREPARATION OF THE ASSESSMENT ENGINEER'S REPORTS PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, FOR PROCEEDINGS FOR THE ANNUAL ASSESSMENT LEVY WITHIN ONTARIO STREET LIGHTING MAINTENANCE DISTRICTS NO. 1 AND NO. 2 FOR FISCAL YEAR 2024-25.

WHEREAS, the City Council of the City of Ontario, California, previously formed maintenance districts pursuant to the terms and provisions of the "Landscaping and Lighting Act of 1972," being Division 15, Part 2, of the Streets and Highways Code of the State of California (the "1972 Act"), known and designated as

CITY OF ONTARIO
STREET LIGHTING MAINTENANCE DISTRICTS NO. 1 AND 2

(the "Districts"); and

WHEREAS, at this time the City Council desires to initiate proceedings to provide for the annual levy of assessments for the referenced Fiscal Year to provide for the annual costs for maintenance of improvements within the Districts; and

WHEREAS, the proceedings for the annual levy of assessments shall relate to the Fiscal Year commencing July 1, 2024, and ending June 30, 2025; and

WHEREAS, there has been submitted to this City Council for its consideration at this time, maps showing the boundaries of the areas affected by the levy of the assessments for the above-referenced Fiscal Year, and inventory maps showing and describing in general the works of improvement proposed to be maintained in said Districts, said description being sufficient to identify the works of improvement and the areas proposed to be assessed for said maintenance thereof.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

SECTION 1. That the above recitals are all true and correct.

SECTION 2. That the maps entitled

CITY OF ONTARIO
STREET LIGHTING MAINTENANCE DISTRICTS NO. 1 AND 2
BOUNDARY MAP AND INVENTORY MAPS

attached hereto, as submitted to this City Council, showing the boundaries of the proposed areas to be assessed and showing the works of improvement to be maintained, are hereby approved, and a copy thereof shall be on file in the Records Management

Department and open to public inspection. The proposed parcels and properties within said areas are those to be assessed to pay the costs and expenses for said maintenance work.

SECTION 3. That the proposed maintenance work within the areas proposed to be assessed shall be for street lighting and signal and appurtenant improvements, as said maintenance work is set forth in the Reports to be presented to this City Council for consideration.

SECTION 4. That the Assessment Engineer, Harris & Associates, is hereby ordered to prepare and file with this City Council the Assessment Engineer's Reports relating to said annual assessment and levy in accordance with the provisions of 1972 Act, Article XIIID of the Constitution of the State of California ("Article XIIID"), and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750 and following) (the "Implementation Act") (the 1972 Act, Article XIIID and the Implementation Act are referred to collectively as the "Assessment Law").

SECTION 5. That upon completion, said Assessment Engineer's Reports shall be filed with the City Clerk, who shall then submit the same to this City Council for its consideration pursuant to the Assessment Law.

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

PASSED, APPROVED, AND ADOPTED this 18th day of June, 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 June 18, 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 June 18, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE ASSESSMENT ENGINEER'S REPORTS FOR THE ANNUAL LEVY OF ASSESSMENTS WITHIN ONTARIO STREET LIGHTING MAINTENANCE DISTRICTS NO. 1 AND NO. 2 FOR FISCAL YEAR 2024-25.

WHEREAS, the City Council of the City of Ontario, California, pursuant to the provisions of Division 15, Part 2, of the Streets and Highways Code of the State of California (the "1972 Act"), Article XIIID of the Constitution of the State of California ("Article XIIID"), and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750 and following) (the "Implementation Act") (the 1972 Act, Article XIIID and the Implementation Act are referred to collectively as the "Assessment Law"), did, by previous Resolution, order the preparation of the Assessment Engineer's Reports for the annual levy of assessments for the referenced Fiscal Year in the maintenance assessment districts known and designated as

CITY OF ONTARIO
STREET LIGHTING MAINTENANCE DISTRICTS NO. 1 AND 2

(the "Districts"); and

WHEREAS, there has now been presented to this City Council the Assessment Engineer's Reports as required by the Assessment Law and as previously directed by Resolution; and

WHEREAS, this City Council has now examined and reviewed the Assessment Engineer's Reports as presented, and is satisfied with each and all of the items and documents as set forth therein, and is satisfied that the assessments on a preliminary basis, have been assessed in accordance with the special benefits received from the improvements to be maintained, as set forth in said Assessment Engineer's Reports.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

SECTION 1. That the above recitals are all true and correct.

SECTION 2. That the Assessment Engineer's Reports as presented, consisting of the following:

A. Plans and specifications describing the general nature, location, and extent of the improvements to be maintained and the extent of such maintenance for each District;

B. An estimate of the cost of the maintenance of the improvements for each District for the referenced Fiscal Year;

C. A diagram for each District, showing the area and properties proposed to be assessed; and

D. An annual assessment within each District for the referenced Fiscal Year of the estimated costs of the maintenance of those improvements to be maintained during such Fiscal Year, assessing the net amount upon all assessable lots and/or parcels within each District in proportion to the special benefits received;

are hereby approved on a preliminary basis and are ordered to be filed in the Records Management Department as a permanent record and to remain open to public inspection.

SECTION 3. That the City Clerk shall certify to the passage and adoption of this Resolution, and the minutes of this meeting shall so reflect the presentation of the Assessment Engineer's Reports.

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

PASSED, APPROVED, AND ADOPTED this 18th day of June, 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 June 18, 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 June 18, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING ITS INTENTION TO PROVIDE FOR AN ANNUAL LEVY AND COLLECTION OF ASSESSMENTS FOR FISCAL YEAR 2024-25 IN ONTARIO STREET LIGHTING MAINTENANCE DISTRICT NO. 1 PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, AND SETTING A TIME AND PLACE FOR A PUBLIC HEARING THEREON.

WHEREAS, the City Council of the City of Ontario, California, has previously formed a street lighting maintenance assessment district pursuant to the terms and provisions of the "Landscaping and Lighting Act of 1972," being Division 15, Part 2, of the Streets and Highways Code of the State of California (the “1972 Act”), in what is known and designated as

CITY OF ONTARIO
STREET LIGHTING MAINTENANCE DISTRICT NO. 1

(hereinafter referred to as the District); and

WHEREAS, the City Council has previously undertaken proceedings as required by the 1972 Act, Article XIIID of the Constitution of the State of California (“Article XIIID”), and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750 and following) (the “Implementation Act and, together with the 1972 Act and Article XIIID, the “Assessment Law”) to approve and has approved the levy of maximum annual assessments to finance the estimated costs of the maintenance of all of the improvements to be maintained, assessing the net amount upon all assessable lots and/or parcels within the District in proportion to the special benefits received; together with a formula pursuant to which such maximum assessments may be adjusted annually for inflation; and

WHEREAS, at this time, this City Council desires to conduct proceedings to provide for the annual levy of assessments for the referenced Fiscal Year, to provide for the costs and expenses necessary for continual maintenance of improvements within said District; and

WHEREAS, at this time, there has been presented and approved by this City Council, the Engineer's Report as required by law, and this City Council desires to conduct the proceedings for said annual levy; and

WHEREAS, the proposed annual assessments for the referenced Fiscal Year as set forth in the Assessment Engineer’s Report do not exceed the maximum annual assessments as previously authorized to be levied and, therefore, the proposed levy of assessments for the referenced Fiscal Year are not deemed to be “increased” over the maximum annual assessments.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

SECTION 1. That the above recitals are all true and correct.

SECTION 2. That the public interest and convenience requires, and it is the intention of this City Council, to undertake proceedings for the annual levy and collection of special assessments for the continual maintenance of certain improvements, all to service and specially benefit said District as said area is shown and delineated on the maps as previously approved by this City Council and on file in the Records Management Department, open to public inspection, and herein so referenced and made a part hereof, and proposed changes thereto are set forth in the Engineer's Report, incorporated herein as a part hereof.

REPORT

SECTION 3. That the Engineer's Report regarding the annual levy for said District, which Report is for maintenance for said Fiscal Year, is hereby approved and is directed to be filed in the Records Management Department. Reference is made to such Report for a full and detailed description of the improvements to be maintained, the boundaries of the District and the zones therein, and the proposed assessments on assessable lots and parcels of land within the District.

ASSESSMENT

SECTION 4. That the public interest and convenience requires, and it is the intention of this City Council to order the annual assessment levy for the District as set forth and described in said Engineer's Report, and further it is determined to be in the best public interest and convenience to levy and collect annual assessments to pay the costs and expenses of said maintenance and improvement as estimated in said Report.

DESCRIPTION OF MAINTENANCE

SECTION 5. The assessments levied and collected shall be for the maintenance of certain street lighting and appurtenant improvements, as set forth in the Engineer's Report, referenced and so incorporated herein.

COUNTY AUDITOR

SECTION 6. The County Auditor shall enter on the County Assessment Roll the amount of the assessments, and the County Tax Collector shall collect said assessments at the time and in the same manner as County taxes are collected. After collection by the County, the net amount of the assessments, after the deduction of any compensation due to the County for collection, shall be paid to the Treasurer for purposes of paying for the costs and expenses of said District.

SPECIAL FUND

SECTION 7. That all monies collected shall be deposited in a special fund. Payment shall be made out of said fund only for the purpose provided for in this Resolution, and in order to expedite the making of this maintenance and improvement, the City Council may transfer into said fund as it may deem necessary to expedite the proceedings. Any such transfer shall be repaid out of the proceeds of the assessments provided for in this Resolution.

BOUNDARIES OF DISTRICT

SECTION 8. Said contemplated maintenance work is in the opinion of this City Council, of special benefit to the properties within the boundaries of the District, and this City Council makes the costs and expenses of said maintenance chargeable upon the District, which District said City Council hereby declares to be the District specially benefited by said improvement and maintenance, and to be further assessed to pay the costs and expenses thereof. Said District shall include each and every parcel of land within the boundaries of said District, as said District is shown on the maps as approved by this City Council and on file in the Records Management Department.

PUBLIC HEARING

SECTION 9. NOTICE IS HEREBY GIVEN THAT A PUBLIC HEARING WILL BE HELD THE 16th DAY OF JULY, 2024, AT THE HOUR OF 6:30 O'CLOCK P.M., IN THE REGULAR MEETING OF THE CITY COUNCIL, BEING IN THE COUNCIL CHAMBERS, WHICH IS THE TIME AND PLACE FIXED BY THIS CITY COUNCIL FOR THE HEARING OF PROTESTS OR OBJECTIONS IN REFERENCE TO THE ANNUAL LEVY OF ASSESSMENTS, TO THE EXTENT OF THE MAINTENANCE, BY PROPERTY OWNERS AFFECTED HEREBY AND ANY OTHER MATTERS CONTAINED IN THIS RESOLUTION; PROVIDED, THAT, IN THE EVENT THE JULY 16, 2024 CITY COUNCIL MEETING IS HELD VIA TELECONFERENCE AND/OR VIDEO CONFERENCE ONLY, THE MEANS BY WHICH THE PUBLIC MAY OBSERVE SUCH PUBLIC HEARING AND OFFER PUBLIC COMMENT SHALL BE PRESCRIBED IN THE NOTICE AND AGENDA FOR SUCH CITY COUNCIL MEETING. ANY PERSONS WHO WISH TO OBJECT TO THE PROCEEDINGS FOR THE ANNUAL LEVY SHOULD FILE A WRITTEN PROTEST WITH THE CITY CLERK PRIOR TO THE TIME SET AND SCHEDULED FOR SAID PUBLIC HEARING.

NOTICE

SECTION 10. That the City Clerk is hereby authorized and directed to publish, pursuant to Government Code Section 6061, a copy of this Resolution in the INLAND VALLEY DAILY BULLETIN, a newspaper of general circulation within said City, said publication shall be made one time and not less than ten (10) days before the date set for the Public Hearing.

SECTION 11. That this Resolution shall take effect immediately upon its adoption.

SECTION 12. For any and all information relating to the proceedings, protest procedure, any documentation and/or information of a procedural or technical nature, your attention is directed to the below listed person at the local agency or department so designated:

Claudia Hernandez
City of Ontario
303 East “B” Street
Ontario, California 91764
(909) 395-2261

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

PASSED, APPROVED, AND ADOPTED this 18th day of June, 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 June 18, 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 June 18, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING ITS INTENTION TO PROVIDE FOR AN ANNUAL LEVY AND COLLECTION OF ASSESSMENTS FOR FISCAL YEAR 2024-25 IN ONTARIO STREET LIGHTING MAINTENANCE DISTRICT NO. 2, PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, AND SETTING A TIME AND PLACE FOR A PUBLIC HEARING THEREON.

WHEREAS, the City Council of the City of Ontario, California, has previously formed a street lighting maintenance assessment district, and authorized the levy of assessments therein pursuant to the terms and provisions of the "Landscaping and Lighting Act of 1972," being Division 15, Part 2, of the Streets and Highways Code of the State of California (the "1972 Act"), Article XIIID of the Constitution of the State of California ("Article XIIID"), and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750 and following) (the "Implementation Act") (the 1972 Act, Article XIIID and the Implementation Act are referred to collectively as the "Assessment Law") in what is known and designated as

CITY OF ONTARIO
STREET LIGHTING MAINTENANCE DISTRICT NO. 2

(the "District"); and

WHEREAS, the City Council previously undertook proceedings as required by the Assessment Law to consider the approval of the levy of (a) maximum annual assessments to finance the estimated costs of the maintenance of all of the improvements to ultimately be maintained upon the completion and acceptance thereof for maintenance, assessing the net amount upon all assessable lots and/or parcels within the District in proportion to the special benefits received; together with a formula pursuant to which such maximum assessment may be adjusted annually for inflation, and (b) an initial annual assessment of the estimated costs of the maintenance of those improvements to be maintained during such Fiscal Year, assessing the net amount upon all assessable lots and/or parcels within the District in proportion to the special benefits received; and

WHEREAS, upon the conclusion of the public hearing related to the proposed levy of the maximum annual assessments referred to in the preceding recital, the assessment ballots submitted in favor of the maximum annual assessments and the assessment ballots received in opposition to the levy of the maximum annual assessments were tabulated with assessment ballots weighted according to the proportional financial obligation of the affected properties; and

WHEREAS, as a result of the tabulation of the assessment ballots submitted, it was determined that the assessment ballots submitted, and not withdrawn, in favor of the proposed maximum annual assessment exceeded the assessment ballots submitted, and not withdrawn, in opposition to the levy of the maximum annual assessment; and

WHEREAS, this City Council has initiated proceedings to provide for the annual levy of assessments for the referenced Fiscal Year, to finance the costs and expenses necessary for continual maintenance of improvements within said District; and

WHEREAS, at this time, there has been presented and approved by this City Council, the Assessment Engineer's Report as required by the Assessment Law, and this City Council desires to conduct the proceedings to authorize said annual levy; and

WHEREAS, the proposed annual assessments for the referenced Fiscal Year as set forth in the Assessment Engineer's Report do not exceed the maximum annual assessments as previously authorized to be levied and, therefore, the proposed levy of assessments for the referenced Fiscal Year are not deemed to be "increased" over the maximum annual assessments.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

RECITALS

SECTION 1. That the above recitals are all true and correct.

IMPROVEMENTS AND MAINTENANCE

SECTION 2. That the public interest and convenience requires, and it is the intention of this City Council, to undertake proceedings for the annual levy and collection of special assessments for the continual maintenance of the improvements described below, all to service and specially benefit the properties within said District as said area is shown and delineated on a map as previously approved by this City Council and on file in the Records Management Department, open to public inspection, and herein so referenced and made a part hereof:

The improvements to be maintained include street lighting facilities specially benefiting the properties within the District. Such street lighting facilities include all works or improvements used or useful for street lighting, including luminaires, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, braces, transformers, insulators, contacts, switches, capacitors, meters, communications circuits, appliances, attachments and appurtenances.

The maintenance of such street lighting facilities shall include the furnishing of services and materials for the ordinary and usual maintenance and servicing of the street lighting facilities, including:

(a) Repair, removal, or replacement of all or any part of any street lighting facility; and
(b) The provision of electric current for the operation of such street lighting facilities.

Reference is made to the Assessment Engineer's Report for further information regarding the improvements to be maintained and the scope of such maintenance.

The annual assessment for the referenced Fiscal Year shall be levied only for those improvements completed or projected to be completed and accepted by this City Council for maintenance prior to or during said Fiscal Year.

ASSESSMENT ENGINEER'S REPORT

SECTION 3. That the Assessment Engineer's Report regarding the annual levy for said District, which Report is for maintenance for the said Fiscal Year, is hereby approved and is directed to be filed in the Records Management Department. Reference is made to such Report for a full and detailed description of the improvements to be maintained, the boundaries of the District and any zones therein, and the proposed assessments upon assessable lots and parcels of land within the District.

ASSESSMENT

SECTION 4. That the public interest and convenience requires, and it is the intention of this City Council to order the annual assessment levy for the District as set forth and described in said Assessment Engineer's Report, and further it is determined to be in the best public interest and convenience to levy and collect annual assessments to pay the costs and expenses of said maintenance and improvement as estimated in the Assessment Engineer's Report.

BOUNDARIES OF DISTRICT

SECTION 5. Said contemplated maintenance work is in the opinion of this City Council, of direct benefit to the properties within the boundaries of the District, and this City Council makes the costs and expenses of said maintenance chargeable upon a District, which District said City Council hereby declares to be the District benefited by said improvement and maintenance, and to be further assessed to pay the costs and expenses thereof. Said District shall include each and every parcel of land within the boundaries of said District, as said District is shown on a map as approved by this City Council and on file in the Records Management Department, and so designated by the name of the District.

PUBLIC HEARING

SECTION 6. NOTICE IS HEREBY GIVEN THAT A PUBLIC HEARING WILL BE HELD THE 16th DAY OF JULY, 2024, AT THE HOUR OF 6:30 O'CLOCK P.M., IN THE REGULAR MEETING OF THE CITY COUNCIL, BEING IN THE COUNCIL CHAMBERS, WHICH IS THE TIME AND PLACE FIXED BY THIS CITY COUNCIL FOR THE HEARING OF PROTESTS OR OBJECTIONS IN REFERENCE TO THE ANNUAL LEVY OF ASSESSMENTS, TO THE EXTENT OF THE MAINTENANCE, BY ANY INTERESTED PERSON AND ANY OTHER MATTERS CONTAINED IN THIS RESOLUTION; PROVIDED, THAT, IN THE EVENT THE JULY 16, 2024 CITY COUNCIL MEETING IS HELD VIA TELECONFERENCE AND/OR VIDEO CONFERENCE ONLY, THE MEANS BY WHICH THE PUBLIC MAY OBSERVE SUCH PUBLIC HEARING AND OFFER PUBLIC COMMENT SHALL BE PRESCRIBED IN THE NOTICE AND AGENDA FOR SUCH CITY COUNCIL MEETING. ANY PERSONS WHO WISH TO OBJECT TO THE PROCEEDINGS FOR THE ANNUAL LEVY SHOULD FILE A WRITTEN PROTEST WITH THE CITY CLERK PRIOR TO THE TIME SET AND SCHEDULED FOR SAID PUBLIC HEARING.

NOTICE

SECTION 7. That the City Clerk is hereby authorized and directed to publish, pursuant to Government Code Section 6061, a copy of this Resolution in the INLAND VALLEY DAILY BULLETIN, a newspaper of general circulation within said City, said publication shall be made one time and not less than ten (10) days before the date set for the Public Hearing.

EFFECTIVE DATE OF RESOLUTION

SECTION 8. That this Resolution shall take effect immediately upon its adoption.

PROCEEDING INQUIRIES

SECTION 9. For any and all information relating to the proceedings, protest procedure, any documentation and/or information of a procedural or technical nature, your attention is directed to the below listed person at the local agency or department so designated:

Claudia Hernandez
City of Ontario
303 East “B” Street
Ontario, California 91764
(909) 395-2261

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

PASSED, APPROVED, AND ADOPTED this 18th day of June, 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 June 18, 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 June 18, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **June 18, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Records Management Prepared By: Claudia Y Isbell Staff Member Presenting: Ruben Duran, City Attorney Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 5

SUBJECT: **RESOLUTIONS TO CALL AND GIVE NOTICE, CONSOLIDATE AND ADOPT REGULATIONS FOR CANDIDATE STATEMENTS FOR THE GENERAL MUNICIPAL ELECTION OF NOVEMBER 5, 2024**

RECOMMENDATION: That the City Council adopt the following Resolutions:

A. A Resolution to call and set the date of the General Municipal Election as November 5, 2024;
B. A Resolution to request the San Bernardino County Registrar of Voters to consolidate the election with the Presidential General Election; and
C. A Resolution establishing regulations pertaining to Candidate Statements

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

FISCAL IMPACT: The cost of election services to be provided by the County of San Bernardino is anticipated to be $165,000. Appropriations of $140,000 are included in the General Fund as part of the Fiscal Year 2024-25 Adopted Budget. Increases to appropriations for election costs will be added at a future quarterly budget update, as necessary.

BACKGROUND & ANALYSIS: California Government Code provides that general law cities conduct elections every two years for the purpose of electing their public officials. On July 21, 1987, the City Council adopted Ordinance No. 2392 providing for consolidation of general municipal elections with the state's General Elections. On November 5, 2024, the community will be asked to elect one Member of the City Council representing District 1, one Member of the City Council representing District 4, one City Clerk, and one City Treasurer.

The proposed Resolutions are required by the California Elections Code and cover the options available for the translation, printing, and payment for candidate statements. In past elections, candidates have had the option of submitting a candidate statement for inclusion in the voter information pamphlet. State law also requires that a Spanish language translation of each candidate statement be included in the voter information pamphlet. Additionally, Election Code

Section 13307(a)(1) allows the governmental body of a local agency to determine either a 200 or 400 word limitation for candidate statements. Consistent with past City Council elections. Staff is recommending a 400 word count limitation for candidate statements.

The cost of translation and printing of candidate statements has historically been the responsibility of the candidates. These costs vary each election based on a number of factors including; actual printing costs, the number of candidate statements submitted, and the number of registered voters. The final cost for translating, printing and publishing a 400 word candidate statement for this year's election is currently under purview of the County. An estimate for this cost will be collected from the candidates and subsequently reconciled after the County confirms final costs.

Staff recommends that the City Council adopt the proposed Resolutions necessary for the General Municipal Election on November 5, 2024.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CALLING FOR THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2024, FOR THE ELECTION OF CERTAIN OFFICERS AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES.

WHEREAS, under the provisions of the laws relating to general law cities in the State of California, a General Municipal election shall be held on November 5, 2024, for the election of Municipal Officers.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of the laws of the State of California relating to General Law Cities, there is called and ordered to be held in the City of Ontario, California, on Tuesday, November 5, 2024, a General Municipal Election for the purpose of electing a Election for the purpose of electing one (1) Member of the City Council representing District 1 for the full term of four years; one (1) Member of the City Council representing District 4 for the full term of four years; one (1) City Clerk for the full term of four years; and one (1) City Treasurer for the full term of four years.

SECTION 2. That the ballots to be used at the election shall be in form and content as required by law.

SECTION 3. That the City Clerk is authorized, instructed and directed to coordinate with the County of San Bernardino Registrar of Voters to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

SECTION 4. That the polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, pursuant to Election Code § 10242, except as provided in §14401 of the Elections Code of the State of California.

SECTION 5. That all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 6. That notice of the time and place of holding the election is given and the City Clerk is authorized instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 7. That in the event of a tie vote (if any two or more persons receive an equal and the highest number of votes for an office) as certified by the San Bernardino Registrar of Voters, in accordance with Election Code §15651 (a) shall set a date and time and place and summons the candidates who have received the tie votes to appear and will determine the tie by lot.

SECTION 8. The City Council authorizes the San Bernardino Registrar of Voters to canvass and certify the results of the election to be presented to the Ontario City Council for ratification.

SECTION 9. The City Council authorizes the City Clerk or her designee to administer said election and all reasonable and actual election expenses shall be paid by the City upon presentation of a properly submitted bill.

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

PASSED, APPROVED, AND ADOPTED this 18th day of June 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 June 18, 2024, by the following roll call vote, to wit:

AYES: MAYOR/COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held June 18, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2024, PURSUANT TO §10403 OF THE ELECTIONS CODE.

WHEREAS, the City Council of the City of Ontario has called a General Municipal Election to be held on November 5, 2024, for the purpose of the election of one (1) Member of the City Council representing District 1, one (1) Member of the City Council representing District 4, one (1) City Clerk, and one (1) City Treasurer; and

WHEREAS, it is desirable that the General Municipal Election be consolidated with the Statewide General Election to beheld on the same date and that within the City the precincts, polling places and election officers of the two elections be the same and that the county election department of the County of San Bernardino canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of §10403 of the Elections Code, the Board of Supervisors of the County of San Bernardino is here by requested to consent an agree to the consolidation of a General Municipal Election with the statewide General election on Tuesday, November 5, 2024 for the purpose of the election of one (1) Member of the City Council representing District 1, one (1) Member of the City Council representing District 4, one (1) City Clerk, and one (1) City Treasurer; for a term of office which ends November, 2028.

SECTION 2. That the county election department is authorized to canvass the returns of the General Municipal Election. The election shall be held in all respects as if there were only one election, and shall be in the form and content as required by law. The election will be held and conducted in accordance with the provisions of law regulating the statewide election.

SECTION 3. That the Board of Supervisors is requested to issue instructions to the county election department to take any and all steps necessary for the holding of the consolidated election.

SECTION 4. That the City of Ontario recognizes that additional costs will be incurred by the County by reason of this consolidate and agrees to reimburse the County for any costs.

SECTION 5. That the City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the county election department of the County of San Bernardino.

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

PASSED, APPROVED, AND ADOPTED this 18th day of June 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 June 18, 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 June 18, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING REGULATIONS FOR CANDIDATES FOR ELECTIVE OFFICE PERTAINING TO CANDIDATES STATEMENT SUBMITTED TO THE VOTERS AT AN ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2024.

WHEREAS, §13307 of the Elections Code of the State of California provides that the governing body of any local agency adopt regulations pertaining to materials prepared by any candidate for a municipal election, including costs of the candidate's statement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. General Provisions. That pursuant to §13307 of the Elections Code of the State of California, each candidate for elective office to be voted for at an Election to be held in the City of Ontario on November 5, 2024 may prepare a candidate's statement on an appropriate form provided by the City Clerk's office. The statement may include the name, age and occupation of the candidate and a brief description of no more than 400 words of the candidate's education and qualifications expressed by the candidate himself or herself. The statement shall not include party affiliation of the candidate, nor membership or activity in partisan political organizations. The statement shall be filed in typewritten form in the office of the City Clerk at the time the candidate's nomination papers are filed. The statement may be withdrawn, but not changed, during the period for filing nomination papers and until 5:00 p.m. of the next working day after the close of the nomination period.

SECTION 2. Foreign Language Policy.

A. Pursuant to the Federal Voting Rights Act, candidate's statements will be translated into the languages required by the County of San Bernardino. The county is required to translate candidate's statements into the following language: Spanish.

B. The County will mail separate voter information guides and candidate's statements in Spanish to only those voters who are on the county voter file as having requested a voter information guide in Spanish. The county will also make the voter information guides and candidate's statements in Spanish available at all polling places on the County's website and in the Election Official's office.

SECTION 3. Payment.

A. Translation. The candidate shall be required to pay for the cost of translating the candidate's statement into any required foreign language as specified in (A) or (B) of Section 2 above pursuant to Federal and/or State law.

B. Printing.

1. The candidate shall be required to pay for the cost of printing the candidate's statement in English in the main voter pamphlet.

2. The candidate shall be required to pay for the cost of printing the candidate's statement in a foreign language required in (A) of Section 2 above in the main voter pamphlet.

SECTION 4. Miscellaneous.

A. All translations shall be provided by professionally certified translators.

B. The City Clerk's office shall not allow bold type, underlining, capitalizations, indentations, bullets, or leading hyphens.

C. The City Clerk's office shall comply with all recommendations and standards set forth by the California Secretary of State regarding occupational designations and other matters relating to elections.

SECTION 5. Additional Materials. No candidate will be permitted to include additional materials in the voter information guide.

SECTION 6. The City Clerk's office shall provide each candidate or the candidate's representative a copy of this Resolution at the time nomination petitions are issued.

SECTION 7. That all previous resolutions establishing council policy on payment for candidate's statements are repealed.

SECTION 8. That this Resolution shall apply only to the election to be held on November 5, 2024 and shall then be repealed.

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

PASSED, APPROVED, AND ADOPTED this 18th day of June, 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 June 18, 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 June 18, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **June 18, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Tricia Maruki Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 6

SUBJECT: **AN AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT WITH GROUP DELTA FOR MONITORING AND REPORTING SERVICES AND AN AMENDMENT TO THE LANDSCAPE MAINTENANCE SERVICES AGREEMENT WITH NATURES IMAGE FOR THE MILL CREEK WETLANDS FACILITY**

RECOMMENDATION: That the City Council take the following actions:

A. Approve and authorize the City Manager, or his designee, to execute an amendment with Group Delta Consultants, Inc. of Irvine, California, in the amount of $151,544 for Fiscal Year 2024-25 Adopted Budget and extend the agreement for up to three additional years with future amendments consistent with City Council approved budgets up to a total five-year not-to-exceed amount of $716,474 to provide professional monitoring and reporting services for the Mill Creek Wetlands facility; and
B. Approve and authorize the City Manager, or his designee, to execute an amendment with Natures Image of Lake Forest, California, in the amount of $425,146 for Fiscal Year 2024-25 Adopted Budget and extend the agreement for up to three additional years with future amendments consistent with City Council approved budgets up to a total five-year not-to-exceed amount of $2,315,380 to provide landscape maintenance services for the Mill Creek Wetlands facility.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch

FISCAL IMPACT: The Fiscal Year 2024-25 Adopted Budget includes appropriations of $648,500 from Ontario Ranch Operations & Maintenance Community Facilities District Fund (OR CFD) for various professional and maintenance services for the Mill Creek Wetlands facility. Appropriations for future fiscal years will be included in future Annual Budgets for City Council approval (Refer to Exhibit "A" for fiscal year breakdown).

BACKGROUND & ANALYSIS: The Mill Creek Wetlands project was partially funded by a State Proposition 40 grant. The Operations and Maintenance Program for the wetlands was developed based on those grant requirements and was approved by the State Water Resources Control Board. This program includes specific water quality performance evaluation activities and landscape maintenance requirements needed to achieve adequate water quality performance objectives.

In October 2023, the City solicited proposals for monitoring and reporting services and Group Delta Consultants, Inc. of Irvine, California was selected based on their qualifications and knowledge of the facility and associated reporting requirements. Group Delta has been providing water quality monitoring and reporting services for the Mill Creek Wetlands since 2014 and is familiar with the unique water quality objectives and the Proposition 40 grant requirements. In order to maintain the consistency of monitoring and reporting approach, staff recommends approval of the amendment to the Professional Services Agreement with Group Delta Consultants, Inc.

In June 2023, the City solicited proposals for landscape maintenance services and Natures Image of Lake Forest, California was selected based on their qualifications, resources, past experience and references. The contract with Natures Image allows for billing rates to be negotiated each year based on CPI percent changes for All Urban Consumers in Riverside-San Bernardino, averaging 8% annually.

These proposed amendments are consistent with the Fiscal Year 2024-25 Adopted Budget.

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 GROUP DELTA CONSTULTANTS, 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 Group Delta Consultants, Inc., a Corporation with its principal place of business at 32 Mauchly, Suite B, Irvine, Ca 92618 ("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 as January 25, 2024 ("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement to include services for Fiscal Year (FY) 2024-2025 as described in Exhibit "A-1", in the amount of One Hundred Fifty-One Thousand Five Hundred Forty-Four Dollars ($151,544.00); increase the not-to-exceed compensation amount to Two Hundred Fourteen Thousand Eight Hundred Forty-Four Dollars ($214,844.00); and extend the term to June 30, 2025.

2.3 Amendment Authority. This Amendment No. 1 is authorized pursuant to Section 3 of the Agreement.

3. Terms.

3.1 Amendment. Section 3.1.1, 3.1.2, 3.2.1, 3.2.3, 3.3.2, and 3.3.9.1 of the Agreement is hereby amended in its entirety to read as follows:

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional monitoring and reporting consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" and "A-1" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state

and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from January 1, 2024 to June 30, 2025, 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 three additional one-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" and "C-1" attached hereto and incorporated herein by reference. The total compensation shall not exceed Two Hundred Fourteen Thousand Eight Hundred Forty-Four Dollars ($214,844.00) without written approval of the City Council or City Manager, as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "C" and "C-1" of this Agreement.

3.3.2 Scheule of Services. Consultant shall perform the Services in a prompt and timely manner and in accordance with the Schedule of Services set forth in Exhibit "B" and "B-1" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services expeditiously. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.3.9 Period of Performance.

3.3.9.1 Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" and "A-1" or "B" and "B-1" attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Performance Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage.

3.2 Continuing Effect of Agreement. Except as amended by this Amendment No. 1, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 1. From and after the date of this Amendment No. 1, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 1.

3.3 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they

have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 1.

3.4 Severability. If any portion of this Amendment No. 1 is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5 Integration. This Amendment represents the entirety of the Parties' understanding relating to the subject of this Amendment, including written or verbal communications between the Parties, which shall have no relevance unless expressly incorporated herein. This is an integrated amendment.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICE AGREEMENT BETWEEN THE CITY OF ONTARIO AND GROUP DELTA CONSULTANTS, 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

GROUP DELTA CONSULTANTS, INC.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

EXHIBIT "A-1"
SCOPE OF SERVICES

GROUP DELTA

City of Ontario
303 East B Street
Ontario, CA 91764

April 11, 2024
Project No. EN038

Attention: Mr. Nathan Pino

Subject: **Proposal for Annual Monitoring & Reporting Activities and Flow Meter Operation and Full Maintenance (July 2024 – June 2025)**
Mill Creek Wetlands Project
Chino, California

Dear Mr. Pino:

In response to your request, Group Delta Consultants, Inc. (Group Delta) is pleased to submit to the City of Ontario (City) this proposal to conduct annual water quality monitoring and reporting activities for the Mill Creek Wetlands Project. This proposal includes monitoring and reporting and flow meter operation and maintenance activities from July 1, 2024, through June 30, 2025.

PROJECT DESCRIPTION

The City of Ontario has sponsored the Mill Creek Wetlands Project in Chino, California. The Project consists of a series of hydraulically connected basins serving as wetlands that treat stormwater runoff and dry weather flows from the Cucamonga Creek watershed. As part of the Project, water quality performance evaluation is to be conducted in accordance with the Project's Monitoring and Reporting Program for submission to the City of Ontario and the State Water Resources Control Board (SWRCB). Group Delta completed quarterly bioassessment monitoring events and weekly water quality performance monitoring from June 2014 through June 2018 and June 2020, respectively, at which times, these sampling requirements were met.

Additionally, Group Delta conducted monthly water quality performance monitoring from June 2014 to July 2023, and resumed activities in January 2024. This proposal is for continued monthly water quality performance monitoring events to be conducted between July 2024 and June 2025.

SCOPE OF WORK

Group Delta shall conduct 12 rounds of monthly performance monitoring sampling events. Following sample collection and submittal of the samples to a state-certified laboratory, Group Delta will perform a quality assessment/quality control (QA/QC) of the laboratory analytical data and summarize the data in quarterly progress reports and the Annual Report. Group Delta will also assist in the collection of flowrate data using stationary flow meters. Additionally, Group Delta will perform monthly wetland inspections to assess the physical conditions of each basin.

This scope of work is based on requirements provided by SWRCB. Further descriptions of each task are provided below.

Task 1. Monthly Performance Monitoring

Group Delta Technicians will collect surface water samples monthly within the wetlands at the CD_{IN}, $P3_{OUT}$, and $P6_{OUT}$ locations depicted in Figure 1 provided below:

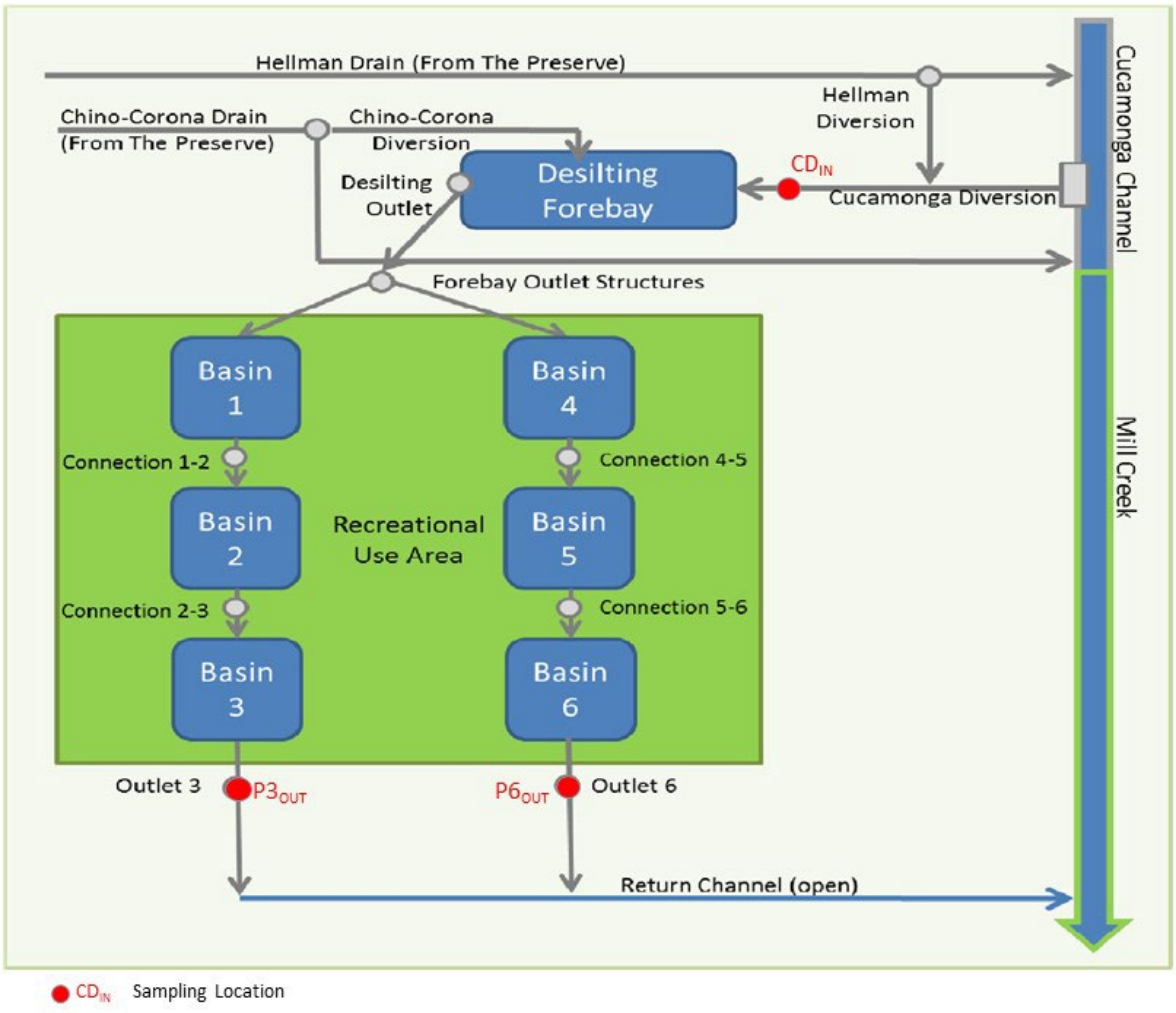


Figure 1: Sampling Locations for Monthly Performance Monitoring

Three primary surface water samples will be collected during each of the 12 months of the contract period. For each month, an initial sampling event will be conducted at $CD_{IN,}$ and a second sampling event will be conducted at $P3_{OUT}$, and $P6_{OUT}$. Based on a Residence Time Study completed by Group Delta (July 2022), a sampling delay of seven days between the influent sample collected at CD_{IN} and the discharge samples collected at $P3_{OUT}$, and $P6_{OUT}$, was implemented beginning July 2022. The sampling delay was determined based on average residence time calculated from this study for both pond series and shall continue during the

contract period. When a rain event between the initial sampling event at CD_{IN} and subsequent sampling events at $P3_{OUT}$, and $P6_{OUT}$ cannot be avoided, the sampling delay will be shortened to avoid storms between influent/effluent sampling events.

In addition, QC samples will be collected at a rate of one duplicate and one field blank sample per every three sampling events. This results in a 33% frequency of QC samples, in accordance with the revised Quality Assurance Project Plan (QAPP) and the Monitoring and Reporting Plan (MRP) (Group Delta, 2018). Each sample is to be analyzed for the analytes listed in Table A below. Group Delta will coordinate with the analytical laboratory for delivery of sample containers and drop-off of samples.

Table A: Monthly Performance Monitoring Sampling Program: Analytical Suite

ANALYTE	METHOD
Title 22 Metals: Cr, Cu, Pb, Ni, Zn	EPA 200.8: total metals
Total Suspended Solids	SM 2540D
Total Nitrogen, Nitrate, Nitrite	SM 353.2
Kjeldahl Nitrogen	EPA 351.2
Total Phosphorus	SM4500-P H
Total Coliform	SM9221B/C
Fecal Coliform	SM9221 C/E
Fecal Streptococcus/Enterococcus	SM9230 B/ Enterolert
E. coli	SM 9223B

In addition to the above analyses, Group Delta will collect the following water quality data using a hand-held meter:

- Dissolved oxygen
- Total Dissolved Solids
- Temperature
- pH
- Turbidity
- Conductivity
- Stream flow velocity (only at the forebay low flow channel)

This data will be recorded on logs prepared for each sampling event. Group Delta will also complete a field observation form noting the condition of the site during the sampling event.

Following receipt of the analytical data, Group Delta will perform a QA/QC review of the analytical data per the QAPP developed for the project and will assess the integrity of the data and compare to historical values. Group Delta will then summarize the data in tables and figures showing trends and will include a discussion of the results that will be incorporated into the Annual Report.

Records of monitoring information and copies of reports and correspondence (including the annual report) and sample collection logs will be retained for a period of at least five years.

Task 2. Flow Meter Operation and Maintenance

There are currently two ADS Triton+ flowmeters that were installed in the northern and southern diversion culverts. Real time data can be transferred to a web-based datalogging and monitoring platform synchronized with the flowmeters. Collected parameters include water level, velocity, flow rate, peak flow rate, and total flow. The data represent average values based on measurements collected at 15-minute intervals for the reported period. The flow meters require quarterly operation and maintenance which is provided by Ardurra (Group Delta's subcontractor). Other site visits in addition to quarterly visits, will be performed to track silt levels in each channel. Additionally, a full removal and re-installation of the flow meters is included considering that it is planned to have the pipeline jetted / cleaned to remove the settled silt. This will require an additional two (2) site visits (one for removal and one to reinstall the flow meter). This proposal includes estimated fees for a monthly wireless communication and web hosting fees.

Task 3. Reporting

Group Delta will evaluate the analytical data to assess the performance of the wetlands in targeted contaminant reduction. This data will be summarized in tables in an easily digestible manner for inclusion in required reports. Group Delta will assist in preparation of the Annual Reports which may include, but not be limited to, written summaries of water quality results including trends and conclusions, an evaluation of treatment efficiency, preparation of figures and tables, and QA/QC of the data. In addition, Quarterly Executive Summaries will be submitted on a quarterly basis to the City; these summaries will describe work completed during the preceding quarter and provide an overview of analytical results.

Task 4A – Complete Replacement of Southern Flowmeter

Ardurra will coordinate ordering the necessary equipment and the crew members to perform a complete replacement of the southern flowmeter in a timely manner.

Task 4B – Flow Meter Contingency Budget.

Task 4B is flow meter contingency budget will only be utilized on a **as needed time and materials basis** and will be used only in the event the flow meters are malfunctioning or require additional parts replacement. Group Delta will notify the City if contingency budget is needed and adequate, and will not proceed to coordinate additional part replacements or labor with Ardurra without prior approval from the City.

FEES

Task 1, Task 2, and Task 3 - Monthly Performance Monitoring, Flow Meter Operation and Maintenance, and Reporting. The fee for the above scope of work, will be on a **lump sum basis** with a not-to-exceed value of $129,544.

Task 4A – Complete Replacement of Southern Flowmeter. The fee for this scope of work will be on a **lump sum basis** in the not-to-exceed amount of $17,000.

Task 4B (as needed T&M) – Flow Meter Contingency Budget. The fee for this scope of work will be on a **as needed time and materials basis** in the not-to-exceed amount of $5,000.

A detailed cost breakdown is provided in Table 1. As before, no mark-up is included for any subcontractor and laboratory services. We will not exceed these fees unless we encounter significant unexpected problems, or change of scope, in that event, we will discuss the situation with you before incurring any additional cost.

The above fee estimates cover services provided through the completion of the analytical data tables documenting performance assessment to be included in the Annual Report. Supplemental post-report services will be provided, as needed, on a time-and-materials basis in accordance with our approved Schedule of Fees described below.

HOURLY CHARGES FOR PERSONNEL (Engineer/Geologist/Scientist)	
PRINCIPAL	$210
ASSOCIATE	$200
PROJECT	$190
STAFF	$160
CHARGES FOR EQUIPMENT	
VEHICLE:	
MILEAGE/VEHICLE PER SAMPLING EVENT	$ 50
MILEAGE/VEHICLE PER SITE WALK	$ 45
SUPPLIES:	
FIELD SUPPLIES PER MONTH	$ 135

(Cost includes sampling materials, calibration fluids, equipment calibration, and field supplies)

SCHEDULE

We are prepared to start work immediately following the receipt of your written authorization. Standard turnaround time for pathogen laboratory analysis is three business weeks.

EXHIBIT "B-1"
SCHEDULE OF SERVICES

Table B. Schedule (yearly based monitoring)

ACTION ITEM	DATE
Monthly Sampling	Second and third Monday of the month*
1st Quarter Executive Summary	Submitted by the end of April
2nd Quarter Executive Summary	Submitted by the end of July
3rd Quarter Executive Summary	Submitted by the end of October
4th Quarter Executive Summary	Submitted by the end of January
Annual Report	Submitted by the end of August

*It should be noted that monthly sampling dates may need to be revised based upon inclement weather or ongoing maintenance within the wetlands in order to avoid atypical conditions which could present anomalous analytical results.

STAFFING

The following key staff will be assigned to this project. Each of the key staff members has extensive technical experience on similar projects.

Personnel	Role
Glenn Burks, PhD, PE	Principal-In-Charge
Jack Packwood, CIH	Associate
Natalia Delgadillo	Project Manager

The Principal-In-Charge for this project will be Dr. Glenn Burks. He is a registered Chemical Engineer with diverse process and environmental engineering, compliance, and hazardous waste handling experience.

SUPPORT NEEDED FROM CLIENT

The schedule and budget estimate presented above is based on the understanding that you will provide the following support prior to start of field work:

- Site access

CONCLUDING REMARKS

We look forward to being your consultant on this project. Please feel free to call us if you have any questions on the contents of this proposal.

If you accept the terms of this proposal and you wish us to perform the proposed services, please document your authorization to proceed by returning a countersigned copy of this letter or issuing other type of written authorization.

Sincerely,

Group Delta

Natalia Delgadillo
Project Engineer

Glenn Burks, Ph. D., P.E.
Principal & Director of Environmental Services

EXHIBIT "C-1"
COMPENSATION

Table 1
July 2024 - June 2025 Water Quality Monitoring Reporting
Mill Creek Wetlands - Chino, California
Group Delta Project No. EN038

Task No.	TASK DESCRIPTION	Principal	Associate	Project	Staff	LABOR	TOTALS: EQUIPMENT & EXPENSES	LABORATORY	Total ODC's	TOTAL
	Hourly Rate	$210	$200	$190	$160					
	TASK NAME									
	Task 1. Monthly Performance Monitoring									
1	Twelve sampling events at three locations. Cost includes: collecting field parameter measurements; field supplies; travel expenses; one field blank and duplicate sample per quarter; staff at six hours per event, two events per month ($185 per sampling event). Sampling cost includes equipment maintaninace and calibration.				144	**$23,040**	**$2,220**	**$24,153**	**$26,373**	**$49,413**
2	Coordination with Lab for preparation of sample containers, and pick-up and drop-off per sampling event.				24	**$3,840**				**$3,840**
3	Lump Sum Contingency expenses.						**$1,500**		**$1,500**	**$1,500**
	SUBTOTALS				***168***	***$26,880***	***$3,720***	***$24,153***	***$27,873***	***$54,753***
	Task 2. Flow Meters									
1	1st Quarter Operations and Maintenance (including web hosting fee)						**$6,978**		**$6,978**	**$6,978**
2	2nd Quarter Operations and Maintenance (including web hosting fee)						**$6,978**		**$6,978**	**$6,978**
3	3rd Quarter Operations and Maintenance (including web hosting fee)						**$6,978**		**$6,978**	**$6,978**
4	4th Quarter Operations and Maintenance (including web hosting fee)						**$6,978**		**$6,978**	**$6,978**
	SUBTOTALS						***$27,911***		***$27,911***	***$27,911***
	Task 3. Quarterly and Annual Reporting									
1	Annual DWR Report	4	8	16	6	**$6,440**	**$50**		**$50**	**$6,490**
2	1st Quarter Summary	2	4	8	2	**$3,060**				**$3,060**
3	2nd Quarter Summary	2	4	8	2	**$3,060**				**$3,060**
4	3rd Quarter Summary	2	4	8	2	**$3,060**				**$3,060**
5	4th Quarter Summary	2	4	8	2	**$3,060**				**$3,060**
	SUBTOTALS	***12***	***24***	***48***	***14***	***$18,680***	***$50***		***$50***	***$18,730***
	General Project Management - Meetings and Correspondance									
1	Monthly Site Walk Meetings. Assuming four hours per month, excluding holidays, plus mileage ($80 per site walk)	8	8	32	8	**$10,640**	**$810**		**$810**	**$11,450**
2	Confirm Flow Meter Functionality			18		**$3,420**				**$3,420**
3	Project Admn/Meetings/Calls	16	16	32	4	**$13,280**				**$13,280**
	SUBTOTALS	***24***	***24***	***82***	***12***	***$27,340***	***$810***		***$810***	***$28,150***
	TOTAL	***36***	***48***	***130***	***194***	***$ 72,900***	***$ 32,491***	***$ 24,153***	***$ 56,644***	***$ 129,544***
	Monthly Performance Monitoring, Flow Meter Operation and Maintenance, and Reporting								**TOTAL**	**$129,544**
	Task 4. Flow Meters Parts Replacement									
1	Complete Replacement of Southern Flowmeter						**$17,000**		**$17,000**	**$17,000**
2	Flow Meter Contingency Budget (as needed)						**$5,000**		**$5,000**	**$5,000**
	SUBTOTALS						***$22,000***		***$22,000***	***$22,000***
	Flow Meters Parts Replacement								**TOTAL**	**$22,000**
	Monthly Performance Monitoring, Flow Meter Operation and Maintenance, and Reporting, Complete Replacement of Southern Flowmeter, and Flow Meter Contingency Budget (as needed)								**TOTAL**	**$151,544**

Note: There is 0% mark-up on analytical laboratory cost

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 MAINTENANCE SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND NATURES IMAGE

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 Natures Image, a Municipal Corporation organized under the laws of the State of California with its principal place of business at 20361 Hermana Circle, Lake Forest, Ca 92630 ("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 "Maintenance Services Agreement" dated August 16, 2023 ("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement to include services for Fiscal Year (FY) 2024-2025 and add services requested by the City to repair the gabions at the forebay as described in the Fee Proposal, in the amount of Four Hundred Twenty-Five Thousand One Hundred Forty-Six Dollars ($425,146.00); increase the not-to-exceed compensation amount to Eight Hundred Twenty-Four Thousand Seven Hundred Seventy-Six Dollars ($824,776.00); and extend the term until June 30, 2025.

2.3 Amendment Authority. This Amendment No. 1 is authorized pursuant to Section 3 of the Agreement.

3. Terms.

3.1 Amendment. Section 3.1.1, 3.1.2, and 3.2.1 of the Agreement is hereby amended in its entirety to read as follows:

> 3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the maintenance services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A", Exhibit "C" and "C-1" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto

and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from the date of this Agreement to June 30, 2025, 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 3 additional one-year terms. Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" and "C-1" attached hereto and incorporated herein by reference. The total compensation shall not exceed Eight Hundred Twenty-Four Thousand Seven Hundred Seventy-Six Dollars ($824,776.00) without written approval of City's Manager. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2 Continuing Effect of Agreement. Except as amended by this Amendment No. 1, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 1. From and after the date of this Amendment No. 1, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 1.

3.3 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 1.

3.4 Severability. If any portion of this Amendment No. 1 is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5 Integration. This Amendment represents the entirety of the Parties' understanding relating to the subject of this Amendment, including written or verbal communications between the Parties, which shall have no relevance unless expressly incorporated herein. This is an integrated amendment.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR AMENDMENT NO. 1 TO THE MAINTENANCE SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND NATURES IMAGE

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

NATURES IMAGE

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

EXHIBIT "C-1"
SCOPE OF SERVICES

EXHIBIT "C-1" COMPENSATION

Maintenance Services Agreement; Amendment No. 1
Mill Creek Wetlands Landscape Maintenance Project
Fee Proposal

Submitted on 2/2/2024

Description	QTY	UNIT	UNIT COST	TOTAL COST
1) Two Man Maintenance Crew - Daily Site Visits, Weekdays [1,2,3]	12	Month	$ 23,311.00	$ 279,732.00
2) Zone 3 Wetlands- Annual Vegetation Removal within Wetland Ponds[4]	Not-To-Exceed			$ 69,069.00
3) Allowance for Service to Unlock & Lock Public Access Gate[5]	Allowance			$ 31,395.00
4) Contingency[6]	Not-To-Exceed			$ 38,650.00
5) Remove Cobblestone from Side Gabions[7]	Lump Sum			$ 6,300.00

Annual Total FY 24/25	**$**	**425,146.00**

Assumptions:

The terms set forth in this document shall supersede any conflicting terms in any other contract documents.

Amendment No. 1 to the Agreement will be issued to modify the Agreement to include services in this Fee Proposal for FY 24/25 in the amount of $425,146.00; increase the overall not-to-exceed amount to $824,776.00; and renew the term of services for one addtional term from July 1, 2024 to June 30, 2025. Amendment No. 1 will be the first one-year renewal, and overall The City and Natures Image may extend the term of this agreement up to a total of four (4) additional one-year terms by mutual, written consent. Fees for contract extensions shall be subject to increases based CPI percent change for All Urban Consumers in Riverside-San Bernardino-Ontario.

[1] Two man crew will provide routine maintenance services per Exhibit B, except Zone 3- Annual Vegetation Removal, Unlock/Lock Access Gate, and the services noted in footnote [3] below. Work will be performed during regular working hours Monday-Friday. Weekend, holiday, and/or overtime work are not anticipated in cost for this item. Cucamonga Creek weir board adjustments will be scheduled to accommodate the Maintenance Crew's five day work week.

[2] Clarification regarding Task 4.1.6 of Exhibit B Operations and Maintenance Schedule: Sediment piles that accumulate as a result of maintenance actives will be spread and leveled within the forebay area. Hauling/disposal of sediment at offsite location are not included. This work will occur annually.

[3] The following services are not included in this Fee Proposal: Repair of fencing and gates, repair of entrance drive and CMB parking lot, purchase of replacement wheel stops/stall markers/signage, stripping, concrete and DG repair, replacement benches/tables and gate pilasters, graffiti removal, replacement planting, tree removal, control of burrowing rodents, erosion control, control measures to protect new & vulnerable riparian vegetation, soil export, replacement valves/controllers/ enclosures/backflows, overtime/holiday work, rip rap installation or removal, gabion repair, aerial mapping and data analysis, biological monitoring, repair due to acts of God, war, vandalism or neglect/damage by Owner or others.

[4] Work will be invoiced against the Not-To-Exceed amount using the rates listed below in Additional Work- Schedule of Charges.

[5] Actual amount will be based on service provider's cost + 15% markup. Services will include the following: Lock & unlock gates seven days per week.

[6] Contingency work may be invoiced against the Not-To-Exceed amount for Task 4) using the rates listed below in Additional Work- Schedule of Charges.

[7] Task 5 shall include removal cobblestone from the first layer of two (2) side gabions at the forebay (See Exhibit C-1, Gabion Removal Area). Each gabion is approximately (L 11'x W 2'x H 3'). The cobblestones will be stockpiled on site in the staging area.

Additional Work- Schedule of Charges

Hourly Rates for Personnel	$/Hour
Project Manager	$ 110.00
Landscape Maint Sr Foreman	$ 87.00
Landscape Maintenance Foreman	$ 73.00
Landscape Maintenance Labor	$ 58.00
Landscape Maintenance Operator	$ 87.00
Landscape Operating Engineer	$ 188.00
GIS Analysist	$ 147.00
FAA Licensed UAS Pilot	$ 272.00

Other Direct Costs	Markup
Materials, Incidentals, Equipment Rental, Dump Fees, Facilities, etc.	Cost + 15%

Hourly Rates For Equipment	$/Hour
Pickup Truck	$ 31.00
Dump Truck or Stake Bed	$ 60.00
UTV Utility Vehicle	$ 31.00
Chainsaw, Line Trimmer	$ 16.00
Backpack Sprayer	$ 7.00
Spray Rig	$ 24.00
Reach Lift	$ 78.00
Brush Chipper	$ 94.00
Takeuchi Skid Steer or Mini Ex	$ 94.00
Saturated Steam Weed Control Unit	$ 68.00
12 Ft Boat	$ 10.00
12 Ft Boat w/ Outboard Motor	$ 27.00

Exhibit C-1
Gabion Removal Area

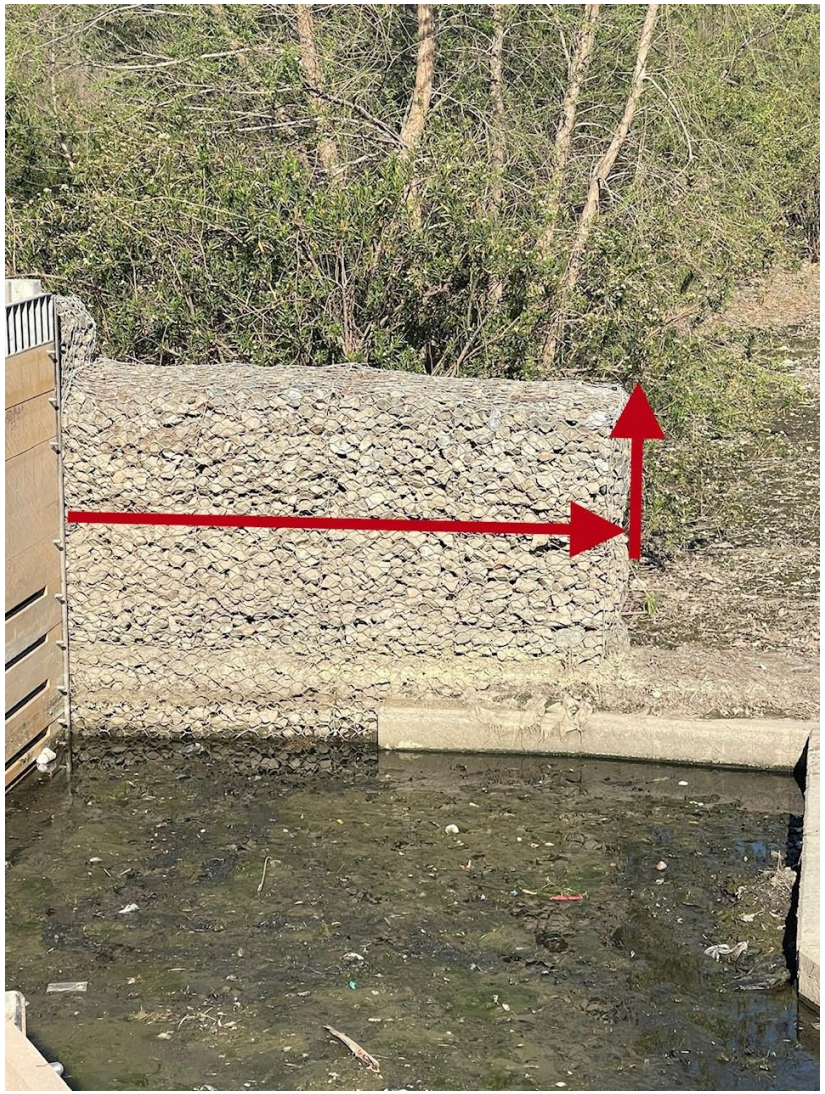




Exhibit "A"

Agreements Costs Per Year and Fiscal Year

Year	Fiscal Year	Natures Image	% Increase (Negotiated Yearly)
First Year	FY23-24	$ 399,630.00	N/A
Second Year	FY24-25	$ 425,146.00	6%
Third Year	FY25-26	$ 459,157.00	8%
Fourth Year	FY26-27	$ 495,888.00	8%
Fifth Year	FY27-28	$ 535,559.04	8%
	Total	**$ 2,315,380.04**	

Year	Fiscal Year	Group Delta	% Increase (Negotiated Yearly)
First Year (Half year only)	FY23-24	$ 63,300.00	N/A
Second Year	FY24-25	$ 151,544.00	139%
Third Year	FY25-26	$ 159,121.20	5%
Fourth Year	FY26-27	$ 167,077.26	5%
Fifth Year	FY27-28	$ 175,431.12	5%
	Total	**$ 716,473.58**	

CITY OF ONTARIO *Agenda Report* **June 18, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Trevor Rivero 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: 7

SUBJECT: **A RESOLUTION APPROVING FINAL PARCEL MAP NO. 20587, LOCATED NEAR THE NORTHEAST CORNER OF EUCLID AVENUE AND 6TH STREET**

RECOMMENDATION: That the City Council adopt a Resolution approving Final Parcel Map No. 20587 located near the northeast corner of Euclid Avenue and 6th Street.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: There is not a direct fiscal impact associated with this action. All public infrastructure improvements required have already been constructed.

BACKGROUND & ANALYSIS: Final Parcel Map No. 20587, consisting of two numbered lots on less than one acre of land, as shown on Exhibit A, has been submitted by the owners, Genet Negash and Samson Mulugeta. Tentative Parcel Map No. 20587 was approved by the Planning Commission on June 27, 2023.

This map meets all conditions of the Subdivision Map Act and the Ontario Municipal Code. All public improvements were previously installed, and the map has been reviewed and approved by the City Engineer.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FINAL PARCEL MAP NO. 20587, LOCATED NEAR THE NORTHEAST CORNER OF EUCLID AVENUE AND 6th STREET.

WHEREAS, Tentative Parcel Map No. 20587 submitted for approval by the owners, and was approved by the Planning Commission of the City of Ontario on June 27, 2023; and

WHEREAS, Tentative Parcel Map No. 20587 consists of two numbered lots, being a subdivision of lots 64 and 65 of Tract No. 2845 as per map recorded in book 40, pages 54 and 55 of maps of official records in the Office of the County Recorder of the County of San Bernardino, State of California; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ontario, California, that Final Parcel Map No. 20587 be approved and that the City Clerk be authorized to execute the statement thereon on behalf of said City.

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

PASSED, APPROVED, AND ADOPTED this 18th day of June, 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 June 18, 2024 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

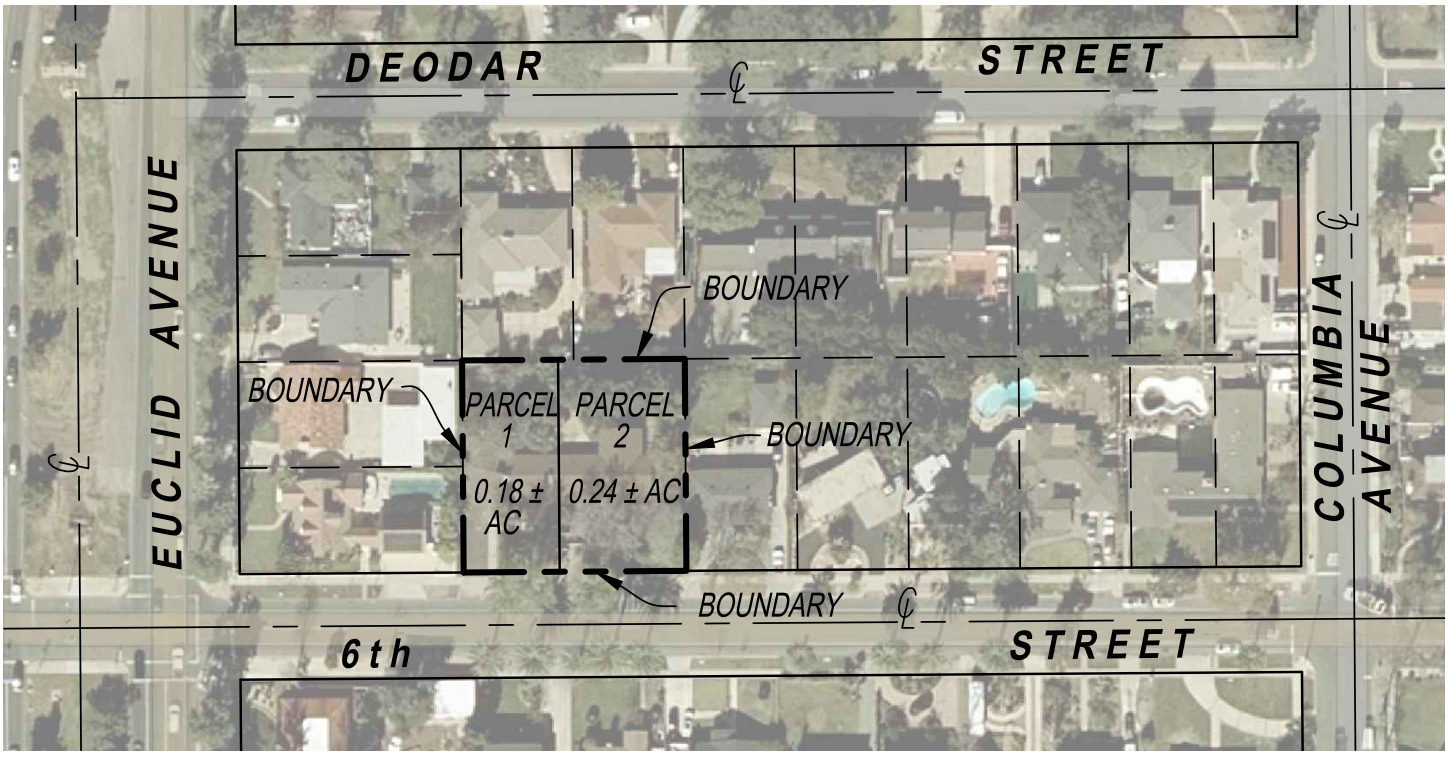
The foregoing is the original of Resolution No. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held June 18, 2024.

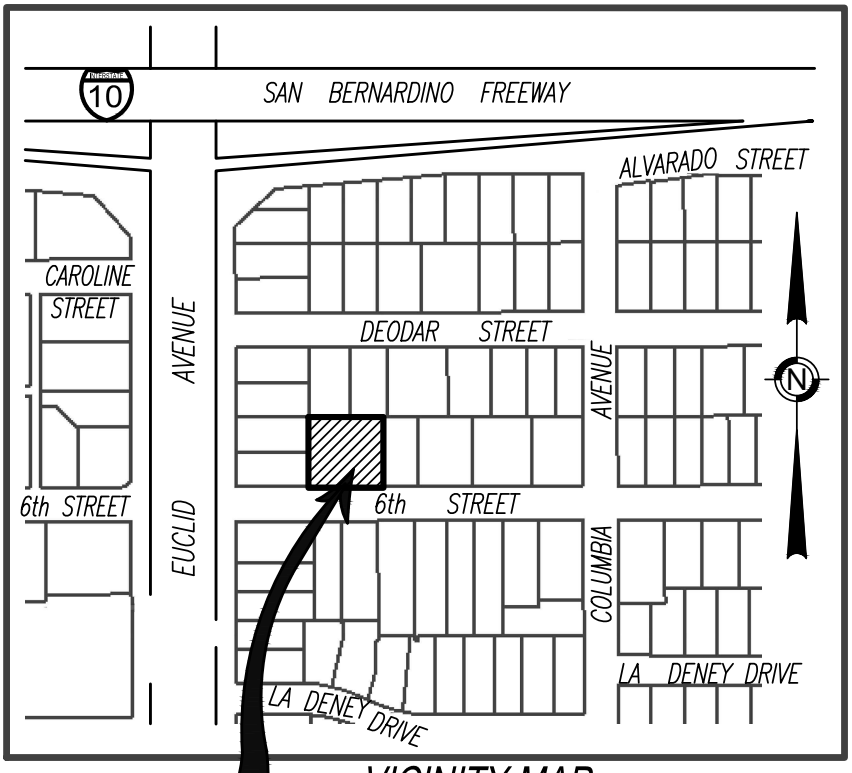
_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

PM - 20587

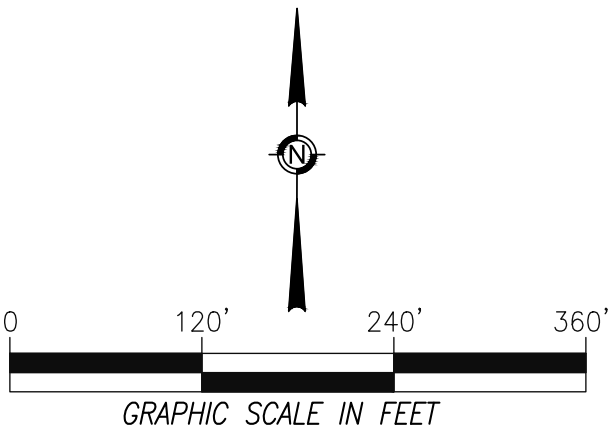




VICINITY MAP

NOT TO SCALE

PROJECT LOCATION



DATE: April 17, 2024

PREPARED BY:
ANDREASEN ENGINEERING, INC.
Civil Engineering • Land Surveying • Municipal Engineering
195 North Euclid Avenue, Suite 101, Upland, CA 91786
(909) 623-1595 • www.aeicivil.com

CITY OF ONTARIO *Agenda Report* **June 18, 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: 8

SUBJECT: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING A SPECIAL TAX WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 65 (FALLONCREST)**

RECOMMENDATION: That the City Council consider and adopt an Ordinance authorizing the levy of special taxes within City of Ontario Community Facilities District No. 65 (Falloncrest).

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

FISCAL IMPACT: The use of Mello-Roos financing in the Falloncrest residential development is projected to generate approximately $430,266 per year, at build-out, to fund administrative fees and municipal services; and approximately $14.6 million in bond proceeds to be used to fund a portion of the public infrastructure improvements needed to serve the project. Mello-Roos bonds are not a direct obligation of the City and are paid from special taxes levied on each taxable parcel in the District; therefore, there is no fiscal impact to the General Fund from the issuance of Mello-Roos bonds. City Council approval will be required to process annual special tax levies in future years.

BACKGROUND & ANALYSIS: The Mello-Roos Community Facilities Act of 1982 (the Act) provides local government, with the consent from a majority of the property owners, the authority to establish community facilities districts for the purpose of levying special taxes to finance various public infrastructure facilities and fund municipal services.

At a public hearing conducted by the City Council on June 4, 2024, the City Council adopted a Resolution of Formation of Community Facilities District No. 65 (Falloncrest); authorized the levy of a special tax; established an appropriations limit of the Community Facilities District; and called a special election for the Community Facilities District. On that date, an election was held in which the qualified electors of the Community Facilities District approved said proposition by more than

the two-thirds vote required by the Act. Adoption of the proposed ordinance to authorize the levy of special taxes within the Community Facilities District will conclude the formation process for the City of Ontario Community Facilities District No. 65 (Falloncrest).

The Falloncrest project addresses the development of approximately 22.65 gross acres located south of Ontario Ranch Road, north of Grand Park Street, west of Broadway Avenue, and east of Archibald Avenue. At build-out, the project is expected to include 362 attached residential units.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING A SPECIAL TAX WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 65 (FALLONCREST)

WHEREAS, on April 16, 2024, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Intention to Establish a Community Facilities District Proposed to be Named City of Ontario Community Facilities District No. 65 (Falloncrest) and to Authorize the Levy of a Special Tax Therein," stating its intention to establish City of Ontario Community Facilities District No. 65 (Falloncrest) (the "Community Facilities District") and to authorize the Community Facilities District to levy a special tax (the "Special Tax") within the Community Facilities District for the purpose of financing certain public facilities (the "Facilities") and services (the "Services"); and

WHEREAS, on June 4, 2024, the City Council held a noticed public hearing on the establishment of the Community Facilities District, as required by the Act; and

WHEREAS, subsequent to the close of said hearing, the City Council adopted resolutions entitled "A Resolution of the City Council of the City of Ontario, California, of Formation of City of Ontario Community Facilities District No. 65 (Falloncrest), Proposing that the Community Facilities District Be Authorized to Levy a Special Tax and Proposing that an Appropriations Limit of the Community Facilities District Be Established" (the "Resolution of Formation"), "A Resolution of the City Council of the City of Ontario, California, Deeming it Necessary for City of Ontario Community Facilities District No. 65 (Falloncrest) to Incur Bonded Indebtedness" and "A Resolution of the City Council of the City of Ontario, California, Calling Special Election for City of Ontario Community Facilities District No. 65 (Falloncrest)," which resolutions established the Community Facilities District, proposed that the Community Facilities District be authorized to levy the Special Tax within the Community Facilities District, proposed that an appropriations limit of the Community Facilities District be established and called a special election to submit to the qualified electors of the Community Facilities District the combined ballot proposition to authorize the Community Facilities District to incur bonded indebtedness, to authorize the Community Facilities District to levy the Special Tax and to establish the appropriations limit of the Community Facilities District; and

WHEREAS, on June 4, 2024, an election was held in which the qualified electors of the Community Facilities District approved said proposition by more than the two-thirds vote required by the Act; and

WHEREAS, the City Council is the legislative body of the Community Facilities District;

THE CITY COUNCIL OF THE CITY OF ONTARIO DOES ORDAIN AS FOLLOWS:

Section 1. The City Council hereby authorizes and levies the Special Tax within the Community Facilities District pursuant to Sections 53328 and 53340 of the Act, at the rate and in accordance with the method of apportionment set forth in Exhibit B to the Resolution of Formation (the "Rate and Method"). The Special Tax is hereby levied commencing in fiscal year 2024-25 and in each fiscal year thereafter until the last fiscal year in which the Special Tax is authorized to be levied pursuant to the Rate and Method.

Section 2. The City Council may, pursuant to subdivision (b) of Section 53340 of the Act, provide, by resolution, for the levy of the Special Tax in the current tax year or in future tax years at the same rate or at a lower rate than the rate provided by this Ordinance. In no event shall the Special Tax be levied on any parcel within the Community Facilities District in excess of the maximum tax specified therefor in the Rate and Method.

Section 3. The Special Tax shall be levied on all of the parcels in the Community Facilities District, unless exempted by law or by the Rate and Method.

Section 4. The proceeds of the Special Tax shall only be used to pay, in whole or in part, the cost of providing the Facilities and Services and incidental expenses pursuant to the Act.

Section 5. The Special Tax shall be collected in the same manner as ordinary *ad valorem* property taxes are collected and shall be subject to the same penalties and the same procedure, sale and lien priority in the case of delinquency as is provided for *ad valorem* taxes or in such other manner as the City Council shall determine, including direct billing of the affected property owners.

Section 6. If for any reason any portion of this Ordinance is found to be invalid, or if the Special Tax is found inapplicable to any particular parcel within the Community Facilities District, by a court of competent jurisdiction, the balance of this Ordinance and the application of the Special Tax to the remaining parcels within the Community Facilities District shall not be affected.

Section 7. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 18th day of June, 2024.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held June 4, 2024 and adopted at the regular meeting held June 18, 2024 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held June 18, 2024 and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **June 18, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Leonard Lui Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 9

SUBJECT: **A CONSTRUCTION CONTRACT WITH MAMCO, INC. AND AN AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT WITH KLEINFELDER, INC. FOR ON-CALL GEOTECHNICAL AND MATERIAL TESTING SERVICES FOR THE SULTANA AVENUE STORM DRAIN, STREET, AND SEWER IMPROVEMENT PROJECTS**

RECOMMENDATION: That the City Council take the following actions:

A. Award a Construction Contract with Mamco, Inc. dba Alabbasi of Perris, California, for the Sultana Avenue Storm Drain, Street and Sewer Improvement Project in the amount of $16,939,393 plus a ten percent (10%) contingency of $1,693,939 for a total of $18,633,332 and authorize the City Manager, or his designee, to execute said contract and all related documents, file a notice of completion at the conclusion of all construction activities; and
B. Approve Amendment No. 6 to the Professional Services Agreement with Kleinfelder, Inc. of Ontario, California, to provide on-call geotechnical and material testing services for the Sultana Avenue Storm Drain, Street, and Sewer Improvement Projects in the amount of $334,756 for a revised not-to-exceed total of $1,351,242; 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:
Operate in a Businesslike Manner
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)
Pursue City's Goals and Objectives by Working with Other Governmental Agencies
Invest in the Growth and Evolution of the Cityâ€™s Economy

FISCAL IMPACT: Included in the Fiscal Year 2023-24 Adopted Budget are appropriations for the construction of the Sultana Avenue Storm Drain and Street Improvements Project (SM2302) in the amount of $6,200,000 in the Measure Q Capital Project Fund. The total recommended expenditure authorization for Mamco, Inc., consists of $16,939,393 plus a ten percent (10%) contingency of $1,693,939 for a total of $18,633,332. Based on an agreed-upon proportion of work relative to the

projects SM2302 and Sultana Avenue Sewer Main Improvements Project (SE2505), $17,320,230 will be funded by the Measure Q Capital Project Fund for SM2302 and $1,313,102 will be funded by Sultana Avenue Sewer Main Improvements Project (SE2505) included in the Sewer Capital Fund Fiscal Year 2024-25 Adopted Budget. If approved, additional appropriations in the Measure Q Capital Project Fund will be included in a future Quarter Budget Update Report to City Council, as needed.

Included in the Fiscal Year 2023-24 Adopted Budget are appropriations for the construction support services for the Sultana Avenue Storm Drain and Street Improvements Project (SM2302) in the amount of $800,000 in the Measure Q Capital Projects Fund. The proposed Amendment No. 6 with Kleinfelder, Inc., increases the Agreement amount by $334,756 for a revised total not-to-exceed amount of $1,351,242. Based on an agreed-upon proportion of work relative to Projects SM2302 and Sultana Avenue Sewer Main Improvements Project (SE2505), $307,976 will be funded by the Measure Q Capital Project Fund for SM2302 and $26,780 will be funded by the Sultana Avenue Sewer Main Improvements Project (SE2505) in the Sewer Capital Fund. If the amendment is approved, additional appropriations will be included in a future Quarter Budget Update Report to City Council for approval regarding construction support services for Sewer Main Improvements Project in the Sewer Capital Fund, as needed.

BACKGROUND & ANALYSIS: The Sultana Avenue Storm Drain is a regional Master Plan Facility located along Sultana Avenue from Fifth Street down to Transit Street, with major storm drain laterals built along J Street and Columbia Avenue. Rainfall has historically overtaxed the existing roadway, resulting in the need for the storm drain facility. The storm drain project proposes pipe sizes ranging from 18" reinforced concrete pipe (RCP) to 78" RCP, at a total length of approximately 11,250 linear feet (LF). The project is located along Sultana Avenue.

In conjunction with the storm drain project, the Sultana Avenue sewer main improvements were identified in the Sewer Master Plan, in conjunction with maintenance data, as needing to be upgraded within the downtown area to divert flows north of D Street from Cherry Avenue to the new Sultana Avenue sewer main. The sewer project will consist of 1,513 linear feet of 8" to 10" sewer main from Cherry Avenue, north of D Street to Sultana Avenue and B Street. This system See Exhibit “A” for the project location map.

The general scope of work to be performed under the construction contract consists of, but is not limited to, traffic control, clearing and grubbing, protection and demolition of existing improvements within the public Right-of-Way, utility coordination, installation of RCP ranging from 18” to 78”, installation of VCP sewer ranging from 8” to 10”, installation of catch basins, sewer manholes, and storm drain manholes, construction of PCC curb and gutter, rock curb and gutter, drive approaches, ADA ramps, AC paving, signing and striping, tree planting, and any other appurtenances necessary to complete the improvements as described in the Plans and Specifications. A project location map is provided for reference as Exhibit "A". In May 2024, the City solicited bids for the project and five bids were received. The following is a summary of the bid results:

CONTRACTOR	LOCATION	AMOUNT
Mamco, Inc. dba Alabbasi	Perris, CA	$16,939,393
Weka, Inc.	San Bernardino, CA	$17,496,944
Nationwide Contracting Srvices, Inc.	Huntington Beach, CA	$19,936,422
Norstar Plumbing & Engineering, Inc.	Alta Loma, CA	$23,625,214
Mike Bubalo Construction Co., Inc.	Baldwin Park, CA	$29,540,643

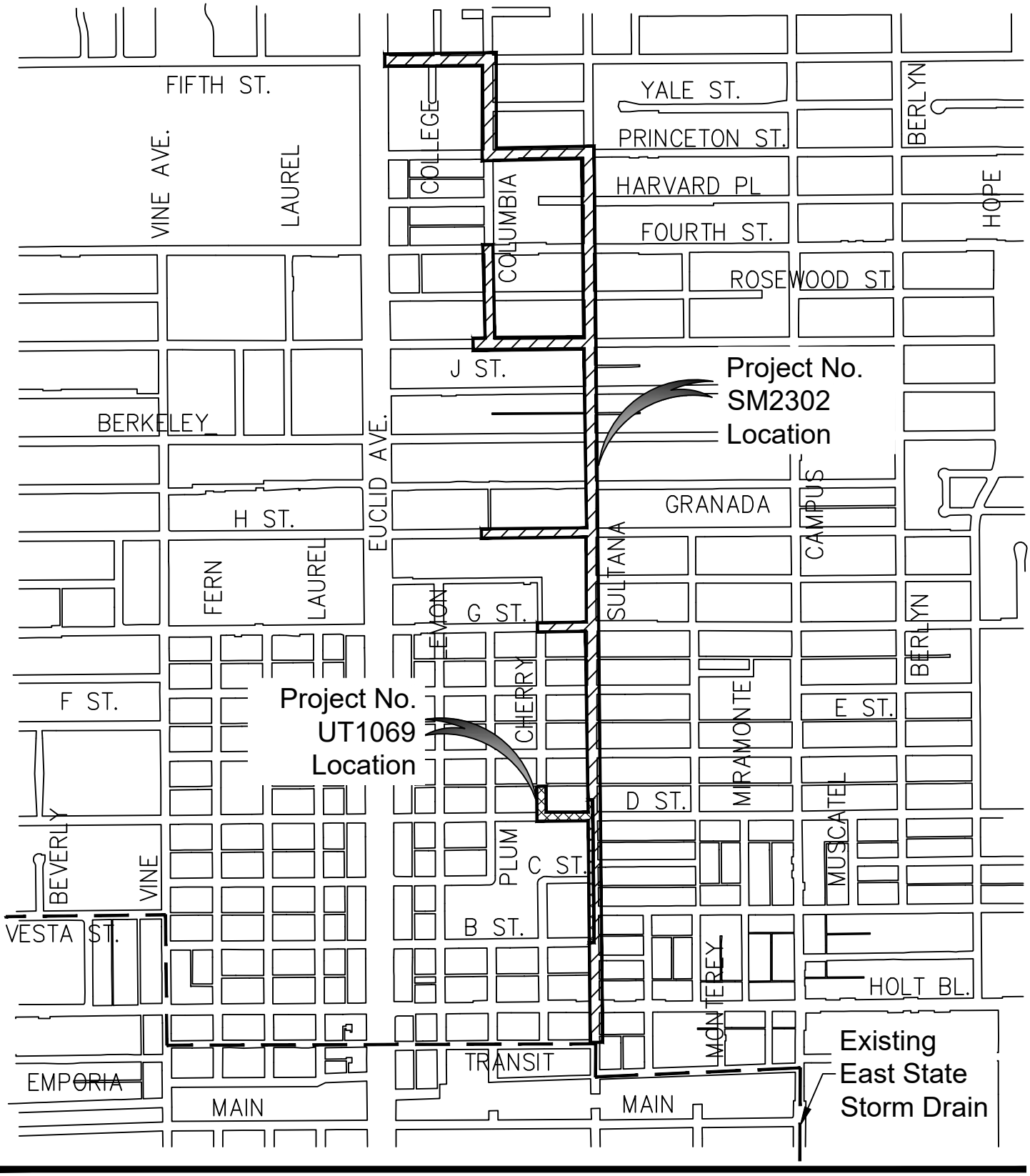
Kleinfelder, Inc. will provide on-call geotechnical and material testing services that will be necessary during construction of the Sultana Avenue Storm Drain and Street Improvements Project (SM2302), and the Sultana Avenue Sewer Main Improvements Project (UT1069), which will be executed under one construction contract. The City first contracted with Kleinfelder, Inc. in March of 2023 after an extensive request for proposal selection process for on-call geotechnical and material testing services. This Amendment is to revise the scope of work for Kleinfelder to include services for the Sultana Avenue Storm Drain, Street, and Sewer Improvement Projects.

Environmental Review: The project is Categorically Exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15301 (Class 1 – Existing Facilities) of the CEQA Guidelines. The project consists of demolition of existing improvements within the existing public right-of-way and the alteration/installation of storm drain facilities/infrastructure and associated street improvements within the specified street segments noted above. The project involves negligible expansion or change to the former use as applicable through CEQA Section 15301 and will result in improved effectiveness/efficiency of a regional storm drain facility.

SULTANA AVENUE

STORM DRAIN AND STREET IMPROVEMENTS PROJECT NO. SM2302

SEWER MAIN IMPROVEMENTS PROJECT NO. UT1069



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

SECTION 00500
CONTRACT

THIS CONTRACT is entered as of _____, in the County of San Bernardino, State of California, by and between the City of Ontario, hereinafter called City, and **Mamco Inc., dba Alabbasi**, hereinafter called Contractor. The City and the Contractor for the considerations stated herein agree as follows:

ARTICLE 1. SCOPE OF WORK. The Contractor shall perform all Work within the time stipulated the Contract and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Article 5 below for the following Project:

SULTANA AVENUE STORM DRAIN AND STREET IMPROVEMENTS PROJECT (SM2302)
SULTANA AVENUE SEWER MAIN IMPROVEMENTS PROJECT (UT1069)

The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION. Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within **Three Hundred (300) Working days** from the commencement date stated in the Notice to Proceed, herein after the Contract Time. By its signature hereunder, Contractor agrees the Contract Time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE. The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Sixteen Million Nine Hundred Thirty-Nine Thousand Three Hundred Ninety-Three Dollars and 00/100 ($16,939,393.00)**, hereinafter the Contract Price. Payment shall be made as set forth in the General Conditions.

ARTICLE 4. LIQUIDATED DAMAGES. The Contractor acknowledges that the City will sustain actual damages for each and every day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, as provided in Government Code section 53069.85, it is agreed that

the Contractor will pay the City the sum of **Nine Thousand Five Hundred Dollars ($9,500)** for each and every calendar day of delay in completing the Work beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event the Liquidated Damages are not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Article does not affect the City's rights to other damages or remedies specified in the Contract Documents or allowed by law.

Should Contractor be inexcusably delayed in the performance of the Work, City may deduct Liquidated Damages based on its estimate of when Contractor will achieve Final Completion or other milestones. City need not wait until Final Completion to withhold Liquidated Damages from Contractor.

Liquidated Damages are not a penalty but an agreed upon estimate of the actual damages that would be sustained by the City for delay, including but not limited to loss of revenue, inconvenience to the City and the public, and increased Project administration expenses, such as extra inspection, construction management, staff time and architectural and engineering expenses. Liquidated Damages do not include actual damages the City incurs on account of claims by third parties against the City on account of any delay.

Should money due or to become due to the Contractor be insufficient to cover Liquidated Damages or other offsets due, then Contractor forthwith shall pay the remainder of the assessed liquidated damages to City.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT. The "Contract Documents" include the following documents, each of which is incorporated into this Contract by reference

- Notice Inviting Bids
- Instructions to Bidders
- Bid Form
- Contractor's Certificate Regarding Workers' Compensation form
- Bid Bond
- List of Subcontractors form
- Contractor Information and Experience Form
- Non-Collusion Declaration form
- Public Works Contractor Registration Certification form
- Iran Contracting Act Certification form
- Contract
- Performance Bond
- Payment Bond
- Environmental documents and approvals (If Applicable)
- General Conditions
- Special Conditions
- Standard Specifications for Public Works Construction (Greenbook), Latest Edition, except Sections 1-9
- Technical Specifications
- Addenda (If Applicable)

- Plans and Drawings
- Approved and fully executed Change Orders
- Applicable Local Agency Standards and Specifications, as last revised
- Federal Requirements (If Applicable)
- Any other documents contained in or incorporated into the Contract

The Contactor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. **PROVISIONS REQUIRED BY LAW**. Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including but not limited to, the provisions of the California Labor Code and Public Contract Code applicable to this Project.

ARTICLE 7. **INDEMNIFICATION**. Contractor shall provide indemnification as set forth in the General Conditions.

ARTICLE 8. **PREVAILING WAGES**. Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at City Clerk's office or may be obtained online at http//www.dir.ca.gov/dlsr. and which must be posted at the job site.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year above written.

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

END OF CONTRACT

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. 6.0
TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF ONTARIO AND
KLEINFELDER, INC.

1. Parties and Date.

This Amendment No. **6.0** to the Agreement (as defined herein) is made and entered into as of _____, by and between the City of Ontario ("City") and Kleinfelder, 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 "**A Professional Services Agreement for On-Call Geotechnical and Material Testing Services**" dated March 7, 2023 ("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement to include services for the Sultana Avenue Storm Drain and Street Improvements Project (Contract No. SM2302) and Sultana Avenue Sewer Main Improvements Project (Contract No. UT1069) in the amount of **Three Hundred Thirty-Four Thousand Seven Hundred Fifty-Six Dollars and 00/100 ($334,756.00)**; and increase the not-to-exceed compensation amount to One Million Three Hundred Fifty-One Thousand Two Hundred Forty-Two Dollars and 00/100 ($1,351,242.00). The Parties have heretofore entered into that Amendment No. 1 dated, April 4, 2023, Amendment No. 2 dated, May 2, 2023, Amendment No. 3 dated, May 2, 2023, Amendment No. 4 dated, March 5, 2024, and Amendment No. 5, dated _____, 20____.

2.3 Amendment Authority. This Amendment No. 6.0 is authorized pursuant to Section 3 of the Agreement.

3. Additional Work (Term).

3.1 Amendment. Section 3.2.1, and Exhibit "A" and Exhibit "B", of the Agreement are 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 **One Million Three Hundred Fifty-One Thousand Two Hundred Forty-Two Dollars ($1,351,242)** 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. **6.0**, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. **6.0**. From and after the date of this Amendment No. 6.0, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 6.0.

3.3 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 6.0.

3.4 Severability. If any portion of this Amendment No. 6.0 is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5 Integration. This Amendment represents the entirety of the Parties' understanding relating to the subject of this Amendment, including written or verbal communications between the Parties, which shall have no relevance unless expressly incorporated herein. This is an integrated amendment.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR AMENDMENT NO. 6.0 TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND KLEINFELDER, INC.

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 6.0 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

KLEINFELDER, INC.

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

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

Attachment A

Exhibit “A” - SCOPE OF SERVICES –

Add scope of services proposal “**Kleinfelder Proposal to Provide On-Call Material Testing and Geotechnical Engineering Services for Contract No. SM2302 Sultana Avenue Storm Drain and Street Improvements Project and Contract No. UT1069 Sultana Avenue Sewer Main Improvements”**

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	Not to Exceed Fee	P.O. Number
-	0	2022 Spring Alley CDBG Pavement Rehab Project	$18,440.00	PO-01163
1.0	1.0	UT 1617-02 Well Abandonment 11, 15 & 17, & 26	$38,317.00	PO-01366
2.0	2.0	UT1053 – AMI Antenna Project – Phase 1	$66,554.00	PO-05134
3.0	3.0	Add $400,000 for a NTE of $466,554	$466,554.00	N/A
4.0	4.0	D&C22-012 City Hall Parking Structure	$928,535.00	PO-03189
5.0	5.0	UT1016 Archibald Sewer Diversion Project	$1,016,486.00	Pending
6.0	6.0	SM2302/SE2505 Sultana Avenue Storm Drain, Street and Sewer Improvements Project	$1,351,242.00	Pending
Grand Total			**$1,351,242.00**	

CITY OF ONTARIO *Agenda Report* **June 18, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Recreation & Community Services Prepared By: Danielle Guevara Staff Member Presenting: Nicholas S. Gonzalez, Recreation & Community Services Director Reviewed By: Lacey A Rightmer Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 10

SUBJECT: AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH ECLIPSE PRINTING AND GRAPHICS, LLC DBA JAMES LITHO, FOR PRINTING SERVICES

RECOMMENDATION: That the City Council authorizes the City Manager, or his designee, to execute Amendment No. 1 to the Professional Services Agreement with Eclipse Printing and Graphics, LLC dba James Litho in the amount of $100,000 for a total not-to-exceed contract amount of $300,000 and extend the contract term to June 30, 2026.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities

FISCAL IMPACT: The recommended Amendment will add $100,000 to the current contract amount of $200,000, bringing the not-to-exceed contract amount to $300,000. Additionally, the Amendment will extend the current term through June 30, 2026. The Fiscal Year 2024-25 Adopted Budget includes appropriations from the General Fund for print services. If approved, appropriations for future years of the agreement will be included in the Department's annual budget to be approved by the City Council.

BACKGROUND & ANALYSIS: The Central Services Department runs a small digital print shop, which offers low-cost printing solutions to all City Departments. The Recreation and Community Services Department partners with the Central Services Department to complete most of the requested print jobs in-house. However, for larger canvas banners and more complex print projects that require specialized equipment that the City currently does not own, the City relies on outside vendors, such as James Litho, to complete these specialized print job requests.

The Recreation and Community Services Department requires banners and signage for special events held throughout the year. Due to the large amount of signage for our sponsors at the City's annual 5K event, in addition to the wear and tear on existing signs and the addition of new events, we need to place signage orders regularly.

On July 19, 2022, the City Council approved a Professional Services Agreement with James Litho, for printing services. Based on the efficient turnaround times and the ability to produce specialized items from James Litho, Staff recommends Amendment No. 1 with James Litho for a total not-to-exceed contract amount of $300,000.

CITY OF ONTARIO

303 EAST B STREET | ONTARIO, CALIFORNIA 91764

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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 ECLIPSE PRINTING AND GRAPHICS, LLC DBA JAMES LITHO

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 Eclipse Printing and Graphics, LLC dba James Litho, a Limited Liability Company ("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 July 19, 2022 ("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement to add additional compensation. The total compensation shall not exceed Three Hundred Thousand ($300,000), without written approval of the City Council. Extra Work may be authorized, and will be compensated at the rates and manner set forth in the Agreement. The term of this agreement will be extended to June 30, 2026.

2.3 Amendment Authority. This Amendment No. 1 is authorized pursuant to Section 3.1.2 of the Agreement.

3. Terms.

3.1 Amendment. Section 3.1.2 of the Agreement is hereby amended in its entirety to read as follows:

Term. The term of this Agreement shall be from July 1, 2022 to June 30, 2026, unless earlier termination as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement for no more than 1 additional one-year term. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual,

written consent, extend the term of this Agreement if necessary to complete the Services.

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

Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed Three Hundred Thousand ($300,000) total, without written approval of the City Council or City Manager, as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2 Continuing Effect of Agreement. Except as amended by this Amendment No. 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 ECLIPSE PRINTING AND GRAPHICS, LLC, DBA JAMES LITHO

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

ECLIPSE PRINTING AND GRAPHICS, LLC DBA JAMES LITHO

By: _____

Its: _____

Printed Name: _____

CITY OF ONTARIO *Agenda Report* **June 18, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Gil H Mars Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Bonnie Tam, Andrea Ampig Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 11

SUBJECT: DESIGN SERVICES AGREEMENTS FOR ON-CALL LANDSCAPE ARCHITECTURAL SERVICES

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute the following three-year Agreements for on-call Landscape Architectural Services for a total compensation amount of $1,000,000 over three (3) years and extend the agreements for up to two (2) additional one-year periods:

A. A Design Services Agreement with Community Works Design Group, Inc., of Riverside, California, for a total contract amount not-to-exceed $300,000;
B. A Design Services Agreement with Gruen Associates, of Los Angeles, California, for a total contract amount not-to-exceed $100,000;
C. A Design Services Agreement with RJM Design Group, Inc., of San Juan Capistrano, California, for a total contract amount not-to-exceed $250,000;
D. An As-Needed Professional Consultant Services Agreement (subject to minor revisions, if any, approved or directed by the City Attorney) with SWA Group of Laguna Beach, California, for a total contract amount not-to-exceed $100,000; and
E. A Design Services Agreement with Withers & Sandgren, Ltd., of Chatsworth, California, for a total contract amount not-to-exceed $250,000.

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

FISCAL IMPACT: The proposed Design Services Agreement with Community Works Design Group, Inc. is an estimated amount of $100,000 per year for a total contract amount not-to-exceed of $300,000. The proposed Design Services Agreement with Gruen Associates is an estimated amount of $33,333 per year for a total contract amount not-to-exceed of $100,000. The proposed Design Services Agreement with RJM Design Group, Inc. is an estimated amount of $83,333 pear year for a

total contract amount not-to-exceed of $250,000. The As-Needed Professional Consultant Services Agreement with SWA Group is an estimated amount of $33,333 per year for a total contract amount not-to-exceed of $100,000. The proposed Design Services Agreement with Withers & Sandgren, Ltd. is an estimated amount of $83,333 per year for a total contract amount not-to-exceed of $250,000.

All five firms have agreed to fixed billing rates set forth in their respective agreements on an on-call, as needed basis for three (3) years. Pricing for the option years will be negotiated and any proposed fee increases will not exceed 3% per year. The total compensation of $1,000,000 under the terms of these agreements will commensurate with City Council approved budgets for various agencies and tasks.

BACKGROUND & ANALYSIS: The City has needs for On-Call Landscape Architectural Services for work that cannot be provided by City Staff. Staff is recommending contracts with a total of five qualified firms to assure 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 agencies can use these firms. This procedure reduces overhead charges and increases efficiency in completing critical projects, ultimately resulting in well-executed projects.

On January 11, 2024, the City solicited requests for proposals for on-call Landscape Architectural Services and responses from the following companies were evaluated:

Architectural Firm	Location
Albert A. Webb Associates	Riverside, CA
Architerra Design Group	Rancho Cucamonga, CA
BMLA, Inc.	Corona, CA
Community Works Design Group	Riverside, CA
David Volz Design Landscape Architects, Inc.	Costa Mesa, CA
EPTDESIGN	Claremont, CA
Gruen Associates	Los Angeles, CA
Hirsch & Associates, Inc.	Anaheim, CA
IDS Group, Inc.	Irvine, CA
Kimley-Horn and Associates, Inc.	Orange, CA
KTU&A	San Diego, CA
Mark Thomas and Company, Inc.	Irvine, CA
Michael Baker International, Inc.	Santa Ana, CA
RHA Landscape Architects-Planners, Inc.	Riverside, CA
RJM Design Group, Inc.	San Juan Capistrano, CA
Schmidt Design Group, Inc.	San Diego, CA
Sitio Landscape Architecture	Anaheim, CA
Studio One Eleven	Long Beach, CA
SWA Group	Laguna Beach, CA

Van Dyke Landscape Architects	Solana Beach, CA
Verde Design, Inc.	Riverside, CA
Withers & Sandgren, Ltd.	Chatsworth, CA

Staff reviewed the requests for proposals utilizing a qualifications-based selection process. Community Works Design Group, Gruen Associates, RJM Design Group, Inc., SWA Group, and Withers & Sandgren Ltd. were deemed to be the most qualified firms. The recommendation to award Design Services Agreements to these firms is based on their broad range of expertise as demonstrated by work performed for other municipal agencies and capability to perform highly complex work in a timely manner.

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

PAUL S. LEON
MAYOR

DEBRA PORADA
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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

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 **Withers & Sandgren, LTD.**, a corporation with its principal place of business at **20948 Tulsa Street, Chatsworth, CA 91311** (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 Landscape Architectural 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 a landscape architect in the State of California.

2.3 Project**.** City desires to engage Consultant to render such services for the **D&C24-010 On-Call Landscape Architectural** ("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 landscape architectural and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated herein by reference. All

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

3.1.2 Term. The term of this Agreement shall be from **July 2, 2024, to July 1, 2027**, unless earlier terminated as provided herein The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than two 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 Landscape Project Architect. Consultant shall name a specific individual to act as Project Consultant, subject to the approval of City. Consultant hereby designates Lacey Withers (License No. 3820) to act as the Landscape Project Architect for the Project. The Project Architect 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 Project Architect shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Project Architect shall be of at least equal competence as the prior Project Architect. In the event that City and Consultant cannot agree as to the substitution of a new Landscape Project Architect, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Landscape Project Architect, 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: Patty Nalle, Senior Production Landscape Architect; Linda Endler, Landscape Architect.

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 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 Alfredo Banuelos, Parks & Maintenance Director, 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. City shall pay to Consultant, for the performance of all Services rendered under this Agreement, the total not to exceed amount of **TWO HUNDRED FIFTY THOUSAND DOLLARS** ($**250,000**) ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

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 "C" 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 "C" 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 "C" 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 phasing and funding schedule provided in Exhibit "B" and the compensation rates indicated in Exhibit "C" 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 landscape architectural 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	Withers & Sandgren, Ltd.
303 East “B” Street	20948 Tulsa Street
Ontario, CA 91764	Chatsworth, CA 91311
Attn: Alfredo Banuelos, Parks & Maintenance Director	Attn: Lacey Withers

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 WITHERS & SANDGREN, LTD.

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

CITY OF ONTARIO	**WITHERS & SANDGREN, LTD**
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:	
_____	
City Clerk	

EXHIBIT "A"
SCOPE OF SERVICES

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: None.

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"
FEE SCHEDULES

1. FEE SCHEDULE.

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each phase and the total amount spent against the Total Compensation. Consultant will inform City regarding any out-of-scope work being performed by Consultant for which Consultant intends to seek compensation from City.

2. PHASING/FUNDING SCHEDULE.

Progress payments towards Total Compensation shall never exceed the following percentages of Total Compensation as of the phase indicated:

Initial Planning Phase:	_____ percent (%____)
Schematic Plan Phase:	_____ percent (%____)
Design Development Phase:	_____ percent (%____)
Final Working Drawings & Specifications Phase:	_____ percent (%____)
Construction Contract Documents Phase:	_____ percent (%____)
Bid Phase:	_____ percent (%____)
Construction Phase:	_____ percent (%____)
As-Built Drawings Phase:	_____ percent (%____)
Warranty Period Phase:	_____ percent (%____)

Phasing/Funding Schedule to be provided if/when needed. Currently, this is not applicable

EXHIBIT "C"
COMPENSATION RATES AND REIMBURSABLE EXPENSES

1. HOURLY COMPENSATION RATES.

Firm Hourly Rates & Costs:	
Principal	$165.00
Irrigation Specialist	$135.00
Senior Project Architect	$135.00
Project Manager/Designer	$125.00
Draftsperson	$ 95.00
Clerical	$ 75.00

2. REIMBURSABLE EXPENSES.

Schedule of Costs / Reimbursable Expenses:
The schedule of Reimbursable Expenses for the Landscape Architect's "in-house" services is as follows:

Reprographics:	
Blueline or Blackline Prints	$10.00 per 24 x 36 print
CAD Plots (on mylar)	$45.00 per 24 x 36 print
CAD Plots (on heavy bond)	$30.00 per 24 x 36 print
CAD Plots (on translucent bond)	$24.00 per 24 x 36 print
Plotter Color Sheets	$65.00 per 24 x 36 print (color graphics)
Plotter Color Sheets	$135.00 per 36 x 48 print (color graphics)
Digital Scan Images	$30.00 per 81/2 x 11 inch original
Digital Scan Images (oversize)	Direct Cost (not in-house)
Color Copies	$1.50 per 8 1/2 x 11 inch
Color Copies	$3.00 per 11 x 17 inch
B & L Laser Copies	$ .10 per 8 1/2 x 11 inch
B & L Laser Copies	$ .15 per 11 x 17 inch
Specifications Package	Direct Cost + 15%
Delivery Services	Direct Cost + 15%
Express and Priority Mail	Direct Cost + 15%
Reprographic Expenses	Direct Cost + 15%
Travel Expenses:	
Automobile Transportation	$.55 a 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.

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

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 **RJM Design Group**, a corporation with its principal place of business at **31591 Camino Capistrano, San Juan Capistrano, CA 92675** (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 architectural design services required by the City on the terms and conditions set forth in this Agreement. Consultant represents 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 a Landscape Architect in the State of California.

2.3 Project**.** City desires to engage Consultant to render such services for the **D&C24-010 On-Call Architectural Landscape** ("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 architectural and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated herein by reference. All

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

3.1.2 Term. The term of this Agreement shall be from July 2, 2024 to July 1, 2027, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than two 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 Landscape Project Architect. Consultant shall name a specific individual to act as Project Consultant, subject to the approval of City. Consultant hereby designates Larry P. Ryan (License No. 2502) to act as the Principal Project Architect for the Project. The Principal Project Architect 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 Principal Project Architect shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Project Architect shall be of at least equal competence as the prior Project Architect. In the event that City and Consultant cannot agree as to the substitution of a new Project Architect, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Project Architect, 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: Zachary Mueting, Backup Principal In Charge; Craig Sensenbach, Project Manager; Tyler Page, Project Landscape Architect; Tamara McClory, Project Landscape Architect.

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 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 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 Alfredo Banuelos, Parks & Maintenance Director 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. City shall pay to Consultant, for the performance of all Services rendered under this Agreement, the total not to exceed amount of **Two Hundred Fifty Thousand Dollars ($250,000)** ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

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 "C" 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 "C" 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 "C" 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 phasing and funding schedule provided in Exhibit "B" and the compensation rates indicated in Exhibit "C" 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 reasonably approved by City), 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 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 (if any), 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, or Coverage Symbols 8 and 9, hired and non-owned autos, if no autos are owned).

(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 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 landscape architectural 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	RJM Design Group, Inc.
303 East “B” Street	31591 Camino Capistrano
Ontario, CA 91764	San Juan Capistrano, CA 92675
Attn: Alfredo Banuelos	Attn: Larry Ryan

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 RJM DESIGN GROUP, 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

RJM DESIGN GROUP, INC.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

EXHIBIT "A"
SCOPE OF SERVICES

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: None. On-Call/As-Needed Professional Consulting with rate sheet attached.

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"
FEE SCHEDULES

1. FEE SCHEDULE.

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each phase and the total amount spent against the Total Compensation. Consultant will inform City regarding any out-of-scope work being performed by Consultant for which Consultant intends to seek compensation from City.

2. PHASING/FUNDING SCHEDULE.

Progress payments towards Total Compensation shall never exceed the following percentages of Total Compensation as of the phase indicated:

Initial Planning Phase:	_____ percent (%____)
Schematic Plan Phase:	_____ percent (%____)
Design Development Phase:	_____ percent (%____)
Final Working Drawings & Specifications Phase:	_____ percent (%____)
Construction Contract Documents Phase:	_____ percent (%____)
Bid Phase:	_____ percent (%____)
Construction Phase:	_____ percent (%____)
As-Built Drawings Phase:	_____ percent (%____)
Warranty Period Phase:	_____ percent (%____)

Phasing/Funding Schedule to be provided if/when needed. Currently, this is not applicable.

EXHIBIT "C"
COMPENSATION RATES AND REIMBURSABLE EXPENSES

1. HOURLY COMPENSATION RATES.

Fee Schedule

RJM DESIGN GROUP, INC.	
Principal Landscape Architect	$220 per hour
Associate Landscape Architect	$195 per hour
Landscape Architect / Project Manager	$180 per hour
Job Captain / Landscape Designer	$165 per hour
CADD Technician / Graphics	$150 per hour
Administrative Staff	$105 per hour
SVA ARCHITECTS	
Partners	$225 per hour
Principals	$210 per hour
Sr. Project Architect / Manager	$195 per hour
Sr. Project Designer	$195 per hour
Project Architect / Manager	$175 per hour
Project Designer	$175 per hour
Job Captain	$155 per hour
Intermediate Technical Designer	$125 per hour
Junior Technical Designer	$100 per hour
Administrative Staff	$75 per hour
JONES AND MADHAVEN	
Principal Architect	$200 per hour
Principal Mechanical Engineer	$200 per hour
Architectural Designer	$125 per hour
Mechanical Designer	$125 per hour
CAD Draftsperson	$95 per hour
Clerical	$65 per hour
GLASIR (IRRIGATION)	
On-Site Consulting / Public Agency Coordination	$145 per hour
Irrigation Designer	$120 per hour
Plan Check	$120 per hour
CIVTEC (CIVIL ENGINEER)	
Principal	$225 per hour
Project Manager	$175 per hour
Project Engineer	$150 per hour
Project Surveyor	$175 per hour
Design Engineer	$125 per hour
Draftsperson	$95 per hour
Project Assistant	$80 per hour
2-Person Survey Crew	$350 per hour
3-Person Survey Crew	$525 per hour

Fee Schedule (continued)

FBA ENGINEERING (ELECTRICAL ENGINEERING)	
Principal / Project Director	$210 per hour
V.P. / Senior Associate	$160 per hour
Associate / Project Manager	$160 per hour
Construction Support	$135 per hour
Electrical Designer	$110 per hour
CAD / BIM Designer	$90 per hour
Technical Typist	$50 per hour
GMU (STRUCTURAL + GEOTECHNICAL ENGINEERING)	
Principal Director	$290 per hour
Associate Engineer or Geologist	$267 per hour
Senior Engineer or Geologist	$248 per hour
Project Engineer or Geologist	$212 per hour
Senior Staff Engineer or Geologist	$188 per hour
Staff Engineer or Geologist	$170 per hour
CAD/GIS Design Engineer	$128 per hour
Document Preparation and Project Services	$110 per hour
NEWLINE SKATEPARK INC.	
Director of Design	$150 per hour
Director of Skatepark Civil Engineering	$150 per hour
Project Manager	$130 per hour
Senior Design / Production	$120 per hour
Design / Production	$100 per hour
Design 3D Graphics	$100 per hour

Charges for sub-consultant services are billed at cost plus a 15% coordination fee

2. REIMBURSABLE EXPENSES.

REIMBURSABLE EXPENSES

When incurred, the following project expenses will be billed at cost plus 15% administrative fee in addition to the above professional services fee:

- Printing, plotting, copying, scanning, photography, graphic expenses
- Delivery, shipping, and handling of documents
- Permits, plan check, and inspection fees
- City business license
- Soils testing

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 15%. Owner shall have the authority to review and approve the rates of any such consultants.

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

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 **Gruen Associates**, a CORPORATION with its principal place of business at **6330 San Vicente Boulevard, Suite 200, Los Angeles, CA 90048** (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 landscape architectural 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 landscape architect in the State of California.

2.3 Project**.** City desires to engage Consultant to render such services for the **D&C24-010 On-Call Landscape Architectural** ("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 architectural and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal

laws, rules and regulations. All Services performed by Consultant shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld.

3.1.2 Term. The term of this Agreement shall be from **July 2, 2024, to July 1, 2027**, unless earlier terminated as provided herein The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than two additional one-year terms. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines. 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 Project Architect. Consultant shall name a specific individual to act as Project Consultant, subject to the approval of City. Consultant hereby designates Larry Schlossberg (License No. C17410) to act as the Landscape Project Architect for the Project. The Project Architect 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 Project Architect shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Project Architect shall be of at least equal competence as the prior Project Architect. In the event that City and Consultant cannot agree as to the substitution of a new Project Architect, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Landscape Project Architect, 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: Dean Howell, Project Manager, #5765.

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 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 **Alfredo Banuelos, Parks & Maintenance Director**, 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. City shall pay to Consultant, for the performance of all Services rendered under this Agreement, the total not to exceed amount of **One Hundred Thousand Dollars** ($**100,000**) ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

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 "C" 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 "C" 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 "C" 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 phasing and funding schedule provided in Exhibit "B" and the compensation rates indicated in Exhibit "C" 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 landscape architectural 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	Gruen Associates
303 East “B” Street	6330 San Vicente Boulevard, Suite 200
Ontario, CA 91764	Los Angeles, CA 90048
Attn: Alfredo Banuelos, Parks & Maintenance Director	Attn: Larry Schlossberg

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 GRUEN 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

GRUEN ASSOCIATES

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

EXHIBIT "A"
SCOPE OF SERVICES

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: None. On-Call/As-Needed Professional Consulting with rate sheet attached.

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"
FEE SCHEDULE

1. FEE SCHEDULE.

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each phase and the total amount spent against the Total Compensation. Consultant will inform City regarding any out-of-scope work being performed by Consultant for which Consultant intends to seek compensation from City.

2. PHASING/FUNDING SCHEDULE.

Progress payments towards Total Compensation shall never exceed the following percentages of Total Compensation as of the phase indicated:

Initial Planning Phase:	_____ percent (%____)
Schematic Plan Phase:	_____ percent (%____)
Design Development Phase:	_____ percent (%____)
Final Working Drawings & Specifications Phase:	_____ percent (%____)
Construction Contract Documents Phase:	_____ percent (%____)
Bid Phase:	_____ percent (%____)
Construction Phase:	_____ percent (%____)
As-Built Drawings Phase:	_____ percent (%____)
Warranty Period Phase:	_____ percent (%____)

**Phasing/Funding Schedule to be provided if/when needed. Currently, this is not applicable. **

EXHIBIT "C"
COMPENSATION RATES AND REIMBURSABLE EXPENSES

1. HOURLY COMPENSATION RATES.

Standard Hourly Billing Rate Schedule

Gruen Associates' staffing rates are listed for the types of services to be provided including base fee, indirects and other soft cost multipliers:

Partner-in-Charge	$ 290 - 350
Project Manager	$ 195 - 250
Technical Manager	$ 185 - 245
QA/QC Manager	$ 195 - 225
Design Director	$ 250 - 290
Planning Director	$ 215 - 250
Director of Construction Administration Phase Services	$ 185 - 210
Director of Landscape Architecture	$ 195 – 225
Director of Design Technology Services	$ 185 - 215
Senior Staff	$ 155 - 215
Intermediate Staff	$ 110 - 145
Assistant Staff	$ 95 - 110

2. REIMBURSABLE EXPENSES.

Traditional reimbursable rates include costs for any material or equipment that will be used (reprographics and plotting) and/or local travel costs (mileage), which will be at IRS rates.

Any other costs that relate to proposed support that will be charged to the City includes a mark-up of 6% on subconsultants.

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 6%. Owner shall have the authority to review and approve the rates of any such consultants.

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
DESIGN SERVICES AGREEMENT

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 **Community Works Design Group**, a corporation with its principal place of business at **7111 Indiana Avenue, Suite 300, Riverside, CA 92504** (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 landscape architectural 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 a landscape architect in the State of California.

2.3 Project**.** City desires to engage Consultant to render such services for the **D&C24-010 On-Call Landscape Architectural** ("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 landscape architectural and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated herein by reference. All

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

3.1.2 Term. The term of this Agreement shall be from **July 2, 2024, to July 1, 2027**, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than two 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 Project Architect. Consultant shall name a specific individual to act as Project Consultant, subject to the approval of City. Consultant hereby designates Scott Rice (License No. 5111) to act as the Landscape Project Architect for the Project. The Landscape Project Architect 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 Project Architect shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Project Architect shall be of at least equal competence as the prior Project Architect. In the event that City and Consultant cannot agree as to the substitution of a new Project Architect, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Project Architect, 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: Scott Rice, Principal Landscape Architect; Dan Burkhart, Senior Landscape Architect; Robert Collings, Senior Landscape Architect; Allison Rush, Senio Landscape Architect; Analicia Escobar-Gomez, Senior 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.

3.3.5 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 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 Alfredo Banuelos, Parks and Maintenance Director 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. City shall pay to Consultant, for the performance of all Services rendered under this Agreement, the total not to exceed amount of **Three Hundred Thousand Dollars** (**$300,000**) ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

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 "C" 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 "C" 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 "C" 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 phasing and funding schedule provided in Exhibit "B" and the compensation rates indicated in Exhibit "C" 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 architectural 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	Community Works Design Group
303 East “B” Street	7111 Indiana Avenue,
Ontario, CA 91764	Suite 300
Attn: Alfredo Banuelos, Parks & Maintenance Director	Riverside, CA 92504
	Attn: Scott Rice

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 COMMUNITY WORKS DESIGN GROUP

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

COMMUNITY WORKS DESIGN GROUP

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

EXHIBIT "A"
SCOPE OF SERVICES

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: None. On-Call/As-Needed Professional Consulting with rate sheet attached.

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"
FEE SCHEDULES

1. FEE SCHEDULE.

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each phase and the total amount spent against the Total Compensation. Consultant will inform City regarding any out-of-scope work being performed by Consultant for which Consultant intends to seek compensation from City.

2. PHASING/FUNDING SCHEDULE.

Progress payments towards Total Compensation shall never exceed the following percentages of Total Compensation as of the phase indicated:

Initial Planning Phase:	_____ percent (%____)
Schematic Plan Phase:	_____ percent (%____)
Design Development Phase:	_____ percent (%____)
Final Working Drawings & Specifications Phase:	_____ percent (%____)
Construction Contract Documents Phase:	_____ percent (%____)
Bid Phase:	_____ percent (%____)
Construction Phase:	_____ percent (%____)
As-Built Drawings Phase:	_____ percent (%____)
Warranty Period Phase:	_____ percent (%____)

Phasing/Funding Schedule to be provided if/when needed. Currently, this is not applicable

EXHIBIT "C"
COMPENSATION RATES AND REIMBURSABLE EXPENSES

1. HOURLY COMPENSATION RATES.

ATTACHMENT - 1
2023/24 HOURLY RATE SCHEDULE
COMMUNITY WORKS DESIGN GROUP

RATES EFFECTIVE JANUARY 1, 2023 – JUNE 30, 2024

Principal Landscape Architect's time at the fixed rate of:	$215.00 per hour
Principal Certified Access Specialist (CASp)'s time at the fixed rate of:	$215.00 per hour
Certified Access Specialist (CASp)'s time at the fixed rate of:	$195.00 per hour
Senior Landscape Architect's time at the fixed rate of:	$175.00 per hour
Certified Water Auditor's time at the fixed rate of:	$175.00 per hour
Certified Irrigation Designer's time at the fixed rate of:	$175.00 per hour
Senior Project Manager's time at the fixed rate of:	$160.00 per hour
Construction Manager's time at the fixed rate of:	$160.00 per hour
ISA Certified Arborist's time at the fixed rate of:	$160.00 per hour
FAA Part 107 sUAS Remote Pilot's time at the fixed rate of:	$160.00 per hour
Project Manager's time at the fixed rate of:	$145.00 per hour
Landscape Designer's time at the fixed rate of:	$130.00 per hour
Design Assistant's time at the fixed rate of:	$ 75.00 per hour
Professional Staff's time at the fixed rate of:	$ 75.00 per hour

2. REIMBURSABLE EXPENSES.

When incurred, the following project expenses will be billed at a cost plus 15% administrative fee in addition to the above professional services fee:

- **PRINTING, PLOTTING, COPYING, SCANNING, PHOTOGRAPHY, GRAPHIC EXPENSES;**
- **DELIVERY, SHIPPING AND HANDLING OF DOCUMENTS;**
- **PERMITS, PLAN CHECK, INSPECTION DOCUMENTS;**

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 15% Owner shall have the authority to review and approve the rates of any such consultants.

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

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

CITY OF ONTARIO

AS-NEEDED PROFESSIONAL CONSULTANT SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this __ day of _____, 2024, by and between the City of Ontario ("City") and **SWA Group Inc.**, a California corporation with its principal place of business at 2200 Bridgeway Blvd., Sausalito, CA 94965 ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain as-needed professional consulting services required by the City on an on-call basis on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional consulting services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional consulting services for the City Owned Parks and Landscape On-Call Project(s) ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional consulting services necessary for the Project on an on-call basis ("Services"). The City will issue individual Task Orders that more particularly describe the Services to be performed by Consultant during the term of this Agreement. No Services shall be performed by Consultant unless authorized by a fully executed Task Order in the form provided by the City as set forth in Exhibit "D." The terms of each Task Order constitute full and final compensation for the Services set forth therein.

The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, the task order(s) issued pursuant to this Agreement, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from the date set forth in the first paragraph above to June 30, 2027, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The City may, at its sole option, extend the term of this Agreement for not to exceed two (2) additional one (1) year terms.

3.2 Responsibilities of Consultant.

3.2.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant 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 Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Neither City, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall 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.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference which may be more particularly defined in Task Orders issued pursuant to this Agreement.. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

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

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows:

Sean O'Malley (License No. CA 3286) to act as the Managing Principal, Steve Rydzon, Principal in Charge (License No. 6038), Daniel Dobson, Associate Principal (License No. CA 6935); Lovisa Kjerrgren, Associate Principal (License No. CA 6986); Joseph Hsu, Associate (License No. 6603) and Chris Anderson, Associate Landscape Designer.

3.2.5 City's Representative. The City hereby designates Alfredo Banuelos, or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Work or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Work or change the Consultant's total compensation subject to the provisions contained in Section 3.3 of this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.2.6 Consultant's Representative. Consultant hereby designates Sean O'Malley (License No. CA 3286), or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

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

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant represents and warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. 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. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If Consultant performs any work knowing it to be contrary

to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees, agents, and volunteers 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.

3.2.10 Insurance.

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

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

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office “occurrence” form CG 0001, or the exact equivalent, with limits of not less than $1,000,000 per occurrence and no less than $2,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions.

(B) Automobile Liability Insurance: (1) a Personal Automobile Liability policy for the Consultant's own vehicle "stipulating Automobile Liability Insurance with a limit of not less than $1,000,000 each accident"; or (2) a non-owned auto endorsement to the Commercial General Liability policy if Consultant uses vehicles of others (e.g., vehicles of employees).

(C) Workers’ Compensation/Employer’s Liability: Workers’ Compensation Insurance, as required by the State of California and Employer’s Liability Insurance with a limit of not less than $1,000,000 per accident for bodily injury and disease. If Consultant has no employees or agents, Consultant shall not be required to maintain Workers’ Compensation Insurance. However, in the event that Consultant hires employees or agents during the term of this Agreement, Consultant shall obtain and maintain Workers’ Compensation/Employer’s Liability Insurance in accordance with this Section.

(D) Professional Liability (Errors & Omissions): Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant’s profession with limits of not less than $1,000,000 per claim and in aggregate. Covered professional services shall specifically include all work to be performed under the Agreement. If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this agreement.

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

(A) Commercial General Liability and Pollution Liability:

(1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

(2) Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Consultant shall provide endorsements in the form of ISO CG 20 10 and 20 37 (or endorsements providing the exact same coverage) to effectuate this requirement.

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

(B) Automobile Liability:

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

(C) Professional Liability (Errors & Omissions):

(1) Cancellation: Required insurance policies shall not be canceled or materially changed until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(D) Worker's Compensation:

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

(2) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the City, its officials, officers, employees, agents, and volunteers.

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

3.2.10.5 Waiver of Subrogation. All policies of Commercial General Liability and Automobile Liability insurance shall contain or be endorsed to waive subrogation against 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 grants to City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that

may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. Consultant shall require similar written express waivers and insurance clauses from each of its subconsultants.

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

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

3.2.10.8 Failure to Maintain Coverage. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced immediately so as to avoid a lapse in the required coverage, 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 effective upon notice.

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

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

3.2.10.11 Claims Made Policies. If any of the required policies provide coverage on a claims-made basis:

(A) The Retroactive Date must be shown and must be before the effective date of the Agreement or the beginning of work under this Agreement.

(B) Such insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of all services under this Agreement.

(C) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the effective date of the Agreement, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of all services under this Agreement.

3.2.10.12 Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. The Consultant shall be compensated if the changes increase the insurance cost.

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

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions, where applicable, shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, 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.

3.2.12 Water Quality Management and Compliance.

3.2.12.1 Storm Water Management. Storm, surface, nuisance, or other waters may be encountered at various times during the Services. Consultant hereby acknowledges that it has investigated the risk arising from such waters, and assumes any and all risks and liabilities arising therefrom.

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

requirements of the City, and any other water district, 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.

3.2.12.3 Standard of Care. Consultant represents and warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in Section 3.2.12.2 of this Agreement. Consultant further represents and warrants that it, its employees and subcontractors have or will receive adequate training, as determined by the City, regarding these requirements as they may relate to the Services.

3.2.12.4 Liability for Non-compliance.

(A) Indemnity: Failure to comply with laws, regulations, and ordinances listed in Section 3.2.12.2 of this Agreement is a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Consultant agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Services, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(B) Defense: City reserves the right to defend any enforcement action or civil action brought against the City for Consultant's failure to comply with any applicable water quality law, regulation, or policy. Consultant hereby agrees to be bound by, and to reimburse the City for the costs associated with, any settlement reached between the City and the relevant enforcement entity.

(C) Damages: City may seek damages from Consultant for delay in completing the Services caused by Consultant's failure to comply with the laws, regulations and policies described in Section 3.2.12.2 of this Agreement, or any other relevant water quality law, regulation, or policy.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed One Hundred Thousand Dollars ($100,000) without written approval of the City Council or City Manager as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges thereon. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein.

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

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City. For agreements authorized by the City Manager or a Department Head, the City Manager may approve Extra Work in accordance with the City's current purchasing policy. Any additional work in excess of this amount, or if the City Council approved the original agreement, shall be approved by the City Council.

3.3.5 Rate Increases. In the event that this Agreement is renewed pursuant to Section 3.1.2, the rate set forth in Exhibit "C" may be adjusted each year at the time of renewal as set forth in Exhibit "C."

3.4 California Labor Code Provisions.

3.4.1 Prevailing Wage Law. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Moreover, as required by Labor Code 1860, Consultant shall secure the payment of compensation to Consultant's employees in accordance with the provisions of Labor Code Section 3700. Consultant shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Agreement from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. In the alternative, Consultant may view a copy of the prevailing rates of per diem wages at the City. 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. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4.2 Registration. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations, Consultant shall maintain registration for the duration of the project and require the same of any subconsultants, and this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Notwithstanding the foregoing, the 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.

3.4.3 Labor Compliance; Stop Orders. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be the Consultant's sole responsibility to evaluate and pay the cost of complying with all labor compliance

requirements under this Contract and applicable law. Any stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant that affect Consultant's performance of Work, 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 subject to any applicable liquidated damages 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.

3.5 Accounting Records.

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

3.6 General Provisions.

3.6.1 Termination of Agreement.

3.6.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. In the event that Consultant is in default under this Agreement, City will give Consultant notice of the default giving rise to its intent to terminate the Agreement for cause, and Consultant shall have five (5) days to cure such default. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

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

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

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

Consultant: SWA Group, a California corporation
570 Glenneyre Street
Laguna Beach, CA 92651-2453
Attn: Sean O'Malley, Managing Principal

City: City of Ontario

303 East "B" Street
Ontario, CA 91764
ATTN: Alfredo Banuelos

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.

3.6.2 Ownership of Materials and Confidentiality.

3.6.2.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

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

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

3.6.2.4 City Provided Information. Consultant may reasonably rely on the accuracy of City-provided information provided to Consultant. However, it shall notify the City if it notes any inconsistency or inaccuracy in such information.

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

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

3.6.5 Indemnification.

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

3.6.5.2 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.

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

3.6.7 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

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

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

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

3.6.11 Assignment or Transfer. Consultant 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.

3.6.12 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

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

3.6.14 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

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

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

3.6.17 Prohibited Interests. Consultant represents 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 represents and 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. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

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

Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.6.19 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.

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

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

3.7 Independent Contractors and Subcontracting.

3.7.1 Use of Independent Contractors and Subcontractors. Consultant is aware of statutory and case law regarding classification of workers as independent contractors, including California Labor Code Section 2775 and *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal.5th 903 (2018). To ensure that Consultant is in compliance with the California Labor Code, Consultant shall only provide the Services through its employees. Consultant may not provide the services through any independent contractor, subcontractor or subconsultant ("Contractor(s)") unless approved by the City. Consultant represents and warrants that all personnel who perform the Services on Consultant's behalf are Consultant's employees, and that Consultant complies with all applicable laws, rules and regulations governing its employees, including, but not limited to, the California Labor Code, Unemployment Insurance Code and all applicable Industrial Welfare Commission Wage Orders. City shall have the right to audit Consultant's compliance with this Paragraph; upon City's request, Consultant shall provide within five (5) business days documents sufficient to demonstrate its compliance with this Paragraph including, but not limited to, W4s, itemized wage statements, employee handbooks, and time cards for any of Consultant personnel who provides the Services. Any provisions in this Agreement which provide, imply or suggest that Consultant may use Contractors to provide the Services are controlled by and intended to be consistent with this Paragraph. In the event that City authorizes Consultant to use a Contractor, Consultant shall enter into a written agreement with the Contractor, which must include all applicable provisions of the Agreement, including a restriction on the Contractor's use of further independent contractors, subcontractors or subconsultants without the City's prior consent.

3.7.2 Prior Approval Required. Consultant 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.

[SIGNATURES ON FOLLOWING PAGE]

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

SWA Group

By: _____
Gerdo Aquino
CEO

By: _____
Margaret Leonard
Secretary / Controller

EXHIBIT "A"

SCOPE OF SERVICES

CONSULTANT SHALL RENDER THE FOLLOWING SERVICES UPON A TASK ORDER FOR SUCH SERVICES BEING EXECUTED:

1. GENERAL REQUIREMENTS.

1.1 Basic Services. Consultant agrees to perform all the necessary professional landscape architectural 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: civil engineering, soils engineering, geotechnical services, hazardous waste or toxic substances engineering, asbestos, construction, or other SERVICES not included in Consultant's on-call project proposal.

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, 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 landscape architectural concept ("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 the Project in a single-line drawing, and shall include all revisions required by City or by any federal, state, regional or local agency having jurisdiction over the Project. All landscape 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 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 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 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 landscape architectural and 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 landscape architectural 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 subconsultants hired by Consultant, 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 subconsultants 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"

SCHEDULE OF SERVICES

[TO BE ESTABLISHED IN EACH TASK ORDER]

EXHIBIT "C"

COMPENSATION

1. HOURLY COMPENSATION RATES.

Managing Principal	$375
Principal in Charge	$290
Associate Principal	$220
Associate	$185
Field Specialist	$210
Landscape Design Staff	$140

2. REIMBURSABLE EXPENSES

THE FOLLOWING AT COST PLUS 10%:

- Copies of drawings
- In-house prints & plots
- Reprographic services
- Reports or documents furnished/prepared in connection with the contracted work
- Parking
- Car rental (if needed for City tours)
- Shipping expenses other than first class mail

Private automobile travel billed at the IRS-allowable rate at the time of traveling

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 not to exceed 20% in excess actually and reasonably incurred. Owner shall have the authority to review and approve the rates of any such consultants.

EXHIBIT "D"

TASK ORDER FORM

SAMPLE TASK ORDER NO. ____

This Task Order No. ____ ("Task Order") is entered into this ___ day of _____, 20___, by and between City of Ontario ("City") and SWA Group, a California corporation ("Consultant").

RECITALS

A. On or about _____, 20___ the City and Consultant executed a [***INSERT NAME OF AGREEMENT***] ("Agreement").

B. The Agreement provides that the parties would enter into a Task Order to make changes to or authorize certain work set forth in the Scope of Services (as defined in the Agreement). The purpose of this Task Order is to make changes to or authorize work on the terms and conditions set forth herein.

NOW, THEREFORE, the parties hereto hereby agree:

1. The Consultant is directed to perform the work listed on Exhibit "1" attached hereto and by this reference incorporated herein ("Task Order Work").

2. The amount to be paid by the City to Consultant for the Task Order Work shall be in accordance with the unit prices listed in Exhibit "1." In no event shall Consultant shall be paid an amount in excess of _____ for work authorized pursuant to this Task Order.

3. Consultant shall complete the Task Order Work no later than _____ calendar days from issuance of this Task Order.

4. Consultant acknowledges that the compensation (time and cost) set forth herein comprises the total compensation due for the work defined in this Task Order. The signing of this Task Order acknowledges full mutual accord and satisfaction for the work and that the stated time and/or cost constitute the total equitable adjustment owed the Consultant as a result of the authorized work.

5. Except as amended or supplemented herein or in previous task orders, the terms and conditions of the Agreement shall remain in full force and effect. Notwithstanding the immediately preceding sentence, the Agreement shall be interpreted in a manner consistent with the intent of this Task Order.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR TASK ORDER NO. ___

IN WITNESS WHEREOF, the City and Consultant have caused this Task Order No. ____ to be executed as of the day and year first above written.

SWA Group		CITY OF ONTARIO	
By:	_____	By:	_____
Name:	_____	Name:	_____
Its:	_____	Its:	_____

CITY OF ONTARIO *Agenda Report* **June 18, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Vivian Quintana Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Bonnie Tam, Gina Gomez Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 12

SUBJECT: **A MAINTENANCE SERVICES AGREEMENT WITH GUARANTEED JANITORIAL SERVICES, INC. FOR CUSTODIAL MAINTENANCE SERVICES AT VARIOUS CITYWIDE LOCATIONS**

RECOMMENDATION: That the City Council authorize the City Manager or his designee to execute a Maintenance Services Agreement with Guaranteed Janitorial Services, Inc., of Chino, California, to provide Custodial Maintenance Services for a total contract amount not-to-exceed $1,888,790 for up to five (5) years.

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

FISCAL IMPACT: The recommended contract award to Guaranteed Janitorial Services, Inc. is for $359,748 per year plus contingency of $17,987, for a total of $1,079,244 plus a contingency in an amount of $53,962 for a total contract amount of $1,133,206 over a three-year term. Two (2) one-year extensions may be exercised at the City's sole discretion for an additional contract amount of $719,604 plus a contingency in an amount of $35,980 for a total contract amount not-to-exceed $1,888,790 over a five-year term. The Fiscal Year 2024-25 Adopted Budget includes appropriations in the Facility Maintenance Fund for Custodial Maintenance Services at various citywide locations.

BACKGROUND & ANALYSIS: The City has historically deployed a balance of in-house custodial staff supplemented by outside contractor services. This staffing model ensures that regular service needs are covered by core City Staff while allowing for fluctuations in workload to be managed by contract service providers. This eliminates any cyclical hiring due to separation of employees that may otherwise occur. The scope of work provides for regularly scheduled custodial maintenance services at the following facilities:

Anthony Munoz Community Center	Dorothy A. Quesada Community Center
Armstrong Community Center	Ovitt Family Community Library
208 W. Emporia-Community Improvement	Ontario Senior Center
De Anza Community Center	Westwind Community Center

In addition, the contract includes a weekend day porter at the following facilities:

Anthony Munoz Community Center	Ontario Police Department - Main Building
City Hall Annex	Ontario Police Department - Mills Substation
Dorothy A. Quesada Community Center	Ontario Senior Center
C-Block Parking Structure	Westwind Community Center
Ovitt Family Community Library	

In May 2024, the City solicited bids for Bid No. 1791 for Custodial Maintenance Services. Five (5) responses were received, four (4) responses met the bid criteria and pricing for all services and one (1) was deemed non-responsive. The bid results are summarized below:

Name	**Location**	**Amount**
Guaranteed Janitorial Services, Inc.	Chino, CA	$359,748
JJ Property Maintenance Network, Inc.	Pasadena, CA	$440,879
Merchants Building Maintenance	Pomona, CA	$491,515
JoncoWest, LLC	Corona, CA	$563,997
BMS Staffing Services, Inc	Los Angeles, CA	Invalid

Guaranteed Janitorial Services, Inc., of Chino, California, submitted a bid that met all the required specifications with a total contract cost of $1,079,244, over a three-year term. Based on the proposal, credentials, pricing, and favorable reference checks, Staff recommends awarding the Maintenance Services Agreement to Guaranteed Janitorial Services, Inc. for Custodial Maintenance Services at various citywide locations.

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
MAINTENANCE SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered as of _____, by and between the City of Ontario, a municipal corporation organized under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City") and **Guaranteed Janitorial Services, Inc.**, a **Corporation**, with its principal place of business at **13039 Eleventh St, Chino CA 91710** ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain maintenance services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing **Custodial Maintenance** services 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 the plans of City.

2.2 Project.

City desires to engage Contractor to render such services for the **Custodial Maintenance Services** project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

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

3.1.2 Term. The term of this Agreement shall be from **July 1, 2024 to June 30, 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. Contractor shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines. The parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Compensation.

3.2.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **One Million Seventy-Nine Thousand Two Hundred Forty-Four Dollars and Zero Cents ($1,079,244)** without written approval of City's Manager. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2.2 Payment of Compensation. Contractor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies 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 approved charges thereon.

3.2.3 Deductions. City may deduct or withhold, as applicable, from each progress payment an amount necessary to protect City from loss because of: (1) stop payment notices as allowed by state law; (2) unsatisfactory prosecution of the Services by Contractor; (3) sums representing expenses, losses, or damages as determined by the City, incurred by the City for which Contractor is liable under the Agreement; and (4) any other sums which the City is entitled to recover from Contractor under the terms of the Agreement or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the City to deduct any of these sums from a progress payment shall not constitute a waiver of the City's right to such sums.

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

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

3.3 Responsibilities of Contractor.

3.3.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor 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 Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor 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. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.3.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

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

3.3.4 City's Representative. The City hereby designates **Vivian Quintana, Facilities Maintenance 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 Agreement except for increasing compensation. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.3.5 Contractor's Representative. Contractor hereby designates **Martha E. Ortiz, Administrator** or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor'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 portions of the Services under this Agreement.

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

3.3.7 Standard of Care; Performance of Employees. Contractor 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. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor 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, Contractor 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 Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-contractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.3.8 Period of Performance.

3.3.8.1 Contractor shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Contractor shall perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be provided separately in writing to the Contractor. Contractor agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such completion schedule or Project milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the sum of **Eight Hundred Twenty-One Dollars with Zero Cents ($821)** per day for each and every calendar day of delay beyond the Performance Time or beyond any completion schedule or Project milestones established pursuant to this Agreement.

3.3.8.2 Neither City nor Contractor 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 Contractor and its subconsultants, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the Services and Agreement.

3.3.8.3 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 Contractor to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

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

3.3.10 Laws and Regulations; Employee/Labor Certifications.

3.3.10.1 Compliance with Laws. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work

knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor 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. Contractor 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

3.3.10.2 Employment Eligibility; Contractor. By executing this Agreement, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. 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 Contractor. Contractor 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. Contractor 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. Contractor 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 Contractor's compliance with the requirements provided for in Section 3.3.10 or any of its sub-sections.

3.3.10.3 Employment Eligibility; Subcontractors, Sub-subcontractors and Consultants. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.3.10.1.

3.3.10.4 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Contractor verifies that they are a duly authorized officer of Contractor, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in Sections 3.3.10.1 or 3.3.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Contractor under Section 3.3.10.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.3.10.5 Equal Opportunity Employment. Contractor 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. Contractor shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.3.10.6 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Contractor 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. Contractor 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 Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

3.3.10.7 Water Quality.

(A) To the extent applicable, Contractor'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 Colorado River 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.

(B) 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 Contractor or City to penalties, fines, or additional regulatory requirements. Contractor 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 Contractor's non-compliance with the laws, regulations and policies described in this Section, unless such non-compliance is the result of the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(C) Training. In addition to any other standard of care requirements set forth in this Agreement, Contractor 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. Contractor 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 Contractor with a list of training programs that meet the requirements of this paragraph.

3.3.11 Insurance.

3.3.11.1 Time for Compliance. Contractor shall not commence Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all

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

3.3.11.2 Minimum Requirements. Contractor 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 Contractor, its agents, representatives, employees or subcontractors. Contractor 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:

(A) 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.

(B) Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability:* $2,000,000 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 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 per accident for bodily injury or disease. Defense costs shall be paid in addition to the limits.

(C) 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, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. 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 Contractor or the City may withhold amounts sufficient to pay premium from Contractor payments. In the alternative, the City may suspend or terminate this Agreement.

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

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

(A) 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 Contractor, 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 Contractor'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 Contractor's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth in Section 3.3.11.2(B), 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 3.3.11.3(A).

(B) 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 Contractor or for which the Contractor 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 Contractor'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 Contractor'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 3.3.11.2(B), 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 3.3.11.3(B).

(C) 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 Contractor.

(D) 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.

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

3.3.11.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor 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 Contractor shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.3.11.6 Subcontractor Insurance Requirements. Contractor 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 Contractor, the City may approve different scopes or minimum limits of insurance for particular subcontractors. The Contractor 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.

3.3.11.7 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.

3.3.11.8 Verification of Coverage. Contractor 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.

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

3.3.12 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor 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 lifesaving 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.

3.3.13 Bonds.

3.3.13.1 Performance Bond. If required by law or otherwise specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.3.13.2 Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.3.13.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

3.3.13.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.3.14 Work Site.

3.3.14.1 Inspection Of Site. Contractor shall visit sites where Services are to be performed and shall become acquainted with all conditions affecting the Services prior to commencing the Services. Contractor shall make such examinations as it deems necessary to determine the condition of the work sites, its accessibility to materials, workmen and equipment, and to determine Contractor's ability to protect existing surface and subsurface improvements. No claim for allowances–time or money–will be allowed as to such matters after commencement of the Services.

3.3.14.2 Field Measurements. Contractor shall make field measurements, verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents, including any plans, specifications, or scope of work before commencing Services. Errors, inconsistencies or omissions discovered shall be reported to the City immediately and prior to performing any Services or altering the condition.

3.3.15 Loss and Damage. Contractor shall be responsible for all loss and damage which may arise out of the nature of the Services agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Services until the same is fully completed and accepted by City.

3.3.16 Warranty. Contractor warrants all Services under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Contract or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Services or non-conformance of the Services to the Contract, commence and prosecute with due diligence all Services necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the work (or work of other contractors) damaged by its defective Services or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor's obligation hereunder to correct defective work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

3.4 Labor Code Requirements.

3.4.1 Prevailing Wages. Contractor 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, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor 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 Contractor's principal place of business and at the project site. Contractor 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 shall be mandatory upon the Contractor and all subcontractors 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.

3.4.2 Registration/DIR Compliance. If the Services are being performed as part of an applicable "public works" or "maintenance" project, and if the total compensation is $15,000 or more, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, as applicable.

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

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

3.5 Termination of Agreement.

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

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

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

3.6 Indemnification.

3.6.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor 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 Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's Services, the Project 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, Contractor's indemnity obligation shall not apply to such loss or damage which is caused by the sole or active negligence or willful misconduct of the City.

3.6.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of City's choosing and at Contractor'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, Contractor 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. Contractor 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. Contractor 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. Contractor'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.

3.7 General Provisions.

3.7.1 Accounting Records. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor 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. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.7.2 Independent Contractors and Subcontracting.

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

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

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

Contractor:

Guaranteed Janitorial Service, Inc.
13039 Eleventh St
Chino, CA 91710
Attn: Martha E Ortiz, Administrator

City: City of Ontario
303 East "B" Street
Ontario, CA 91764
Attn: Vivian Quintana, Facilities Maintenance Manager

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

3.7.4 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, Contractor 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 Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

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

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

3.7.7 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project.

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

3.7.9 Assignment or Transfer. Contractor 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.

3.7.10 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 Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

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

3.7.12 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.7.13 No Third Party Beneficiaries. Except to the extent expressly provided for in Section 3.5.7, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

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

3.7.15 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor 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 Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor 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.

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

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

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

3.7.19 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 NEXT PAGE

SIGNATURE PAGE FOR MAINTENANCE SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND GUARANTEED JANITORIAL SERVICES, 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

GUARANTEED JANITORIAL SERVICES, INC.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

EXHIBIT "A"

PROPOSED SCOPE OF SERVICES

CITY OF ONTARIO
SPECIFICATIONS FOR CUSTODIAL MAINTENANCE SERVICES

I. COMPENSATION, FEES, PAYMENTS, REIMBURSEMENT AND EXTRA WORK

A. Fees and Payments

1. Compensation, Payment of Compensation, Reimbursement of Expanses and Extra Work are described in the Maintenance Service Agreement (MSA) Section 3.3.

2. Invoices shall be sent to:

City of Ontario - Public Works Agency

Attention: Municipal Services

1425 S. Bon View Ave.

Ontario, CA 91761-4406

The invoice shall include the contract number, City purchase order number, period of service, and price. Price shall be at the stated cost in the MSA.

II. RESPONSIBILITIES

A. Bidder Responsibilities

1. The contractor shall provide all management, supervision, labor, equipment, supplies and paper products necessary to accomplish custodial and floor care services at City facilities as defined in the Maintenance Service Agreement and this document.

2. Square footage of each facility is provided for reference purposes only. Potential bidders should verify square footage and other facility characteristics by personal on-site inspection. Square footage is not the primary indicator of required service levels; bidders should read the specific facility requirements.

3. By submitting the Bidder acknowledges it has performed inspections of each work site and has evaluated the extent to which the physical condition thereof will affect the contract services to be provided. Bidder, if awarded the contract, accepts the premises in their present physical condition and agrees to make no demands upon the City for any improvements or alterations thereof.

4. Site examinations are permitted as explained in the RFP Section II, Letter H.

5. Bid Bond is explained in the RFP.

B. City Responsibilities

1. The City of Ontario will provide all potential bidders with the following:

- A mandatory meeting with City representatives with site visits to several locations
- Will provide access to other facilities upon request and by appointment so bidders can perform more detailed inspections for bid purposes. During such inspections, bidder representatives may discuss facility characteristics with on-site City staff, but only the designated contract administrator can make decisions regarding the service levels specified in this bid.
- Contract administration and contact information
- To communicate changes, modifications, or updates to all potential bidders during the bidding process and review period.

III. PERFORMANCE REQUIREMENTS

A. These performance standards are the City's expectations of cleanliness, but are not meant to replace or supersede the latest industry standards or materials and equipment manufacturers' recommendations.

B. Each of the Contractor's Employee's shall be equipped with the necessary equipment to carry out the proper performance of the cleaning as specified. This equipment shall be available and/or in possession of the Contractor's Employee's at all times while carrying out their duties.

C. Performance Standards:

Service Level (Acceptable Quality): The level of services as outlined in these Specifications shall consistently be maintained.

1. **Blinds:** Blinds shall be cleaned using tools or equipment designed for cleaning these types of furnishings.
   Standard: Blinds shall be free of dust and give an overall clean appearance.
2. **Metal/Stainless Steel Surfaces:** Cleaning metal surfaces requires the removal of mineral deposited, surface spots, fingerprints, smudges, etc., with the appropriate cleaner/polish.
   Standard: Surfaces will present a clean uniform shining appearance free of all mineral deposits, soil, marks, smudges, streaks.
3. **Damp Mopping:** Damp mopping requires the use of a flat microfiber wet mop system (preferred method) or string type mop (24 oz.) that have been mechanically wrung/squeezed to remove excess solution for purposes of removing light soil, dirt, liquid or other foreign material from a floor that does not require the complete mopping of the area or when the area is not soiled sufficiently to require wet mopping. **Standard: A** damp mopped floor shall be free of all dirt, debris soil, liquids or other foreign material; **with no streak marks.** All splash marks/spots on walls and furniture/fixtures shall be removed before completion of the damp mopping task. All items moved to accomplish this task shall be returned to their original positions.
4. **Disinfecting:** Disinfecting is the application of a germicidal solution to surfaces to kill or neutralize 99.9% of the material containing or supporting the growth of bacterial/viral organisms. Surfaces should remain "wet" for a minimum of 10 minutes or per manufacturer's recommendation.

Standard: Surfaces shall be as free of material containing living bacteria, viruses, or other contaminations that are capable of causing infections.

5. **Dispenser Cleaning and Service:** Dispenser cleaning/service requires damp wiping dispensers with a disinfectant, checking/refilling of all towel, toilet tissue, seat covers, soap, or any other dispensers which may be identified by the Contract Administrator.
   Standard: Dispensers will be disinfected, present a clean uniform shining appearance free of all soil, marks, smudges, streaks and will have an adequate supply of the applicable dispensed products.
6. **Dusting:** Normal or low dusting includes all levels up to eight (8) feet or the height of common/office spaces. All high dusting will be above eight (8) feet high.
   Standard: Items shall be free of any laden airborne materials, streaks, smudges, and cobwebs. Laden airborne matter shall be removed by either mechanical, chemical, or manual means. Devices, which merely displace or redistribute the matter, such as feather dusters, will not be used, unless treated to attract and hold the matter. All items moved to accomplish this task shall be returned to their original position.
7. **Entrance Glass:** Cleaning of glass is cleaning the inside and outside glass surfaces and the surrounding boundary of the applicable entrance area.
   Standard: Glass shall be free of streaks, smudges, fingerprints, etc. Surfaces surrounding the entrance shall be free of dirt, dust, fingerprints, and have a clean appearance.
8. **Entrance Mats:** Carpet mats shall be vacuumed with a commercial vacuum before spot cleaning. Entrance mats made of rubber or polyester shall be swept, shaken, vacuumed or washed. Entrance mats shall be lifted, moved to remove soil and moisture underneath, and replaced.
   Standard: There shall be no dirt left on surfaces.
9. **Fixtures:** Cleaning of restroom & kitchen fixtures and fountains require the removal of dust, dirt, debris, spots, stains, and smears from sinks, slop sinks, toilets, urinals, and fountains with a germicidal solution.
   Standard: Fixtures will be disinfected and there shall be no dust, dirt, spots or debris on the fixtures.
10. **Furniture:** Cleaning of furniture and tables requires dusting and/or damp wiping.

    Standard: Surfaces are to be free of dirt, dust, debris, marks, and film.
11. **Upholstered Furniture Deep Cleaning:** Cleaning requires the removal of odors, dirt, soil, debris, liquid stains, or other foreign materials from Upholstered Furniture using the best cleaning method available with a cleaning solution which will not discolor or damage the fabric.
    Standard: Upholstered Furniture cleaning shall remove completely any odor, dirt, soil, debris, liquid stains, or other foreign materials from fabric areas and return the finish of the fabric to clean condition.
12. **Glass Windows and Mirrors:** Glass window and mirror cleaning requires the removal of dirt, soil, smudges, fingerprints, and other foreign material. This includes glass on doors, partitions, or any other items, which may consist in whole or part of glass, or similar material including mirrors.

Standard: Glass surfaces shall be free of all dirt, soil, smudges, streaks, smears, film, or any other foreign substances. All excess spray/solution must be removed from any surrounding trim or surfaces and glass/window surfaces shall have a uniformly bright appearance. Any items moved to accomplish this task must be returned to their original positions.

13. **Policing:** Policing is picking up paper, trash, empty bottles, containers, and other discarded materials; spillages, accidents, plumbing failures, and inclement weather. **Standard:** Area(s) being policed shall be free of debris. Area(s) shall present an overall clean appearance.
14. **High Speed Buffing/Polishing:** Buffing/Polishing requires the use of a high-speed; 1500 RPM of higher floor machine and a clean pad designed for polishing or buffing. **Standard:** The floor should have a "non-yellowed" high-gloss appearance.
15. **Receptacle Cleaning:** Cleaning and disinfecting receptacles is defined as wiping or washing containers with a germicidal solution and replacing plastic liners. **Standard:** Receptacles shall be considered properly cleaned when both the inside and outside are clean, free of stains, dried refuse and odors, and a plastic liner replaced, if necessary.
16. **Refrigerators:** Requires cleaning outside surfaces, especially the handles with a germicidal detergent solution.
    Standard: Outside surfaces shall present an overall clean appearance.
17. **Restrooms:** Cleaning of restrooms requires the removal of trash, cleaning of floors, fixtures, urinals, toilets, receptacles, faucets, handles, dispensers, walls, partition stalls, and doors with a germicidal solution. All glass, chrome, and stainless-steel surfaces shall be cleaned and buffed to a shine. Some restrooms are equipped with waterless urinals; they are to be cleaned with manufacturer-recommended products and cartridges serviced or replace on a regular basis. **Standard:** Restrooms shall be considered properly cleaned when floors are mopped and fixtures, urinals, toilets, waste receptacles, wash basins, faucets, handles, dispensers, partition stalls, and doors are cleaned with a germicidal solution. All glass, chrome, and stainless-steel surfaces shall be cleaned and buffed to a shine, waste receptacles emptied, and dispensers refilled.
18. **Scrubbing:** Machine scrubbing requires the use of mechanized scrubbing/ vacuum machines to be more aggressive than wet mopping; this may include large areas such as multi-purpose rooms, hallways, lobbies, garages, ramps, or similar large areas which would otherwise require extensive labor to complete in a reasonable time period. **Standard:** Machine scrubbing shall be held to the same quality standard as wet mopping and shall remove all scuff marks.
19. **Shower Curtain/Doors:** Cleaning of curtains/doors requires washing curtains with an approved cleaner that will eliminate fungus and green mold.
    Standard: Washed with a germicidal solution with no mold and/or odor remaining.
20. **Shower Stalls:** Cleaning of shower stalls is defined as the removal of soap scum, mold, stains, and odors from surfaces (including grout) and cleaning the entire enclosure with a germicidal solution or steam cleaning.

Standard: Walls, ceiling, enclosures, grout, and fixtures are cleaned with a germicidal solution and metal surfaces are buffed to shine. There shall be no mold and/or odor remaining.

21. **Smoking Area:** City of Ontario facilities are designated as smoke-free facilities. Ash butt containers outside any buildings shall be cleaned by Contractor's employees once per week as well as the designated area where smoking is allowed to be free from cigarette butts and debris.
    Standard: Smoking area is to be policed and free of cigarette butts and debris.
22. **Spot Cleaning of Upholstered Furniture and Carpets:** Spot shall be any soiled area Spot cleaning requires the removal of dirt, soil, debris, liquids, stains, or other foreign materials from carpeted areas which can be accomplished by cleaning only the immediately affected area where cleaning the whole area would not be necessary. Spot cleaning may be accomplished by any of the methods contained herein and as dictated by the circumstances of the soiling. Carpet spots shall be removed immediately with an approved carpet cleaning solution in such a manner, which will not leave rings or discoloration.
    Standard: Spot cleaning shall remove completely any evidence of the soiling which necessitated the cleaning, and return the finish of the area affected to its pre-soiled condition without evidence of occurrence or cleaning.
23. **Carpet Cleaning:** Cleaning requires the removal of dirt, soil, debris, liquids, stains, or other foreign materials from carpeted areas which can be accomplished by cleaning only. Carpet cleaning shall be to manufactures recommendations or if not available by an industry standard method. Carpet cleaning shall be completed with an approved carpet cleaning solution in such a manner, which will not leave rings or discoloration. **Standard:** Carpet cleaning shall remove completely any dirt, soil, debris, liquids, stains, or other foreign materials from carpeted areas and return the finish of the area to clean condition.
24. **Sweeping or Dust Mopping:** Sweeping/dust mopping requires the removal of loose dirt, dust, debris, and other foreign material through either manual or mechanized methods, as appropriate for the location and situation. For gym floors use a properly treatment microfiber dust mop
    Standard: A swept/dust mopped area shall be free of all loose dirt, grit, lint, dust, debris, or other foreign material with no build up in corners, crevices, under or around furniture parts. All items moved to remove dirt shall be returned to their original location.
25. **Trash/Waste Removal:** Trash/waste removal requires the collection of all materials, which have been placed into appropriate containers, and taken to a specified site for disposal.
    Standard: All trash/waste and soiled liners shall be removed from all trash/waste containers, and a new trash/waste liner shall be fitted into all such containers.
26. **Recycle Removal:** Recycle removal requires the collection of all materials, which have been placed into appropriate containers, and taken to a specified site for discarding.
    Standard: All recycled material shall be removed from all recycled containers, and a new liner shall be fitted into such containers as necessary.

27. **Vacuuming:** Vacuuming requires the mechanical removal of loose dust, dirt, soil, debris, and other foreign material from carpeted floors and other items (e.g. couches, chairs, walls, curtains/drapes), which require this method of cleaning.
Standard: There shall be no evidence of any dust or dirt or any other loose foreign material. Materials shall be left in a lint free state. All items moved during this process shall be returned to their original positions.

28. **Wet Mopping:** Wet mopping requires the removal of built-up dirt, soil, liquids, or other foreign materials from a floor using a flat microfiber wet mop system (preferred method) or a clean string type mop (24 oz.) and mechanically wrung out so as to have sufficient neutral detergent and water solution or disinfecting detergent and water solution. This shall include rinsing if required or as recommended by the detergent manufacturer.
Standard: A wet mopped floor shall be free of all dirt, debris, soil, liquids, or other foreign material. It will present a uniform appearance free of streaks, smudges, heel marks, or any other marks, which can be reasonably removed through this cleaning method. All splash marks/spots on walls and furniture/fixtures shall be removed before completion of the wet mopping task. All items moved to accomplish this task shall be returned to their original positions.

D. The performance standards are to be applied to all cleaning tasks listed in the specifications. If a specific task is not mentioned in the performance standards, the contractor will still be expected to perform the task to a level consistent with the industry standards. Sub-standard performance may be cause to enforce the deficiency correction clause; Section VI.

E. Deficiencies such as broken glass, doors, dispensers, lights etc. noticed during the course of normal work are to report to the City Custodial Supervisor or his designee by phone at (909) 395-2454 or email at CMunguia@ontarioca.gov; include a full description and location of the deficiency and pictures if emailing. A list of alternate contacts will be provided when agreement is awarded.

F. Within the performance specifications, where a specific service is designated to be performed at a pre-determined interval (e.g. "every six months"), and is accompanied by the phrase "or as needed", that phrase shall mean the service is to be performed at least as often as specified, but may be performed more often at the direction of the City. Such supplemental effort is subject to additional reasonable compensation and shall be mutually agreed to prior to initiating the work.

G. A copy of the performance specifications for each facility will be kept in the janitorial closet at each building. Cleaning crews will check off each task as it is completed. Electronic copies of the specifications will be provided to the successful bidder, who will make copies at its own expense for this purpose. A copy of the completed checklists will be provided to the City.

H. All cleaning equipment shall be of the type necessary to properly perform the work, and shall be maintained in proper operating condition. Contractor shall have a sufficient inventory of equipment and supplies so as to avoid any interruption or delay in service due to breakdowns or shortages. Before making a bid award, the City reserves the right to request a list of equipment and supplies that would typically be used to complete the work as specified.

IV. SCOPE OF WORK

The items in this section will be required in all City facilities except where noted that additional work at specific locations are needed. All tasks are to be completed to the standards list above in Section I or to the latest industry standards.

A. DAILY SERVICE:

1 Common Areas to include but not limited to all office space, hallways, stairways, lobby areas, exit stairwells, patio areas, employee lounges, workout/fitness rooms, elevators, meeting and conference rooms.

- Sweep all hard-surfaced floors with treated dust mop
- Damp mop all hard-surfaced floors
- Vacuum carpet areas
- Remove spillage spots and gum from carpets
- Empty all waste containers, recyclable containers, and place in pick-up areas
- Dust and wipe clean desks, chairs, counters and all office furniture
- Spot clean walls, doors and door hardware
- Clean all entry glass, doors, and metal thresholds
- Clean all glass on interior doors and including metal thresholds
- Clean all security glass/plexiglass including metal thresholds
- Clean and polish drinking fountains
- Return furniture to a neat and orderly position
- Replace wastebaskets liners as necessary
- Remove all black marks from gym floors, dust mop and damp mop floor
- Sweep or vacuum stairs, clean hand rails, and wet mop hard-surfaced stairs
- Clean elevators
- Clean and disinfect fitness equipment
- Sweep and pick-up outside trash and empty trash containers at entrance approaches

2 Restrooms, Showers and Locker Rooms

- Remove trash and empty sanitary napkin dispensers, replace liners
- Replenish soap, towel, tissue, and seat cover dispensers
- Clean and disinfect sinks, toilet bowls, urinals, control valves, showers, partitions, counter tops, shelves, dispensers, and floors
- Clean and polish chrome and stainless steel
- Remove soap scum from showers, shower curtains
- Clean mirrors

3 Kitchens and Employee Lunchrooms

- Clean and disinfect all table tops and counter tops
- Clean chairs, metal surfaces, sinks and dispensers
- Replenish all soap(s) and paper towel dispensers
- Empty trash and recycle containers replacing liners on appropriate receptacles
- Clean stove tops, hoods, refrigerator doors, kitchen appliances, cupboard doors, and microwave ovens
- Clean under all raised kitchen appliances

4 Gymnasiums and Multi-Purpose Room Floors

- Use a properly treatment microfiber dust mop

5. Outside Trash and Recycle Bins/Enclosures
    - Clean up trash from ground in and around these areas

6. WEEKLY SERVICES

1. Common Areas
    - Dust/wipe baseboards, ledges, and windowsills
    - High speed buff all waxed hard surface floors
    - Light scrub of all vinyl non-waxed hard surface floors
    - Dust picture frames, shelves, bookcases, file cabinets, and window blinds
    - Perform high dusting of high reach areas including partition tops, door tops, clocks, vents and air return grills and diffusers
    - Remove spider webs
    - Wipe clean vinyl/leather chairs and couches
    - Vacuum upholstered furniture
    - Clean and disinfect trash/recycle containers
    - Dust ledges, and windowsills in the Atrium Areas at PD
    - Clean Windows in the Atrium Areas at PD
2. Restrooms, Showers and Locker Rooms
    - Wash and scrub down walls, partitions and floors
    - Dust and Wipe down ceilings
    - Pour clean water down all floor drains to prevent sewer gases
    - Dust and wipe clean lockers (including the top)
3. Gymnasiums and Multi-Purpose Rooms
    - Maintain all wooden floors per manufacture/refinishing company's recommend treatment or an agreed upon method (Bi-Weekly)
    - Facilities with gym floors used for basketball and other games; the refinishing company recommends using a weighted bar with a treated towel that is dragged across the floor (Quick-Pass by Hillyard). The cleaning crew will use the Quick Pass nightly and spot mop floor as needed.
    - Vinyl floor care - Scrubber should be used with the chemicals recommend by the manufacturer.

4. CUSTODIAL CLOSETS/STORAGE AREAS

1. The contractor shall keep all tools, equipment, and supplies left on the job site in the janitor's storage closets or assigned storage area and not in any other parts of the buildings. These areas shall be kept in a neat and orderly manner at all times and shall be part of the regular inspection.

2. Any and all flammable liquids shall be kept off premises. Rags and other flammable solids shall be kept in State Fire Marshall approved containers. All containers shall be labeled as to contents. If any toxic materials must be stored, they shall be labeled with name and proper antidotes. All buckets, wringers, mop sinks, and other tools and equipment shall be kept clean and free of objectionable odors. The floor/wall sinks, whether porcelain or stainless steel are to be kept clean and polished at all times. Some custodial closets/storage areas may contain water heaters and/or electrical panels. All materials MUST be stored at least 36" away from these water heaters or panels.

V. INSPECTION

A. One of our Agencies Departmental Key Performance Indicators is the inspections of our Facilities as so all inspection will be scored using a City rating system.

B. During the contract period the Custodial Services Supervisor or his assigned designee will conduct bi- weekly inspections along with the Contractors' Supervisor of the facilities; further random inspections will be conducted by the Custodial Supervisor.

C. Inspections are based on the differing criteria for each site. Total there are 39 qualifying factors; not all sites have all factors. Example; most sites do not have a gym floors, elevators (etc.) to be evaluated. Each sites scoring is based only on the factors of that site.

D. Scoring; Evaluation of completed work is based on the Performance Standards and the Scope of Work listed above. The scoring will be detailed with the awarded firm.

E. Any deficiencies will be handled as described below.

VI. DEFICIENCY CORRECTION/NON-PERFORMANCE

A. In the event the work specified in this contract is either not performed or found to be unsatisfactory, the contractor will be given four (4) hours from time of notification to remedy the deficient work.

B. If the contractor fails to correct the deficient work within the four (4) hour time period, the City reserves the right to have the work performed by an alternate source at contractor expense.

C. If the contractor fails to correct the deficient work within the four (4) hour time period and the City opts not to have the work performed by another source, the City will deduct the value of the work from the monthly invoice.

D. In cases where the City deducts the value of the work from the monthly invoice, the amount deducted shall be one (1) percent of the base monthly cost, per occurrence per day, until the contractor corrects the deficiency.

E. Non-adherence to any of the specifications and regulations made clear in this contract, including the items below, will be considered deficient work and subject to penalties identified in the Maintenance Services Agreement.

1. Non-compliance to any City specified and/or Contractor supplied job schedules, without proper notification of disruption in schedule;

2. Non-responsiveness to requests for such items as, time sheets, inspection reports, management system access;

3. Failure to show completed/scheduled tasks within three days of scheduled completion date through any means; paper or electronic.

F. Non-compliance to Performance Standards per Section 111, Letter C, Numbers 1 to 29 at repeated locations.

G. The City may employ other methods to determine deficient work as stated above in letter A. These methods are not limited to communication with City employees or the Public, the use of video monitoring security cameras, unannounced inspections during cleaning shifts, and other such means as the City deems necessary.

H. Repeated instances of non-performance by the contractor will be grounds for termination of the contract by the City per Maintenance Services Agreement section 3.4.

VII. RECYCLABLES

A. Contractor shall comply with State Recycling Mandates in the placement of collected recyclable material in the appropriate containers. Contractor shall place, maintain, and empty recyclable materials from the specified containers from all City government offices and buildings on a daily basis or on the same schedule of refuse removal. **All recyclable materials collected by the contractor must be placed into the correct receptacle for appropriate handling.** This material shall not be mixed with refuse or other material that would cause contamination of such material. The material for collection includes but is not limited to commingled recycling of paper, aluminum, glass, and plastic.

B. Fluorescent tubes, and batteries are not to be placed in with the recycled materials or trash containers, these items are to be collected and/or stored for proper disposal; contact the Custodial Maintenance Supervisor.

C. Contractor shall notify City staff of any issues regarding this program in order to maintain the integrity.

VIII. BACKGROUND/SECURITY CHECKS

A. All contractor personnel engaged in the performance of the work as part of the work in the CMA shall be employees of the contractor and as such shall be warranted to possess sufficient experience and have security clearance to perform this work.

B. Security Clearances shall be as follows:

1. All contractor personnel working in any City facility (excluding the Police sites) are required to have passed a basic "Livescan" background check. This check may take up to two weeks to be completed. A list of employees scheduled to work as part of this agreement with the Livescan results are to be provided 2 weeks prior to the agreement start date for City approval. Contractor will have a sufficient number of employees who have passed the Livescan process to ensure coverage in cases of vacations, sickness, or employee terminations.

C. Police Department Facilities Security Requirements. All contractor personnel working in an Ontario Police facility will be required to undergo a City Police background check. The Police Department will supply the contractor with all necessary documents and schedule interviews upon Notification of Intent to Award. Contractor's staff with this clearance shall be one (1) supervisor and the number of employees required to maintain the facilities plus two (2) additional employees to ensure coverage in cases of vacation, sickness, employee termination or additional work.

1. The background check will consist of the following:

a. A brief personal history statement which includes at least three references, last employer, relatives etc.

b. Fingerprints

c. A neighborhood canvass (investigator talking to their neighbors)

d. A pre-polygraph questionnaire, may be subject to a polygraph examination on a case-by-case basis

e. Criminal History

2. The contractor shall submit a new cleared employee list when personnel is added or deleted and as requested by the City.

3. The contractor further agrees to remove from the City's premises any employee who, in the opinion of the City, does not meet minimum security requirements.

IX. BUILDING SECURITY/KEYS

A. The contractor shall not admit anyone into a building who is not a direct employee of the contractor and not actively engaged in the performance of the work. This prohibition includes custodians' children or other relatives. At no time shall the contractor or its employees enter areas of a facility not specifically included in this contract for custodial services.

B. Some facilities are protected by limited access security systems. The contractor will schedule all work in these facilities to be done after City staff opens the facilities.

C. The City will issue keys/security cards as necessary for access to work areas. The contractor shall assume full responsibility for any theft or loss of these items and shall pay for the replacement and/or re-keying all locks operated by these keys. Keys shall not be duplicated. Keys shall not be loaned to unauthorized personnel.

D. Keys for all custodial work in the Police Station will be checked out from the Watch Commander.

E. Certain facilities have alarm and lighting controls with which contractor's personnel will need to become familiar. Contractor agrees to make its employees available for training on such systems during the City's normal business hours.

X. EMPLOYMENT STANDARDS - EMPLOYEES

A. Staff: The contractor agrees the custodial services covered by this contract shall be performed by employees who have been hired in conformity with the contractor's personnel selection policies, and trained to perform to accepted janitorial standards, practices, and these specifications. The contractor agrees to provide the City with a steady, dependable work force while keeping employee turnover to a minimum. Contractor is to submit their personnel hiring polices as part the submittal.

B. Conduct: No person shall be employed for this work who is found to be incompetent, disorderly, troublesome, under the influence of alcohol or drugs, who fails or refuses to perform the specified work properly or acceptably, or is otherwise objectionable, has been found have said or used inappropriate language or actions as determined by the City of Ontario. Anyone found to be objectionable will be prohibited from working in City facilities immediately. The contractor shall not allow any employee under the influence of alcohol or drugs on the premises or in any buildings. The contractor shall not allow the use or presence of alcohol or drugs on the premises or in any buildings. Smoking is prohibited in all City facilities at all times.

C. Training: The contractor shall have an ongoing training program for its entire staff. The contractor shall provide only personnel that have been fully trained for the performance of this work. Supervisors shall have been trained in supervision as well as technical training in janitorial services. The City may ask for copies of training materials and verification of employee training.

D. Identification:

1. Company and personal recognition requirement:

- All personnel shall wear uniforms, furnished by the contractor with their names or their ID badge with their name visible at all times when performing work as part of this agreement.
- Staff assigned to PD sites must be in uniform with their City issued ID visible at all times when performing work as part of this agreement.
- The contractor and/or supervisory personnel may wear badges in lieu of uniforms. Badges must be visible at all times.

XI. SUPERVISION AND COMMUNICATION

The contractor shall provide to the City, upon execution of this agreement, the names and contact information of the contractor's supervisory personnel responsible for execution of work in this agreement. A designated supervisor shall be on site and available at the times when the majority of the contractor's crews are working in the City to respond personally to requests for information or instructions concerning the execution of the work. If for any reason the supervisor must leave the job site during the execution of the work, a foreman/lead person shall be designated and able to make decisions on behalf of the supervisor. The supervisor and the foreman/lead person shall be able to communicate in both written and verbal English. Under no circumstances will the designated on-site supervisor be considered a "working supervisor" who is assigned routine cleaning duties. The supervisor's primary duty will be to inspect the cleaning staff's work and ensure any deficiencies are corrected in a timely manner. The supervisor may provide limited cleaning services to correct a deficiency or on an emergency basis, (for example, if a regular custodian must leave work due to illness, and a timely replacement cannot be found).

During times when the designated supervisor is not on-site, the contractor will ensure a supervisor is available to respond to calls within two hours. The designated supervisor and the City must be able to effectively communicate with all employee or teams performing services under this contract; preferably through a company supplied cell phone. This allows communication with their base of operation, City staff and emergency services.

XII. SAFETY/ENVIRONMENTAL

A. All material, parts, equipment, and chemicals used or furnished pursuant to the specifications of this contract shall be in compliance with the laws and regulations of OSHA, the State of California and the City of Ontario.

B. The contractor shall provide to the City the Safety Data Sheet (SDS) for all the chemicals that will be used in the performance of their work prior to the start of this agreement. A binder with the SDS for all chemicals per location will be located in all area they are stored. The contractor is responsible for updating the information in the binders as City approved items are added or deleted. At no time shall a chemical be used or stored at a City facility that has not been approved.

C. The contractor agrees to take all reasonable steps and precautions to prevent accidents and preserve the life and health of their own staff, the public or any property damage during the performance and execution of the work in this contract.

D. Where applicable, contractor will comply with all federal, state, regional, and local environmental regulations in force during the period of this contract, (e.g. NPDES compliance for washing down facility exteriors). This includes requirements to maintain a LEED (Leadership in Energy and Environmental Design) building.

E. Any violation of these rules and requirements, unless promptly corrected as directed by the City, shall be grounds for termination of this contract.

F. Contractor shall use a minimum of 75 percent "Green Seal" certified cleaning products and paper products with similar certifications.

XIII. HOURS OF WORK

A. The contractor and any subcontractor shall comply with and be governed by the laws of the State of California having to do with all laborers, workers, or custodians employed in the execution of this contract.

B. The work shall generally be performed between the hours of 6:00 p.m. to 3:00 a.m., Monday through Saturday at most facilities. Some weekend, after hours, or evening work may be required to accomplish tasks such as carpet cleaning, hard floor maintenance and window cleaning.

C. The City reserves the right to inspect or audit the contractor's time cards and other documentation to verify the number of hours worked at City facilities. Such inspection may take place during contractor's normal business office hours without prior notification from the City.

D. For emergency and after-hours needs, the contractor will respond with an appropriate crew within four hours of being notified. The contractor will provide a 24-hour toll-free telephone number for after-hours contact purposes.

E. The successful bidder will be required to submit its crew schedule for the City's approval before commencing work. The schedule will include the days and hours when the crews will be in each building and the number of custodians per crew. It should be noted that where service times are specified in these contract documents, they must be followed due to facility programming needs. If there are scheduled extended hours events at any facility that conflict with custodial crews the City will notify the contractor primary contact(s) by email.

XIV. ADDITIONAL WORK AND DAY PORTER

A. There may be requirements for additional or day porter services above and beyond the routine daily service levels. Multiple porters may be required to complete these services. Although it is not anticipated this will be requested very often, an hourly rate for additional/day porter services is to be quoted as a line item and on Bid Forms 1 B, 28, 38.

B. Weekend Day Porter Services will require staff with PD security clearance. It is anticipated to be a six (6) hour shift on Saturday and a four (4) hour shift on Sunday with the responsibilities to included but not limited to the tasks listed below.

1. A specific schedule will be prepared by the Custodial Services Supervisor for regular and event generated tasks. The daily schedule will be supplied and is to be completed and returned to the Custodial Services Supervisor.

2. Normal tasks will include inspecting and service all restrooms, especially all public use restrooms, to ensure floors and walls remain clean and free from debris, and to ensure all dispensers are full.

3. Report any general maintenance deficiencies directly to the Custodial Services Supervisor at 909-957-2192. The Day Porter shall give a full description and location of the work required. On occasion, the Day Porter may be required to assist City personnel with cleaning up during or after an emergency.
   Weekend day porter services is to be quoted as a line item on Bid Forms 3A, 38 & 3C

XV. RESTRICTIONS

A. General: Contractor personnel shall not disturb papers on desks, open drawers or cabinets, use radios, computers, television sets, coffee pots, microwave ovens, stoves, or refrigerators, nor shall they tamper with any personal or City property.

B. Telephones: Telephones shall not be used by the contractor or its employees for personal or business reasons with the following exceptions:
1. report the need of medical aid, fire or the need for law enforcement, press 9-911.

C. Radios: The contractor or its employees shall not use any of the City's two-way radios or special telecommunications equipment under any circumstances. No exceptions will be made to this rule. Violation is grounds for immediate termination of any of the contractor's employees that is so engaged.

D. City Equipment: The contractor or its employees shall not use any of the City's equipment such as: printers, copy machines, fax machines or computers at any time.

XVI. TRANSPORTATION

The contractor shall provide whatever transportation is necessary to move its employees or supplies among facilities.

XVII. MEETINGS

Contractor will make available representatives with the proper authority to discuss contractual issues for periodic or urgent meetings with the City's contract management staff, at regular intervals or when deemed necessary by the City to ensure contract compliance.

XVIII. MANAGEMENT SYSTEMS/TRACKING

A. If available, submit an example of your company's Management System.

B. Management System should be able to monitor all tasks at the intervals in the MSA with completion dates and the ability to view job schedules on a continuous basis.

C. If no management system is available the Contractor shall provide the City within the first week of each month the finalized monthly work scheduled, which is to be located in the Janitor's closet, with completed tasks dates at the intervals in the MSA from the prior month. A monthly schedule will be given to the awarded firm.

XIX. PAPER PRODUCTS, SOAP DISPENSERS, VENDING MACHINES AND WATERLESS URINALS

A. The contractor will provide paper and soap products to the quality of the brands listed in section XXI; the City will determine if the provided items are of equal quality.

B. Feminine Supplies: Most women's restrooms contain feminine hygiene product vending machines. The custodial contractor will supply and maintain all machines. Any money collected as a result of sales will become the property of the custodial contractor. Contractor will supply the jail with feminine supplies as needed.

XX. UNSANITARY CONDITIONS

A. Contractor shall clean and dispose of any unsanitary and unsightly conditions caused by persons and animals using the public areas at the City's request, or as the Day Porters or night crews find during regular cleanings. Such areas shall be immediately cleaned during his or her regular work and at any time such a condition is identified by either the Contract Administrator or other occupants/users of the facilities.

B. Crews are to be trained in the removal of unsanitary items.

C. In the event any custodian finds hazardous materials, toxic chemicals, or highly corrosive liquids, he or she shall immediately notify their Supervisor, City's representative and the Fire Department for removal.

XXI. SITE LOCATIONS, HOURS AND FACILITIES REFERENCE LIST

(Contractor shall be responsible for accurate paper product estimates)

1. Code Enforcement & Housing {14,976 sq. ft.)
Business Hours: Monday - Friday 7:30 am to 5:30 pm.

Restrooms	5
Kitchens	2
Sinks	11
Urin&#65533;s	4
Toilets	9
Multifold towel dispensers	10
Roll towel dispensers	1
Percentage of Carpet	85%
Percentage of Vinyl Flooring	10%
Percentage of Ceramic Flooring	5%

Paper Products Approximate Monthly Usage

Paper	2.5 cases- 2010 Kleen line White
towels Roll	Multifold 1 case- 02001 Scott Roll Towel
Towels	

Toilet Paper Seat	1 case - 13217 Scott Roll Bathroom Tissue
Covers Hand	¾ case- Health Gards Green 5000
HandSoap Liquid	3 gallons- Dial Basic

2. Police Department (167,735 sq. ft.)
Business Hours: 24 Hour Facility

Restrooms	14
Kitchens	8
Sinks	56
Urinals	12
Toilets	31
Multifold towel dispensers	28
Roll towel dispensers	18
Percentage of Carpet	65%
Percentage of Vinyl Flooring	25%
Percentage of Ceramic Flooring	10%

Paper Products Approximate Monthly Usage

Paper towels Roll	15 cases - 2010 Kleenline White Multifold 14
Towels Toilet	case - 02001 Scott Roll Towel
Paper Seat	15 cases - 13217 Scott Roll Bathroom Tissue
Covers Hand	5 cases- Health Gards Green 5000
Soap Liquid	3 gallons - Dial Basic

3. Police Department Sub-Station Mills Mall (1,000 sq. ft.)
Business Hours: Daily 11:30 am to 9:00 pm.

Restrooms	2
Kitchens	1
Sinks	3
Urinals	0
Toilets	2
Multifold towel dispensers	2
Roll towel dispensers	2
Percentage of Carpet	90%
Percentage of Vinyl Flooring	10%

Paper Products Approximate Monthly Usage

Paper towels Roll	1 cases - 2010 Kleenline White Multifold
Towels Toilet	½ case - 02001 Scott Roll Towel
Paper Seat	1 case - 13217 Scott Roll Bathroom Tissue
Covers Hand	¾ case- Health Gards Green 5000
Soap Liquid	1 gallon- Dial Basic

4. Senior Center (13,964 sq. ft.)
Business Hours: Monday - Friday 8:00 am to 8:00 pm

Restrooms	4
Kitchens	1
Sinks	9
Urinals	2
Toilets	9
Multifold towel dispensers	5
Roll towel dispensers	2
Percentage of Carpet	20%

Percentage of Vinyl Flooring	20%
Percentage of Ceramic Flooring	20%
Percentage of Wood Flooring	40%

Paper Products Approximate Monthly Usage

Paper towels Roll	4 cases - 2010 Kleenline White Multifold
Towels Toilet	1 case - 02001 Scott Roll Towel
Paper Seat	4 cases - 13217 Scott Roll Bathroom Tissue
Covers Hand	1 case - Health Gards Green 5000
Soap Liquid	3 gallons - Dial Basic

Library (65,DDD sq. ft.)

Business Hours: Sunday 1pm - 4pm
Monday - Thursday 1Dam - 9pm
Friday - Saturday 1Dam - 6pm

Restrooms	8
Kitchens	2
Sinks	18
Urinals	4
Toilets	15
Multifold towel dispensers	8
Roll towel dispensers	5
Percentage of Carpet	75%
Percentage of Vinyl Flooring	10%
Percentage of Ceramic Flooring	15%

Paper Products Approximate Monthly Usage

Paper towels Roll	8 cases - 2010 Kleenline White Multifold
Towels Toilet	2 case - 02001 Scott Roll Towel
Paper Seat	15 cases - 13217 Scott Roll Bathroom Tissue
Covers Hand	4 cases - Health Gards Green 5000
Soap Liquid	3 gallons - Dial Basic

6. De Anza Teen Center (23,683 sq. ft.}

Business Hours: Monday-Friday 8:DD am - 8:DD pm
Saturday 12:DD pm--4:DD pm

Restrooms	5
Kitchens	1 15
Sinks	3 10
Urinals	7
Toilets	2
Multifold towel dispensers	10%
Roll towel dispensers	40%
Percentage of Carpet	10%
Percentage of Vinyl Flooring	10%
Percentage of Waxed Vinyl Flooring	30%
Percentage of Ceramic Flooring	
Percentage of Wood Flooring	

Paper Products Approximate Monthly Usage

Paper towels	13 cases - 2010 Kleenline White Multifold
Roll Towels	2 cases- 02001 Scott Roll Towel
Toilet Paper	6 cases 13217 Scott Roll Bathroom Tissue
Seat Covers	1.5 cases - Health Gards Green 5000

Hand Soap Liquid	3 gallons - Dial Basic

7. Dorothy Quesada Center (18,154 sq. ft.)
Business Hours: Monday - Friday 8:00 am - 8:00 pm
Saturday As Required

Restrooms	5
Kitchens	1
Sinks	10
Urin♦s	1
Toilets	9
Multifold towel dispensers	6
Roll towel dispensers	0
Percentage of Carpet	5%
Percentage of Vinyl Flooring	85%
Percentage of Ceramic Flooring	10%

Paper Products Approximate Monthly Usage

Paper towels Roll	8 cases - 2010 Kleenline White Multifold
Towels Toilet	0 case - 02001 Scott Roll Towel
Paper Seat	2 cases - 13217 Scott Roll Bathroom Tissue
Covers Hand	1 case - Health Gards Green 5000
Soap Liquid	3 gallons - Dial Basic

8. Anthony Munoz Center (13,894 sq. ft.)
Business Hours: Monday - Friday 8:00 am - 8:00 pm
Saturday 11am-3pm

Restrooms	4
Kitchens	1
Sinks	5
Urinals	2
Toilets	5
Multifold towel dispensers	4
Roll towel dispensers	1
Percentage of Carpet	10%
Percentage of Vinyl Flooring	80%
Percentage of Ceramic Flooring	10%

Paper Products Approximate Monthly Usage

Paper towels Roll	1.5 cases - 2010 Kleenline White Multifold
Towels Toilet	2 cases- 02001 Scott Roll Towel
Paper Seat	1 case - 13217 Scott Roll Bathroom Tissue
Covers Hand	½ case - Health Gards Green 5000
Soap Liquid	1 gallon - Dial Basic

9. Westwind Center (26,260 sq. ft.)
Business Hours: Monday-Friday 8:00 am - 8:00 pm
Saturday 11:00 am-4:00 pm

Restrooms	4
Showers	2
Kitchens	1
Sinks	19
Urinals	5

Toilets	11
Multifold towel dispensers	11
Roll towel dispensers	0
Percentage of Carpet	10%
Percentage of Vinyl Flooring	20%
Percentage of Ceramic Flooring	20%
Percentage of Wood Flooring	50%

Paper Products Approximate Monthly Usage

Paper towels Roll	2 cases - 2010 Kleenline White Multifold
Towels Toilet	0 case - 02001 Scott Roll Towel
Paper Seat	2 cases - 13217 Scott Roll Bathroom Tissue
Covers Hand	¾ case - Health Gards Green 5000
Soap Liquid	3 gallons - Dial Basic

10. Armstrong Community Center (13,500 sq. ft.)
Business Hours: Monday - Friday 8:00 am - 9:30 pm

Restrooms	2
Kitchens	1
Sinks	7
Urinals	1
Toilets	3
Multifold towel dispensers	11
Roll towel dispensers	5
Percentage of Carpet	20%
Percentage of Vinyl Flooring	80%

Paper Products Approximate Monthly Usage

Paper towels Roll	2 cases - 2010 Kleenline White Multifold 2
Towels Toilet	cases- 02001 Scott Roll Towel
Paper Seat	1 case - 13217 Scott Roll Bathroom Tissue
Covers Hand	½ case - Health Gards Green 5000
Soap Liquid	2 gallons - Dial Basic

11. Colony High School Library (14,806 sq. ft.)
Cleaned Bi-Monthly on Sundays

Restrooms	0
Kitchens	1
Sinks	1
Urinals	0
Toilets	0
Multifold towel dispensers	2
Roll towel dispensers	0
Percentage of Carpet	95%
Percentage of Vinyl Flooring	5%

Paper Products Approximate Monthly Usage

Paper towels Roll	1.5 cases - 2010 Kleenline White Multifold
Towels Toilet	0 case - 02001 Scott Roll Towel
Paper Seat	0 case - 13217 Scott Roll Bathroom Tissue
Covers Hand	0 case - Health Gards Green 5000
Soap Liquid	½ gallon - Dial Basic

XXI. LICENSES, INSURANCE AND BONDS

A. The successful bidder shall, at bidders own expense, obtain all necessary permits and licenses, (including a City of Ontario Business License), give all necessary notices, pay all fees required by law, and comply with all laws, ordinances, rules and regulations relating to work and to the preservation of public health and safety. Copies of all such permits and licenses must be provided to and be accepted by the City of Ontario before award of the contract. All appropriate permits and licenses must be maintained during the term of the contract.

B. The successful bidder shall carry and require all subcontractors to carry insurance in limits or amounts not less than listed in the Maintenance Service Agreement. Certificates of Insurance shall be furnished to the City of Ontario and approved by the Risk Management Department before a contract is entered into with the successful bidder.

C. A Bid Bond in the amount of not less than ten percent (10%) of the total bid amount shall accompany each bid.

D. Contractor shall execute and provide to City concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in the contractor's surety firm form approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

E. Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in the contractor's surety firm form approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City. These funds will be used to continue service in the event the contractor fails to comply with the specifications, terms and conditions. If any subcontractors are to be used in the performance of this contract, the subcontractors must furnish their own performance bonds or security checks.

XXII. NON-COLLUSION DECLARATION

All bidders will execute the Non-Collusion Declaration, attachment in bid documents, and return it with their bids. Bids submitted without a properly executed affidavit will be considered non- responsive.

XXI. Mandatory Pre-Bid Meeting

A Mandatory Pre-Bid Meeting and site review to ensure the accuracy of the bid will be conducted on Wednesday, May 1st, 2024 from 11:00 am to 1:00 pm, at 303 E.

B St. Ontario, CA 91764. It is required that all bidders attend the walk-through. Vendors should be prepared to review facilities; it is important that vendors send qualified personnel to participate in this walk-through. The site review will require approximately two (2) hours. A sign-in sheet will be made available to all prospective bidders through the on-line bid system.

BID SCHEDULE NO. 1A

CUSTODIAL MAINTENANCE CONTRACT-REGULAR DAILY SERVICES

INITIAL 3 YEAR CONTRACT

Site Location/ Type	Square Footage	Service Nights	Monthly Cost	Annual Cost	Daily Service Hours
Office Buildings					
Housing/Community Improvement Building E. Emporia St.	14,976	Mon-Fri	$2,472.00	$29,664.00	4.00
Community Centers					
Armstrong Community Center 1265 S. Palmetto Ave.	13,500	Mon-Fri	$3,087.00	$37,044.00	4.25
Anthony Munoz Community Center 1240 W. Fourth St.	13,894	Mon- Sat	$3,386.00	$40,632.00	4.50
DeAnza Community Center 1405 S. Fern Ave.	23,683	Mon-Sat	$3,238.00	$38,856.00	5.00
Dorothy Quesada Community Center 1010 S. Bon View Ave.	18,154	Mon-Sat	$3,190.00	$38,280.00	4.30
Senior Center 225 E. B St.	13,964	Mon-Sat	$2,984.00	$35,808.00	3.85
Westwind Community Center 2455 E. Riverside Dr.	26,260	Mon-Sat	$3,244.00	$38,928.00	4.25
Library					
Ovitt Family Library	65,000	7 days	$6,168.00	$74,016.00	10.00
Total			$27,769.00	$333,228.00	40.15

BID SCHEDULE NO. 2A

CUSTODIAL MAINTENANCE CONTRACT-

OTHER SERVICES INITIAL 3 YEAR CONTRACT

Weekend Day Porter Service*	Hourly	Daily	Annual
Saturday Day Porter Service – 6 -8 hours minimum Police Department, Police Department Mills, City Hall Annex, Ovitt Community Library, Community Centers (excluding Armstrong), C- Block Parking Structure, Homer Briggs Park – Lighting to be turned on.	$36.00	$288.00	$14,976.00
Sunday Day Porter Service – 3- 6 hours minimum Police Department, Police Department Mills, City Hall Annex, Ovitt Community Library & Community Centers (with events scheduled), C- Block Parking Structure, Homer Briggs Park – lighting to be turned on.	$37.00	$222.00	$11,544.00
*Employee would need to have PD Clearance		Total	$26,520.00

*Complete if your company has a minimum hour for day porter work.

Day Porter Service	Hourly	*Minimum Hours
Any Day or time up to 8 hours	$45.00	2.00 HRS

BID SCHEDULE NO. 1B

CUSTODIAL MAINTENANCE CONTRACT-REGULAR DAILY SERVICES

FIRST OPTION YEAR

Site Location/ Type	Square Footage	Service Nights	Monthly Cost	Annual Cost	Daily Service Hours
Office Buildings					
Housing/Community Improvement Building E. Emporia St.	14,976	Mon-Fri	$2,400.00	$28,800.00	4.00
Community Centers					
Armstrong Community Center 1265 S. Palmetto Ave.	13,500	Mon-Fri	$2,998.00	$35,976.00	4.25
Anthony Munoz Community Center 1240 W. Fourth St.	13,894	Mon- Sat	$3,288.00	$39,456.00	4.50
DeAnza Community Center 1405 S. Fern Ave.	23,683	Mon-Sat	$3,144.00	$37,728.00	5.00
Dorothy Quesada Community Center 1010 S. Bon View Ave.	18,154	Mon-Sat	$3,098.00	$37,176.00	4.30
Senior Center 225 E. B St.	13,964	Mon-Sat	$2,898.00	$34,476.00	3.85
Westwind Community Center 2455 E. Riverside Dr.	26,260	Mon-Sat	$3,150.00	$37,800.00	4.25
Library					
Ovitt Family Library	65,000	7 days	$5,988.00	$71,856.00	10.00
Total			$26,964.00	$323,568.00	40.15 HRS

BID SCHEDULE NO. 2B

CUSTODIAL MAINTENANCE CONTRACT-OTHER SERVICES

FIRST OPTION YEAR

Weekend Day Porter Service*	Hourly	Daily	Annual
Saturday Day Porter Service – 6 - 8 hours minimum Police Department, Police Department Mills, City Hall Annex, Ovitt Community Library, Community Centers (excluding Armstrong), C- Block Parking Structure, Homer Briggs Park – Lighting to be turned on.	$36.00	$288.00	$14,976.00
Sunday Day Porter Service – 4 - 6 hours minimum Police Department, Police Department Mills, City Hall Annex, Ovitt Community Library & Community Centers (with events scheduled), C- Block Parking Structure, Homer Briggs Park – lighting to be turned on.	$37.00	$222.00	$11,544.00
*Employee would need to have PD Clearance		Total	$26,520.00

*Complete if your company has a minimum hour for day porter work.

Day Porter Service	Hourly	*Minimum Hours
Any Day or time up to 8 hours	$45.00	2.00 HRS

BID SCHEDULE NO.1C

CUSTODIAL MAINTENANCE CONTRACT-REGULAR DAILY SERVICES

SECOND OPTION YEAR

Site Location/ Type	Square Footage	Service Nights	Monthly Cost	Annual Cost	Daily Service Hours
Office Buildings					
Housing/Community Improvement Building E. Emporia St.	14,976	Mon-Fri	$2,544.00	$30,528.00	4.00
Community Centers					
Armstrong Community Center 1265 S. Palmetto Ave.	13,500	Mon-Fri	$3,177.00	$38,124.00	4.25
Anthony Munoz Community Center 1240 W. Fourth St.	13,894	Mon- Sat	$3,486.00	$41,832.00	4.50
DeAnza Community Center 1405 S. Fern Ave.	23,683	Mon-Sat	$3,333.00	$39,996.00	5.00
Dorothy Quesada Community Center 1010 S. Bon View Ave.	18,154	Mon-Sat	$3,284.00	$39,408.00	4.30
Senior Center 225 E. B St.	13,964	Mon-Sat	$3,072.00	$36,864.00	3.85
Westwind Community Center 2455 E. Riverside Dr.	26,260	Mon-Sat	$3,339.00	$40,068.00	4.25
Library					
Ovitt Family Library	65,000	7 days	$6,348.00	$76,176.00	10.00
Total			$28,583.00	$342,996.00	40.15 HRS

BID SCHEDULE NO. 2C

CUSTODIAL MAINTENANCE CONTRACT-

OTHER SERVICES SECOND OPTION YEAR

Weekend Day Porter Service*	Hourly	Daily	Annual
Saturday Day Porter Service - 6 – 8 hours minimum Police Department, Police Department Mills, City Hall Annex, Ovitt Community Library, Community Centers (excluding Armstrong), C- Block Parking Structure, Homer Briggs Park – Lighting to be turned on.	$36.00	$288.00	$14,976.00
Sunday Day Porter Service – 4 - 6 hours minimum Police Department, Police Department Mills, City Hall Annex, Ovitt Community Library & Community Centers (with events scheduled), C- Block Parking Structure, Homer Briggs Park – lighting to be turned on.	$37.00	$222.00	$11,544.00
*Employee would need to have PD Clearance		Total	$26,520.00

*Complete if your company has a minimum hour for day porter work.

Day Porter Service	Hourly	*Minimum Hours
Any Day or time up to 8 hours	$45.00	2.00 HRS

EXHIBIT "B"

SCHEDULE OF SERVICES

JULY 1, 2024 - JUNE 30, 2027

EXHIBIT "C"

COMPENSATION

NOT TO EXCEED $1,079,244

PERFORMANCE/PAYMENT BONDS ON THE NEXT PAGE

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Ontario (hereinafter referred to as "City") has awarded to _____, (hereinafter referred to as the "Contractor") _____ an agreement for _____ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of _____ DOLLARS, ($_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship, Surety shall undertake and faithfully fulfill all such obligations. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

(1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

(2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

(3) Permit the City to complete the Project in any manner consistent with local, California and federal law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__).

(Corporate Seal)

_____
Contractor/ Principal

By_____

Title_____

(Corporate Seal)

_____
Surety

By_____
Attorney-in-Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

(Attach Attorney-in-Fact Certificate)

Title_____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, $_____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

_____

_____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____

_____

_____

(Telephone number of Surety and Agent or Representative for service of process in California) _____

_____

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____
On _____, 20__, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of Ontario (hereinafter designated as the "City"), has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows:

_____ (the "Project"); and

WHEREAS, the work to be performed by the Principal is more particularly set forth in the Contract Documents for the Project dated _____ ("Contract Documents"), the terms and conditions of which are expressly incorporated by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the City in the penal sum of _____ _____ Dollars ($_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or

attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)_____

Contractor/ Principal

By_____

Title_____

_____

(Corporate Seal) Surety

By_____

Attorney-in-Fact

Title_____

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so much be attached hereto.

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____
On _____, 20__, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

CITY OF ONTARIO

Agenda Report
June 18, 2024

SECTION:
CONSENT CALENDAR

Department: Public Works
Prepared By: Vivian Quintana
Staff Member Presenting: Tito Haes, Executive Director Public Works
Reviewed By: Bonnie Tam, Gina Gomez
Approved By:

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 13

SUBJECT: A GOODS AND SERVICES AGREEMENT WITH CONSOLIDATED ELECTRICAL DISTRIBUTORS FOR THE PURCHASE OF STREETLIGHT POLES AND LUMINARIES

RECOMMENDATION: That the City Council authorize the City Manager or his designee to execute a Goods and Services Agreement with Consolidated Electrical Distributors, of Ontario, California, for a total contract amount not-to-exceed $1,398,485 for up to five (5) years.

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

FISCAL IMPACT: The recommended contract award to Consolidated Electrical Distributors is for a total not-to-exceed contract amount of $839,091 over the three-year term. Two (2) one-year extensions may be exercised at the City's sole discretion for an additional contract amount of $559,394 for a total contract amount not-to-exceed $1,398,485 over a five-year term. The Fiscal Year 2024-25 Adopted Budget includes appropriations in the General Fund for the purchase of Streetlight Poles and Luminaries.

BACKGROUND & ANALYSIS: The Public Works Agency maintains an estimated 14,000 streetlights. It is necessary to maintain an inventory of streetlight poles and luminaries due to unexpected accidents that damage streetlight poles throughout the City.

In May 2024, the City solicited bids for Bid No. 1790 for streetlight poles and luminaires. Three (3) responses were received, one (1) response met the bid criteria and pricing for all items and two (2) did not meet the bid criteria. The bids are summarized below:

Name	Location	Amount
Consolidated Electrical Distributors	Ontario, CA	$279,697
Morgan Ingland, LLC	Morgan Hill, CA	$281,475
Optima Energy, Inc.	Artesia, CA	$311,892

Consolidated Electrical Distributors, of Ontario, California, submitted a bid that met all the required specifications with a total contract cost of $839,091, over a three-year term. Based on the proposal, credentials, pricing, and favorable reference checks, Staff recommends awarding the Goods and Services Agreement to Consolidated Electrical Distributors.

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
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 **Consolidated Electrical Distributors**, a **Corporation** with its principal place of business at **1241 W Brooks St., Ontario, CA 91762** ("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 **Streetlight Poles and Luminaries** 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 **July 1, 2024 to June 30, 2027** 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 "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Eight Hundred Thirty-Nine Thousand Ninety-One Dollars and Zero Cents ($839,091)** without written approval of City's 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 "B" attached hereto and incorporated herein by reference ("Performance time"). Upon request of City, Vendor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Goods and Services. Vendor agrees that if the Goods are not provided and/or

the Services are not completed within the Performance Time, it is understood, acknowledged and agreed that the City will suffer damage.

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

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

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

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

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

4.6 Standard of Care; Performance of Employees. Vendor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Vendor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Vendor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Vendor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of

whatever nature that are legally required to perform the Services, including a City business license, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Vendor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Vendor's failure to comply with the standard of care provided for herein. Any employee of the Vendor or its sub-Vendors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed by the Vendor and shall not be re-employed to perform any of the Services provided under this Agreement.

4.7 Warranty. In addition to all warranties which may be provided by law, Vendor warrants that the Goods delivered hereunder shall, (a) be free from defect of material or workmanship and conform strictly to the specifications, drawings, or sample specified or furnished; (b) conform to drawings, plans, specifications, samples or other descriptions furnished, specified, accepted or approved by City; and (c) be merchantable and fit for the purposes intended. The warranty shall be for a period of one (1) year, or such longer period as provided by a manufacturer's warranty or as agreed to by Vendor and City, from the date of final written acceptance of the Goods by City. This warranty shall survive any inspection, delivery, acceptance, or payment by City of the Goods. Vendor, at its own expense, shall repair or replace, at the option of City, any defective Goods within two (2) business days after receipt of notice from City or within four (4) hours in case of emergency, as determined by City. Vendor also warrants that the Goods are free and clear of all liens and encumbrances whatsoever, that Vendor is conveying good and marketable title to same, and that Vendor owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the Goods. Vendor agrees to indemnify, defend and hold City harmless against any and all third party claims resulting from the breach or inaccuracy of any of the foregoing warranties.

4.8 Reserved.

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

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

and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

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

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

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

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

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

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

4.10.7 Water Quality.

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

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

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

5. PROJECT MANAGEMENT

5.1 City's Representative. The City hereby designates **Vivian Quintana, Facilities Maintenance 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 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 **Brad Mullen, Inside Sales**, 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** 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** 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** 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 lifesaving 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:

Consolidated Electrical Distributors
1241 W Brooks St.
Ontario, CA 91762
City: Attn: Brad Mullen, Inside Sales

City of Ontario
303 East "B" Street
Ontario, CA 91764-4196
Attn: Vivian Quintana, Facilities Maintenance Manager

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

12.2 Subcontracting. Vendor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City.

Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

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

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

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

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

12.7 Assignment or Transfer. Vendor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

12.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Vendor include all personnel, employees, agents, and subcontractors of Vendor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

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

12.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

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

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

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

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

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

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

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

12.18 Federal Provisions When funding for the Services and Goods is provided, in whole or in part, by an agency of the federal government, Vendor shall also fully and adequately comply with the provisions included in Exhibit "D" (Federal Requirements) attached hereto and incorporated herein by reference ("Federal Requirements"). With respect to any conflict between such Federal Requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control.

SIGNATURES ON NEXT PAGE

SIGNATURE PAGE FOR GOODS & SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND CONSOLIDATED ELECTRICAL DISTRIBUTORS

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

CONSOLIDATED ELECTRICAL DISTRIBUTORS

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

EXHIBIT "A"

SCOPE OF SERVICES

Scope of Services

Purchase of Street Poles and Accessories.

Line Items

Discount Terms No Discount

Item #	Item Code	Type	Item Description	UOM	QTY	Unit Price	Line Total	Response	Comment
Street Poles and Accesories							$232,528.0000		
1			Ameron 1-C1-28-F8-G (See Attached City Standard Drawing)	EA	40	$3,368.0000	$134,720.0000	Yes	
2			Ameron 4B1-24 with 8" arm	EA	2	$3,500.0000	$7,000.0000	Yes	
3			Ameron SBR04 Small BasePLTD, Grey Natural Exposed Finish, Aluminum Tenon 2.875 O.D. x 3.25 LG	EA	2	$3,610.0000	$7,220.0000	Yes	
4			Ameron J40150 14" bolt CircleDia., Finish Painted Chevron Gray #RT7005 ,Less A.B. ,Cream Color	EA	3	$7,863.0000	$23,589.0000	Yes	
5			Ameron SPL N 3515 D/15SB ,35', Slip Base with 180 Degree twin Arm Mounts	EA	3	$5,860.0000	$17,580.0000	Yes	
6			Ameron 1C125-Pole BMT OCT 25 LA CITY B/W FINISH	EA	10	$3,428.0000	$34,280.0000	Yes	
7			Ameron 1C614 BASEPLTD RD POLE	EA	3	$2,713.0000	$8,139.0000	Yes	
Luminaires and Other Street Light Parts							$24,939.0000		
8			King KM62-13 Black	EA	3	$4,205.0000	$12,615.0000	Yes	
9			SPRCI ALMWSH-LE070-EVX-L18-CR3-YS11-TRP7P-CU	EA	6	$2,054.0000	$12,324.0000	Yes	
Percent Discount							$0.0000		
10			Percent Off List Price - for Items not on bid sheet	EA	1	$0.0000	$0.0000	Yes	
Miscellaneous Fees							$22,229.9000		
11			Tax (8.75%)	Lot	1	$22,229.9000	$22,229.9000	Yes	
12			Other fees (if applicable)	Lot	1	$0.0000	$0.0000	Yes	

EXHIBIT "B"

SCHEDULE OF SERVICES

JULY 1, 2024 – JUNE 30, 2024

EXHIBIT "C"

COMPENSATION

NOT TO EXCEED $839,091

CITY OF ONTARIO *Agenda Report* **June 18, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Vivian Quintana Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Bonnie Tam, Gina Gomez Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 14

SUBJECT: A GOODS AND SERVICES AGREEMENT WITH SCP DISTRIBUTORS, LLC DBA LINCOLN AQUATICS FOR THE PURCHASE OF SWIMMING POOL CHEMICALS

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute a Goods and Services Agreement with SCP Distributors, LLC dba Lincoln Aquatics, of Concord, California, for a total contract amount not-to-exceed $500,000 for up to five (5) years.

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

FISCAL IMPACT: The recommended contract award to SCP Distributors, LLC dba Lincoln Aquatics, is for $100,000 per year for a total not-to-exceed contract amount of $300,000 over the three-year term. Two (2) one-year extensions may be exercised at the City's sole discretion for an additional contract amount of $200,000 for a total contract amount not-to-exceed $500,000. The Fiscal Year 2024-25 Adopted Budget includes appropriations in the Facility Maintenance Fund for the purchase of swimming pool chemicals.

BACKGROUND & ANALYSIS: The Public Works Agency maintains three (3) swimming pools located at the Anthony Munoz Community Center, Dorothy Quesada Community Center, and Westwind Community Center, and one (1) historic water fountain located at the Museum of History and Art. The purchase of swimming pool chemicals is necessary for the health and safety of pool users, life expectancy of equipment, and regulatory compliance.

In May 2024, the City solicited bids for Bid No. 1789 for swimming pool chemicals. Two (2) responses were received. One (1) response met the bid criteria and pricing for all items and one (1) did not meet the bid criteria. The bids are summarized below:

Name	Location	Amount
SCP Distributors, LLC dba Lincoln Aquatics	Ontario, CA	$31,116
Waterline Technologies, Inc.	Santa Ana, CA	$29,955

SCP Distributors, LLC dba Lincoln Aquatics, of Concord, California, submitted a bid that met all the required specifications with a total contract cost of $300,000, over a three-year term. Based on the proposal, credentials, pricing, favorable reference checks, and having a neighboring facility, Staff recommends awarding the Goods and Services Agreement to SCP Distributors, LLC dba Lincoln Aquatics.

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
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 **SCP Distributors LLC, dba Lincoln Aquatics**, a **Corporation** with its principal place of business at **1848 Arnold Industrial Pl, Concord, CA 94520** ("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 **Swimming Pool Chemical** 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 **July 1, 2024 to June 30, 2027** unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion to renew this Agreement automatically for no more than **Two Additional One-Year Terms.** 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 "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Three Hundred Thousand Dollars and Zero Cents ($300,000)** without written approval of City's 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 "B" attached hereto and incorporated herein by reference ("Performance time"). Upon request of City, Vendor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Goods and Services. Vendor agrees that if the Goods are not provided and/or

the Services are not completed within the Performance Time, it is understood, acknowledged and agreed that the City will suffer damage.

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

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

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

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

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

4.6 Standard of Care; Performance of Employees. Vendor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Vendor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Vendor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Vendor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of

whatever nature that are legally required to perform the Services, including a City business license, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Vendor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Vendor's failure to comply with the standard of care provided for herein. Any employee of the Vendor or its sub-Vendors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed by the Vendor and shall not be re-employed to perform any of the Services provided under this Agreement.

4.7 Warranty. In addition to all warranties which may be provided by law, Vendor warrants that the Goods delivered hereunder shall, (a) be free from defect of material or workmanship and conform strictly to the specifications, drawings, or sample specified or furnished; (b) conform to drawings, plans, specifications, samples or other descriptions furnished, specified, accepted or approved by City; and (c) be merchantable and fit for the purposes intended. The warranty shall be for a period of one (1) year, or such longer period as provided by a manufacturer's warranty or as agreed to by Vendor and City, from the date of final written acceptance of the Goods by City. This warranty shall survive any inspection, delivery, acceptance, or payment by City of the Goods. Vendor, at its own expense, shall repair or replace, at the option of City, any defective Goods within two (2) business days after receipt of notice from City or within four (4) hours in case of emergency, as determined by City. Vendor also warrants that the Goods are free and clear of all liens and encumbrances whatsoever, that Vendor is conveying good and marketable title to same, and that Vendor owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the Goods. Vendor agrees to indemnify, defend and hold City harmless against any and all third-party claims resulting from the breach or inaccuracy of any of the foregoing warranties.

4.8 Reserved.

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

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

and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

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

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

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

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

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

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

4.10.7 Water Quality.

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

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

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

5. PROJECT MANAGEMENT

5.1 City's Representative. The City hereby designates **Vivian Quintana, Facilities Maintenance 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 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 **Debbie Graham, National Accounts and Gov't Bids Salesperson**, 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** 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** 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** 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:

SCP Distributors, LLC dba Lincoln Aquatics
1848 Arnold Industrial Pl
Concord, CA 94520
Attn: Debbie Graham, National Accounts and Gov't Bids Salesperson

City:

City of Ontario
303 East "B" Street
Ontario, CA 91764-4196
Attn: Vivian Quintana, Facilities Maintenance Manager

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

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

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

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

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

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

12.7 Assignment or Transfer. Vendor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

12.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Vendor include all personnel, employees, agents, and subcontractors of Vendor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

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

12.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

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

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

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

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

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

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

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

SIGNATURES ON NEXT PAGE

SIGNATURE PAGE FOR GOODS & SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND SCP DISTRIBUTORS LLC DBA LINCOLN AQUATICS

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

SCP DISTRIBUTORS LLC DBA LINCOLN AQUATICS

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

EXHIBIT "A"

SCOPE OF SERVICES

Scope of Service

Purchase of swimming pool chemical and supplies

Line Items

Discount Terms No Discount

Item #	Item Code	Type	Item Description	UOM	QTY	Unit Price	Line Total	Response	Comment
Chemicals							$28,612.3900		
1			15GAL LIQUID CHLORINE, 1015 (HAS-50-102)	Drum	175	$74.9900	$13,123.2500	Yes	
2			15GAL MURIATIC ACID (HAS-50-101)	Drum	20	$124.9900	$2,499.8000	Yes	
3			53GAL CHLORINE DRUM (HAS-50-109)	Drum	48	$234.9900	$11,279.5200	Yes	
4			25# POOL SEASON SUPER ALGAE DESTROYER (HGH-50-9225)	Bucket	18	$94.9900	$1,709.8200	Yes	That part # is discontinued. Bidding with EZC-50-9225 (same product)
Discount							$0.0000		
5			PERCENT OFF LIST PRICE- FOR ITEMS NOT LISTED ON BID FORM	Percent	1	$0.0000	$0.0000	Yes	
Miscellaneous Fees							$2,503.5800		
6			Tax (8.75%)	Lot	1	$2,503.5800	$2,503.5800	Yes	
7			Miscellaneous Fees	Lot	1	$0.0000	$0.0000	Yes	

EXHIBIT "B"

SCHEDULE OF SERVICES

JULY 1, 2024 – JUNE 30, 2027

EXHIBIT "C"

COMPENSATION

NOT TO EXCEED $300,000

CITY OF ONTARIO *Agenda Report* **June 18, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Utilities Prepared By: Joline Neal 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: 15

SUBJECT: A PROFESSIONAL SERVICES AGREEMENT WITH WEST YOST & ASSOCIATES INC. FOR ON-CALL CROSS-CONNECTION INSPECTION AND TESTING SERVICES

RECOMMENDATION: That the City Council approve and authorize the City Manager, or designee, to execute a one-year Professional Services Agreement with West Yost & Associates Inc., of Davis, California, for on-call cross-connection inspection and testing services in the amount of $250,000 for Fiscal Year 2024-25, with the option to extend the Agreement for up to four successive one-year periods (Fiscal Year 2025-26 to Fiscal Year 2028-29), with up to a 5% increase per Fiscal Year, for a total not-to-exceed amount of $1,250,000.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner

FISCAL IMPACT: The Fiscal Year 2024-25 Adopted Budget includes appropriations from the Water Operating Fund for on-call cross-connection inspection and testing services. The recommended Agreement amount is for a total-not-to-exceed amount of $250,000 for the initial term, which will be from July 1, 2024 to June 30, 2025. At the City's discretion, up to four additional one-year extensions may be executed. Should the City exercise all four successive one-year extensions, the projected total amount to be spent for the five years (July 1, 2024 to June 30, 2029) would amount to a not-to-exceed of $1,250,000. Actual expenses will be based on listed prices and the actual need for services, consistent with the City Council approved budgets for the Water Operating Fund. Prices for the first year are fixed, and after the first year, any proposed increases in fees will be negotiable annually but will not exceed 5% per year. There is no impact to the General Fund.

BACKGROUND & ANALYSIS: On December 19, 2023, the California State Water Resources Control Board (State Water Board) adopted new regulations on cross-connection control and backflow prevention. These regulations require the City to inspect commercial and industrial facilities and test recycled water locations for the presence of cross-connections. Cross-connections are physical connections made between a drinking water system and a non-drinking water supply, such as recycled water. Backflow prevention devices are designed to prevent water used at commercial and industrial facilities from coming back into the drinking water system and contaminating it.

The City is required to ensure its drinking water system is protected from any contamination that could be introduced through a cross-connection, and that backflow prevention devices are installed at commercial and industrial facilities and recycled water locations; this also ensures the protection of individual customers utilizing recycled water. These services will support staff in inspecting 40,000 plus drinking water connections and testing over 550 recycled water locations to meet new state regulations and requirements. Additional services include preparing reports for state approval to use recycled water for landscape irrigation, agricultural farming, and new development construction.

On February 20, 2024, the City requested competitive bids for on-call cross-connection inspection and testing services. Over 1,000 vendors were notified through PlanetBids. The request for services was based on the ability to perform:

- recycled water system inspections and testing at multi-family residences, landscape irrigation premises, and commercial and industrial locations where drinking water is also used on-site,
- prepare state required reports to receive state approval to use recycled water at multi-family residences, commercial, and industrial locations, and
- identify and evaluate hazardous water user activities and ensure the drinking water system is protected from such hazards.

On April 2, 2024, only one proposal was received for Bid No. 1768 for On-call Cross-Connection Inspection and Testing Services, which was by West Yost & Associates Inc. from Davis, CA. West Yost & Associates Inc. just completed a successive five-year contract with the City for similar services. The company's staff is reliable and knowledgeable with the City of Ontario's recycled water customers and State Water Board regulations and policies on cross-connection prevention.

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
PROFESSIONAL SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered as of _____, by and between the City of Ontario, a municipal corporation organized under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City") and West Yost Associates, Inc., Corporation, with its principal place of business at 2020 Research Park Drive, Suite 100, Davis, California 95618 ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing on-call cross-connection inspection and testing services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional services for the Cross-Connection Inspection and Testing project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

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

3.1.2 Term. The term of this Agreement shall be from July 1, 2024 to June 30, 2025 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 four additional one-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Compensation.

3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Two hundred fifty thousand dollars ($250,000.00)** without written approval of the City Council or City Manager, as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

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

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

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

3.3 Responsibilities of Consultant.

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

personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

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

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

3.3.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows: Greg Chung, P.E., Vice President/Principal-in-Charge.

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

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

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

3.3.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants

shall have sufficient skill and experience to perform the Services assigned to them. Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its subconsultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.3.9 Period of Performance.

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

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

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

3.3.10 Laws and Regulations; Employee/Labor Certification.

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

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

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

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

3.3.10.5 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant must additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. City may seek damages from Consultant for delay in completing the Services caused by Consultant's failure to comply with the laws, regulations and policies described in this Section, or any other relevant water quality law, regulation, or policy.

3.3.10.6 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and

regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.3.11 Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

3.3.11.5 Waiver of Subrogation. All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications

to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

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

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

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

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

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

3.3.11.11 Additional Insurance Provisions

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

(B) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled

and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

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

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

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

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

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

3.4 Labor Code Requirements.

3.4.1 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services

available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

3.5 Termination of Agreement.

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

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

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

3.6 Indemnification.

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

volunteers.

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

3.7 General Provisions.

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

3.7.2 Independent Contractors and Subcontracting.

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

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

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

Consultant: West Yost Associates, Inc.
2020 Research Park Drive, Suite 100

Davis, CA 95618
ATTN: Alex Bucher, P.E., Project Manager

City: City of Ontario
303 East "B" Street
Ontario, CA 91764
ATTN: Joline Neal, Water Quality Programs Manager

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

3.7.4 Ownership of Materials and Confidentiality.

3.7.4.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

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

3.7.4.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at

City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

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

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

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

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

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

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

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

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

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

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

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

3.7.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.7.14 Amendment; Modification. No supplement, modification, or amendment of

this Agreement shall be binding unless executed in writing and signed by both Parties.

3.7.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

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

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

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

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

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

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

SIGNATURES ON NEXT PAGE

SIGNATURE PAGE TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND WEST YOST ASSOCIATES, INC.

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

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

WEST YOST ASSOCIATES, INC.

By: _____

Its: Vice President

Printed Name: Greg Chung

By: _____

Its: Treasurer

Printed Name: Lindsay Smith

EXHIBIT "A"
SCOPE OF SERVICES

GENERAL INFORMATION

Recycled Water

The City of Ontario ("City") currently has over 530 approved recycled water connections. Recycled water is used in the City for landscape irrigation, industrial and commercial processes, and agricultural activities. The City is currently expanding its recycled water infrastructure to preserve drinking water supplies, support community growth, and sustain a reliable water portfolio.

Hazard Assessments

The City has over 40,000 potable water connections that service industrial and commercial facilities, landscape irrigation, and residential dwellings. As Ontario Ranch continues to develop, it is expected that potable water connections will nearly double in the next ten to fifteen years.

APPLICABILITY

Cross-connections are governed by the California Code of Regulations, Titles 17 and 22. These regulations prevent the occurrence of cross-connections by implementing protective health measures, such as backflow prevention assemblies and approved uses of recycled water.

On December 19, 2023, the State Water Resources Control Board ("State Water Board") adopted the California Cross-Connection Control Policy Handbook (CCCPH). The policy handbook focuses on community water system's backflow prevention programs and preventative measures for cross-connections. Additionally, community water systems are required to perform hazard assessments on all potable meter connections, including industrial and commercial facilities, landscape irrigation, and multi- and single-family residences.

REQUIREMENTS

The person(s) performing Task 1 shall a be a qualified and actively licensed Professional Engineer (P.E.) with the California Board for Professional Engineers, Land Surveyors, and Geologists; experienced in the field of wastewater treatment; and have a minimum of three years preparing Engineering Reports.

The person(s) performing Tasks 2 through 4 shall be a certified American Water Works Association (AWWA) Cross-Connection Control Specialist ("Specialist") with a minimum of three years of experience.

ON-CALL CROSS-CONNECTION INSPECTION AND TESTING SERVICES

Task 1 – Preparation of Title 22 Supplemental Engineering Reports

A Supplemental Engineering Report is a supplemental report to the City's approved Master Engineering Report for potential recycled water customers (either new construction or retrofit of an existing property). Supplemental reports are submitted to the State Water Board's Division of Drinking Water (DDW) by the City for state approval before recycled water is connected and activated at a property.

The Supplemental Engineering Report consists of two components: the supplemental report and site exhibits (landscape irrigation use only). If requested, the City will provide customer and site information, estimated recycled water demands, and existing water/irrigation drawings (if available).

Description of a Supplemental Engineering Report's layout:

- Schematic/Aerial Map: prepare a schematic/aerial map prior to the site assessment.
- Site Assessment: on-site visit to acquire, at a minimum: existing meter type(s) and location(s), fire services, backflow prevention device assemblies, quick couplers, controller boxes (valves), and other information pertinent to the preparation of the site exhibit and supplemental report. Initial on-site visits shall be coordinated by City staff.
- Site Exhibit for Landscape Irrigation Users: prepare a site exhibit based on the information obtained during the site assessment. This will include, but not limited to, the on-site irrigation design that will separate the irrigation system from the domestic water system, recycled water signage/notification placement, location of irrigation mainlines and appurtenances, etc.
- Supplemental Report: prepare a two-page supplemental report in the format provided by the City that contains site, owner, tenant, and recycled water use information (Figure 1). A complete Engineer Report will be needed for industrial sites that require a more detailed description and inspection.
- Calculations: if requested, prepare a worksheet showing all formulas, calculations, and derived values. This shall be prepared and stamped by a California licensed and active Professional Engineer (see REQUIREMENTS section for more information).

See Figure 2 for the State Water Board's DDW *Guidelines for the Preparation of an Engineering Report for the Production, Distribution and Use of Recycled Water*.

Figure 1: Sample Supplemental Engineering Report

CITY OF ONTARIO

Recycled Water Use Site
Engineer's Report Supplement

Report No.				**Site Name:**			
Retrofit	☐	New Site	☐	Plans reviewed by District?	**Yes** ☐	**No** ☐	

Recycled Water Site Information			
Name			
Address			
City, State, Zip			
Phone No.			
General Site Description			
Site Area	Acres	Total Area Irrigated W/ RW	Acres
Annual RW Demand	AF/Year	RW Source	OMUC Recycled Water System

Recycled Water User Information		**Owner Information (if different from User Info)**
Name		
Address		
City, State, Zip		
Phone No.		
email		

Intended On-Site Uses:		
Landscape Irrigation	☐	See Attached Data Sheet(s) for Site Specific Information
Agricultural Irrigation	☐	
Impoundment	☐	
Cooling	☐	
Industrial Process/Other	☐	Recycled Water is disinfected tertiary treated water, Title 22 section 60304a
Groundwater Recharge	☐	
Dual Plumbed Use Area	☐	Site Plan Attached: ☐ Landscape/Irrigation Plans Attached (if available): ☐

The aforementioned Recycled Water User has agreed to follow all rules and regulation set forth in Title 22 and 17 of the California Codes and Regulations, the Master Engineering Report (dated April 2008) for the use of Recycled Water throuthout the City of Ontario, as well as all the applicable rules set forth in Section 1-3 of this report according to the specified intended use.

Monitoring and Supervision (As per 4.8, 4.9. See also "Recycled Water Training Manual")	
On-Site Recycled Water Supervisor:	
Employer (if different from Recycled Water User):	
Title:	
Phone No. (Office)	
Phone No. (Emergency)	
Email Address:	
Date of On Site Supervisor Training Completed:	

CITY OF ONTARIO

Recycled Water Use Site
Landscape Irrigation Data Sheet

Report No.		**Site Name:**	

Recycled Water User Information			
Name			
Address			
City, State, Zip			
Phone No.			
Annual RW Demand	AF/Year	Total Area Irrigated W/ RW	Acres

Site Specific Information	
Detailed plans showing all piping networks in the use area attached:	☐
Map showing required setbacks per Section 60310 attached:	☐
Locations of public warning signs shown on plans:	☐

Description of land use (on-site and surrounding, **including any wells within 50ft**):

Description of what will be irrigated and method used:

Degree of access to use site by employees and public:

Size and number of connections (RW and potable):

Type of backflow protection and other cross-connection protection measures taken (as per 4.7):

Direction of drainage and description of drainage area (as per 4.7):

Use area containment and protection measures for drinking fountains and outdoor eating areas:

Proposed irrigation schedule (if public access is allowed):

Measures taken to minimize ponding and exclude or minimize public contact:

Figure 2: DDW's Guidelines for the Preparation of an Engineering Report

Guidelines for the Preparation of an Engineering Report for the Production, Distribution and Use of Recycled Water
(Nonpotable and indirect potable reuses only)

State Water Resources Control Board
Division of Drinking Water

June 2023



Credit: www.aquaoperations.com

Guidelines for the Preparation of an Engineering Report for the Production, Distribution and Use of Recycled Water

(Nonpotable and indirect potable reuses only)

June 2023

(Replaces March 2001 Version)

The intent of these guidelines is to provide a framework to assist in developing a comprehensive engineering report which addresses all necessary elements of a proposed or modified project. Such an engineering report is necessary to allow for the required regulatory review and approval of a recycled water project, which must meet all requirements set forth in the California Water Recycling Criteria (Title 22).

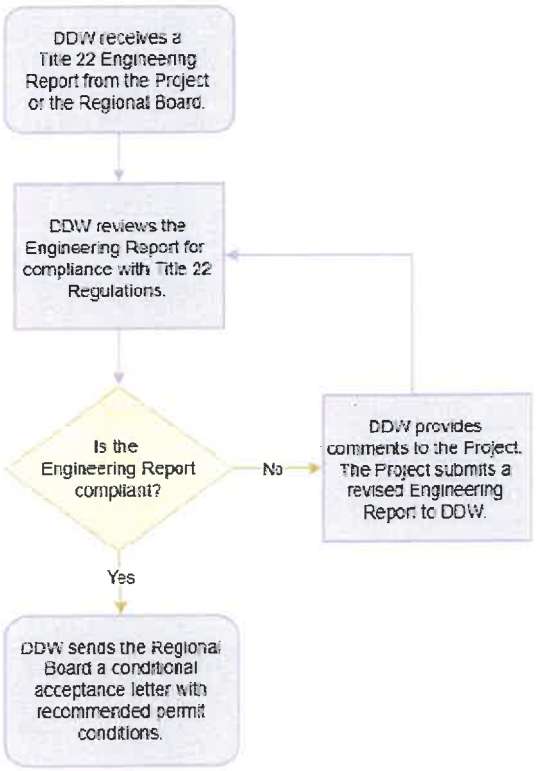
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1. Introduction

The State of California Water Recycling Criteria (Title 22 Section 60323) requires an engineering report, approved by the State Water Resources Control Board – Division of Drinking Water (DDW), for all recycled water projects. The engineering report should be submitted to the applicable California Regional Water Quality Control Board (Regional Board) and DDW before recycled water projects are implemented. Projects are encouraged to contact the Regional Board and DDW in advance of and/or during preparation of the engineering report to address any questions. Additionally, the engineering report must be amended prior to any modification to existing projects. Figure 1 provides a summary of the engineering report review process.

Figure 1. DDW Review Process for the Engineering Report



The purpose of an engineering report is to describe how a project will comply with the Water Recycling Criteria. The Water Recycling Criteria are contained in Sections 60301 through 60355, and Section 64668 inclusive of the California Code of Regulations, Title 22. The Criteria prescribe:

- Recycled water quality and wastewater treatment requirements for the various types of allowed uses (see Title 22 Sections 60303 through 60307);
- Use area requirements pertaining to the actual location of use of the recycled water - including dual plumbed facilities (see Title 22 Sections 60310 through 60316); and
- Reliability features required in the treatment facilities to ensure safe performance (see Title 22 Sections 60333 through 60355).

Title 22 Section 60323 specifies that the engineering report be prepared by a qualified engineer, licensed in California, and experienced in the field of wastewater treatment.

Recycled water projects vary in complexity. Therefore, engineering reports will vary in content, and the detail presented will depend on the scope of the proposed project and the number and nature of the agencies involved in the production, distribution, and use of the recycled water. The engineering report should contain sufficient information to assure the regulatory agencies that the degree and reliability of treatment is commensurate with the requirements for the proposed use, and that the distribution and use of the recycled water will not create a health hazard or nuisance.

References which may assist in addressing various project elements include:

- State of California Water Recycling Criteria
- California Waterworks Standards
- California Water Code
- Cross-Connection Control Policy Handbook
- DDW Alternative Treatment Technology Report for Recycled Water
- Planning for the Distribution of Reclaimed Water, AWWA Manual M24

- Guidelines for the On-Site Retrofit of Facilities Using Disinfected Tertiary Recycled Water
- NWRI Ultraviolet Disinfection – Guidelines for Drinking Water and Water Reuse
- Australian WaterVal Validation Protocol on Chlorine Disinfection
- Australian WaterVal Validation Protocol on Membrane Bioreactor

2. Recycled Water Project

The following sections discuss the type of information that should be presented and described in the engineering report. Some sections may be applicable only to certain types of recycled water, as summarized below.

Table 1. Types of recycled water and applicable areas in the Title 22 Engineering Report Guidelines.

Types of Recycled Water	Applicable Areas in the Engineering Report Preparation Guidelines
Undisinfected Secondary	1 – 4, 5.1, 5.7
Disinfected Secondary-23	1 – 4, 5.1, 5.2, 5.3, 5.7
Disinfected Secondary-2.2	1 – 4, 5.1, 5.2, 5.3, 5.7
Disinfected Tertiary	1 – 4, 5.1, 5.2, 5.3, 5.4, 5.7

2.1. General

The engineering report shall identify all agencies or entities that will be involved in the design, treatment, distribution, construction, operation, and maintenance of the recycled facilities, including a description of any legal arrangements outlining authorities and responsibilities between the agencies with respect to treatment, distribution, and use of recycled water. In areas where more than one agency/entity is involved in the reuse project, a description of arrangements for coordinating all reuse-related activities (e.g., line construction/repairs) shall be provided. An organizational chart may be useful.

2.2. Rules and Regulations

The procedures, restrictions, and other requirements that will be imposed by the distributor and/or user should be described. In multiple projects covered under a Master Permit issued by the Regional Boards where the reuse oversight responsibility is delegated to the distributor and/or user, the requirements and restrictions should be codified into a set of enforceable rules and regulations. The rules and regulations should include a compliance program to be used to protect public health and prevent cross connections. Describe in the engineering report the adoption of enforceable rules and regulations that cover the design and construction, operation and maintenance of the distribution systems and use areas, as well as use area control measures. Provide a description of the organization of the agency or agencies who have the authority to implement and enforce the rules and regulations, and the responsibilities of pertinent personnel involved in the reuse program. Reference to any ordinances, rules of service, contractual arrangements, etc. should be provided.

2.3. Producer – Distributor – User

The producer is the public or private entity that will produce the recycled water used in the project. The producer may also be the distributor of recycled water.

The distributor is the entity that distributes recycled water to users. In some cases, a distributor may provide additional treatment (such as disinfection).

The users take physical possession of the recycled water from producers and/or distributors for an approved recycled water use.

Where more than one entity is involved in the treatment and/or distribution of the recycled water, the roles and responsibilities of each entity (i.e., producer, distributor, user) should be described.

2.4. Raw Wastewater

The engineering report should describe the raw wastewater. The description should include:

- Chemical quality, including minimum, maximum, median and 95th percentile values (historical data should be provided where available)

- Applicable flow conditions (historical data should be provided where available)
- Source of the wastewater to be used and the proportion and types of industrial waste
- Source control programs

2.5. Treatment Processes and Operations

Process Flow Diagram. Provide a process flow diagram of the recycled water treatment train. Include the following, if applicable:

- All treatment processes
- Chemical dosing locations
- Flow metering
- Process monitoring
- Compliance sampling locations
- Path(s) for diversion of non-compliant water

Chemicals. State the chemicals that will be used, the method of mixing, the degree of mixing, the point of application, and the dosages. Also describe the chemical storage and handling facilities;

Filtration. If filtration is provided, include design criteria (specify filtration and backwash rates, filter depth and media specifications, etc.). State the expected turbidities of the filter influent (prior to the addition of chemicals) and the filter effluent.

Disinfection. If disinfection is provided, describe the design and operation of the proposed disinfection system. Additionally, for disinfected tertiary recycled water, describe how the project will comply with Title 22 Section 60301.230.

Tracer Study. Where a tracer study is required to demonstrate that the requirements of Title 22 Section 60301.230(a)(1) for modal contact time and CT are met, a tracer test protocol should be submitted to DDW for review and approval prior to conducting the test.

Free Chlorine. Where free chlorine is used for disinfection, the requirements of Title 22 Section 60301.230(a)(2) should be met. The *WaterVal Validation Protocol for Chlorine Disinfection* may be used to meet this requirement.

UV Disinfection. Where UV disinfection is proposed per Title 22 Section 60301.230(a)(2), refer to the *NWRI UV Disinfection Guidelines*.

- UV System Validation. Identify the proposed UV manufacturer and UV system model. It is recommended that this UV system be validated and that a DDW conditional acceptance letter has been issued. If the UV system has not been accepted by DDW previously, an extensive validation must be performed onsite to demonstrate Title 22 Section 60301.230(a)(2) is met. The conditional acceptance letter specifies some of the critical requirements for design, monitoring and operation. Conditionally accepted UV systems will be identified in the DDW *Alternative Treatment Technology Report*.

- Spot-check Bioassay Test. For these off-site validated and conditionally accepted UV systems, an onsite spot-check bioassay test will be required upon installation and commissioning. The testing protocol and commissioning procedures must be submitted for review and approval by DDW.

- Commissioning Tests. The project should describe how commissioning tests and other conditions in the *NWRI UV Disinfection Guidelines* will be met.

Personnel. List personnel that will operate the facility including their position, training certifications, and hours during which the facility will be staffed (see Title 22 Section 60325).

Maintenance. Describe the preventive maintenance program (see Title 22 Section 60327).

Manuals. Describe the operation and maintenance manuals available (see Title 22 Section 60329).

2.6. Plant Reliability Features

The engineering report should include detailed descriptions of the plant reliability features proposed to comply with Title 22 Sections 60333 through 60355. The discussion of each reliability feature should state under what conditions it will be

actuated. When alarms are used to indicate system failure, the engineering report should state where the alarm will be received, how the location is staffed, and who will be notified.

2.7. Supplemental Water Supply

The engineering report should describe all supplemental water supplies. The description should include:

- Purpose
- Source
- Quality
- Quantity available
- Cross-connection control and backflow prevention measures

Where applicable, describe how the requirements of the Cross Connection Control Policy Handbook will be met.

2.8. Monitoring and Reporting

The engineering report should describe the planned monitoring and reporting program, including all monitoring required by the Water Recycling Criteria and the frequency and location of sampling. Where continuous analysis and recording equipment is used, the method and frequency of calibration should be stated. All laboratory analyses shall be performed by a laboratory approved by the California Environmental Laboratory Accreditation Program (ELAP) and accredited for the method.

2.9. Contingency Plan

Title 22 Section 60323(c) requires that the engineering report contain a contingency plan designed to prevent inadequately treated wastewater from being delivered to the user. The contingency plan should include:

- A list of conditions which would require an immediate diversion to take place;
- A description of the diversion procedures;

- A description of the diversion area including capacity, holding time and return capabilities;
- A description of plans for activation of supplemental supplies (if applicable);
- A plan for the disposal or treatment of any inadequately treated effluent;
- A description of fail-safe features in the event of a power failure; and
- A plan (including methods) for notifying the recycled water user(s), the Regional Board, DDW, the state and local health departments, and other agencies as appropriate, of any treatment failures that could result in the delivery of inadequately treated recycled water to the use area.

3. Transmission and Distribution Systems

Maps and/or plans showing the service area boundary, location of the transmission facilities and the distribution system layout should be provided. The plans should include the ownership and location of all potable water lines, recycled water lines and sewer lines within the recycled water service area and use area(s).

Where recycled water hauling will be conducted, a description of the water hauling program must be provided.

4. Use Areas

Requirements for use areas are described in Title 22 Section 60310. The engineering report description of each use area should include:

- The type of land uses;
- The specific type of reuse proposed;
- The party(s) responsible for the distribution and use of the recycled water at the use area;
- Identification of other governmental entities which may have regulatory jurisdiction over the use area such as the US Department of Agriculture, California Department of Public Health, Food and Drug Branch, the California Department of Public Health, Licensing and Certification Program, etc. These agencies should also be consulted and provided with a copy of the Title 22 Engineering Report for review and comment.

- Use area containment measures;
- A map showing:
  - Specific areas of use
  - Areas of public access
  - Surrounding land uses
  - The location and construction details of wells in or within 1000 feet of the use area
  - Location and type of signage;
- The degree of potential access by employees and/or the public; and
- For use areas where both potable and recycled water lines exist, a description of the cross-connection control procedures which will be used.

4.1. Use Area Design

The engineering report should discuss how domestic water distribution system shall be protected from the recycled water in accordance with the Cross Connection Control Policy Handbook and the California Waterworks Standards, and measures to prevent recycled water leaving the designated use area.

4.2. Use Area Inspections and Monitoring

The engineering report should describe the use area inspection and monitoring program. It should identify the locations at the use area where problems are most likely to occur (e.g., ponding, runoff, overspray, cross-connections, etc.), the frequency of inspections and monitoring, and the personnel in charge of the monitoring and reporting of use area problems. If a user supervisor is designated, the engineering report should describe user supervisor training and qualification requirements.

4.3. Use Area Employee Training

The engineering report should describe the training which use area employees will receive to ensure compliance with the Water Recycling Criteria and identify the entity that will provide the training and its frequency. The engineering report should also identify any written manuals of practice to be made available to employees.

4.4. Dual Plumbed Use Areas

A dual plumbed system is defined in Title 22 Section 60301.250. When a system is determined to be dual plumbed, the project should comply with Title 22 Sections 60313 through 60316.

5. Recycled Water Uses

Where applicable, for the engineering report should describe the following specific proposed uses:

5.1. Irrigation

Requirements for irrigation uses are described in Title 22 Section 60304. The engineering report should include the following:

- Detailed plans showing all piping networks within the use area including recycled, potable, sewage, and others as applicable;
- Description of what will be irrigated (e.g., landscape, specific food crop, etc.);
- Method of irrigation (e.g., spray, flood, or drip);
- The location of domestic water supply facilities in or adjacent to the use area;
- Use area containment measures;
- Measures to be taken to minimize ponding and runoff from leaving the use area;
- The direction of drainage and a description of the area to which the drainage will flow;
- A map and/or description of how the setback distances of Title 22 Section 60310 will be maintained;

- Protection measures of drinking water fountains and designated outdoor eating areas, if applicable;
- Location and wording of public warning signs;
- The proposed irrigation schedule (if public access is included); and
- Measures to be taken to exclude or minimize public contact.

5.2. Impoundments

Requirements for impoundment uses are described in Title 22 Section 60305. The engineering report should include the following:

- The type of use or activity to be allowed on the impoundment;
- Description of the degree of public access;
- The conditions under which the impoundment can be expected to overflow and the expected frequency; and
- The direction of drainage and a description of the area to which the drainage will flow.

5.3. Cooling

Requirements for cooling uses, are described in Title 22 Section 60306. The engineering report should include the following:

- Type of cooling system (e.g., cooling tower, spray, condenser, etc.);
- Type of biocide to be used, if applicable;
- Type of drift eliminator to be used, if applicable; and
- Potential for employee or public exposure, and mitigative measures to be employed.

5.4. Indirect Potable Reuse: Groundwater Replenishment – Surface Application

Requirements for groundwater replenishment reuse projects are described in Title 22 Sections 60320.100 through 60320.130.

5.5. Indirect Potable Reuse: Groundwater Replenishment – Subsurface Application

Requirements for groundwater replenishment reuse projects are described in Title 22 Sections 60320.200 through 60320.230.

5.6. Indirect Potable Reuse: Surface Water Augmentation

Requirements for surface water augmentation are described in Title 22 Sections 60320.300 through 60320.328 and Sections 64668.05 through 64668.30.

5.7. Use of Recycled Water for Other Purposes

Requirements for the use of disinfected tertiary recycled water for other purposes are described in Title 22 Section 60307(a).

Requirements for the use of disinfected secondary recycled water for other purposes are described in Title 22 Section 60307(b).

Requirements for the use of undisinfected secondary recycled water for other purposes are described in Title 22 Section 60307(c).

6. References

1. State of California (2000). "Water Recycling Criteria." California Code of Regulations, Title 22, Division 4, Chapter 3.

2. State of California (2008). "California Waterworks Standards." California Code of Regulations, Title 22, Division 4, Chapter 16.

3. California Water Code.

4. State of California (2022). Cross-Connection Control Policy Handbook (Draft).

5. CA State Water Resources Control Board, Division of Drinking (2023). Alternative Treatment Technology Report for Recycled Water.

6. American Water Works Association (2018), Planning for the Distribution of Reclaimed Water, Manual M24. Fourth Edition. Denver (US).

7. California-Nevada Section - American Water Works Association (1997). Guidelines for the On-Site Retrofit of Facilities Using Disinfected Tertiary Recycled Water.

8. National Water Research Institute (NWRI) and Water Research Foundation (WRF) (2012), Ultraviolet Disinfection. Guidelines for Drinking Water and Water Reuse. Fountain Valley (US).

9. WaterSecure (2017), Chlorine Disinfection, WaterVal Validation Protocol, Australian WaterSecure Innovations Ltd, Brisbane.

10. WaterSecure (2017), Membrane Bio-reactor, WaterVal Validation Protocol, Australian WaterSecure Innovations Ltd, Brisbane.

Task 2 – Cross-connection and Overspray Testing

- Site Assessment: City staff along with the Specialist will visit the site and verify the locations of the potable and recycled water meters, backflow devices, and pressure recording points. Initial site assessment visit will be coordinated by City staff.

- Cross-connection Testing: install a minimum of two digital pressure recording devices on each water system (i.e., potable and recycled). Each water system shall be turned off for a minimum of two hours while the other water system remains pressurized. During the potable water system shutdown, the number 2 test cock shall remain open and all recycled water appurtenances shall be energized for a minimum of one minute. During the recycled water system shutdown, all potable water appurtenances will be activated and verified to be under full working pressure.

  The City shall not be responsible for any failure or malfunction of pressure recording device(s) or any other type of equipment when used in the field to perform cross-connection testing. The City shall not be invoiced for labor, time lost, equipment, or repeat testing in the field from failing pressure recording device(s).

- Overspray Testing (Landscape Irrigation Use only) and Initial Inspection: the landscape irrigation system will be activated to check for excessive overspray, ponding, runoff, broken mains, and broken heads. During the initial inspection (for any use), the Specialist shall:

  - examine the site for proper signage, markings on all recycled water appurtenances, and adequate separation between any adjoining potable system;

  - measure and record total dissolved solids (TDS) samples on both potable and recycled water systems; and

  - record backflow prevention device information and last test date at all potable connections on premise.

- Follow-up Inspection: if a punch list is generated for deficiencies/out of compliance, as a result of the initial inspection, a follow-up inspection is required to ensure corrective actions were addressed and the user is in compliance with state regulations. The follow-up inspection shall be performed within two weeks of the initial inspection date and may be repeated as necessary for the user to comply.

- Final DDW Report: The Specialist shall prepare a report within two weeks of the overspray testing and initial inspection OR the follow-up inspection (if applicable). The report shall contain, but not limited to, the following elements: specific site information, shutdown test results (including copies of the digital pressure recording tables and graphs), overspray inspection results, corrective actions (if applicable), potable backflow prevention device information and last testing date, TDS measurements, Site Supervisor information, and

any additional information or comments needed to provide a complete report. A draft state report shall be submitted to the City for review.

The City shall review all DDW reports for completeness. If discrepancies are discovered or information is missing, the City reserves the right to follow up with the Consultant and request clarification. If applicable, due to either missing information or discrepancies, the City reserves the right to request a revised DDW report for review before DDW submission. The City shall not pay for incomplete or revised reports. Any report that requires clarification or any follow-up to understand the report's completeness and/or accuracy, shall not be billed twice for the same report.

Task 3 – Annual Inspection and Overspray Testing

- Annual Inspection (All Uses) and Overspray Testing (Landscape Irrigation Use only) for Existing Recycled Water Customers: The irrigation system will be activated to check for excessive overspray, ponding, runoff, broken mains, and broken heads. During the annual inspection (for any use), the Specialist shall:
    - examine the site for proper signage,
    - markings on all recycled water appurtenances,
    - adequate separation between any adjoining potable system,
    - measure and record TDS samples on both potable and recycled water systems, and
    - record backflow prevention device information and last testing date at all potable connections on premise.
- Follow-up Inspection: If a punch list is generated for deficiencies/out of compliance, as a result of the annual inspection, a follow-up inspection is required to ensure corrective actions were addressed and the user is in compliance with its approved recycled water use letter and state regulations. The follow-up inspection shall be performed within two weeks of the annual inspection and may be repeated as necessary for the user to comply.

Task 4 – Hazard Assessments

- Initial hazard assessments shall include, but not limited to, the following required elements:
    - the existence of cross-connections;
    - the type and use of materials handled and present, or likely to be, on the user premises;

- the degree of piping system complexity and accessibility;
- access to auxiliary water supplies, pumping systems, or pressure systems;
- distribution system conditions that increase the likelihood of a backflow event (e.g., hydraulic gradient differences impacted by main breaks and high water demand situations, multiple service connections that may result in flow-through conditions, etc.);
- characterizing user activities performed on premise(s), including manufacturing processes, production, and equipment;
- user premises accessibility;
- any previous backflow incidents on the user premises;
- identification of the degree of hazard to the City's drinking water system as either a high-hazard, medium-hazard, low-hazard, or none;
- determination if existing backflow prevention assembly provides adequate protection based on the degree of hazard; and
- the requirements and information provided in the CCCPH.

- Follow-up hazard assessments shall be performed when one the following criteria no longer represents the initial hazard assessment:
  - if a user premises changes account holder, excluding single-family residences;
  - if a user premises is newly or re-connected to the City's drinking water system;
  - if evidence exists of changes in the activities or materials on a user's premises;
  - if backflow from a user's premises occurs;
  - periodically, as identified in the City's Cross-Connection Control Plan;
  - if the State Water Board requests a hazard assessment of a user's premises; and
  - if the City concludes an existing hazard assessment may no longer accurately represent the degree of hazard.

- Hazard assessments are performed at the following facility and dwelling types: commercial and industrial facilities, landscape irrigation, and residential dwellings (i.e., single- and multi-family).

- Consultant shall conduct assessments (i.e., on-site, off-site) at the facility and dwelling types described above by using the City's Building Permit (Accela), Customer Information System (CIS), Cross-Connection (SAMS XC), Geographical Information System (GIS), and workflow automation program (Asana). City staff shall coordinate on-site inspections on behalf of the Consultant.

  The City shall review all hazard assessments for completeness and accuracy. If discrepancies are discovered or information is missing, the City reserves the right to follow up with the Consultant and request clarification. If applicable, due to missing information or required elements as described above, the City reserves the right to request a reassessment for the City staff's review. The City shall not pay for incomplete assessments or reassessments to capture missing elements and/or information. Any report that requires clarification or follow-up to understand the report's completeness and accuracy shall not be billed twice for the same initial assessment.

- Consultant shall log all findings and entries into the City's Cross-Connection database (SAMS XC).

EXHIBIT "B"
SCHEDULE OF SERVICES

Services shall be performed on an as needed basis.

EXHIBIT "C"
COMPENSATION

The Consultant shall invoice the City monthly. Consultant shall include with each invoice a detained progress report that indicates the amount of budget spent on each requested task. The Consultant shall inform the City regarding any out-of-scope work requested or being performed. This is a time-and-materials contract. Service shall be performed on an as needed basis (on-call) and following the described scope of services. All tasks shall be priced to include materials, equipment, transportation, vehicle, subcontracting (if applicable), and labor costs. *Note: pricing is based on a single quantity and inclusive of all work performed to complete the requested task.*

Table 1: Supplemental Engineering Reports

Task No.	Task Description	Unit of Measure	Cost per Task
1	Preparation of Title 22 Supplemental Engineering Reports	Lump Sum	$ 4,500

Table 2: Cross-Connection Testing

Task No.	Task Description	Unit of Measure	Cost per Task
2A	Cross-Connection Testing for sites with 1-4 total connections	Lump Sum	$ 5,500
2B	Cross-Connection Testing for sites with 5-8 total connections	Lump Sum	$ 7,500
2C	Cross-Connection Testing for sites with 9-12 total connections	Lump Sum	$ 10,500
2D	Cross-Connection Testing for sites with 13-16 total connections	Lump Sum	$ 15,500
2E	Cross-Connection Testing for sites with 17-20 total connections	Lump Sum	$ 20,000
2F	Cross-Connection Testing for sites with 21 or more connections	Lump Sum	$ 25,000

Table 3: Recycled Water Inspections

Task No.	Task Description	Unit of Measure	Cost per Task
3A	Recycled Water Inspections for sites with less than (<) 10 irrigation valves	Lump Sum	$ 2,000

CITY OF ONTARIO *Agenda Report* **June 18, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Utilities Prepared By: Courtney Jones 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: 16

SUBJECT: A PROFESSIONAL SERVICES AGREEMENT WITH NOSSAMAN LLP FOR LEGAL AND TECHNICAL SERVICES PERTAINING TO WATER AND WASTEWATER MATTERS

RECOMMENDATION: That the City Council approve and authorize the City Manager, or designee, to execute a two-year Professional Services Agreement with Nossaman LLP of Los Angeles, California, on file with the Records Management Department, for legal and technical services relating to water supply, water rights, and wastewater matters in the amount of $1,200,000 for FY 2024-25 and $1,200,000 for FY 2025-26 for a total not-to-exceed contract amount of $2,400,000, and a term from July 1, 2024 thru June 30, 2026.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)
Operate in a Businesslike Manner
Pursue City's Goals and Objectives by Working with Other Governmental Agencies

FISCAL IMPACT: The Fiscal Year 2024-25 Proposed Budget includes appropriations in the Water and Sewer Operating Funds for legal and technical services relating to water supply, water rights, and wastewater matters. Appropriations will also be included in future year budgets presented to city council for approval. There is no impact to the General Fund.

The recommended Agreement is for $1,200,000 for FY 2024-25 and $1,200,000 for FY 2025-26 for a total not-to-exceed contract amount of $2,400,000. Expenditures will be based on a negotiated billing rate sheet, and proposals will be requested per specific tasks between Nossaman LLP (Nossaman) and the City. Any increases to the billing rates will be negotiated at the City's discretion.

BACKGROUND & ANALYSIS: The City has historically used Nossaman for legal and technical representation regarding water supply, water rights matters, and wastewater matters. Nossaman's involvement will be critical for the continuation of several multi-year efforts and emerging regional topics anticipated over the next few years. The Agreement will ensure the continuity of legal services necessary in preserving and managing Ontario's utility resources and services to it's community as these multi-year efforts are concluded.

The City is undertaking multi-year efforts to achieve several goals, including ensuring the protection of our local water supply to meet the needs of the community, mitigating impacts on consumer costs, preserving and enhancing water and recycled water rights, and maintaining recycled water rights through collaboration with the Inland Empire Utilities Agency (IEUA) and the Chino Basin Watermaster (Watermaster).

The Agreement's primary efforts include the Meter Equivalent Unit (MEU) charge, the regional sewage contract, administering of Watermaster activities and Court approved agreements, and regional projects. The proposed action on these efforts is consistent with the City Council's direction to the City Manager to engage in settlement discussions and pursue legal actions if necessary and as appropriate.

CITY OF ONTARIO *Agenda Report* **June 18, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Fire Department Prepared By: Belinda Negrete Staff Member Presenting: Mike Gerken, Fire Chief Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 17

SUBJECT: A RESOLUTION APPROVING FIRE DEPARTMENT CLASSIFICATIONS BE ADDED TO THE CALIFORNIA FIRE AND RESCUE MUTUAL AID SYSTEM

RECOMMENDATION: That the City Council adopt a Resolution approving additional Fire Department classifications to the terms and conditions for Fire Department responses to the California Fire and Rescue Mutual Aid System requests to assist State of California and Federal Fire agencies.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner
Pursue City's Goals and Objectives by Working with Other Governmental Agencies

FISCAL IMPACT: There is no direct fiscal impact associated with this action. However, approval of the proposed Resolution will ensure that the City's Fire Department recovers the maximum amount of reimbursable costs when assigned to emergency incidents through the mutual aid system.

BACKGROUND & ANALYSIS: The intent of the California Fire Assistance Agreement ("CFAA") is to compensate California Fire and Rescue Mutual Aid System Agencies for the cost of when assigned to emergency incidents through the Mutual Aid system. Eligible expenses that may be reimbursed though the CFAA include personnel time, equipment, car rental, fuel, lodging, and meals. A Resolution adopted by the governing body must be on file with the California Govenor's Office of Emergency Services (CalOES) for the Fire Department's employees to qualify for reimbursement from the time of initial dispatch from their home base, to the time of return to home base ("portal-to-portal") when assigned to an emergency incident through the Mutual Aid system. Without this Resolution, reimbursement would be limited to only actual hours worked while on the incident scene itself.

Resolution No. 2015-039 (approved by the City council on May 19, 2015), specified the positions of Fire Chief, Senior Deputy Fire Chief, Deputy Fire Chief, Battalion Chief, Fire Captain, Fire Engineer, Firefighter, and Nurse Administrator as eligible classifications for portal-to-portal reimbursement when assigned to emergency incidents through the Mutual Aid system. Resolution No. 2022-011 (approved by City Council on March 1, 2022) added the classifications of Fire Administrative Director, Emergency Manager, Fire Communications Manager, Fire Dispatch Supervisor, Senior Fire

Dispatcher, and Fire Dispatcher as being eligible for portal-to-portal reimbursement when assigned to an emergency incident through the Mutal Aid system.

The Fire Department is requesting to add the following classifications to be eligible for portal-to-portal reimbursement when assigned to an emergency incident through the Mutual Aid system in various administrative and support roles: Administrative Officer, Senior Management Analyst, Emergency Management Coordinator, Management Analyst, Emergency Medical Services ("EMS") Director, and EMS Nurse.

This item was previously approved by the City Council on May 7, 2024, and is being re-introduced to amend Resolution language pursuant to CalOES recommendations.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING THE TERMS AND CONDITIONS FOR FIRE DEPARTMENT RESPONSE AWAY FROM THEIR OFFICIAL DUTY STATION AND ASSIGNED TO AN EMERGENCY INCIDENT.

WHEREAS the City of Ontario (”City”) Fire Department is a public agency providing fire protection services located inthe County of San Bernardino, State of California; and

WHEREAS, the Fire Department responds to California Fire and Rescue Mutual Aid System requests to assist State of California and Federal Fire agencies as a mutual aid provider under the California Fire Assistance Agreement; and

WHEREAS, the City adopted Resolution No. 2024-025 which specified the positions of Administrative Officer, Senior Management Analyst, Management Analyst, Emergency Medical Services (“EMS”) Director, and EMS Nurse as eligible classifications; and

WHEREAS, the City desires to ensure its employees are compensated portal-to-portal while in the course of their employment and away from their official duty station and assigned to an emergency incident, in support of an emergency incident, or pre-positioned for emergency response.

NOW THEREFORE, be it resolved by the City Council that the following shall become effective immediately upon adoption:

1. Incorporation of Recitals. The recitals listed above are true and correct, and they are hereby incorporated herein by this reference.

2. Amendment. Resolution 2024-025 is hereby amended as follows:

    a. The parenthetical “(“outside emergency support”)” in the second recital is deleted in its entirety.

    b. The words “for reimbursement from the time of initial dispatch from their home base to the time of return to home base (“portal-to-portal”) when providing outside emergency support” in the fourth (4th) recital are deleted in their entirety.

    c. The words “when providing outside emergency support” in the fifth (5th) recital are deleted in their entirety; and are replaced with the words “while in the course of their employment and away from their official duty station and assigned to an

emergency incident, in support of an emergency incident, or pre-positioned for emergency response; and".

d. The words "when providing outside emergency support" in the seventh (7th) recital are deleted in their entirety; and are replaced with the words "while in the course of their employment and away from their official duty station and assigned to an emergency incident, in support of an emergency incident, or pre-positioned for emergency response".

e. The words "outside emergency support" in the eighth (8th) recital are deleted in its entirety; and are replaced with the words "portal-to-portal reimbursement while in the course of their employment and away from their official duty station and assigned to an emergency incident, in support of an emergency incident, or pre-positioned for emergency response".

The City Mayor shall sign this Resolution, and the City Clerk shall attest and certify to the passage and adoption thereof.

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

PASSED, APPROVED, AND ADOPTED this 18th day of June, 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 June 18, 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 June 18, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **June 18, 2024**	**SECTION:** **PUBLIC HEARINGS**
Department: Financial Services Prepared By: Stephanie Castro Staff Member Presenting: Armen Harkalyan, Executive Director of Finance Reviewed By: Claudia Hernandez, Armen Harkalyan Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 18

SUBJECT: **A PUBLIC HEARING TO CONSIDER A RESOLUTION REGARDING THE FORMATION OF THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 68 (RICH HAVEN INDUSTRIAL SERVICES); AND INTRODUCTION OF AN ORDINANCE LEVYING SPECIAL TAXES**

RECOMMENDATION: That the City Council consider and:

A. Adopt a Resolution of Formation of Community Facilities District No. 68 (Rich Haven Industrial Services), proposing that the community facilities district be authorized to levy a special tax and proposing that an appropriations limit of the community facilities district be established;
B. Adopt a Resolution calling a special election for City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services);
C. Adopt a Resolution declaring the results of the special election and directing the recording of a Notice of Special Tax Lien; and
D. Introduce and waive further reading of an ordinance levying special taxes within City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services).

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

FISCAL IMPACT: The use of Mello-Roos financing in the Rich Haven Industrial Services development is projected to generate approximately $251,085 annually, at buildout, to fund administrative fees and municipal services. Approval from the City Council will be required in future years to process annual special tax levies.

BACKGROUND & ANALYSIS: The Mello-Roos Community Facilities Act of 1982 provides local government, with the consent from a majority of the property owners, the authority to establish

community facilities districts for the purpose of levying special taxes to finance municipal services. Municipal services that may be funded by a community facilities district include: police protection services, fire protection and suppression services, ambulance and paramedic services, maintenance and lighting of parks, parkways, streets, roads and open space, flood and storm protection services, maintenance and operation of fiber optic telecommunication, wireless communication and public safety camera systems and maintenance and operation of any real property or other tangible property with an estimated useful life of five or more years that is owned by the City. Under the Mello-Roos Act, the initial steps in the formation of a community facilities district to finance municipal services are to adopt resolutions declaring the intention to establish a community facilities district and authorize the levy of special taxes. Accordingly, on May 7, 2024, the City Council approved Resolution No. 2024-024, a Resolution of Intention to establish City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services) and authorize the levy of special taxes within the district. The Resolution of Intention set the public hearing date for the regularly scheduled City Council meeting on June 18, 2024, to consider formation matters.

The Rich Haven Industrial Services project addresses the development of approximately 52.97 gross acres located south of Schaefer Avenue, north of Ontario Ranch Road, west of Hamner Avenue, and east of Mill Creek Avenue. At build out, the project is expected to include 1,003,918 square feet of industrial space.

Included, as part of the Resolution of Formation is the proposed Rate and Method of Apportionment of Special Tax for the District. The term and structure of the Rate and Method of Apportionment of Special Tax for the Rich Haven Industrial Services project is consistent with those of previously adopted Rates and Methods of Apportionment for the Ontario Ranch community facilities districts. This ensures that the special tax rates levied on all residential property owners in the Ontario Ranch community facilities districts are developed in a consistent and equivalent manner. In addition, under the provisions of the Mello-Roos Act, to ensure that home buyers are making an informed decision, all residential builders in the Ontario Ranch districts will be required to disclose the maximum annual special tax amount to each homeowner before entering into a sales contract.

Attached are three Resolutions and an Ordinance. The first attached Resolution establishes the community facilities district, with the rate and method of apportionment of special taxes and authorizes the levy of special taxes within the district. The second attached Resolution calls for a special landowner election to be held on June 18, 2024. The third attached Resolution declares the results of the election, including a statement from the City Clerk as to the canvass of ballots, and directs the recording of the Notice of Special Tax Lien. The attached Ordinance authorizes the levying of special taxes.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF FORMATION OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 68 (RICH HAVEN INDUSTRIAL SERVICES), PROPOSING THAT THE COMMUNITY FACILITIES DISTRICT BE AUTHORIZED TO LEVY A SPECIAL TAX AND PROPOSING THAT AN APPROPRIATIONS LIMIT OF THE COMMUNITY FACILITIES DISTRICT BE ESTABLISHED

WHEREAS, on May 7, 2024, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Intention to Establish a Community Facilities District Proposed to be Named City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services) and to Authorize the Levy of a Special Tax Therein" (the "Resolution of Intention"), stating its intention to establish City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services) (the "Community Facilities District"), to authorize the Community Facilities District to levy a special tax within the Community Facilities District for the purpose of financing certain services and setting the date for a public hearing to be held on the establishment of the Community Facilities District; and

WHEREAS, pursuant to the Resolution of Intention, notice of said public hearing was published in the *Inland Valley Daily Bulletin*, a newspaper of general circulation published in the area of the Community Facilities District, in accordance with the Act; and

WHEREAS, on this date, the City Council opened, conducted and closed said public hearing; and

WHEREAS, pursuant to the Resolution of Intention, each officer of the City who is or will be responsible for providing one or more of the proposed types of services to be financed by the Community Facilities District was directed to study, or cause to be studied, the proposed Community Facilities District and, at or before said public hearing, file a report with the City Council containing a brief description of the services by type that will in his or her opinion be required to adequately meet the needs of the Community Facilities District, and his or her estimate of the cost of providing such services; such officers were also directed to estimate the fair and reasonable cost of the incidental expenses proposed to be paid; and

WHEREAS, said report was so filed with the City Council and made a part of the record of said public hearing; and

WHEREAS, at the hearing, the testimony of all persons for or against the establishment of the Community Facilities District, the extent of the Community Facilities District and the furnishing of the specified types of services was heard; and

WHEREAS, written protests against the establishment of the Community Facilities District, the furnishing of any specified type or types of services within the Community Facilities District or the levying of a specified special tax were not made or filed at or before said hearing by 50% or more of the registered voters, or six registered voters, whichever is more, residing within the territory proposed to be included in the Community Facilities District, or the owners of one-half or more of the area of land in the territory proposed to be included in the Community Facilities District and not exempt from the special tax; and

WHEREAS, there has been filed with the City Clerk of the City a letter from the Registrar of Voters of the County of San Bernardino indicating that no persons were registered to vote within the territory of the proposed Community Facilities District as of May 13, 2024, which demonstrates that 12 or more persons have not been registered to vote within the territory of the proposed Community Facilities District for each of the 90 days preceding the close of said public hearing;

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

Section 1. The foregoing recitals are true and correct, and the City Council so finds and determines.

Section 2. The Community Facilities District is hereby established.

Section 3. The name for the Community Facilities District is "City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services)."

Section 4. The services (the "Services") proposed to be financed by the Community Facilities District pursuant to the Act are described under the caption "Services" on Exhibit A hereto. The incidental expenses proposed to be incurred are identified under the caption "Incidental Expenses" on Exhibit A hereto. No facilities are proposed to be financed by the Community Facilities District.

Section 5. The proposed special tax to be levied within the Community Facilities District has not been precluded by majority protest pursuant to Section 53324 of the Act.

Section 6. The City Council proposes that, except where funds are otherwise available, the Community Facilities District be authorized to annually levy within the Community Facilities District a special tax (the "Special Tax") sufficient to pay for all Services, secured by recordation of a continuing lien against all nonexempt real property in the Community Facilities District. The rate, method of apportionment and manner of collection of the Special Tax, in sufficient detail to allow each landowner or resident within the proposed Community Facilities District to estimate the maximum amount that he or she will have to pay, is specified in the Rate and Method of Apportionment of Special Tax (the "Rate and Method") attached hereto as Exhibit B, which is by this reference incorporated herein. The obligation to pay the Special Tax may not be prepaid and permanently satisfied. The Special Tax will be collected in the

same manner as ordinary *ad valorem* property taxes or in such other manner as the City Council shall determine, including direct billing of the affected property owners.

Section 7. The Special Tax may only finance the Services to the extent that they are in addition to those provided in the territory of the Community Facilities District before the date the Community Facilities District is created. The Services may not supplant services already available within that territory when the Community Facilities District is created.

Section 8. The name, address and telephone number of the office, department or bureau that will be responsible for preparing annually a current roll of Special Tax levy obligations by assessor's parcel number and that will be responsible for estimating further Special Tax levies pursuant to Section 53340.2 of the Act are as follows: Management Analyst, Financial Services, City of Ontario, 303 East B Street, Ontario, California 91764, (909) 395-2341.

Section 9. Upon recordation of a notice of special tax lien pursuant to Section 3114.5 of the California Streets and Highways Code, a continuing lien to secure each levy of the Special Tax shall attach to all nonexempt real property in the Community Facilities District and this lien shall continue in force and effect until the Special Tax obligation is canceled in accordance with law or until the Special Tax ceases to be levied and a notice of cessation of the Special Tax is recorded in accordance with Section 53330.5 of the Act.

Section 10. The boundary map of the Community Facilities District has been recorded in San Bernardino County in Book 91 at Page 63 of Maps of Assessments and Community Facilities Districts in the San Bernardino County Recorder's Office (Document No. 2024-0108529).

Section 11. The City Council proposes that the annual appropriations limit, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution, of the Community Facilities District be established at $13,400,000.

Section 12. Pursuant to the provisions of the Act, the propositions to authorize the Community Facilities District to levy the Special Tax and to establish the appropriations limit of the Community Facilities District specified above shall be subject to the approval of the qualified electors of the Community Facilities District at a special election. The City Council hereby finds and determines that no persons were registered to vote within the territory of the proposed Community Facilities District as of May 13, 2024, and that 12 or more persons have not been registered to vote within the territory of the Community Facilities District for each of the 90 days preceding the close of the public hearing held by the City Council on the establishment of the Community Facilities District. Accordingly, pursuant to Section 53326 of the Act, the vote shall be by the landowners of the Community Facilities District and each person who is the owner of land as of the close of said public hearing, or the authorized representative thereof, shall have one vote for each acre or portion of an acre that he or she owns within the Community Facilities District not exempt from the Special Tax. The voting procedure shall be by mailed or hand-delivered ballot.

Section 13. The City Council hereby finds and determines that all proceedings up to and including the adoption of this Resolution were valid and in conformity with the requirements of the Act. In accordance with Section 53325.1 of the Act, such finding shall be final and conclusive.

Section 14. All actions heretofore taken by the officers, employees and agents of the City with respect to the establishment of the Community Facilities District, or in connection with or related to any of the matters referred to herein, are hereby approved, confirmed and ratified.

Section 15. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things that they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof.

Section 16. This Resolution shall take effect immediately upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 18th day of June, 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 June 18, 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 June 18, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

SERVICES AND INCIDENTAL EXPENSES

Services

The types of City services to be financed by the Community Facilities District are police protection services, fire protection and suppression services, ambulance and paramedic services, maintenance and lighting of parks, parkways, streets, roads and open space, flood and storm protection services, maintenance and operation of fiber optic telecommunication, wireless communication and public safety camera systems and maintenance and operation of any real property or other tangible property with an estimated useful life of five or more years that is owned by the City.

Incidental Expenses

The incidental expenses proposed to be incurred include the costs associated with the creation of the Community Facilities District, determination of the amount of taxes, collection of taxes, payment of taxes, or costs otherwise incurred in order to carry out the authorized purposes of the Community Facilities District.

EXHIBIT B

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 68
(RICH HAVEN INDUSTRIAL SERVICES)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax shall be levied on all Assessor's Parcels in the City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services) ("CFD No. 68") and collected each Fiscal Year commencing in Fiscal Year 2024-25, in an amount determined by the City Council of the City of Ontario through the application of the Rate and Method of Apportionment, as described below. All of the real property in CFD No. 68, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent, and in the manner herein provided.

A. DEFINITIONS

The terms as may hereinafter be set forth have the following meanings:

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5 of Part 1 of Division 2 of Title 5 of the California Government Code.

"Administrative Expenses" means the following actual or reasonably estimated costs directly related to the administration of CFD No. 68: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or CFD No. 68 or both); the costs of collecting the Special Taxes (whether by the County or otherwise); the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City or CFD No. 68 related to an appeal of the Special Tax; the City's administration fees and third party expenses; the costs of City staff time and reasonable overhead related to CFD No. 68; and amounts estimated or advanced by the City or CFD No. 68 for any other administrative purposes of CFD No. 68, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

"Assessor's Parcel" means a lot or parcel shown on an Assessor's Parcel Map with an assigned Assessor's Parcel Number.

"Assessor's Parcel Map" means an official map of the Assessor of the County designating parcels by Assessor's Parcel Number.

"Assessor's Parcel Number" means, with respect to an Assessor's Parcel, that number assigned to such Assessor's Parcel by the County for purposes of identification.

"CFD Administrator" means an official of the City responsible for determining the Special Tax Requirement, providing for the levy and collection of the Special Tax, and performing the other duties provided for herein.

"CFD No. 68" means City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services).

"City" means the City of Ontario, California.

"City Council" means the City Council of the City, acting as the legislative body of CFD No. 68.

"County" means the County of San Bernardino.

"Fiscal Year" means the period starting July 1 and ending on the following June 30.

"Gated Community Attached Dwelling Unit" means a Unit within any residential building containing two or more dwelling units (including attached condominiums, townhouses, duplexes, triplexes, and apartments) within a gated community that, within such community, is primarily served by private interior streets.

"Land Use Class" means any of the classes listed in Table 1 below.

"Lower Income Household Welfare Exemption Property" means, for each Fiscal Year, an Assessor's Parcel within the boundaries of CFD No. 68 that is subject to a welfare exemption under subdivision (g) of Section 214 of the California Revenue and Taxation Code (or any successor statute), as indicated in the most recent County assessor's roll finalized prior to such Fiscal Year.

"Maximum Special Tax" means, with respect to an Assessor's Parcel of Taxable Property, the maximum Special Tax determined in accordance with Section C below that can be levied in any Fiscal Year on such Assessor's Parcel of Taxable Property.

"Multiple Family Dwelling Unit" means a Unit within any residential building containing two or more dwelling units, including attached condominiums, townhomes, duplexes, triplexes, and apartments, but excluding Gated Community Attached Dwelling Units.

"Non-Residential" means any buildings that are for commercial lodging use, commercial retail use, institutional use (e.g., churches, private schools), commercial restaurant use, office use, or industrial use.

"Non-Residential Property" means, for each Fiscal Year, an Assessor's Parcel for which a building permit for new construction was issued after January 1, 2022, and before May 1 of the prior Fiscal Year, for a Non-Residential use.

"Property Owner Association Property" means, for each Fiscal Year, property within the boundaries of CFD No. 68 that was owned by a property owner association, including any master or sub-association, as of January 1 of the prior Fiscal Year.

"Proportionately" means that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor's Parcels of Taxable Property.

"Public Property" means, for each Fiscal Year, property within the boundaries of CFD No. 68 that is (a) owned by, irrevocably offered to, or dedicated to the federal government, the State, the County, the City, or any local government or other public agency or (b) encumbered by an easement for purposes of public or utility right-of-way that makes impractical its use for any purpose other than that set forth in such easement, provided that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act shall be taxed and classified according to its use.

"Rate and Method of Apportionment" means this Rate and Method of Apportionment of Special Tax.

"Residential Property" means, for each Fiscal Year, an Assessor's Parcel for which a building permit for new construction of one or more Units was issued after January 1, 2022, and before May 1 of the prior Fiscal Year.

"Services" means the services authorized to be financed, in whole or in part, by CFD No. 68, including: police protection services; fire protection and suppression services; ambulance and paramedic services; maintenance and lighting of parks, parkways, streets, roads, and open space; flood and storm protection services; and maintenance and operation of any real property or other tangible property with an estimated useful life of five or more years that is owned by the City.

"Single Family Detached Dwelling Unit" means any residential building containing only one Unit on one legal lot, including single family residences and single family detached residential condominium units.

"Special Tax" means the special tax authorized by the qualified electors of CFD No. 68 to be levied within the boundaries of CFD No. 68.

"Special Tax Requirement" means the amount necessary in any Fiscal Year to pay the cost of the Services, Administrative Expenses, and an amount equal to Special Tax delinquencies based on the historical delinquency rate for Special Taxes, as determined by the CFD Administrator.

"Square Footage" or **"Sq. Ft."** means, with respect to a building of Non-Residential Property, the gross floor area square footage reflected on the original construction building permit, or as set forth in other official records maintained by the City's Building Department or other appropriate means selected by CFD No. 68, for such building, plus any square footage subsequently added to a building of Non-Residential Property after issuance of a building permit for expansion or renovation of such building.

"State" means the State of California.

"Taxable Property" means, for each Fiscal Year, all Assessor's Parcels of Residential Property and Non-Residential Property within the boundaries of CFD No. 68 which are not exempt from the Special Tax pursuant to law or Section E below.

"Unit" means an individual single-family detached or attached home, townhome, condominium, apartment unit, or other residential dwelling unit, including each separate living area within a half-plex, duplex, triplex, fourplex, or other residential structure.

B. ASSIGNMENT TO LAND USE CATEGORIES

Each Fiscal Year, beginning with Fiscal Year 2024-25, all Taxable Property within CFD No. 68 shall be classified as Residential Property (Single Family Detached Dwelling Unit, Multiple Family Dwelling Unit, or Gated Community Attached Dwelling Unit) or Non-Residential Property and shall be subject to Special Taxes in accordance with the Rate and Method of Apportionment as determined pursuant to Sections C and D below.

C. MAXIMUM SPECIAL TAX

The Maximum Special Tax for each Assessor's Parcel classified as Taxable Property shall be determined by reference to Table 1 below.

TABLE 1
MAXIMUM SPECIAL TAX

Land Use Class	Maximum Special Tax Fiscal Year 2024-25
Residential Property:	
Single Family Detached Dwelling Unit	$1,501.46 per Unit
Multiple Family Dwelling Unit	$1,301.19 per Unit
Gated Community Attached Dwelling Unit	$1,091.19 per Unit
Non-Residential Property	$0.273800 per Sq. Ft.

On January 1 of each Fiscal Year, commencing January 1, 2025, the Maximum Special Tax to be applied in the next Fiscal Year shall be subject to an automatic increase at a rate equal to 4.0% of the amount in effect for the prior Fiscal Year.

In some instances an Assessor's Parcel of Taxable Property may contain more than one Land Use Class. The Maximum Special Tax levied on such Assessor's Parcel shall be the sum of the Maximum Special Tax for all Units of Residential Property and Square Footage of Non-Residential Property (based on the applicable building permits, final subdivision map, parcel map, condominium plan, or other recorded County map) located on that Assessor's Parcel.

D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX

Each Fiscal Year, beginning with Fiscal Year 2024-25, the CFD Administrator shall determine the Special Tax Requirement. The Special Tax shall then be levied Proportionately on each Assessor's Parcel of Taxable Property up to 100% of the applicable Maximum Special Tax for such Assessor's Parcel, until the Special Tax Requirement is satisfied. However, the Special Tax levied in any Fiscal Year shall not increase by more than 4.0% of the amount of the Special Tax levied in the prior Fiscal Year.

E. EXEMPTIONS

Notwithstanding anything in this Rate and Method of Apportionment to the contrary, no Special Tax shall be levied on Public Property or Property Owner Association Property.

No Special Tax shall be levied on Lower Income Household Welfare Exemption Property; provided, however, that if, in any Fiscal Year, applicable law does not require that Lower Income Household Welfare Exemption Property be exempt from some portion, or all, of the Special Tax, such portion, or all, of the Special Tax shall be levied on such property in accordance with this Rate and Method of Apportionment based on the Land Use Class to which the Assessor's Parcel is assigned.

F. APPEALS

Any property owner may file a written appeal of the Special Tax with CFD No. 68 claiming that the amount or application of the Special Tax is not correct. The appeal must be filed not later than one calendar year after having paid the Special Tax that is disputed, and the appellant must be current in all payments of Special Taxes. In addition, during the term of the appeal process, all Special Taxes levied must be paid on or before the payment date established when the levy was made.

The appeal must specify the reasons why the appellant claims the Special Tax is in error. The CFD Administrator shall review the appeal, meet with the appellant if the CFD Administrator deems necessary, and advise the appellant of its determination.

If the property owner disagrees with the CFD Administrator's decision relative to the appeal, the owner may then file a written appeal with the City Council, whose subsequent decision shall be final and binding on all interested parties. If the decision of the CFD Administrator or subsequent decision by the City Council requires the Special Tax to be modified or changed in favor of the property owner, then the CFD Administrator shall determine if sufficient Special Tax revenue is available to make cash refund. If a cash refund cannot be made, then an adjustment shall be made to credit future Special Tax levy(ies).

This procedure shall be exclusive and its exhaustion by any property owner shall be a condition precedent to filing any legal action by such owner.

G. MANNER OF COLLECTION

The Special Taxes shall be collected in the same manner and at the same time as ordinary *ad valorem* property taxes; provided, however, that the Special Taxes may be collected in such other manner as the City Council shall determine, including direct billing of affected property owners.

H. TERM OF SPECIAL TAX

The Special Tax shall continue to be levied indefinitely on an annual basis on all Taxable Property in CFD No. 68.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CALLING SPECIAL ELECTION FOR CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 68 (RICH HAVEN INDUSTRIAL SERVICES)

WHEREAS, on this date, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Formation of City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services), Proposing that the Community Facilities District be Authorized to Levy a Special Tax and Proposing that an Appropriations Limit of the Community Facilities District Be Established" (the "Resolution of Formation"), establishing City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services) (the "Community Facilities District"), proposing that the Community Facilities District be authorized to levy a special tax (the "Special Tax") within the Community Facilities District for the purpose of financing certain services and proposing that an appropriations limit of the Community Facilities District be established at $13,400,000; and

WHEREAS, pursuant to the provisions of the Act and the Resolution of Formation, the propositions to authorize the Community Facilities District to levy the Special Tax and to establish such appropriations limit of the Community Facilities District are to be submitted to the qualified electors of the Community Facilities District at a special election; and

WHEREAS, the City Council desires to designate the City Clerk of the City (the "City Clerk") as the election official for such special election; and

WHEREAS, there has been filed with the City Clerk a letter from the Registrar of Voters of the County of San Bernardino indicating that no persons were registered to vote within the territory of the Community Facilities District as of May 13, 2024, which demonstrates that 12 or more persons have not been registered to vote within the territory of the Community Facilities District for each of the 90 days preceding the close of the public hearings on the establishment of the Community Facilities District; and

WHEREAS, there has been filed with the City Clerk consents and waivers of all of the landowners of record in the Community Facilities District consenting to the waiver of, and waiving, any time limit specified by Section 53326 of the Act and any requirement pertaining to the conduct of said special election, consenting to the holding of said special election on June 18, 2024 and consenting to the waiver of, and waiving, any impartial analysis, arguments or rebuttals, as set forth in Sections 53326 and 53327 of the Act; and

WHEREAS, the City Clerk has concurred in said waivers and has concurred in holding said special election on June 18, 2024;

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

Section 1. The foregoing recitals are true and correct, and the City Council so finds and determines.

Section 2. Pursuant to Sections 53326 and 53325.7 of the Act, the propositions to authorize the Community Facilities District to levy the Special Tax and to establish the appropriations limit of the Community Facilities District shall be submitted to the qualified electors of the Community Facilities District at an election called therefor as provided below.

Section 3. The City Clerk is hereby designated as the official to conduct said election.

Section 4. As authorized by Section 53353.5 of the Act, the propositions to authorize the Community Facilities District to levy the Special Tax and to establish such appropriations limit of the Community Facilities District shall be combined into one ballot proposition.

Section 5. The City Council hereby finds and determines that no persons were registered to vote within the territory of the Community Facilities District as of May 13, 2024, and that 12 or more persons have not been registered to vote within the territory of the Community Facilities District for each of the 90 days preceding the close of the public hearings heretofore held by the City Council on the establishment of the Community Facilities District. Accordingly, pursuant to Section 53326 of the Act, the vote shall be by the landowners of the Community Facilities District and each person who is the owner of land as of the close of said public hearings, or the authorized representative thereof, shall have one vote for each acre or portion of an acre that he or she owns within the Community Facilities District not exempt from the Special Tax.

Section 6. The City Council hereby finds and determines that the qualified electors of the Community Facilities District have (a) unanimously consented to the waiver of, and have waived, any time limit specified by Section 53326 of the Act and any requirement pertaining to the conduct of said election, (b) unanimously consented to the holding of said election on June 18, 2024, and (c) unanimously consented to the waiver of, and have waived, any impartial analysis, arguments or rebuttals, as set forth in Sections 53326 and 53327 of the Act. The City Council hereby finds and determines that the City Clerk has concurred in said waivers and has concurred in holding said election on June 18, 2024.

Section 7. The City Council hereby calls a special election to submit to the qualified electors of the Community Facilities District the combined ballot proposition to authorize the Community Facilities to levy the Special Tax and to establish the appropriations limit of the Community Facilities District at $13,400,000, which election shall be held at 303 East B Street, Ontario, California, on June 18, 2024, provided, that, in the event the June 18, 2024 City Council meeting is held via teleconference and/or

videoconference only, the means by which the public may observe such public hearings and offer public comment would be as prescribed in the notice and agenda for such City Council meeting. The City Council has caused to be provided to the City Clerk, as the official to conduct the election, the Resolution of Formation, a certified map of sufficient scale and clarity to show the boundaries of the Community Facilities District and a sufficient description to allow the City Clerk to determine the boundaries of the Community Facilities District.

The voted ballots shall be returned to the City Clerk not later than 7:30 p.m. on June 18, 2024; provided, however, that if all of the qualified electors have voted prior to such time, the election may be closed with the concurrence of the City Clerk.

Section 8. Pursuant to Section 53326 of the Act, the election shall be conducted by mail or hand-delivered ballot pursuant to Section 4000 *et. seq.* of the California Elections Code. Except as otherwise provided in the Act, the provisions of law regulating elections of the City, insofar as they may be applicable, shall govern the election.

Section 9. The form of the ballot for the election, which sets forth the measure to be submitted to the voters, is attached hereto as Exhibit A and by this reference incorporated herein, and such form of ballot is hereby approved. The City Clerk shall cause to be delivered to each of the qualified electors of the Community Facilities District a ballot in said form, together with all supplies and written instructions necessary for the use and return of the ballot. The number of votes to be voted by a particular landowner shall be specified on the ballot provided to that landowner.

The identification envelope for return of a ballot shall be enclosed with such ballot, shall have the return postage prepaid, and shall contain: (a) the name and address of the landowner, (b) a declaration, under penalty of perjury, stating that the voter is the owner of record or the authorized representative of the landowner entitled to vote and is the person whose name appears on the identification envelope, (c) the printed name and signature of the voter, (d) the date of signing and place of execution of the declaration described in clause (b) above, and (e) a notice that the envelope contains an official ballot and is to be opened only by the canvassing board.

Analysis and arguments with respect to the measure submitted to the voters are hereby waived, as provided in Section 53327 of the Act.

Section 10. The City Clerk shall accept the ballots of the qualified electors in the office of the City Clerk at 303 East B Street, Ontario, California, to and including 7:30 p.m. on June 18, 2024, whether said ballots be personally delivered or received by mail. The City Clerk shall have available ballots that may be marked at said location on the election day by said qualified electors.

Section 11. The City Council hereby determines that the services financed by the Community Facilities District are necessary to meet increased demands placed

upon local agencies as a result of development occurring in the Community Facilities District.

Section 12. All actions heretofore taken by the officers, employees and agents of the City with respect to the special election called pursuant hereto, or in connection with or related to any of the matters referred to herein, are hereby approved, confirmed and ratified.

Section 13. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things that they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof.

Section 14. This Resolution shall take effect immediately upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 18th day of June, 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 June 18, 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 June 18, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

OFFICIAL BALLOT

CITY OF ONTARIO
June 18, 2024

SPECIAL ELECTION

This ballot is for a special, landowner election. The number of votes to be voted pursuant to this ballot is ____.

INSTRUCTIONS TO VOTERS:

To vote on the measure, mark a cross (+ or X) in the voting square after the word "YES" or after the word "NO". All distinguishing marks or erasures are forbidden and make the ballot void. If you wrongly mark, tear or deface this ballot, return it to the City Clerk of the City of Ontario and obtain another.

CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 68
(RICH HAVEN INDUSTRIAL SERVICES)

MEASURE: Shall the measure to authorize City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services) (the "Community Facilities District") to levy a special tax in order to finance certain services and to establish the annual appropriations limit of the Community Facilities District at $13,400,000, as specified in the resolution adopted by the City Council of the City of Ontario on June 18, 2024 entitled "A Resolution of the City Council of the City of Ontario, California, of Formation of City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services), Proposing that the Community Facilities District Be Authorized to Levy a Special Tax and Proposing that an Appropriations Limit of the Community Facilities District Be Established," be adopted?

Yes: ☐

No: ☐

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING RESULTS OF SPECIAL ELECTION AND DIRECTING RECORDING OF NOTICE OF SPECIAL TAX LIEN

WHEREAS, on June 18, 2024, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, Calling Special Election for City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services)" (the "Resolution Calling Election"), calling a special election to submit to the qualified electors of City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services) (the "Community Facilities District") the combined ballot proposition to authorize the Community Facilities District to levy a special tax and to establish the appropriations limit of the Community Facilities District; and

WHEREAS, pursuant to the terms of the Resolution Calling Election and the provisions of the Act, the special election was held on June 18, 2024; and

WHEREAS, the City Clerk of the City (the "City Clerk") has certified the canvass of the returns of the election and has filed a Canvass and Statement of Results of Election (the "Canvass"), a copy of which is attached hereto as Exhibit A;

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

Section 1. The foregoing recitals are true and correct, and the City Council so finds and determines.

Section 2. The City Council has received, reviewed and hereby accepts the Canvass.

Section 3. The City Council hereby finds and declares that the ballot proposition submitted to the qualified electors of the Community Facilities District pursuant to the Resolution Calling Election has been passed and approved by such electors in accordance with Section 53328 and Section 53325.7 of the Act.

Section 4. The City Clerk is hereby directed to execute and cause to be recorded in the office of the County Recorder of the County of San Bernardino a notice of special tax lien in the form required by the Act, said recording to occur no later than 15 days following adoption by the City Council of this Resolution.

Section 5. All actions heretofore taken by the officers, employees and agents of the City with respect to the special election, or in connection with or related to any of the matters referred to herein, are hereby approved, confirmed and ratified.

Section 6. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things that they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof.

Section 7. This Resolution shall take effect immediately upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 18th day of June, 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 June 18 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 June 18, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

[See attached]

CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 68
(RICH HAVEN INDUSTRIAL SERVICES)

CANVASS AND STATEMENT OF RESULTS OF ELECTION

I hereby certify that on June 18, 2024, I canvassed the returns of the special election for City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services) held on June 18, 2024, that the total number of ballots cast in said Community Facilities District and the total number of votes cast for and against the combined ballot proposition submitted to the qualified electors of the Community Facilities District are as follows and that the totals as shown for and against such proposition are true and correct:

	Qualified Landowner Votes	Votes Cast	YES	NO
City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services) Special Election, June 18, 2024	53	___	___	___

MEASURE: Shall the measure to authorize City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services) (the "Community Facilities District") to levy a special tax in order to finance certain services and to establish the annual appropriations limit of the Community Facilities District at $13,400,000, as specified in the resolution adopted by the City Council of the City of Ontario on June 18, 2024 entitled "A Resolution of the City Council of the City of Ontario, California, of Formation of City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services), Proposing that the Community Facilities District Be Authorized to Levy a Special Tax and Proposing that an Appropriations Limit of the Community Facilities District Be Established," be adopted?

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND this 18th day of June, 2024.

By: _____
SHEILA MAUTZ, CITY CLERK

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING A SPECIAL TAX WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 68 (RICH HAVEN INDUSTRIAL SERVICES)

WHEREAS, on May 7, 2024, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Intention to Establish a Community Facilities District Proposed to be Named City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services) and to Authorize the Levy of a Special Tax Therein" stating its intention to establish City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services) (the "Community Facilities District") and to authorize the Community Facilities District to levy a special tax (the "Special Tax") within the Community Facilities District for the purpose of financing certain services (the "Services"); and

WHEREAS, on June 18, 2024, the City Council held a noticed public hearing on the establishment of the Community Facilities District, as required by the Act; and

WHEREAS, subsequent to the close of said hearing, the City Council adopted resolutions entitled "A Resolution of the City Council of the City of Ontario, California, of Formation of City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services), Proposing that the Community Facilities District Be Authorized to Levy a Special Tax and Proposing that an Appropriations Limit of the Community Facilities District Be Established" (the "Resolution of Formation") and "A Resolution of the City Council of the City of Ontario, California, Calling Special Election for City of Ontario Community Facilities District No. 68 (Rich Haven Industrial Services)," which resolutions established the Community Facilities District, proposed that the Community Facilities District be authorized to levy the Special Tax within the Community Facilities District, proposed that an appropriations limit of the Community Facilities District be established and called a special election to submit to the qualified electors of the Community Facilities District the combined ballot proposition to authorize the Community Facilities District to levy the Special Tax and to establish the appropriations limit of the Community Facilities District; and

WHEREAS, on June 18, 2024, an election was held in which the qualified electors of the Community Facilities District approved said proposition by more than the two-thirds vote required by the Act; and

WHEREAS, the City Council is the legislative body of the Community Facilities District;

THE CITY COUNCIL OF THE CITY OF ONTARIO DOES ORDAIN AS FOLLOWS:

Section 1. The City Council hereby authorizes and levies the Special Tax within the Community Facilities District pursuant to Sections 53328 and 53340 of the Act, at the rate and in accordance with the method of apportionment set forth in Exhibit B to the Resolution of Formation (the "Rate and Method"). The Special Tax is hereby levied commencing in fiscal year 2024-25 and in each fiscal year thereafter until the last fiscal year in which the Special Tax is authorized to be levied pursuant to the Rate and Method.

Section 2. The City Council may, pursuant to subdivision (b) of Section 53340 of the Act, provide, by resolution, for the levy of the Special Tax in the current tax year or in future tax years at the same rate or at a lower rate than the rate provided by this Ordinance. In no event shall the Special Tax be levied on any parcel within the Community Facilities District in excess of the maximum tax specified therefor in the Rate and Method.

Section 3. The Special Tax shall be levied on all of the parcels in the Community Facilities District, unless exempted by law or by the Rate and Method.

Section 4. The proceeds of the Special Tax shall only be used to pay, in whole or in part, the cost of providing the Services and incidental expenses pursuant to the Act.

Section 5. The Special Tax shall be collected in the same manner as ordinary *ad valorem* property taxes are collected and shall be subject to the same penalties and the same procedure, sale and lien priority in the case of delinquency as is provided for *ad valorem* taxes or in such other manner as the City Council shall determine, including direct billing of the affected property owners.

Section 6. If for any reason any portion of this Ordinance is found to be invalid, or if the Special Tax is found inapplicable to any particular parcel within the Community Facilities District, by a court of competent jurisdiction, the balance of this Ordinance and the application of the Special Tax to the remaining parcels within the Community Facilities District shall not be affected.

Section 7. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

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

PASSED, APPROVED, AND ADOPTED this _____ day of _____ 2024.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held _____ and adopted at the regular meeting held _____, 2024 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held _____ and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **June 18, 2024**	**SECTION:** **PUBLIC HEARINGS**
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: 19

SUBJECT: **A PUBLIC HEARING TO CONSIDER AN ORDINANCE ADOPTING A DEVELOPMENT CODE AMENDMENT ESTABLISHING HISTORIC PRESERVATION - ADAPTIVE REUSE PLANS, FILE NO. PDCA24-002**

RECOMMENDATION: That the City Council introduce and waive further reading of the Ordinance Approving File No. PDCA24-002, a Development Code Amendment revising Table 2.02-1: Reviewing Matrix of Chapter 2 (Administration and Procedures) to include the Fire Marshal as an Approving Authority, and Chapters 4 (Permits Actions and Decision) and 7 (Historic Preservation) to establish Historic Preservation - Adaptive Reuse Plan of the City of Ontario Development Code.

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

FISCAL IMPACT: There is not a direct fiscal impact associated with this action.

BACKGROUND & ANALYSIS: Staff has initiated a Development Code Amendment to allow for the establishment of Historic Preservation - Adaptive Reuse Plans and processing procedures, generally described as follows:
(1) Amend Division 2.02 (Application Filing and Processing), revising Table 2.02-1: Reviewing Matrix to include the Fire Marshal as an Approving Authority;
(2) Amend Division 4.03 (Ministerial Permits and Decision) by adding processing procedures, requirements, and eligibility for an adaptive reuse plan approval; and
(3) Amend Division 7.01 (Historic Preservation) to add Historic Preservation - Adaptive Reuse Plan as an incentive.
The Amendment will target adaptive reuse (or change of building classification/occupancy) of designated historic buildings to multiple-family residential, office, commercial, work/live, or retail while removing construction barriers related to zoning, building, and fire code compliance. In turn, the adaptive reuse program will further incentivize preservation of historically significant resources, streamline the review and approval process by waiving the development plan review, reduce underutilized sites, reduce demolition, and foster sustainable community development.

Adaptive reuse programs rely upon the California Historic Building Code, International Existing Building Code, and California Health and Safety Code to provide the authority for the Building Official and Fire Marshal to consider alternative building standards and methods of construction while ensuring adequate health and safety protections for the new use. Relief of strict zoning requirements or allowance of nonconforming site conditions, such as setbacks, parking, open space for residential use, and height, may be considered by the Planning Director. The Fire Marshal, Building Official and Planning Director (Approving Authority) may approve Adaptive Reuse Plans through a ministerial process, however the Approving Authority shall first find that special individual reasons make the strict letter of the local codes impractical and the modification is in compliance with the intent and purpose of the local codes and that such modification does not lessen health, life and safety requirements. The proposed provisions of the Development Code Amendment are shown in Attachment A (Development Code Amendment) of the appended Ordinance. Any provisions proposed for deletion are shown in red strikeout text (~~Abcdefg~~) and all additions are shown in blue text (Abcdefg).

PLANNING COMMISSION REVIEW AND ACTION: On May 28, 2024, the Planning Commission conducted a public hearing to consider the proposed Development Code Amendment. Upon conclusion of the public hearing, the Planning Commission voted unanimously (5-0) to approve Resolution No. PC24-016, recommending the City Council approve the proposed Development Code Amendment.

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 TOP. Goals and policies of TOP that are furthered by the proposed Development Code Amendment are addressed in the attached Planning Commission backup material.

ENVIRONMENTAL REVIEW: The proposed Development Code Amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) and the guidelines promulgated thereunder, pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the activity is covered by the commonsense exemption (general rule) that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

ATTACHMENT A:
Development Code Amendment
File No. PDCA23-001

PART I. Division 2.02—Application Filing and Processing
Revise Table 2.02-1 (Review Matrix) as follows:

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]										
	Planning Director	City Engineer	Fire Marshal	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
A. LEGISLATIVE ACTIONS											
1. Airport Land Use Compatibility Plan and Amendments [1] (Ref: ODC Section 4.01.010)									R	X	
2. Development Agreements [1] (Ref: ODC Section 4.01.015)									R	X	
3. Development Code Amendments [1] (Ref: ODC Section 4.01.020)									R	X	
4. Amendment to the Policy Plan (General Plan) Component of The Ontario Plan [1] (Ref: ODC Section 4.01.025)									R	X	
5. Planned Unit Developments and Amendments [1] (Ref: ODC Section 4.01.030)									R	X	
6. Specific Plans and Amendments [1][12] (Ref: ODC Section 4.01.035)									R	X	
7. Williamson Act Contract Cancellations [1] (Ref: GC Section 51200 et.seq.)									R	X	
8. Zone Changes [1] (Ref: ODC Section 4.01.040)									R	X	
B. DISCRETIONARY PERMITS AND ACTIONS											
1. Billboard Relocation Agreements [1] (Ref: ODC Section 4.02.010)									R	X	
2. Conditional Use Permits (Ref: ODC Section 4.02.015)											
a. Hotels, Motels and Residence Inns [1]									R	X	
b. Use established in conjunction with a Development Plan [1]						R			X	A	
c. Use established within an existing structure [1]					X				A	A	
d. Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) [1]									X	A	
e. Revocation due to abandonment of use per ODC Division 2.05 (City Initiated Modification or Revocation) [1]					X				A	A	
3. Density Bonus and Other Incentives per ODC Section 6.01.010.G (Density Bonus and Other Incentives) [1]									R	X	
4. Development Plans, except within the ONT zoning district (Ref: ODC Section 4.02.025)											

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]										
	Planning Director	City Engineer	Fire Marshal	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
a. Residential developments totaling 5 or more dwelling units or the development of 3 or more dwelling units on a single lot or parcel						R			X	A	
b. Commercial developments, and developments in the CIV, OS-R, OS-C and UC zoning districts, greater than 500 SF in area						X			A	A	
c. Industrial developments equal to or less than 0.45 FAR						X			A	A	
d. Industrial developments exceeding 0.45 FAR						R			X	A	
e. Wireless telecommunications facilities pursuant to Section 5.03.415 (Wireless Telecommunications Facilities) of this Development Code											
(1) Tier 2 facilities						X			A	A	
(2) Tier 3 facilities [2]						X			A	A	
f. All others						X			A	A	
5. Extensions of Legal Nonconforming Status [1] (Ref: ODC Section 4.02.030)					X				A	A	
6. Historic Preservation											
a. Certificates of Appropriateness (Ref: ODC Section 4.02.050)											
(1) Designated Historic Landmarks and Contributors, and Architectural Conservation Areas; and Demolition of an Historic Resource [1]							R	X		A	
(2) Deferral of Replacement Structure [1]							R	X		A	
(3) Eligible Historic Resources [1]							X	A		A	
(4) Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) [1]							R	X		A	
(5) Waivers for Minor Improvements	X						A[6]	A[6]			
b. Certificates of Economic Hardship [1] (Ref: ODC Section 4.02.055) [1]							R	X		A	
c. Certificates of Economic Hardship—Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) [1]							R	X		A	
d. Conservation Plans (Ref: ODC Section 4.02.060)							X	A		A	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]										
	Planning Director	City Engineer	Fire Marshal	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
e. Historic Resource Tiering (Ref: ODC Section 4.02.040), including Rescinding or Amending Status (Ref: ODC Section 4.02.045)							X	A		A	
f. Local Historic Landmark and Local District Designations, and Architectural Conservation Areas (Ref: ODC Section 4.02.040), including Rescinding or Amending Status (Ref: ODC Section 4.02.045)							R	R		X	
g. Mills Act Contracts (Ref: ODC Section 4.02.065)							R	R		X	
h. Mills Act Cancellations [1] (Ref: ODC Section 4.02.065)							R	R		X	
i. Addition/Removal of Resources to/from the Ontario Register (Ref: ODC Section 4.02.045)											
(1) At the request of the property owner, or upon City initiation if the most recently prepared Historic Resource Survey evaluating the resource is more than 5 years old.							X	A		A	
(2) Loss of all historic and/or cultural significance due to a catastrophe causing a loss of integrity, or due to extensive legally performed alterations performed after the property was initially surveyed.	X							A		A	
7. Master Plans and Amendments [1] (Ref: ODC Section 4.02.070)									R	X	
8. Minor Adjustments/Alterations (Ref: ODC Section 4.02.020.C)					X				A	A	
9. Nonconforming Structure Reconstruction [1] (Ref: ODC Section 3.01.020)									X	A	
10. Parking Reduction (Ref: ODC Section 6.03.025)									X	A	
11. Sign Programs (Ref: ODC Section 4.02.075)	X								A	A	
12. Specific Plan Minor Adjustments/Alterations [12] (Ref: ODC Section 4.02.080)	X								A	A	
13. Stays of Permit Approval Time Limit (Ref: ODC Section 2.02.025.A.8)					X[5]	X[5]	X[5]	X[5]	X[5]	X[5]	
14. Subdivisions											
a. Lot Merger (Merger of Contiguous Parcels) [1] (Ref: ODC Section 4.02.085)						R			X	A	
b. Reversions to Acreage [1] (Ref: ODC Section 4.02.090)						R			X	A	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]										
	Planning Director	City Engineer	Fire Marshal	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
c. Tentative Tract and Parcel Maps, and Vesting Maps [1] (Ref: ODC Section 4.02.095)						R			X	A	
d. Tentative Tract and Parcel Map Time Extensions (Ref: ODC Section 2.02.025.A.3 & 4)						R			X	A	
15. Time Extensions, excepting tentative subdivision maps (Ref: ODC Section 2.02.025)	X								A	A	
16. Variances (Ref: ODC Section 4.02.020.D)											
a. Homeowner [1]					X				A	A	
b. Other [1]						R			X	A	
C. MINISTERIAL (ADMINISTRATIVE) PERMITS AND DECISIONS											
1. Historic Preservation- Adaptive Reuse Plans (Ref: ODC Section 4.03.010)	X		X	X							
2. Administrative Exceptions (Ref: ODC Section 4.03.050)					X				A	A	
3. Administrative Use Permits (Ref: ODC Section 4.03.015)	X										
4. Business License - Zoning/Land Use Compliance (Ref: OMC 3-1.129 (Zoning Compliance)	X								A	A	
5. Development Plans within the ONT zoning district (Ref: ODC Section 4.02.025)	X								A	A	
6. Fair Housing and Reasonable Accommodation Ref: ODC Section 4.02.035)					X				A	A	
7. Interpretations and Land Use Determinations (Ref: ODC Section 1.02.010)					X				A	A	
8. Landscape and Irrigation Plans (Ref. ODC Section 6.05.005)	X								A	A	
9. Off-Site (Public) Improvement Plans (Ref: ODC Section 6.08.040)		X							A	A	
10. ONT ALUCP Interagency Review [7] (Ref: ONT ALUCP)	X									A[8]	
11. Other Plan Checks and actions required by this Development Code	X								A	A	
12. Shopping Cart Retention Plans (Ref: ODC Section 6.11.020)	X								A	A	
13. Sign Plans (Ref: ODC Section 4.03.020)	X								A	A	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	*Reviewing Authorities [4]*										
	Planning Director	*City Engineer*	*Fire Marshal*	*Building Official*	*Zoning Administrator [2]*	*Development Advisory Board*	*Historic Preservation Subcommittee [2] [11]*	*Historic Preservation Commission [11]*	*Planning Commission [11]*	*City Council [11]*	*Ontario International Airport Authority*
14.	X								A	A	
15. Subdivisions											
a. Certificates of Compliance (Ref: ODC Section 4.03.025)		X							A	A	
b. Final Tract and Parcel Maps, and Vesting Maps (Ref: ODC Section 4.03.030)										X	
c. Lot Line Adjustments (Ref: ODC Section 4.03.035)		X							A	A	
d. Map Corrections and Amendments (Ref: ODC Section 4.03.040)		X							A	A	
e. Street Address Numbering (Ref. ODC Section 6.06.010)				X					A	A	
f. Street Name Assignment (Ref. ODC Section 6.06.010)	X								A	A	
g. Subdivision Improvement Agreement (Ref: ODC Section 6.08.040.G)		X							A	A	
h. Urban Lot Split (Ref: ODC Section 6.08.060		X							A	A	
16. Tier 1 wireless telecommunications facility pursuant to ODC Section 5.03.420 (Wireless Telecommunications Facilities)					X				A	A	
17. Wall, Fence, and Obstructions Plans not associated with a Development Plan (Ref. ODC Section 6.02.005)	X								A	A	
D. ENVIRONMENTAL DETERMINATIONS AND ACTIONS											
1. Environmental Impact Reports (EIRs) (Ref: CCR Section 15080 et seq.)									X[3]	X[3]	
2. Exempt Projects (Ref: CCR Section 15300 et seq.)	X[3]				X[3]	X[3]	X[3]	X[3]	A	A	
3. Ministerial Projects (Ref: CCR Section 15268)		Ministerial projects are exempt from the requirements of CEQA [10]									
4. Negative Declarations (NDs) and Mitigated Negative Declarations (MNDs) (Ref: CCR Section 15070 et seq.)					X[3]	X[3]	X[3]	X[3]	X[3]	X[3]	
5. Addendums to previously certified EIRs and previously adopted NDs and MNDs (Ref: CCR Section 15164)					X[3]	X[3]	X[3]	X[3]	X[3]	X[3]	
6. Environmental review for projects located within the ONT zoning district [9]											X

PART II. Division 4.03 —Ministerial Permits and Decision
Add Section as follows:

Sections:

4.03.010: Historic Preservation—Adaptive Reuse Plan

4.03.010: Historic Preservation—Adaptive Reuse Plan

A. Purpose. The purpose of this Section is to establish a procedure by which Adaptive Reuse Plans may be approved by the City, while at the same time:

1. Provide a more efficient way for qualified historic buildings and adaptive reuse projects to meet development, building, and fire protection standards;

2. Promote adaptive reuse as part of broader goals supporting historic preservation, economic development, environmental sustainability and resilience, and recognize the social value of historic buildings;

3. Incentivize building reuse to encourage activation of Downtown Ontario where there is a large collection of commercial and industrial historic buildings that are worthy of preservation;

4. Eliminate or allow nonconformance with certain development regulations that would make adaptive reuse of qualified historic buildings infeasible, including such standards related to parking and loading, height, density, floor-area ratio, and open space; and

5. Allow alternative building and fire code compliance for qualified adaptive reuse projects able to demonstrate an alternative means or method of protecting public health, safety, and welfare.

B. Applicability.

1. Pursuant to Table 2.02-1 (Review Matrix) of this Development Code, the Approving Authority is hereby empowered to approve, approve in modified form, or deny an Adaptive Reuse Plan application, and to impose reasonable conditions upon the approval of the application.

2. Adaptive Reuse Plan approval shall allow for those land uses identified in Table 5.02-1 (Land Use Matrix) of this Development Code which allows for a broad range of land uses of the underlying zoning district in which the site is located. However, no new uses that emits noxious odors or excessive noise shall be allowed, unless the it can be demonstrated to the satisfaction of the Planning Director that the use will not cause adverse impacts to nearby residential land uses.

3. Qualifying buildings include those listed on the National Register of Historic Places, on the California Register of Historic Resources, Ontario Register of Historic Resources as designated local landmarks or contributors to designated local historic districts located within the Adaptive Reuse Plan Area.

4. Adaptive Reuse projects are construction and remodeling projects that reconfigure existing spaces within existing buildings to accommodate a new use or purpose other

than what it was originally designed for. Adaptive Reuse projects require a change of use and building occupancy from office or commercial to residential, industrial to work/live, residential to office or commercial, or assembly to residential, office or commercial.

5. Application Filing and Processing. An Adaptive Reuse Plan application shall be filed, processed, and acted upon pursuant to Division 2.02 (Application Filing and Processing) of this Development Code and the provisions of this Section. Plans and reports prepared for an Adaptive Reuse Plan shall be prepared by a California licensed architect meeting the minimum qualifications standards of The Secretary of the interior Professional Qualifications (Code of Federal Regulations, 36 CFR Part 61).

C. Adaptive Reuse Plan Area. This area consists of the City's original downtown, and extends north to include the historic districts adjacent to Euclid Avenue, the boundary of which is as follows:

Beginning at the intersection of the centerlines of State Street and San Antonio Avenue, thence north to the northernmost city boundary, thence east to the centerline of Sultana Avenue, thence south to the centerline of I Street, thence east to the centerline of Campus Avenue, thence south to the centerline of State Street, thence west to the point of beginning.

D. Alternative Building and Fire Code Regulations. The alternative building and fire codes regulations adopted in this Section are applicable to qualified buildings and adaptive reuse projects.

1. *Alternative Codes.* Use of the California Historic Building Code, International Existing Building Code, California Health and Safety Code and the Ontario Adaptive Reuse Plan Technical Manual shall provide a process and the ability for the Building Official and Fire Marshal to consider alternative building standards while ensuring adequate health and safety protections.

2. In permitting repairs, alterations, and additions necessary to accommodate adaptive reuse projects, the alternative code regulations shall impose requirements that will, in the determination of the Building Official and the Fire Marshal, protect the public health, safety, and welfare.

3. Nothing in this Section shall be construed to allow the reduction of existing seismic or fire and life-safety elements of an eligible building where such elements provide a greater level of protection than the minimum requirements established by this Section.

4. Subject to the approval of the Building Official and Fire Marshal, the use or occupancy type of a qualified building shall be allowed to be changed as part of an adaptive reuse project without conforming to all requirements of Title 8, Building Regulations, and Title 4, Chapter 4, Fire Code of the City of Ontario Municipal Code provided the new or proposed occupancy is equally or less hazardous, based on life and fire risk, than the existing use.

5. Whenever there are practical difficulties involved in carrying out the provisions of Title 8, Building Regulations, and Title 4, Chapter 4, Fire Code of the City of Ontario Municipal Code, the Building Official and Fire Marshal shall have the authority to grant modifications for individual cases, provided the Approving Authority shall first find that special individual reasons make the strict letter of the local codes impractical and the modification is in compliance with the intent and purpose of the local codes and that such modification does not lessen health, life and safety requirements.

E. Incentives. The Planning Director may grant the following departures from certain development standards and requirements to incentivize qualified Adaptive Reuse Plans:

1. *Development Plan Waived*. Approved Adaptive Reuse Plans, which may allow for new additions up to 25 percent of the existing building floor area and is not visible from the public right-of-way, shall be exempt for the requirements for Development Plan review set forth in Section 4.02.025.

2. *Mezzanines*. Loft spaces in joint living and work quarters, dwelling units and guest rooms which do not exceed more than 33 percent of the floor area of the space below shall not be considered new floor area. Mezzanines may be included in the calculation of floor area for the purpose of determining compliance with the standards set forth in Paragraph (E) of this subdivision.

3. *Parking Reduction*. New parking spaces shall not be required for any converted use within the existing footprint of the building, but expansions to floor area shall require one parking space per bedroom or one parking space per 250 square feet of gross floor area for office or commercial.

4. *Setbacks*. Existing building setbacks may remain and shall be considered legally nonconforming, but no further encroachments shall be permitted into any nonconforming setback.

5. *Increases in Maximum Building Height*. The height of the structure, if it exceeds the maximum height of the zoning district, may remain and shall be considered legally nonconforming. Any rooftop construction needed for drainage, ventilation, utilities, or passive recreation shall be included within the height exemption. This height exemption does not include new residential or commercial floor area.

6. *Open Space*. Private open space for residential adaptive reuse projects may be waived when it is determined by the Approving Authority that the requirement would result in exterior alterations to the existing building that would result in an adverse impact to a historic resource. A minimum of 100 square feet of common open space per residential unit or 25 percent of the building square footage, whichever is less, shall be required and may be provided on the rooftop of the building or within the building and include various type of indoor amenities such as fitness center, workstations, playrooms, etc.

7. *Loading Zone*. A new loading zone shall not be required if the existing building does not have an existing loading zone.

F. Standards. Adaptive Reuse Projects permitted pursuant to this subdivision shall be developed in compliance with the following standards:

1. *Minimum Dwelling Units*. Adaptive reuse projects that propose residential shall develop no less than 3 units. The minimum floor area for new dwelling units and joint living and work quarters shall be 450 square feet. Floor area shall not include hallways or other common areas, or rooftops, balconies, terraces, fire escapes, or other projections or surfaces exterior to the walls of the building. The floor area of both the living space and the workspace shall be combined to determine the size of joint living and work quarters. The average floor area, as defined above, of all the dwelling units and joint living and work quarters in the building, including those that existed prior to the effective date of this ordinance, shall be at least 750 square feet. That minimum average size shall be maintained and not reduced.

2. *Storefront*. Ground floor of an existing multiple level commercial building shall contain street frontage and shall be used as a commercial storefront. Residential on ground may occur at the rear of the building behind the storefront.

3. *Exterior or Interior (Public Space) Alterations*. A Certificate of Appropriateness pursuant to Section 4.02.050: Historic Preservation—Certificates of Appropriateness and Demolition of Historic Resources is required for any alteration, addition, restoration, rehabilitation, remodeling, relocation, repainting, and/or resurfacing of an historic resource.

4. *Other Provisions*. Floor Area Ratio (FAR), Landscaping, Lot Coverage, and any other development standard of the underlying zone may be waived by the Approving Authority.

G. Conditions of Approval.

1. In approving an Adaptive Reuse Plan, the Planning Director may impose certain safeguards and standards to ensure that the purposes of this Development Code are maintained; ensure that the permit will not endanger the public health, safety or general welfare; ensure that the permit will not result in any significant environmental impacts; ensure that the permit will be in harmony with the area in which it is located; and ensure that the permit will be in conformity with The Ontario Plan and any applicable specific and/or area plan(s).

2. The standards and requirements authorized by this Section are enforceable in the same manner and to the same extent as any other applicable requirement of this Development Code.

H. Findings and Decision. An Adaptive Reuse Plan, or any amendment thereto, shall be acted upon by the Approving Authority based upon the information provided in the submitted application, evidence presented in the Planning Department's written report, only after considering and clearly establishing all of the below-listed findings, and giving supporting reasons for each finding. The application shall be denied if one or more of the below-listed findings cannot be clearly established.

1. That the use(s) of the property will not be detrimental to the public health, safety and general welfare surrounding the project location;

2. That the Adaptive Reuse Project complies with the standards set forth in Section 4.03.010 (F) of this Development Code; and

3. A Certificate of Appropriateness has been approved or Waived for the Adaptive Reuse Plan.

PART II. Division 7.01 —Historic Preservation
Revise Section 7.01.025 (C) Types of Incentives, as follows:

C. Types of Incentives. The below-listed incentives may be used for the eligible projects identified in Subsection B (Applicability) of this Section.

1. Economic and Financial Incentives. The following economic and financial incentives may be applied to a project following approval by the Historic Preservation Commission or the Historic Preservation Trust Board of Trustees, as applicable, and approval by the City Manager or the City Council, as applicable:

a. Grants or loans approved through the Historic Preservation Trust pursuant to Section 7.01.030 (Historic Preservation Trust Fund) of this Division;

b. Approval of a Mills Act contract pursuant to Section 4.02.070 (Historic Preservation—Mills Act Contracts) of this Development Code;

c. Approval of funding through the Historic Rehabilitation Financing Program pursuant to Section 7.01.015 (California Historical Building Code) of this Division;

d. Grants or loans through other City funding sources, including, but not limited to, redevelopment and housing funds;

e. Preservation easements;

f. Reduction or elimination of building plan check or permit fees;

g. Reduction or elimination of development impact fees;

h. Reduction or elimination of any other applicable City fees; or

i. Federal rehabilitation tax credits (applied through the California Office of Historic Preservation).

2. Development Incentives. The following development incentives to be applied to the project:

a. *California Historical Building Code.* Use of the CHBC pursuant to Section 7.01.015 (California Historical Building Code) of this Division.

b. *Parking Reduction.* For existing single-family dwellings with a one-car garage, the Planning Director may waive the requirement for 2 off-street parking spaces within a garage when adding floor area, if an existing one-car garage contributes to the significance of the property and/or district, and the existing garage is in good condition, or, if deteriorated, will be returned to good condition as part of the work to add new living space to the residence.

c. *Setback Reductions and Increases in Maximum Building Height.* The Planning Director may grant reductions in required building setbacks or increases in the maximum allowed building height when the setback reduction or increase in allowed building height allows for the restoration of a character-defining feature, or allows character-defining features to be replicated in additions to historic structures. In no case, however, shall a reduction in a setback be granted when the reduction will cause an adverse effect to the property or neighboring property, or cause an adverse effect to the character of the neighborhood or district.

d. *Adaptive Reuse.* Departures from certain development standards may be waived to encourage adaptive reuse of qualified historic buildings pursuant to, and in accord with, the provisions of Section 4.03.010 of this Development Code.

CITY OF ONTARIO PLANNING DEPARTMENT

PLANNING COMMISSION AGENDA REPORT

May 28, 2024

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

FILE NO.: PDCA24-002

SUBJECT: A Development Code Amendment to establish Historic Preservation— Adaptive Reuse Plans. **City initiated. City Council action is required.**

RECOMMENDED ACTION: That the Planning Commission consider and adopt the Resolution recommending the City Council approve the Development Code Amendment, File No. PDCA24-002, pursuant to the facts and reasons contained in the staff report and attached Resolution.

PROJECT SETTING: The Development Code Amendment affects approximately 1.7 square miles (533 acres) of land, which is generally bordered by the Interstate 10 Freeway to the north, State Street to the south, San Antonio Avenue to the west and Sultana Avenue and Campus Avenue to the east, and is depicted in Exhibit A, Adaptive Reuse Plan Area.

PROJECT ANALYSIS:

The proposed Development Code Amendment will allow for the establishment of Historic Preservation— Adaptive Reuse Plans and processing procedures, generally described as follows:

(1) Amend Division 2.02 (Application Filing and Processing), revising Table 2.02-1: Reviewing Matrix to include the Fire Marshal as an Approving Authority;

(2) Amend Division 4.03 (Ministerial Permits and Decision) by adding processing procedures, requirements, and eligibility for an adaptive reuse plan approval; and

(3) Amend Division 7.01 (Historic Preservation) to add Historic Preservation— Adaptive Reuse Plan as an incentive.

The Amendment will target adaptive reuse (or change of building classification/occupancy) of designated historic buildings to multiple-family residential, office, commercial, work/live, or retail while removing construction barriers related to zoning, building, and fire code compliance. In turn, the adaptive reuse program will further incentivize preservation of historically significant resources, streamline the review and approval process by waiving the development plan review, reduce underutilized sites, reduce demolition, and foster sustainable community development.

Case Planner:	Diane Ayala
Planning Director Approval:	
Submittal Date:	N/A

Hearing Body	*Date*	*Decision*	*Action*
PC	5/28/2024	Approval	Recommend
CC 1st reading	6/18/2024		Introduction
CC 2nd reading	7/2/2024		Final Action

Adaptive reuse programs rely upon the California Historic Building Code, International Existing Building Code, and California Health and Safety Code to provide the authority for the Building Official and Fire Marshal to consider alternative building standards and methods of construction while ensuring adequate health and safety protections for the new use. Relief of strict zoning requirements or allowance of nonconforming site conditions, such as setbacks, parking, open space for residential use, and height, may be considered by the Planning Director. The Fire Marshal, Building Official and Planning Director (Approving Authority) may approve Adaptive Reuse Plans through a ministerial process, however the Approving Authority shall first find that special individual reasons make the strict letter of the local codes impractical and the modification is in compliance with the intent and purpose of the local codes and that such modification does not lessen health, life and safety requirements.

The proposed provisions of the Development Code Amendment are shown in Attachment A (Development Code Amendment) of the appended resolution. Any provisions proposed for deletion are shown in red strikeout text (~~Abcdefg~~) and all additions are shown in blue text (Abcdefg).

PUBLIC NOTIFICATION: The number of owners to whom a public hearing notice would be mailed or delivered is greater than 1,000; therefore, pursuant to Development Code Section 2.03.010.C.2 and Government Code Section 65091(a)(4), in lieu of mailed or delivered notice, a display advertisement of at least 1/8 page was placed in a newspaper of general circulation in the City of Ontario (Inland Valley Daily Bulletin). Public hearing notification was published a minimum of 10 days in advance of the public hearing.

CORRESPONDENCE: As of the preparation of this Agenda Report, Planning Department staff has not received any written or verbal communications from the owners or occupants of properties surrounding the Project site or from the public in general, regarding the subject application.

AIRPORT LAND USE COMPATIBILITY PLAN (ALUCP) COMPLIANCE: The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan.

On April 19, 2011, the City Council of the City of Ontario approved and adopted the ONT ALUCP, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the recommending authority for the Project, the Planning Commission has reviewed and considered the facts and information contained in the Application and supporting documentation against the ONT ALUCP compatibility factors, including

[1] Safety Criteria (ONT ALUCP Table 2-2) and Safety Zones (ONT ALUCP Map 2-2), [2] Noise Criteria (ONT ALUCP Table 2-3) and Noise Impact Zones (ONT ALUCP Map 2-3), [3] Airspace protection Zones (ONT ALUCP Map 2-4), and [4] Overflight Notification Zones (ONT ALUCP Map 2-5). As a result, the Planning Commission, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ONT ALUCP.

COMPLIANCE WITH THE ONTARIO PLAN: The proposed Project is consistent with the principles, goals and policies contained within the Vision, Governance, Policy Plan (general plan), and City Council Priorities components of The Ontario Plan ("TOP"). More specifically, the goals and policies of TOP that are furthered by the proposed Project are as follows:

(1) City Council Goals.

- Invest in the Growth and Evolution of the City's Economy
- Operate in a Businesslike Manner
- Focus Resources in Ontario's Commercial and Residential Neighborhoods

(2) Vision.

Distinctive Development:

- Commercial and Residential Development

➢ Development quality that is broadly recognized as distinctive and not exclusively tied to the general suburban character typical of much of Southern California.

(3) Governance.

Decision Making:

- Goal G1: Sustained decision-making that consistently moves Ontario towards its Vision by using The Ontario Plan as a framework for assessing choices.

➢ G 1-2. Long-term Benefit. We require decisions to demonstrate and document how they add value to the community and support the Ontario Vision.

(4) Policy Plan (General Plan)

Land Use Element:

- Goal LU-1 Balance: A community that has a spectrum of housing types and price ranges that match the jobs in the City and that make it possible for people to live and work in Ontario and maintain a quality of life.

- LU-1.1 Strategic Growth. We concentrate growth in strategic locations that help create place and identity, maximize available and planned infrastructure, foster the development of transit, and support the expansion of the active and multimodal transportation networks throughout the City.

- LU-1.6 Complete Community. We incorporate a variety of land uses and building types in our land use planning efforts that result in a complete community where residents at all stages of life, employers, workers, and visitors have a wide spectrum of choices of where they can live, work, shop and recreate within Ontario.

- Goal LU-2 Compatibility: Compatibility between a wide range of uses and a resultant urban patterns and forms.

- LU-2.6 Infrastructure Compatibility. We require infrastructure to be aesthetically pleasing and in context with the community character.

Community Economics Element:

- Goal CE-2 Placemaking: A City of distinctive neighborhoods, districts, corridors, and centers where people choose to be.

- CE-2.1 Development Projects. We require new development and redevelopment to create unique, high-quality places that add value to the community.

- CE-2.4 Protection of Investment. We require that new development and redevelopment protect existing investment by providing architecture and urban design of equal or greater quality.

Community Design Element:

- Goal CD-1 Image & Identity: A dynamic, progressive city containing distinct and complete places that foster a positive sense of identity and belonging among residents, visitors, and businesses.

- CD-1.1 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.

- CD-1.2 Growth Areas. We establish Place Types in urban, mixed use, and transit-oriented areas to foster the City's identity as a premier community and require new development within each Place Type to incorporate prescribed urban patterns, forms, and placemaking priorities.

- CD-1.3 Existing Neighborhoods. We require the existing character of viable residential and non-residential neighborhoods be preserved, protected, and enhanced.

- Goal CD-3 Urban, Mixed Use, and Transit-Oriented Place Types: Vibrant urban environments that are organized around intense buildings, pedestrian and transit areas, public plazas, and linkages between and within developments that are conveniently located, visually appealing and safe during all hours.

  - CD-3.2 Comfortable, Human-Scale Public Realm. We require that public spaces, including streets, parks, and plazas on both public and private property be designed to maximize safety, comfort and aesthetics and connect to the citywide pedestrian, vehicular, and bicycle networks.

  - CD-3.3 Complete and Connected Network. We require that pedestrian, vehicular, and bicycle circulation on both public and private property be coordinated to provide connections internally and externally to adjacent neighborhoods and properties (existing and planned) through a system of local roads and trails that promote walking and biking to nearby destinations (including existing and planned parks, commercial areas, and transit stops) and are designed to maximize safety, comfort, and aesthetics.

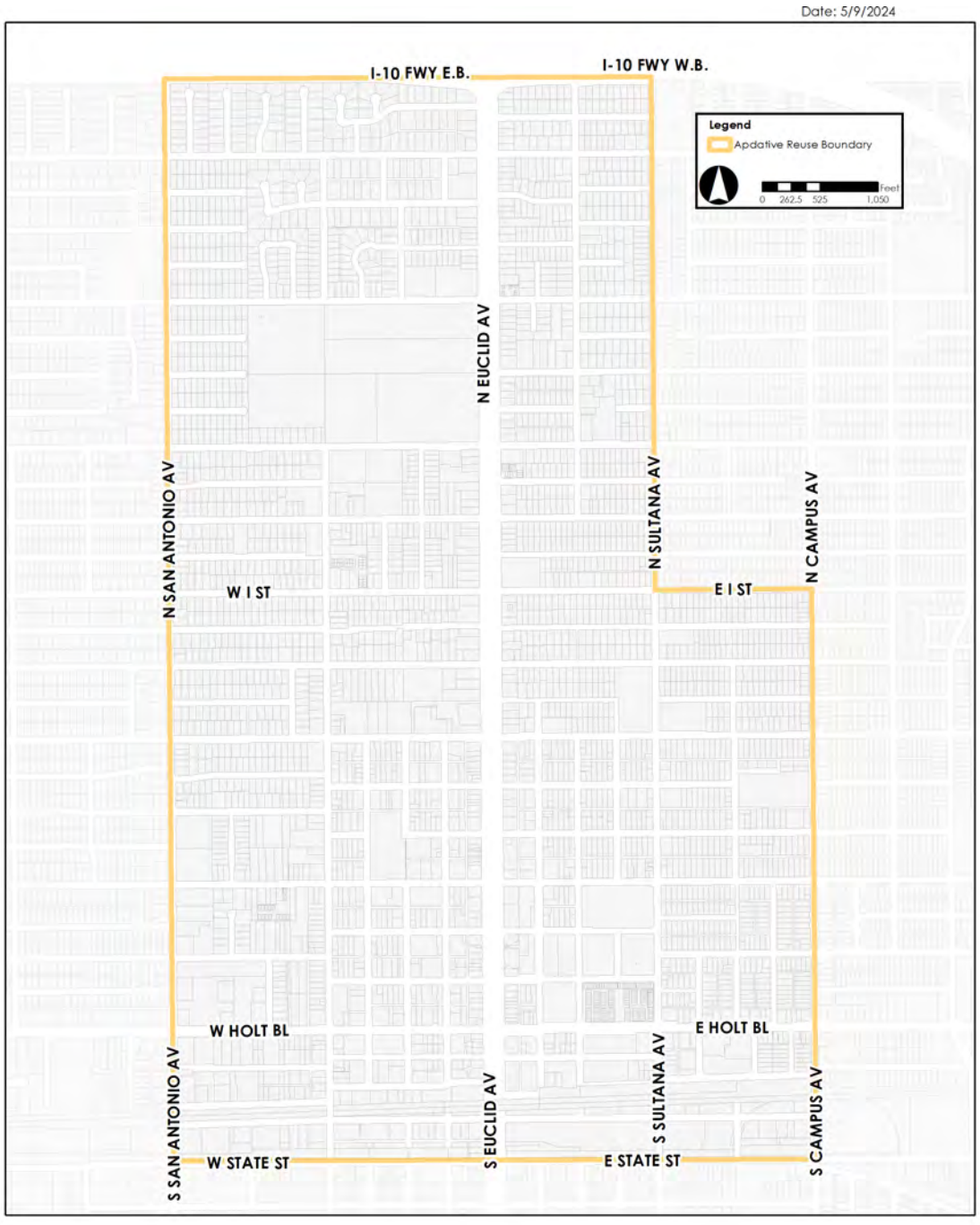
  - CD-3.4 Context-Aware and Appropriate Design. We require appropriate building and site design that complements existing development, respects the intent and identity of the Place Type, and provides appropriate transitions and connections between adjacent uses to ensure compatibility of scale, maintain an appropriate level of privacy for each use, and minimize potential conflicts.

  - CD-3.5 Active Frontages. We create lively pedestrian streetscapes by requiring primary building, business, and residential entrances, outdoor dining, and storefronts be located on ground floors adjacent to sidewalks or public spaces and designed to maximize safety, comfort, aesthetics, and the intended functionality (as defined by the Place Type).

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.

ENVIRONMENTAL REVIEW: The proposed Development Code Amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) and the guidelines promulgated thereunder, pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the activity is covered by the common sense exemption (general rule) that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Exhibit A: ADAPTIVE REUSE PLAN AREA



RESOLUTION NO. PC24-016

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDS THE CITY COUNCIL APPROVE FILE NO. PDCA24-002, A DEVELOPMENT CODE AMENDMENT TO ESTABLISH HISTORIC PRESERVATION— ADAPTIVE REUSE PLANS, AND MAKING FINDINGS IN SUPPORT THEREOF.

WHEREAS, THE CITY OF ONTARIO ("Applicant") has filed an Application for the approval of a Development Code Amendment, File No. PDCA24-002, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the City of Ontario Development Code (Ontario Municipal Code Title 9) provides the legislative framework for the implementation of The Ontario Plan, which establishes long term principals, goals, and policies for guiding the growth and development of the City in a manner that achieves Ontario's vision, and promotes and protects the public health, safety, comfort, convenience, prosperity, and welfare of its citizens; and

WHEREAS, the Project affects approximately 1.7 square miles (533 acres) of land, which is generally bordered by the Interstate 10 Freeway to the north, State Street to the south, San Antonio Avenue to the west and Sultana and Campus Avenue to the east; and

WHEREAS, the Project will allow for the establishment of Historic Preservation— Adaptive Reuse Plans and processing procedures, generally described as follows:

(1) Amend Division 2.02 (Application Filing and Processing), revising Table 2.02-1: Reviewing Matrix to include the Fire Marshal as an Approving Authority;

(2) Amend Division 4.03 (Ministerial Permits and Decision) by adding processing procedures, requirements and eligibility for an adaptive reuse plan approval;

(3) Amend Division 7.01 (Historic Preservation) to add Historic Preservation— Adaptive Reuse Plan as an incentive; and

WHEREAS, the Project will target adaptive reuse (or change of building classification/occupancy) of designated historic buildings to multiple-family residential, office, commercial, work/live, or retail while removing construction barriers related to zoning, building, and fire code compliance; and

WHEREAS, the adaptive reuse program will further incentivize preservation of historically significant resources, streamline the review and approval process by waiving the development plan review, reduce underutilized sites, reduce demolition, and foster sustainable community development; and

WHEREAS, adaptive reuse programs rely upon the California Historic Building Code, International Existing Building Code, and California Health and Safety Code to provide the authority for the Building Official and Fire Marshal to consider alternative building standards and methods of construction while ensuring adequate health and safety protections for the new use. Relief of strict zoning requirements or allowance of nonconforming site conditions, such as setbacks, parking, open space for residential use, and height, may be considered by the Planning Director; and

WHEREAS, the Fire Marshal, Building Official and Planning Director (Approving Authority) may approve of Adaptive Reuse Plans through a ministerial process, however the Approving Authority shall first find that special individual reasons make the strict letter of the local codes impractical and the modification is in compliance with the intent and purpose of the local codes and that such modification does not lessen health, life and safety requirements; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and make recommendation to the City Council on the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan, 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 May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the Planning Commission of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the recommending authority for the Project, the Planning Commission has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) The Development Code Amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) and the guidelines promulgated thereunder, pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the activity is covered by the" common sense exemption" (also known as the " general rule exemption") that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA; and

(3) The determination that the Development Code Amendment is not subject to CEQA reflects the independent judgment of the Planning Commission.

SECTION 2: ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending authority for the Project, the Planning Commission finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, 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 3: ***Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan.

(1) On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the recommending authority for the Project, the Planning Commission has reviewed and considered the facts and information contained in the Application and supporting documentation against the ONT ALUCP compatibility factors, including [1] Safety Criteria (ONT ALUCP Table 2-2) and Safety Zones (ONT ALUCP Map 2-2), [2] Noise Criteria (ONT ALUCP Table 2-3) and Noise Impact Zones (ONT ALUCP Map 2-3), [3] Airspace protection Zones (ONT ALUCP Map 2-4), and [4] Overflight Notification Zones (ONT ALUCP Map 2-5). As a result, the Planning Commission, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ONT ALUCP; and

SECTION 4: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) The Project is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Goals components of The Ontario Plan ("TOP"). The Development Code Amendment will: (a) serve to promote a community that is consistently seeking—and thoughtfully applying—new ways of doing things better, as encouraged by TOP's Vision; (b) provides for 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, have a wide spectrum of choices of where they can live and recreate, as promoted by Land Use Element Policy LU-1.6, Complete Community; and (c) promotes the City Council Goals through the establishment of Development Code provisions that encourages investment in the growth and evolution of the City's economy and focuses City resources in commercial and residential neighborhoods.

(2) The Project would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City. The Development Code Amendment incorporates safeguards intended to ensure that the purposes of the Development Code are preserved; the project will not be contrary to or damage the public health, safety, convenience, or general welfare; the project will not result in any significant environmental impacts; and the project will be in full conformity with the Vision, City Council Priorities, and Policy Plan components of The Ontario Plan.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby RECOMMENDS THE CITY COUNCIL APPROVES the herein described Application, subject to each and every condition set forth in the Department reports attached hereto as "Attachment A," and incorporated herein by this reference.

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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The Secretary Pro Tempore for the Planning Commission of the City of Ontario shall certify as to the adoption of this Resolution.

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of May, 2024 and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

ATTEST:

Henry K. Noh
Planning Director and
Secretary to the Planning Commission

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

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC24-016, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

File No. PDCA24-002
Historic Preservation- Adaptive Reuse Plans

ATTACHMENT A:
Development Code Amendment
File No. PDCA24-002

PART I. Division 2.02—Application Filing and Processing
Revise Table 2.02-1 (Review Matrix) as follows:

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]										
	Planning Director	City Engineer	Fire Marshal	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
A. LEGISLATIVE ACTIONS											
1. Airport Land Use Compatibility Plan and Amendments **[1]** (Ref: ODC Section 4.01.010)									R	X	
2. Development Agreements **[1]** (Ref: ODC Section 4.01.015)									R	X	
3. Development Code Amendments **[1]** (Ref: ODC Section 4.01.020)									R	X	
4. Amendment to the Policy Plan (General Plan) Component of The Ontario Plan **[1]** (Ref: ODC Section 4.01.025)									R	X	
5. Planned Unit Developments and Amendments **[1]** (Ref: ODC Section 4.01.030)									R	X	
6. Specific Plans and Amendments **[1][12]** (Ref: ODC Section 4.01.035)									R	X	
7. Williamson Act Contract Cancellations **[1]** (Ref: GC Section 51200 et.seq.)									R	X	
8. Zone Changes **[1]** (Ref: ODC Section 4.01.040)									R	X	
B. DISCRETIONARY PERMITS AND ACTIONS											
1. Billboard Relocation Agreements **[1]** (Ref: ODC Section 4.02.010)									R	X	
2. Conditional Use Permits (Ref: ODC Section 4.02.015)											
a. Hotels, Motels and Residence Inns **[1]**									R	X	
b. Use established in conjunction with a Development Plan **[1]**						R			X	A	
c. Use established within an existing structure **[1]**					X				A	A	
d. Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**									X	A	
e. Revocation due to abandonment of use per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**					X				A	A	
3. Density Bonus and Other Incentives per ODC Section 6.01.010.G (Density Bonus and Other Incentives) **[1]**									R	X	
4. Development Plans, except within the ONT zoning district (Ref: ODC Section 4.02.025)											

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]										
	Planning Director	City Engineer	Fire Marshal	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
a. Residential developments totaling 5 or more dwelling units or the development of 3 or more dwelling units on a single lot or parcel						R			X	A	
b. Commercial developments, and developments in the CIV, OS-R, OS-C and UC zoning districts, greater than 500 SF in area						X			A	A	
c. Industrial developments equal to or less than 0.45 FAR						X			A	A	
d. Industrial developments exceeding 0.45 FAR						R			X	A	
e. Wireless telecommunications facilities pursuant to Section 5.03.415 (Wireless Telecommunications Facilities) of this Development Code											
(1) Tier 2 facilities						X			A	A	
(2) Tier 3 facilities **[2]**						X			A	A	
f. All others						X			A	A	
5. Extensions of Legal Nonconforming Status **[1]** (Ref: ODC Section 4.02.030)					X				A	A	
6. Historic Preservation											
a. Certificates of Appropriateness (Ref: ODC Section 4.02.050)											
(1) Designated Historic Landmarks and Contributors, and Architectural Conservation Areas; and Demolition of an Historic Resource **[1]**							R	X		A	
(2) Deferral of Replacement Structure **[1]**							R	X		A	
(3) Eligible Historic Resources **[1]**							X	A		A	
(4) Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**							R	X		A	
(5) Waivers for Minor Improvements	X						A[6]	A[6]			
b. Certificates of Economic Hardship **[1]** (Ref: ODC Section 4.02.055) **[1]**							R	X		A	
c. Certificates of Economic Hardship—Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**							R	X		A	
d. Conservation Plans (Ref: ODC Section 4.02.060)							X	A		A	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]										
	Planning Director	City Engineer	Fire Marshal	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
e. Historic Resource Tiering (Ref: ODC Section 4.02.040), including Rescinding or Amending Status (Ref: ODC Section 4.02.045)							X	A		A	
f. Local Historic Landmark and Local District Designations, and Architectural Conservation Areas (Ref: ODC Section 4.02.040), including Rescinding or Amending Status (Ref: ODC Section 4.02.045)							R	R		X	
g. Mills Act Contracts (Ref: ODC Section 4.02.065)							R	R		X	
h. Mills Act Cancellations **[1]** (Ref: ODC Section 4.02.065)							R	R		X	
i. Addition/Removal of Resources to/from the Ontario Register (Ref: ODC Section 4.02.045)											
(1) At the request of the property owner, or upon City initiation if the most recently prepared Historic Resource Survey evaluating the resource is more than 5 years old.							X	A		A	
(2) Loss of all historic and/or cultural significance due to a catastrophe causing a loss of integrity, or due to extensive legally performed alterations performed after the property was initially surveyed.	X							A		A	
7. Master Plans and Amendments **[1]** (Ref: ODC Section 4.02.070)									R	X	
8. Minor Adjustments/Alterations (Ref: ODC Section 4.02.020.C)					X				A	A	
9. Nonconforming Structure Reconstruction **[1]** (Ref: ODC Section 3.01.020)									X	A	
10. Parking Reduction (Ref: ODC Section 6.03.025)									X	A	
11. Sign Programs (Ref: ODC Section 4.02.075)	X								A	A	
12. Specific Plan Minor Adjustments/Alterations **[12]** (Ref: ODC Section 4.02.080)	X								A	A	
13. Stays of Permit Approval Time Limit (Ref: ODC Section 2.02.025.A.8)					X[5]	X[5]	X[5]	X[5]	X[5]	X[5]	
14. Subdivisions											
a. Lot Merger (Merger of Contiguous Parcels) **[1]** (Ref: ODC Section 4.02.085)						R			X	A	
b. Reversions to Acreage **[1]** (Ref: ODC Section 4.02.090)						R			X	A	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]										
	Planning Director	City Engineer	Fire Marshal	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
c. Tentative Tract and Parcel Maps, and Vesting Maps **[1]** (Ref: ODC Section 4.02.095)						R			X	A	
d. Tentative Tract and Parcel Map Time Extensions (Ref: ODC Section 2.02.025.A.3 & 4)						R			X	A	
15. Time Extensions, excepting tentative subdivision maps (Ref: ODC Section 2.02.025)	X								A	A	
16. Variances (Ref: ODC Section 4.02.020.D)											
a. Homeowner **[1]**					X				A	A	
b. Other **[1]**						R			X	A	
C. MINISTERIAL (ADMINISTRATIVE) PERMITS AND DECISIONS											
1. Historic Preservation- Adaptive Reuse Plans (Ref: ODC Section 4.03.010)	X		X	X							
2. Administrative Exceptions (Ref: ODC Section 4.03.050)					X				A	A	
3. Administrative Use Permits (Ref: ODC Section 4.03.015)	X										
4. Business License - Zoning/Land Use Compliance (Ref: OMC 3-1.129 (Zoning Compliance)	X								A	A	
5. Development Plans within the ONT zoning district (Ref: ODC Section 4.02.025)	X								A	A	
6. Fair Housing and Reasonable Accommodation Ref: ODC Section 4.02.035)					X				A	A	
7. Interpretations and Land Use Determinations (Ref: ODC Section 1.02.010)					X				A	A	
8. Landscape and Irrigation Plans (Ref. ODC Section 6.05.005)	X								A	A	
9. Off-Site (Public) Improvement Plans (Ref: ODC Section 6.08.040)		X							A	A	
10. ONT ALUCP Interagency Review **[7]** (Ref: ONT ALUCP)	X									A[8]	
11. Other Plan Checks and actions required by this Development Code	X								A	A	
12. Shopping Cart Retention Plans (Ref: ODC Section 6.11.020)	X								A	A	
13. Sign Plans (Ref: ODC Section 4.03.020)	X								A	A	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]										
	Planning Director	City Engineer	Fire Marshal	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
14.	X								A	A	
15. Subdivisions											
a. Certificates of Compliance (Ref: ODC Section 4.03.025)		X							A	A	
b. Final Tract and Parcel Maps, and Vesting Maps (Ref: ODC Section 4.03.030)										X	
c. Lot Line Adjustments (Ref: ODC Section 4.03.035)		X							A	A	
d. Map Corrections and Amendments (Ref: ODC Section 4.03.040)		X							A	A	
e. Street Address Numbering (Ref. ODC Section 6.06.010)				X					A	A	
f. Street Name Assignment (Ref. ODC Section 6.06.010)	X								A	A	
g. Subdivision Improvement Agreement (Ref: ODC Section 6.08.040.G)		X							A	A	
h. Urban Lot Split (Ref: ODC Section 6.08.060		X							A	A	
16. Tier 1 wireless telecommunications facility pursuant to ODC Section 5.03.420 (Wireless Telecommunications Facilities)					X				A	A	
17. Wall, Fence, and Obstructions Plans not associated with a Development Plan (Ref. ODC Section 6.02.005)	X								A	A	
D. ENVIRONMENTAL DETERMINATIONS AND ACTIONS											
1. Environmental Impact Reports (EIRs) (Ref: CCR Section 15080 et seq.)									X[3]	X[3]	
2. Exempt Projects (Ref: CCR Section 15300 et seq.)	X[3]				X[3]	X[3]	X[3]	X[3]	A	A	
3. Ministerial Projects (Ref: CCR Section 15268)		**Ministerial projects are exempt from the requirements of CEQA [10]**									
4. Negative Declarations (NDs) and Mitigated Negative Declarations (MNDs) (Ref: CCR Section 15070 et seq.)					X[3]	X[3]	X[3]	X[3]	X[3]	X[3]	
5. Addendums to previously certified EIRs and previously adopted NDs and MNDs (Ref: CCR Section 15164)					X[3]	X[3]	X[3]	X[3]	X[3]	X[3]	
6. Environmental review for projects located within the ONT zoning district **[9]**											X

PART II. Division 4.03 —Ministerial Permits and Decision
Add Section as follows:

Sections:

4.03.010: Historic Preservation—Adaptive Reuse Plan

4.03.010: Historic Preservation—Adaptive Reuse Plan

A. Purpose. The purpose of this Section is to establish a procedure by which Adaptive Reuse Plans may be approved by the City, while at the same time:

1. Provide a more efficient way for qualified historic buildings and adaptive reuse projects to meet development, building, and fire protection standards;

2. Promote adaptive reuse as part of broader goals supporting historic preservation, economic development, environmental sustainability and resilience, and recognize the social value of historic buildings;

3. Incentivize building reuse to encourage activation of Downtown Ontario where there is a large collection of commercial and industrial historic buildings that are worthy of preservation;

4. Eliminate or allow nonconformance with certain development regulations that would make adaptive reuse of qualified historic buildings infeasible, including such standards related to parking and loading, height, density, floor-area ratio, and open space; and

5. Allow alternative building and fire code compliance for qualified adaptive reuse projects able to demonstrate an alternative means or method of protecting public health, safety, and welfare.

B. Applicability.

1. Pursuant to Table 2.02-1 (Review Matrix) of this Development Code, the Approving Authority is hereby empowered to approve, approve in modified form, or deny an Adaptive Reuse Plan application, and to impose reasonable conditions upon the approval of the application.

2. Adaptive Reuse Plan approval shall allow for those land uses identified in Table 5.02-1 (Land Use Matrix) of this Development Code which allows for a broad range of land uses of the underlying zoning district in which the site is located. However, no new uses that emits noxious odors or excessive noise shall be allowed, unless the it can be demonstrated to the satisfaction of the Planning Director that the use will not cause adverse impacts to nearby residential land uses.

3. Qualifying buildings include those listed on the National Register of Historic Places, on the California Register of Historic Resources, Ontario Register of Historic Resources as designated local landmarks or contributors to designated local historic districts located within the Adaptive Reuse Plan Area.

4. Adaptive Reuse projects are construction and remodeling projects that reconfigure existing spaces within existing buildings to accommodate a new use or purpose other

than what it was originally designed for. Adaptive Reuse projects require a change of use and building occupancy from office or commercial to residential, industrial to work/live, residential to office or commercial, or assembly to residential, office or commercial.

5. Application Filing and Processing. An Adaptive Reuse Plan application shall be filed, processed, and acted upon pursuant to Division 2.02 (Application Filing and Processing) of this Development Code and the provisions of this Section. Plans and reports prepared for an Adaptive Reuse Plan shall be prepared by a California licensed architect meeting the minimum qualifications standards of The Secretary of the interior Professional Qualifications (Code of Federal Regulations, 36 CFR Part 61).

C. Adaptive Reuse Plan Area. This area consists of the City's original downtown, and extends north to include the historic districts adjacent to Euclid Avenue, the boundary of which is as follows:

Beginning at the intersection of the centerlines of State Street and San Antonio Avenue, thence north to the northernmost city boundary, thence east to the centerline of Sultana Avenue, thence south to the centerline of I Street, thence east to the centerline of Campus Avenue, thence south to the centerline of State Street, thence west to the point of beginning.

D. Alternative Building and Fire Code Regulations. The alternative building and fire codes regulations adopted in this Section are applicable to qualified buildings and adaptive reuse projects.

1. *Alternative Codes.* Use of the California Historic Building Code, International Existing Building Code, California Health and Safety Code and the Ontario Adaptive Reuse Plan Technical Manual shall provide a process and the ability for the Building Official and Fire Marshal to consider alternative building standards while ensuring adequate health and safety protections.

2. In permitting repairs, alterations, and additions necessary to accommodate adaptive reuse projects, the alternative code regulations shall impose requirements that will, in the determination of the Building Official and the Fire Marshal, protect the public health, safety, and welfare.

3. Nothing in this Section shall be construed to allow the reduction of existing seismic or fire and life-safety elements of an eligible building where such elements provide a greater level of protection than the minimum requirements established by this Section.

4. Subject to the approval of the Building Official and Fire Marshal, the use or occupancy type of a qualified building shall be allowed to be changed as part of an adaptive reuse project without conforming to all requirements of Title 8, Building Regulations, and Title 4, Chapter 4, Fire Code of the City of Ontario Municipal Code provided the new or proposed occupancy is equally or less hazardous, based on life and fire risk, than the existing use.

5. Whenever there are practical difficulties involved in carrying out the provisions of Title 8, Building Regulations, and Title 4, Chapter 4, Fire Code of the City of Ontario Municipal Code, the Building Official and Fire Marshal shall have the authority to grant modifications for individual cases, provided the Approving Authority shall first find that special individual reasons make the strict letter of the local codes impractical and the modification is in compliance with the intent and purpose of the local codes and that such modification does not lessen health, life and safety requirements.

E. Incentives. The Planning Director may grant the following departures from certain development standards and requirements to incentivize qualified Adaptive Reuse Plans:

1. *Development Plan Waived*. Approved Adaptive Reuse Plans, which may allow for new additions up to 25 percent of the existing building floor area and is not visible from the public right-of-way, shall be exempt for the requirements for Development Plan review set forth in Section 4.02.025.

2. *Mezzanines*. Loft spaces in joint living and work quarters, dwelling units and guest rooms which do not exceed more than 33 percent of the floor area of the space below shall not be considered new floor area. Mezzanines may be included in the calculation of floor area for the purpose of determining compliance with the standards set forth in Paragraph (E) of this subdivision.

3. *Parking Reduction*. New parking spaces shall not be required for any converted use within the existing footprint of the building, but expansions to floor area shall require one parking space per bedroom or one parking space per 250 square feet of gross floor area for office or commercial.

4. *Setbacks*. Existing building setbacks may remain and shall be considered legally nonconforming, but no further encroachments shall be permitted into any nonconforming setback.

5. *Increases in Maximum Building Height*. The height of the structure, if it exceeds the maximum height of the zoning district, may remain and shall be considered legally nonconforming. Any rooftop construction needed for drainage, ventilation, utilities, or passive recreation shall be included within the height exemption. This height exemption does not include new residential or commercial floor area.

6. *Open Space*. Private open space for residential adaptive reuse projects may be waived when it is determined by the Approving Authority that the requirement would result in exterior alterations to the existing building that would result in an adverse impact to a historic resource. A minimum of 100 square feet of common open space per residential unit or 25 percent of the building square footage, whichever is less, shall be required and may be provided on the rooftop of the building or within the building and include various type of indoor amenities such as fitness center, workstations, playrooms, etc.

7. *Loading Zone*. A new loading zone shall not be required if the existing building does not have an existing loading zone.

F. Standards. Adaptive Reuse Projects permitted pursuant to this subdivision shall be developed in compliance with the following standards:

1. *Minimum Dwelling Units*. Adaptive reuse projects that propose residential shall develop no less than 3 units. The minimum floor area for new dwelling units and joint living and work quarters shall be 450 square feet. Floor area shall not include hallways or other common areas, or rooftops, balconies, terraces, fire escapes, or other projections or surfaces exterior to the walls of the building. The floor area of both the living space and the workspace shall be combined to determine the size of joint living and work quarters. The average floor area, as defined above, of all the dwelling units and joint living and work quarters in the building, including those that existed prior to the effective date of this ordinance, shall be at least 750 square feet. That minimum average size shall be maintained and not reduced.

2. *Storefront*. Ground floor of an existing multiple level commercial building shall contain street frontage and shall be used as a commercial storefront. Residential on ground may occur at the rear of the building behind the storefront.

3. *Exterior or Interior (Public Space) Alterations*. A Certificate of Appropriateness pursuant to Section 4.02.050: Historic Preservation—Certificates of Appropriateness and Demolition of Historic Resources is required for any alteration, addition, restoration, rehabilitation, remodeling, relocation, repainting, and/or resurfacing of an historic resource.

4. *Other Provisions*. Floor Area Ratio (FAR), Landscaping, Lot Coverage, and any other development standard of the underlying zone may be waived by the Approving Authority.

G. Conditions of Approval.

1. In approving an Adaptive Reuse Plan, the Planning Director may impose certain safeguards and standards to ensure that the purposes of this Development Code are maintained; ensure that the permit will not endanger the public health, safety or general welfare; ensure that the permit will not result in any significant environmental impacts; ensure that the permit will be in harmony with the area in which it is located; and ensure that the permit will be in conformity with The Ontario Plan and any applicable specific and/or area plan(s).

2. The standards and requirements authorized by this Section are enforceable in the same manner and to the same extent as any other applicable requirement of this Development Code.

H. Findings and Decision. An Adaptive Reuse Plan, or any amendment thereto, shall be acted upon by the Approving Authority based upon the information provided in the submitted application, evidence presented in the Planning Department's written report, only after considering and clearly establishing all of the below-listed findings, and giving supporting reasons for each finding. The application shall be denied if one or more of the below-listed findings cannot be clearly established.

1. That the use(s) of the property will not be detrimental to the public health, safety and general welfare surrounding the project location;

2. That the Adaptive Reuse Project complies with the standards set forth in Section 4.03.010 (F) of this Development Code; and

3. A Certificate of Appropriateness has been approved or Waived for the Adaptive Reuse Plan.

PART II. Division 7.01 —Historic Preservation
Revise Section 7.01.025 (C) Types of Incentives, as follows:

C. Types of Incentives. The below-listed incentives may be used for the eligible projects identified in Subsection B (Applicability) of this Section.

1. Economic and Financial Incentives. The following economic and financial incentives may be applied to a project following approval by the Historic Preservation Commission or the Historic Preservation Trust Board of Trustees, as applicable, and approval by the City Manager or the City Council, as applicable:

a. Grants or loans approved through the Historic Preservation Trust pursuant to Section 7.01.030 (Historic Preservation Trust Fund) of this Division;

b. Approval of a Mills Act contract pursuant to Section 4.02.070 (Historic Preservation—Mills Act Contracts) of this Development Code;

c. Approval of funding through the Historic Rehabilitation Financing Program pursuant to Section 7.01.015 (California Historical Building Code) of this Division;

d. Grants or loans through other City funding sources, including, but not limited to, redevelopment and housing funds;

e. Preservation easements;

f. Reduction or elimination of building plan check or permit fees;

g. Reduction or elimination of development impact fees;

h. Reduction or elimination of any other applicable City fees; or

i. Federal rehabilitation tax credits (applied through the California Office of Historic Preservation).

2. Development Incentives. The following development incentives to be applied to the project:

a. *California Historical Building Code.* Use of the CHBC pursuant to Section 7.01.015 (California Historical Building Code) of this Division.

b. *Parking Reduction.* For existing single-family dwellings with a one-car garage, the Planning Director may waive the requirement for 2 off-street parking spaces within a garage when adding floor area, if an existing one-car garage contributes to the significance of the property and/or district, and the existing garage is in good condition, or, if deteriorated, will be returned to good condition as part of the work to add new living space to the residence.

c. *Setback Reductions and Increases in Maximum Building Height.* The Planning Director may grant reductions in required building setbacks or increases in the maximum allowed building height when the setback reduction or increase in allowed building height allows for the restoration of a character-defining feature, or allows character-defining features to be replicated in additions to historic structures. In no case, however, shall a reduction in a setback be granted when the reduction will cause an adverse effect to the property or neighboring property, or cause an adverse effect to the character of the neighborhood or district.

d. *Adaptive Reuse.* Departures from certain development standards may be waived to encourage adaptive reuse of qualified historic buildings pursuant to, and in accord with, the provisions of Section 4.03.010 of this Development Code.

ORDINANCE NO._____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDCA24-002, A DEVELOPMENT CODE AMENDMENT REVISING TABLE 2.02-1: REVIEWING MATRIX OF CHAPTER 2 (ADMINISTRATION AND PROCEDURES) TO INCLUDE THE FIRE MARSHAL AS AN APPROVING AUTHORITY, AND CHAPTERS 4 (PERMITS ACTIONS AND DECISION) AND 7 (HISTORIC PRESERVATION) TO ESTABLISH HISTORIC PRESERVATION-ADAPTIVE REUSE PLAN OF THE CITY OF ONTARIO DEVELOPMENT CODE, AND MAKING FINDINGS IN SUPPORT THEREOF.

WHEREAS, THE CITY OF ONTARIO ("Applicant") has filed an Application for the approval of a Development Code Amendment, File No. PDCA24-002, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the City of Ontario Development Code (Ontario Municipal Code Title 9) provides the legislative framework for the implementation of The Ontario Plan, which establishes long term principals, goals, and policies for guiding the growth and development of the City in a manner that achieves Ontario's vision, and promotes and protects the public health, safety, comfort, convenience, prosperity, and welfare of its citizens; and

WHEREAS, the Project affects approximately 1.7 square miles (533 acres) of land, which is generally bordered by the Interstate 10 Freeway to the north, State Street to the south, San Antonio Avenue to the west and Sultana and Campus Avenue to the east; and

WHEREAS, the Project will allow for the establishment of Historic Preservation—Adaptive Reuse Plans and processing procedures, generally described as follows:

(1) Amend Division 2.02 (Application Filing and Processing), revising Table 2.02-1: Reviewing Matrix to include the Fire Marshal as an Approving Authority,

(2) Amend Division 4.03 (Ministerial Permits and Decision) by adding processing procedures, requirements and eligibility for an adaptive reuse plan approval;

(3) Amend Division 7.01 (Historic Preservation) to add Historic Preservation—Adaptive Reuse Plan as an incentive; and

WHEREAS, the Project will target adaptive reuse (or change of building classification/occupancy) of designated historic buildings to multiple-family residential, office, commercial, work/live, or retail while removing construction barriers related to zoning, building, and fire code compliance; and

WHEREAS, the adaptive reuse program will further incentivize preservation of historically significant resources, streamline the review and approval process by waiving the development plan review, reduce underutilized sites, reduce demolition, and foster sustainable community development; and

WHEREAS, adaptive reuse programs rely upon the California Historic Building Code, International Existing Building Code, and California Health and Safety Code to provide the authority for the Building Official and Fire Marshal to consider alternative building standards and methods of construction while ensuring adequate health and safety protections for the new use. Relief of strict zoning requirements or allowance of nonconforming site conditions, such as setbacks, parking, open space for residential use, and height, may be considered by the Planning Director; and

WHEREAS, the Fire Marshal, Building Official and Planning Director (Approving Authority) may approve of Adaptive Reuse Plans through a ministerial process, however the Approving Authority shall first find that special individual reasons make the strict letter of the local codes impractical and the modification is in compliance with the intent and purpose of the local codes and that such modification does not lessen health, life and safety requirements; 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 May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Resolution No. PC24-016, recommending the City Council approve the Application; and

WHEREAS, on June 18, 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 Development Code Amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) and the guidelines promulgated thereunder, pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the activity is covered by the" common sense exemption" (also known as the " general rule exemption") that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA; and

(3) 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.

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 Sections 1 and 2, above, the City Council hereby concludes as follows:

(1) The Project is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Goals components of The Ontario Plan ("TOP"). The Development Code Amendment will: (a) serve to promote a community that is consistently seeking—and thoughtfully applying—new ways of doing things better, as encouraged by TOP's Vision; (b) provides for 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, have a wide spectrum of choices of where they can live and recreate, as promoted by Land Use Element Policy LU-1.6, Complete Community; and (c) promotes the City Council Goals through the establishment of Development Code provisions that encourages investment in the growth and evolution of the City's economy and focuses City resources in commercial and residential neighborhoods.

(2) The Project would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City. The Development Code Amendment incorporates safeguards intended to ensure that the purposes of the Development Code are preserved; the project will not be contrary to or damage the public health, safety, convenience, or general welfare; the project will not result in any significant environmental impacts; and the project will be in full conformity with the Vision, City Council Priorities, and Policy Plan components of The Ontario Plan.

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 Development Code Amendment, attached hereto as "Attachment A," and incorporated herein by this reference.

SECTION 5: ***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 6: ***Severability.*** If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 7: ***Effective Date.*** This Ordinance shall become effective 30 days following its adoption.

SECTION 8: ***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 _____ day of _____ 2024.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held _____ and adopted at the regular meeting held _____, 2024 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held _____ and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

File No. PDCA24-002;
DEVELOPMENT CODE AMENDMENT ADOPTING HISTORIC PRESERVATION– ADAPTIVE REUSE PLAN

(Document follows this page)

ATTACHMENT A:
Development Code Amendment
File No. PDCA23-001

PART I. Division 2.02—Application Filing and Processing

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]										
	Planning Director	City Engineer	Fire Marshal	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
A. LEGISLATIVE ACTIONS											
1. Airport Land Use Compatibility Plan and Amendments [1] (Ref: ODC Section 4.01.010)									R	X	
2. Development Agreements [1] (Ref: ODC Section 4.01.015)									R	X	
3. Development Code Amendments [1] (Ref: ODC Section 4.01.020)									R	X	
4. Amendment to the Policy Plan (General Plan) Component of The Ontario Plan [1] (Ref: ODC Section 4.01.025)									R	X	
5. Planned Unit Developments and Amendments [1] (Ref: ODC Section 4.01.030)									R	X	
6. Specific Plans and Amendments [1][12] (Ref: ODC Section 4.01.035)									R	X	
7. Williamson Act Contract Cancellations [1] (Ref: GC Section 51200 et.seq.)									R	X	
8. Zone Changes [1] (Ref: ODC Section 4.01.040)									R	X	
B. DISCRETIONARY PERMITS AND ACTIONS											
1. Billboard Relocation Agreements [1] (Ref: ODC Section 4.02.010)									R	X	
2. Conditional Use Permits (Ref: ODC Section 4.02.015)											
a. Hotels, Motels and Residence Inns [1]									R	X	
b. Use established in conjunction with a Development Plan [1]						R			X	A	
c. Use established within an existing structure [1]					X				A	A	
d. Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) [1]									X	A	
e. Revocation due to abandonment of use per ODC Division 2.05 (City Initiated Modification or Revocation) [1]					X				A	A	
3. Density Bonus and Other Incentives per ODC Section 6.01.010.G (Density Bonus and Other Incentives) [1]									R	X	
4. Development Plans, except within the ONT zoning district (Ref: ODC Section 4.02.025)											

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]										
	Planning Director	City Engineer	Fire Marshal	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
a. Residential developments totaling 5 or more dwelling units or the development of 3 or more dwelling units on a single lot or parcel						R			X	A	
b. Commercial developments, and developments in the CIV, OS-R, OS-C and UC zoning districts, greater than 500 SF in area						X			A	A	
c. Industrial developments equal to or less than 0.45 FAR						X			A	A	
d. Industrial developments exceeding 0.45 FAR						R			X	A	
e. Wireless telecommunications facilities pursuant to Section 5.03.415 (Wireless Telecommunications Facilities) of this Development Code											
(1) Tier 2 facilities						X			A	A	
(2) Tier 3 facilities [2]						X			A	A	
f. All others						X			A	A	
5. Extensions of Legal Nonconforming Status [1] (Ref: ODC Section 4.02.030)					X				A	A	
6. Historic Preservation											
a. Certificates of Appropriateness (Ref: ODC Section 4.02.050)											
(1) Designated Historic Landmarks and Contributors, and Architectural Conservation Areas; and Demolition of an Historic Resource [1]							R	X		A	
(2) Deferral of Replacement Structure [1]							R	X		A	
(3) Eligible Historic Resources [1]							X	A		A	
(4) Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) [1]							R	X		A	
(5) Waivers for Minor Improvements	X						A[6]	A[6]			
b. Certificates of Economic Hardship [1] (Ref: ODC Section 4.02.055) [1]							R	X		A	
c. Certificates of Economic Hardship—Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) [1]							R	X		A	
d. Conservation Plans (Ref: ODC Section 4.02.060)							X	A		A	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	*Reviewing Authorities [4]*										
	Planning Director	*City Engineer*	*Fire Marshal*	*Building Official*	*Zoning Administrator [2]*	*Development Advisory Board*	*Historic Preservation Subcommittee [2] [11]*	*Historic Preservation Commission [11]*	*Planning Commission [11]*	*City Council [11]*	*Ontario International Airport Authority*
e. Historic Resource Tiering (Ref: ODC Section 4.02.040), including Rescinding or Amending Status (Ref: ODC Section 4.02.045)							X	A		A	
f. Local Historic Landmark and Local District Designations, and Architectural Conservation Areas (Ref: ODC Section 4.02.040), including Rescinding or Amending Status (Ref: ODC Section 4.02.045)							R	R		X	
g. Mills Act Contracts (Ref: ODC Section 4.02.065)							R	R		X	
h. Mills Act Cancellations [1] (Ref: ODC Section 4.02.065)							R	R		X	
i. Addition/Removal of Resources to/from the Ontario Register (Ref: ODC Section 4.02.045)											
(1) At the request of the property owner, or upon City initiation if the most recently prepared Historic Resource Survey evaluating the resource is more than 5 years old.							X	A		A	
(2) Loss of all historic and/or cultural significance due to a catastrophe causing a loss of integrity, or due to extensive legally performed alterations performed after the property was initially surveyed.	X							A		A	
7. Master Plans and Amendments [1] (Ref: ODC Section 4.02.070)									R	X	
8. Minor Adjustments/Alterations (Ref: ODC Section 4.02.020.C)					X				A	A	
9. Nonconforming Structure Reconstruction [1] (Ref: ODC Section 3.01.020)									X	A	
10. Parking Reduction (Ref: ODC Section 6.03.025)									X	A	
11. Sign Programs (Ref: ODC Section 4.02.075)	X								A	A	
12. Specific Plan Minor Adjustments/Alterations [12] (Ref: ODC Section 4.02.080)	X								A	A	
13. Stays of Permit Approval Time Limit (Ref: ODC Section 2.02.025.A.8)					X[5]	X[5]	X[5]	X[5]	X[5]	X[5]	
14. Subdivisions											
a. Lot Merger (Merger of Contiguous Parcels) [1] (Ref: ODC Section 4.02.085)						R			X	A	
b. Reversions to Acreage [1] (Ref: ODC Section 4.02.090)						R			X	A	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]										
	Planning Director	City Engineer	Fire Marshal	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
c. Tentative Tract and Parcel Maps, and Vesting Maps [1] (Ref: ODC Section 4.02.095)						R			X	A	
d. Tentative Tract and Parcel Map Time Extensions (Ref: ODC Section 2.02.025.A.3 & 4)						R			X	A	
15. Time Extensions, excepting tentative subdivision maps (Ref: ODC Section 2.02.025)	X								A	A	
16. Variances (Ref: ODC Section 4.02.020.D)											
a. Homeowner [1]					X				A	A	
b. Other [1]						R			X	A	
C. MINISTERIAL (ADMINISTRATIVE) PERMITS AND DECISIONS											
1. Historic Preservation- Adaptive Reuse Plans (Ref: ODC Section 4.03.010)	X		X	X							
2. Administrative Exceptions (Ref: ODC Section 4.03.050)					X				A	A	
3. Administrative Use Permits (Ref: ODC Section 4.03.015)	X										
4. Business License - Zoning/Land Use Compliance (Ref: OMC 3-1.129 (Zoning Compliance)	X								A	A	
5. Development Plans within the ONT zoning district (Ref: ODC Section 4.02.025)	X								A	A	
6. Fair Housing and Reasonable Accommodation Ref: ODC Section 4.02.035)					X				A	A	
7. Interpretations and Land Use Determinations (Ref: ODC Section 1.02.010)					X				A	A	
8. Landscape and Irrigation Plans (Ref. ODC Section 6.05.005)	X								A	A	
9. Off-Site (Public) Improvement Plans (Ref: ODC Section 6.08.040)		X							A	A	
10. ONT ALUCP Interagency Review [7] (Ref: ONT ALUCP)	X									A[8]	
11. Other Plan Checks and actions required by this Development Code	X								A	A	
12. Shopping Cart Retention Plans (Ref: ODC Section 6.11.020)	X								A	A	
13. Sign Plans (Ref: ODC Section 4.03.020)	X								A	A	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]										
	Planning Director	City Engineer	Fire Marshal	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
14.	X								A	A	
15. Subdivisions											
a. Certificates of Compliance (Ref: ODC Section 4.03.025)		X							A	A	
b. Final Tract and Parcel Maps, and Vesting Maps (Ref: ODC Section 4.03.030)										X	
c. Lot Line Adjustments (Ref: ODC Section 4.03.035)		X							A	A	
d. Map Corrections and Amendments (Ref: ODC Section 4.03.040)		X							A	A	
e. Street Address Numbering (Ref. ODC Section 6.06.010)				X					A	A	
f. Street Name Assignment (Ref. ODC Section 6.06.010)	X								A	A	
g. Subdivision Improvement Agreement (Ref: ODC Section 6.08.040.G)		X							A	A	
h. Urban Lot Split (Ref: ODC Section 6.08.060		X							A	A	
16. Tier 1 wireless telecommunications facility pursuant to ODC Section 5.03.420 (Wireless Telecommunications Facilities)					X				A	A	
17. Wall, Fence, and Obstructions Plans not associated with a Development Plan (Ref. ODC Section 6.02.005)	X								A	A	
D. ENVIRONMENTAL DETERMINATIONS AND ACTIONS											
1. Environmental Impact Reports (EIRs) (Ref: CCR Section 15080 et seq.)									X[3]	X[3]	
2. Exempt Projects (Ref: CCR Section 15300 et seq.)	X[3]				X[3]	X[3]	X[3]	X[3]	A	A	
3. Ministerial Projects (Ref: CCR Section 15268)		Ministerial projects are exempt from the requirements of CEQA [10]									
4. Negative Declarations (NDs) and Mitigated Negative Declarations (MNDs) (Ref: CCR Section 15070 et seq.)					X[3]	X[3]	X[3]	X[3]	X[3]	X[3]	
5. Addendums to previously certified EIRs and previously adopted NDs and MNDs (Ref: CCR Section 15164)					X[3]	X[3]	X[3]	X[3]	X[3]	X[3]	
6. Environmental review for projects located within the ONT zoning district [9]											X

PART II. Division 4.03 —Ministerial Permits and Decision

4.03.010: Historic Preservation—Adaptive Reuse Plan

A. Purpose. The purpose of this Section is to establish a procedure by which Adaptive Reuse Plans may be approved by the City, while at the same time:

1. Provide a more efficient way for qualified historic buildings and adaptive reuse projects to meet development, building, and fire protection standards;

2. Promote adaptive reuse as part of broader goals supporting historic preservation, economic development, environmental sustainability and resilience, and recognize the social value of historic buildings;

3. Incentivize building reuse to encourage activation of Downtown Ontario where there is a large collection of commercial and industrial historic buildings that are worthy of preservation;

4. Eliminate or allow nonconformance with certain development regulations that would make adaptive reuse of qualified historic buildings infeasible, including such standards related to parking and loading, height, density, floor-area ratio, and open space; and

5. Allow alternative building and fire code compliance for qualified adaptive reuse projects able to demonstrate an alternative means or method of protecting public health, safety, and welfare.

B. Applicability.

1. Pursuant to Table 2.02-1 (Review Matrix) of this Development Code, the Approving Authority is hereby empowered to approve, approve in modified form, or deny an Adaptive Reuse Plan application, and to impose reasonable conditions upon the approval of the application.

2. Adaptive Reuse Plan approval shall allow for those land uses identified in Table 5.02-1 (Land Use Matrix) of this Development Code which allows for a broad range of land uses of the underlying zoning district in which the site is located. However, no new uses that emits noxious odors or excessive noise shall be allowed, unless the it can be demonstrated to the satisfaction of the Planning Director that the use will not cause adverse impacts to nearby residential land uses.

3. Qualifying buildings include those listed on the National Register of Historic Places, on the California Register of Historic Resources, Ontario Register of Historic Resources as designated local landmarks or contributors to designated local historic districts located within the Adaptive Reuse Plan Area.

4. Adaptive Reuse projects are construction and remodeling projects that reconfigure existing spaces within existing buildings to accommodate a new use or purpose other than what it was originally designed for. Adaptive Reuse projects require a change of use and building occupancy from office or commercial to residential, industrial to work/live, residential to office or commercial, or assembly to residential, office or commercial.

5. Application Filing and Processing. An Adaptive Reuse Plan application shall be filed, processed, and acted upon pursuant to Division 2.02 (Application Filing and Processing) of

this Development Code and the provisions of this Section. Plans and reports prepared for an Adaptive Reuse Plan shall be prepared by a California licensed architect meeting the minimum qualifications standards of The Secretary of the interior Professional Qualifications (Code of Federal Regulations, 36 CFR Part 61).

C. Adaptive Reuse Plan Area. This area consists of the City's original downtown, and extends north to include the historic districts adjacent to Euclid Avenue, the boundary of which is as follows:

Beginning at the intersection of the centerlines of State Street and San Antonio Avenue, thence north to the northernmost city boundary, thence east to the centerline of Sultana Avenue, thence south to the centerline of I Street, thence east to the centerline of Campus Avenue, thence south to the centerline of State Street, thence west to the point of beginning.

D. Alternative Building and Fire Code Regulations. The alternative building and fire codes regulations adopted in this Section are applicable to qualified buildings and adaptive reuse projects.

1. *Alternative Codes*. Use of the California Historic Building Code, International Existing Building Code, California Health and Safety Code and the Ontario Adaptive Reuse Plan Technical Manual shall provide a process and the ability for the Building Official and Fire Marshal to consider alternative building standards while ensuring adequate health and safety protections.

2. In permitting repairs, alterations, and additions necessary to accommodate adaptive reuse projects, the alternative code regulations shall impose requirements that will, in the determination of the Building Official and the Fire Marshal, protect the public health, safety, and welfare.

3. Nothing in this Section shall be construed to allow the reduction of existing seismic or fire and life-safety elements of an eligible building where such elements provide a greater level of protection than the minimum requirements established by this Section.

4. Subject to the approval of the Building Official and Fire Marshal, the use or occupancy type of a qualified building shall be allowed to be changed as part of an adaptive reuse project without conforming to all requirements of Title 8, Building Regulations, and Title 4, Chapter 4, Fire Code of the City of Ontario Municipal Code provided the new or proposed occupancy is equally or less hazardous, based on life and fire risk, than the existing use.

5. Whenever there are practical difficulties involved in carrying out the provisions of Title 8, Building Regulations, and Title 4, Chapter 4, Fire Code of the City of Ontario Municipal Code, the Building Official and Fire Marshal shall have the authority to grant modifications for individual cases, provided the Approving Authority shall first find that special individual reasons make the strict letter of the local codes impractical and the modification is in compliance with the intent and purpose of the local codes and that such modification does not lessen health, life and safety requirements.

E. Incentives. The Planning Director may grant the following departures from certain development standards and requirements to incentivize qualified Adaptive Reuse Plans:

1. *Development Plan Waived*. Approved Adaptive Reuse Plans, which may allow for new additions up to 25 percent of the existing building floor area and is not visible from the public

right-of-way, shall be exempt for the requirements for Development Plan review set forth in Section 4.02.025.

2. *Mezzanines*. Loft spaces in joint living and work quarters, dwelling units and guest rooms which do not exceed more than 33 percent of the floor area of the space below shall not be considered new floor area. Mezzanines may be included in the calculation of floor area for the purpose of determining compliance with the standards set forth in Paragraph (E) of this subdivision.

3. *Parking Reduction*. New parking spaces shall not be required for any converted use within the existing footprint of the building, but expansions to floor area shall require one parking space per bedroom or one parking space per 250 square feet of gross floor area for office or commercial.

4. *Setbacks*. Existing building setbacks may remain and shall be considered legally nonconforming, but no further encroachments shall be permitted into any nonconforming setback.

5. *Increases in Maximum Building Height*. The height of the structure, if it exceeds the maximum height of the zoning district, may remain and shall be considered legally nonconforming. Any rooftop construction needed for drainage, ventilation, utilities, or passive recreation shall be included within the height exemption. This height exemption does not include new residential or commercial floor area.

6. *Open Space*. Private open space for residential adaptive reuse projects may be waived when it is determined by the Approving Authority that the requirement would result in exterior alterations to the existing building that would result in an adverse impact to a historic resource. A minimum of 100 square feet of common open space per residential unit or 25 percent of the building square footage, whichever is less, shall be required and may be provided on the rooftop of the building or within the building and include various type of indoor amenities such as fitness center, workstations, playrooms, etc.

7. *Loading Zone*. A new loading zone shall not be required if the existing building does not have an existing loading zone.

F. Standards. Adaptive Reuse Projects permitted pursuant to this subdivision shall be developed in compliance with the following standards:

1. *Minimum Dwelling Units*. Adaptive reuse projects that propose residential shall develop no less than 3 units. The minimum floor area for new dwelling units and joint living and work quarters shall be 450 square feet. Floor area shall not include hallways or other common areas, or rooftops, balconies, terraces, fire escapes, or other projections or surfaces exterior to the walls of the building. The floor area of both the living space and the workspace shall be combined to determine the size of joint living and work quarters. The average floor area, as defined above, of all the dwelling units and joint living and work quarters in the building, including those that existed prior to the effective date of this ordinance, shall be at least 750 square feet. That minimum average size shall be maintained and not reduced.

2. *Storefront*. Ground floor of an existing multiple level commercial building shall contain street frontage and shall be used as a commercial storefront. Residential on ground may occur at the rear of the building behind the storefront.

3. *Exterior or Interior (Public Space) Alterations*. A Certificate of Appropriateness pursuant to Section 4.02.050: Historic Preservation—Certificates of Appropriateness and Demolition of Historic Resources is required for any alteration, addition, restoration, rehabilitation, remodeling, relocation, repainting, and/or resurfacing of an historic resource.

4. *Other Provisions*. Floor Area Ratio (FAR), Landscaping, Lot Coverage, and any other development standard of the underlying zone may be waived by the Approving Authority.

G. Conditions of Approval.

1. In approving an Adaptive Reuse Plan, the Planning Director may impose certain safeguards and standards to ensure that the purposes of this Development Code are maintained; ensure that the permit will not endanger the public health, safety or general welfare; ensure that the permit will not result in any significant environmental impacts; ensure that the permit will be in harmony with the area in which it is located; and ensure that the permit will be in conformity with The Ontario Plan and any applicable specific and/or area plan(s).

2. The standards and requirements authorized by this Section are enforceable in the same manner and to the same extent as any other applicable requirement of this Development Code.

H. Findings and Decision. An Adaptive Reuse Plan, or any amendment thereto, shall be acted upon by the Approving Authority based upon the information provided in the submitted application, evidence presented in the Planning Department's written report, only after considering and clearly establishing all of the below-listed findings, and giving supporting reasons for each finding. The application shall be denied if one or more of the below-listed findings cannot be clearly established.

1. That the use(s) of the property will not be detrimental to the public health, safety and general welfare surrounding the project location;

2. That the Adaptive Reuse Project complies with the standards set forth in Section 4.03.010 (F) of this Development Code; and

3. A Certificate of Appropriateness has been approved or Waived for the Adaptive Reuse Plan.

PART II. Division 7.01 —Historic Preservation

C. Types of Incentives. The below-listed incentives may be used for the eligible projects identified in Subsection B (Applicability) of this Section.

1. Economic and Financial Incentives. The following economic and financial incentives may be applied to a project following approval by the Historic Preservation Commission or the Historic Preservation Trust Board of Trustees, as applicable, and approval by the City Manager or the City Council, as applicable:

a. Grants or loans approved through the Historic Preservation Trust pursuant to Section 7.01.030 (Historic Preservation Trust Fund) of this Division;

b. Approval of a Mills Act contract pursuant to Section 4.02.070 (Historic Preservation—Mills Act Contracts) of this Development Code;

c. Approval of funding through the Historic Rehabilitation Financing Program pursuant to Section 7.01.015 (California Historical Building Code) of this Division;

d. Grants or loans through other City funding sources, including, but not limited to, redevelopment and housing funds;

e. Preservation easements;

f. Reduction or elimination of building plan check or permit fees;

g. Reduction or elimination of development impact fees;

h. Reduction or elimination of any other applicable City fees; or

i. Federal rehabilitation tax credits (applied through the California Office of Historic Preservation).

2. Development Incentives. The following development incentives to be applied to the project:

a. *California Historical Building Code.* Use of the CHBC pursuant to Section 7.01.015 (California Historical Building Code) of this Division.

b. *Parking Reduction.* For existing single-family dwellings with a one-car garage, the Planning Director may waive the requirement for 2 off-street parking spaces within a garage when adding floor area, if an existing one-car garage contributes to the significance of the property and/or district, and the existing garage is in good condition, or, if deteriorated, will be returned to good condition as part of the work to add new living space to the residence.

c. *Setback Reductions and Increases in Maximum Building Height.* The Planning Director may grant reductions in required building setbacks or increases in the maximum allowed building height when the setback reduction or increase in allowed building height allows for the restoration of a character-defining feature, or allows character-defining features to be replicated in additions to historic structures. In no case, however, shall a reduction in a setback be granted when the reduction will cause an adverse effect to the property or neighboring property, or cause an adverse effect to the character of the neighborhood or district.

d. *Adaptive Reuse.* Departures from certain development standards may be waived to encourage adaptive reuse of qualified historic buildings pursuant to, and in accord with, the provisions of Section 4.03.010 of this Development Code.

CITY OF ONTARIO *Agenda Report* **June 18, 2024**	**SECTION:** **PUBLIC HEARINGS**
Department: Community Development Prepared By: Pablo De Lara Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 20

SUBJECT: **A PUBLIC HEARING TO CONSIDER THE ADOPTION OF AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA21-010) BETWEEN THE CITY OF ONTARIO AND SL ONTARIO DEVELOPMENT COMPANY, LLC**

RECOMMENDATION: That the City Council introduce and waive further reading of an Ordinance approving a Development Agreement (File No. PDA21-010) between the City of Ontario and SL Ontario Development Company, LLC.

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
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 Development Agreement will provide funding from the formation of a Community Facilities District (CFD) for City services and facilities required to support the Subarea 29 Specific Plan (Specific Plan) development, thereby mitigating the increased costs associated with such services. In addition, the City will receive development impact, compliance processing, licensing, and permitting fees. No General Fund revenue will be used to support the Ontario Ranch development.

BACKGROUND & ANALYSIS: The Ontario Ranch financial commitments required for construction of properties within a specific plan are substantial. Therefore, to adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules, and regulations, SL Ontario Development Company, LLC (collectively the "Applicant" or "Owner"), has requested that the City enter into negotiations to create a Development Agreement (Agreement).

The Agreement proposes to include 62.69 acres of land within Planning Area 32 (Mixed-Residential) and Planning Area 34 (School) of the Subarea 29 Specific Plan, as shown on the attached Exhibit "A." The Agreement grants the Applicant a vested right to develop Tentative Tract Map 20562 (Map),

provided the Owner complies with the terms and conditions of the Specific Plan and related EIR.

The Map, as shown on the attached Exhibit "B," is located at the southeast corner of Eucalyptus Avenue and Haven Avenue and proposes to subdivide 62.69 acres of land into 8 numbered lots and 3 lettered lots for residential uses, a public school, private drives, landscape edges, and common open space purposes.

The term of the Agreement is for 10 years, with a 5-year option to renew. The main points of the Agreement address funding for all new City expenses created by the project, which includes: Development Impact Fees (DIF) for construction of public improvements (i.e. streets and bridges, sewer, water, storm drain and fiber); and the creation of a Community Facilities District (CFD) for the maintenance of public facilities.

In considering the Agreement at their meeting on May 28, 2024, the Planning Commission found the Agreement to be consistent with State law, The Ontario Plan, and the City's Development Agreement policies. As a result, the Planning Commission adopted Resolution No. PC24-012 with a 5 to 0 vote, recommending City Council approval of the Agreement.

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously reviewed in conjunction with an Amendment to the Subarea 29 Specific Plan (File No. PSPA21-005), for which a Subsequent Environmental Impact Report (SEIR) (State Clearinghouse No. 2004011009) was adopted by the City Council on November 21, 2023. This application introduces no new significant environmental impacts.

Exhibit A:
SUBAREA 29 SPECIFIC PLAN LAND USE MAP (File No. PSPA21-005)

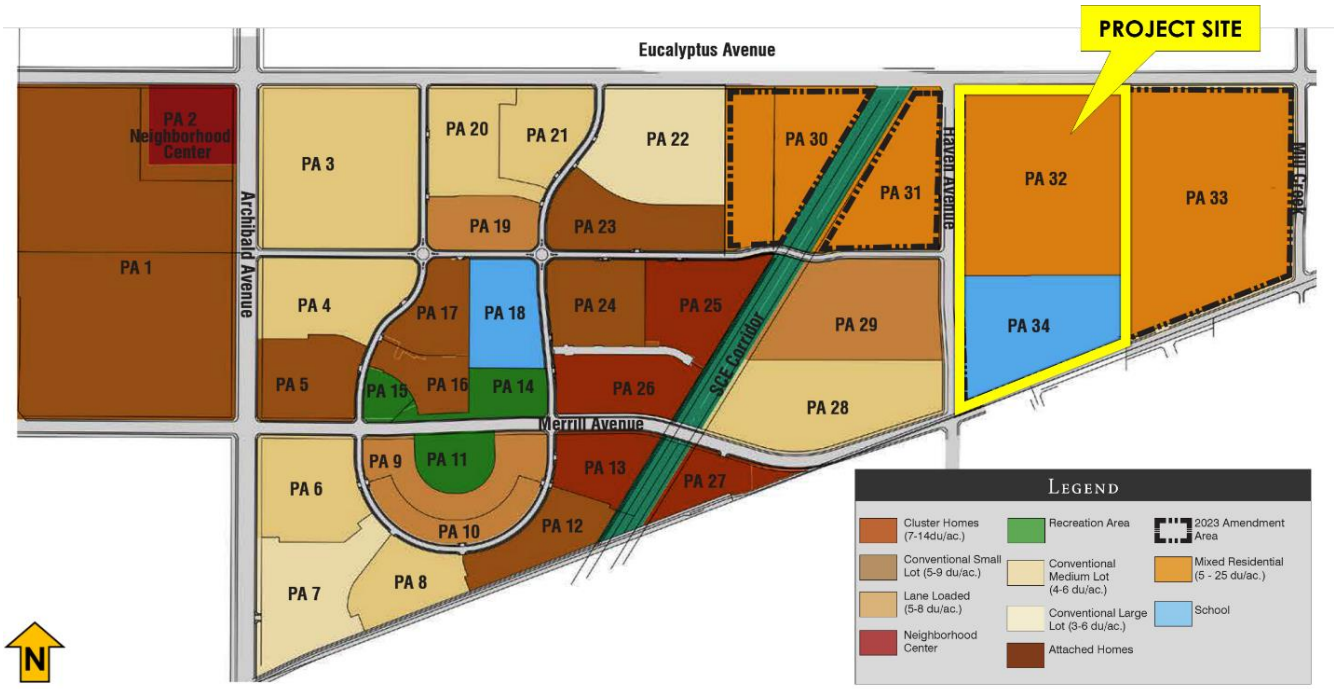
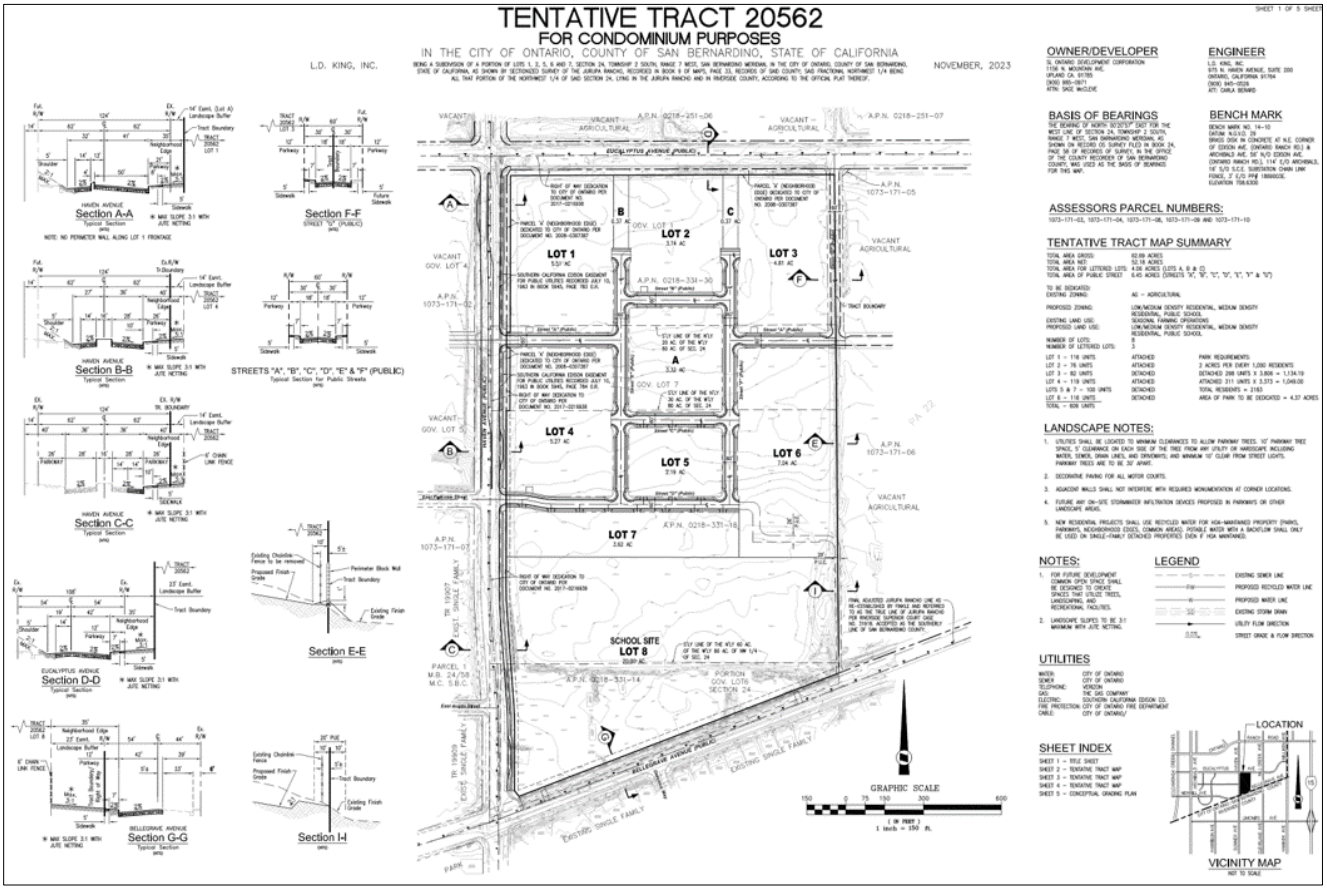


Exhibit B:
TENTATIVE TRACT MAP NO. 20562



PLANNING COMMISSION

STAFF REPORT

May 28, 2024

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

FILE NO: PDA21-010

SUBJECT: A public hearing to consider a Development Agreement (File No. PDA21-010) between the City of Ontario and SL Ontario Development Company, LLC, to establish the terms and conditions associated with Tentative Tract Map 20562 (File No. PMTT22-022), a 62.69 acre property, located at the southeast corner of Eucalyptus Avenue and Haven Avenue, within Planning Area 32 (Mixed-Residential) and Planning Area 34 (School) of the Subarea 29 Specific Plan. (File No. PSPA21-005) (APNs: 1073-171-04, 1073-171-08, 1073-171-09 and 1073-171-10); **submitted by SL Ontario Development Company, LLC. City Council action is required.**

PROPERTY OWNER: **SL Ontario Development Company, LLC.**

RECOMMENDED ACTION: That the Planning Commission consider and recommend City Council adoption of an Ordinance approving the Development Agreement (File No. PDA21-010) between the City of Ontario and SL Ontario Development Company, LLC pursuant to the facts and reasons contained in the staff report and attached Resolution.

PROJECT SETTING: The project site is comprised of 62.69 acres of land located at the southeast corner of Eucalyptus Avenue and Haven Avenue, within Planning Area 32 (Mixed-Residential) and Planning Area 34 (School) of the Subarea 29 Specific Plan and is depicted in Figure 1: Project Location.



Figure.7¿Project.Location

PROJECT ANALYSIS:

Background — The Subarea 29 Specific Plan and related Environmental Impact Report (State Clearinghouse No. 2004011009) were approved by the City Council on October 17, 2006. The Specific Plan established the land use designations, development standards, and design guidelines, which included the potential development of 2,470 dwelling units and up to 87,000 square feet of commercial uses for the Specific

Case Planner:	Pablo De Lara – Project Manager
Planning Director Approval:	
Submittal Date:	4/30/2024

Hearing Body	*Date*	*Decision*	*Action*
DAB	N/A	N/A	N/A
PC	5/28/2024	Approval	Recommend
CC	7/2/2024		Final

Plan Area. Over the years, subsequent Specific Plan Amendments have been adopted to increase dwelling units, include additional product types, and update development standards.

On November 21, 2023, the City Council approved an Amendment to the Subarea 29 Specific Plan (File No. PSPA21-005) for the annexation of 113.2 gross acres of land, located on the southwest corner of Haven Avenue and Eucalyptus Avenue in conjunction with land changes to the land use plan to bring the Specific Plan into compliance with TOP Policy Plan (General Plan) land uses. The amendment also changed the following land use designation to Planning Areas 30 and 31.

The Applicant has submitted Tentative Tract Map No. 20562 (File No. PMTT22-022), subdividing 62.69 acres of land into 8 numbered lots and 3 lettered lots for residential uses, a public school, private drives, landscape edges, and common open space purposes.

The Ontario Ranch financial commitments required for construction of properties within a specific plan are substantial. Therefore, in order to adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules, and regulations, SL Ontario Development Company, LLC ("Owner"), has requested that the City enter into negotiations to create a Development Agreement ("Agreement").

In accordance with California Government Code Section 65865, which in part states that any city... may enter into a Development Agreement with any person having a legal or equitable interest in real property for the development of such property..." and California Government Code Section 65865.52, which in part states that "a Development Agreement shall specify the duration of the Agreement, the permitted uses of the property... and may include conditions, terms, restrictions...," the City of Ontario adopted Resolution No. 2002-100 setting forth the procedures and requirements for consideration of Development Agreements. Pursuant to these procedures and requirements, staff entered into negotiations with the Applicant to create a Development Agreement for consideration by the Planning Commission and City Council.

The proposed Agreement is based on the model Development Agreement that was developed in coordination with the City Attorney and legal counsel for NMC Builders. This model Development Agreement is consistent with the provisions of the Construction Agreement. The terms of the agreement between NMC Builders' members requires that members of the LLC enter into Development Agreements that are consistent with the provisions of the Construction Agreement and are consistent with the commitments to assure adequate public infrastructure improvements are constructed by the Owner.

(1) Staff Analysis — The Agreement proposes to include 62.69 acres of land within Planning Area 32 (Mixed-Residential) and Planning Area 34 (School) of the Subarea 29 Specific Plan (See Exhibit A: Subarea 29 Specific Plan Land Use Plan). The Agreement grants the Applicant a vested right to develop Tentative Tract Map 20562 (the "Map"),

provided that the Owner complies with the terms and conditions of the Specific Plan and related EIR.

The Map (see attached Exhibit B) is located at the southeast corner of Eucalyptus Avenue and Haven Avenue and proposes to subdivide 62.69 acres of land into 8 numbered lots and 3 lettered lots for residential uses, a public school, private drives, landscape edges, and common open space purposes.

The term of the Agreement is for 10 years, with a 5-year option to renew. The main points of the Agreement address funding for all new City expenses created by the project, which includes: Development Impact Fees ("DIF") for construction of public improvements (i.e. streets and bridges, sewer, water, storm drain and fiber); Public Service Funding to ensure adequate provisions of public services (police, fire and other public services); and the creation of a Community Facilities District ("CFD") for the maintenance of public facilities.

Staff finds that the Agreement is consistent with State law, The Ontario Plan, and the City's Development Agreement policies. As a result, staff is recommending approval of the application to the Planning Commission. If the Planning Commission finds the Agreement is acceptable, a recommendation of approval to the City Council would be appropriate.

PUBLIC NOTIFICATION: The subject Agreement was advertised as a public hearing in at least one newspaper of general circulation in the City of Ontario (the Inland Valley Daily Bulletin newspaper). In addition, notices were mailed to all owners of real property located within a minimum of 300 feet of the exterior boundaries of the property that is the subject of the hearing, as shown on the records of the County Assessor.

CORRESPONDENCE: As of the preparation of this Resolution, Planning Department staff has not received any written or verbal communications from the owners or occupants of properties surrounding the Project site or from the public in general, regarding the subject Agreement.

AGENCY/DEPARTMENT REVIEWS: Each City agency/department has been provided the opportunity to review and comment on the subject Agreement and recommend requirements to be imposed upon the Project. At the time of the Resolution preparation, infrastructure requirements were provided and are included within the subject Agreement to the attached Resolution as "Attachment A."

AIRPORT LAND USE COMPATIBILITY PLAN (ALUCP) COMPLIANCE: The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan.

On April 19, 2011, the City Council of the City of Ontario approved and adopted the ONT ALUCP, establishing the Airport Influence Area for Ontario International Airport, which

encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the recommending body for the Project, the Planning Commission has reviewed and considered the facts and information contained in the Application and supporting documentation against the ONT ALUCP compatibility factors, including [1] Safety Criteria (ONT ALUCP Table 2-2) and Safety Zones (ONT ALUCP Map 2-2), [2] Noise Criteria (ONT ALUCP Table 2-3) and Noise Impact Zones (ONT ALUCP Map 2-3), [3] Airspace protection Zones (ONT ALUCP Map 2-4), and [4] Overflight Notification Zones (ONT ALUCP Map 2-5). As a result, the Planning Commission, therefore, finds and determines that the Project, is consistent with the policies and criteria set forth within the ONT ALUCP.

On August 2, 2022, the City Council of the City of Ontario approved and adopted a Development Code Amendment to establish the Chino Airport ("CNO") Overlay Zoning District ("OZD") and Reference I, Chino Airport Land Use Compatibility Plan ("CNO ALUCP"). The CNO OZD and CNO ALUCP established the Airport Influence Area for Chino Airport, solely within the City of Ontario, and limits future land uses and development within the Airport Influence Area, as they relate to safety, airspace protection, and overflight impacts of current and future airport activity. The CNO ALUCP is consistent with policies and criteria set forth within the Caltrans 2011 California Airport Land Use Planning Handbook. The proposed Project is located within the Airport Influence Area of Chino Airport and was evaluated and found to be consistent with the California Airport Land Use Planning Handbook and the CNO ALUCP. As the recommending body for the Project, the Planning Commission has reviewed and considered the facts and information contained in the Application and supporting documentation against the CNO ALUCP compatibility factors, including Safety, Airspace Protection, Overflight. As a result, the Planning Commission, therefore, finds and determines that the Project is consistent with the policies and criteria set forth within the California Airport Land Use Planning Handbook and the Chino ALUCP.

COMPLIANCE WITH THE ONTARIO PLAN: The proposed Project is consistent with the principles, goals and policies contained within the Vision, Governance, Policy Plan (general plan), and City Council Priorities components of The Ontario Plan ("TOP"). More specifically, the goals and policies of TOP that are furthered by the proposed Project are as follows:

(1) City Council Goals.

- Invest in the Growth and Evolution of the City's Economy
- Operate in a Businesslike Manner
- Focus Resources in Ontario's Commercial and Residential Neighborhoods
- Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)
- Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony

(2) Vision.

Distinctive Development:

- Commercial and Residential Development

➢ Development quality that is broadly recognized as distinctive and not exclusively tied to the general suburban character typical of much of Southern California.

(3) Governance.

Decision Making:

- Goal G1: Sustained decision-making that consistently moves Ontario towards its Vision by using The Ontario Plan as a framework for assessing choices.

➢ G 1-2. Long-term Benefit. We require decisions to demonstrate and document how they add value to the community and support the Ontario Vision.

(4) Policy Plan (General Plan)

Land Use Element:

- Goal LU-1 Balance: A community that has a spectrum of housing types and price ranges that match the jobs in the City and that make it possible for people to live and work in Ontario and maintain a quality of life.

➢ LU-1.1 Strategic Growth. We concentrate growth in strategic locations that help create place and identity, maximize available and planned infrastructure, foster the development of transit, and support the expansion of the active and multimodal transportation networks throughout the City.

➢ LU-1.6 Complete Community. We incorporate a variety of land uses and building types in our land use planning efforts that result in a complete community where residents at all stages of life, employers, workers, and visitors have a wide spectrum of choices of where they can live, work, shop and recreate within Ontario.

- Goal LU-2 Compatibility: Compatibility between a wide range of uses and a resultant urban patterns and forms.

➢ LU-2.6 *Infrastructure Compatibility.* We require infrastructure to be aesthetically pleasing and in context with the community character.

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.

  - H-2.4 Ontario Ranch. We support a premier lifestyle community in the Ontario Ranch, distinguished by diverse housing, highest design quality, and cohesive and highly amenitized neighborhoods.

  - 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.

Community Economics Element:

- Goal CE-1 Complete Community: A complete community that provides for all incomes and stages of life.

  - CE-1.6 Diversity of Housing. We collaborate with residents, housing providers, and the development community to provide housing opportunities for every stage of life; we plan for a variety of housing types and price points to encourage the development of housing supportive of our efforts to attract business in growing sectors of the community while being respectful of existing viable uses.

- Goal CE-2 Placemaking: A City of distinctive neighborhoods, districts, corridors, and centers where people choose to be.

  - CE-2.1 *Development Projects*. We require new development and redevelopment to create unique, high-quality places that add value to the community.

  - CE-2.2 *Development Review*. We require those proposing new development and redevelopment to demonstrate how their projects will create appropriately unique, functional, and sustainable places that will compete well with their competition within the region.

  - CE-2.4 *Protection of Investment*. We require that new development and redevelopment protect existing investment by providing architecture and urban design of equal or greater quality.

  - CE-2.5 *Private Maintenance*. We require adequate maintenance, upkeep, and investment in private property because proper maintenance on private property protects property values.

Community Design Element:

- Goal CD-2 Design Quality: A high level of design quality resulting in neighborhoods, public spaces, parks, and streetscapes that are attractive, safe, functional, human-scale, and distinct.

  - CD-2.7 *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.

  - CD-2.13 *Entitlement Process*. We work collaboratively with all stakeholders to ensure a high degree of certainty in the efficient review and timely processing of all development plans and permits.

- Goal CD-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.

  - CD-5.1 *Maintenance of Buildings and Property*. We require all public and privately-owned buildings and property (including trails and easements) to be properly and consistently maintained.

  - CD-5.2 *Maintenance of Infrastructure*. We require the continual maintenance of infrastructure.

HOUSING ELEMENT COMPLIANCE: The project is consistent with the Housing Element of the Policy Plan (general plan) component of The Ontario Plan 2050, 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.

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously reviewed in conjunction with an Amendment to the Subarea 29 Specific Plan (File No. PSPA21-005), for which a Subsequent Environmental Impact Report (SEIR) (State Clearinghouse No. 2004011009) was adopted by the City Council on November 21, 2023. This application introduces no new significant environmental impacts.

Exhibit A:
SUBAREA 29 SPECIFIC PLAN LAND USE MAP (File No. PSPA21-005)

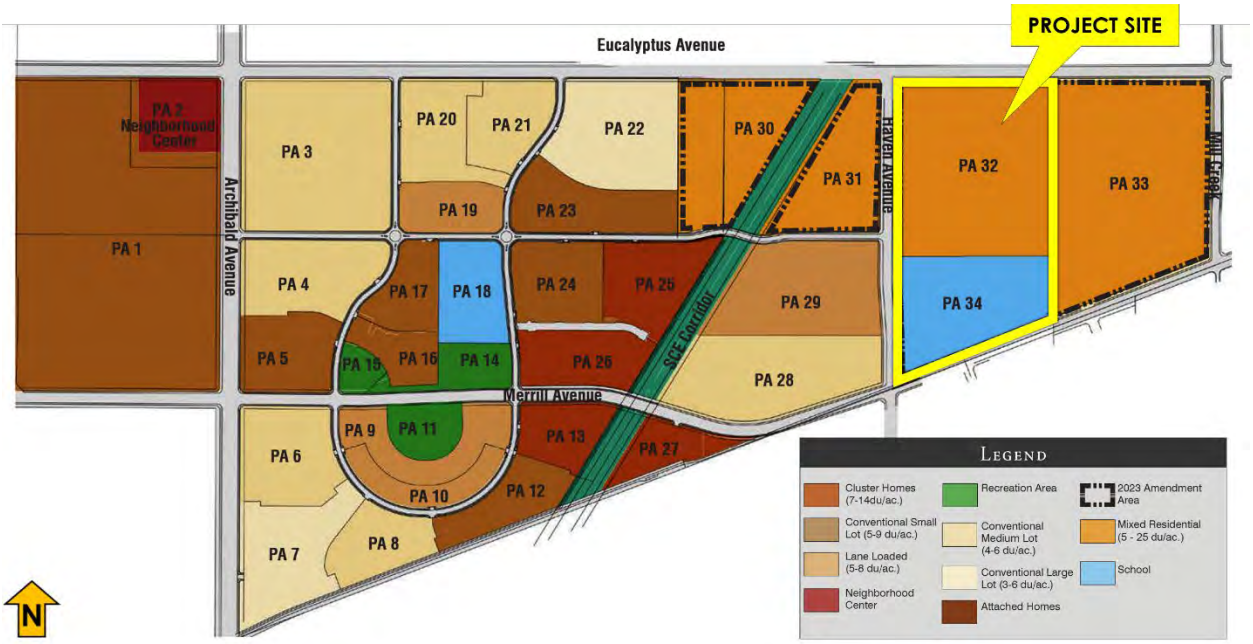
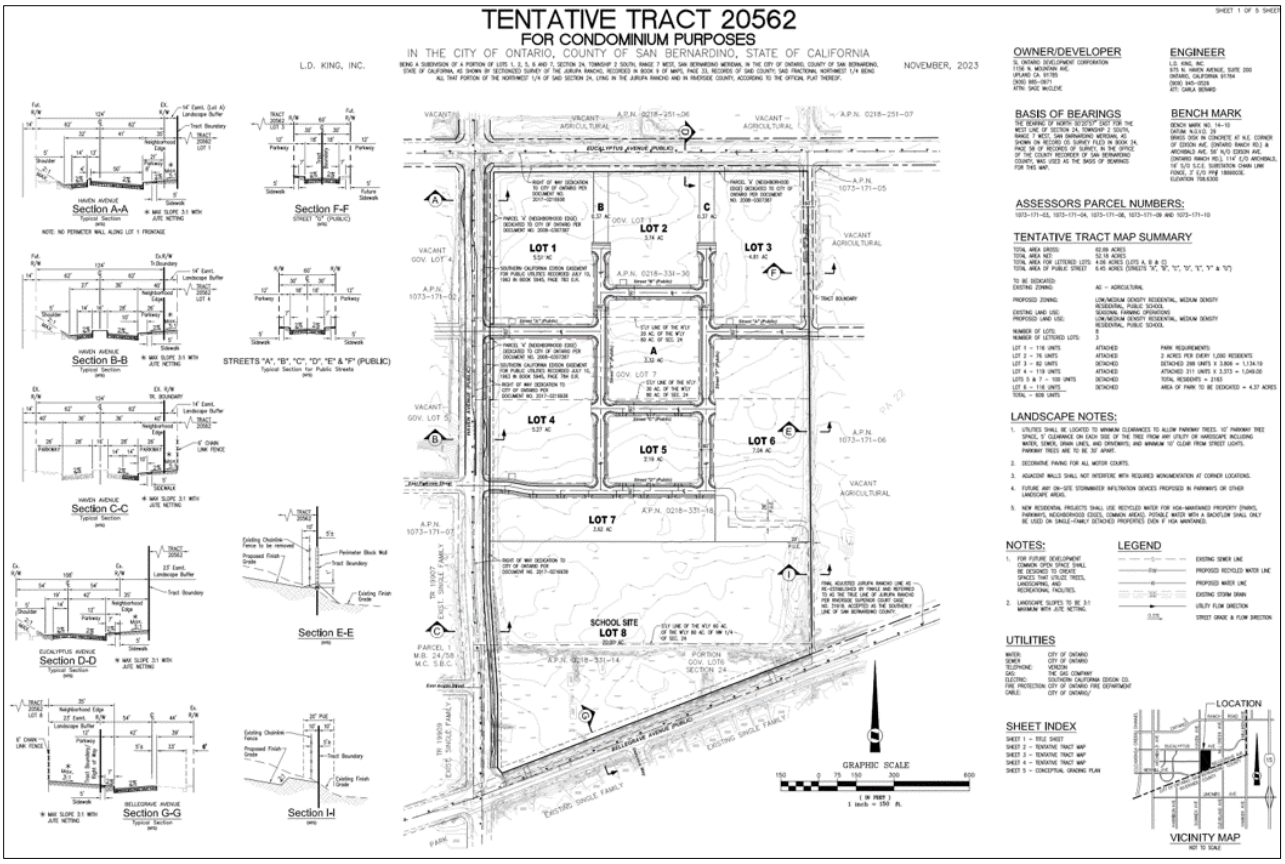


Exhibit B:
TENTATIVE TRACT MAP NO. 20562



RESOLUTION NO. PC24-012

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING CITY COUNCIL APPROVE FILE NO. PDA21-010, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND SL ONTARIO DEVELOPMENT COMPANY LLC, TO ESTABLISH THE TERMS AND CONDITIONS ASSOCIATED WITH TENTATIVE TRACT MAP 20562 (FILE NO. PMTT22-022), A 62.69 ACRE PROPERTY, LOCATED AT THE SOUTHEAST CORNER OF EUCALYPTUS AVENUE AND HAVEN AVENUE, WITHIN PLANNING AREA 32 (MIXED-RESIDENTIAL) AND PLANNING AREA 34 (SCHOOL) OF THE SUBAREA 29 SPECIFIC PLAN. (FILE NO. PSPA21-005), (APNS: 1073-171-04, 1073-171-08, 1073-171-09 AND 1073-171-10).

WHEREAS, SL Ontario Development Company, LLC ("Applicant") has filed an Application for the approval of a Development Agreement, File No. PDA21-010, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 62.69 acres located at the southeast corner of Eucalyptus Avenue and Haven Avenue, within Planning Area 32 (Mixed-Residential) and Planning Area 34 (School) of the Subarea 29 Specific Plan. (File No. PSPA21-005); and

WHEREAS, the Applicant submitted Tentative Tract Map No. 20562 (File No. PMTT22-022), subdividing 62.69 acres of land into 8 numbered lots and 3 lettered lots for residential uses, a public school, private drives, landscape edges, and common open space purposes; and

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with an Amendment to the Subarea 29 Specific Plan (File No. PSPA21-005), for which a Subsequent Environmental Impact Report (SEIR) (State Clearinghouse No. 2004011009) was adopted by the City Council on November 21, 2023. This application introduces no new significant environmental impacts; 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, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and make recommendations to the City Council on the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan, 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 May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the Planning Commission of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the recommending authority for the Project, the Planning Commission has reviewed and considered the information contained in the previous Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the Planning Commission finds as follows:

(1) The environmental impacts of this Project were previously reviewed in conjunction with File No. PSPA21-005, a Specific Plan Amendment for which a Subsequent Environmental Impact Report (SEIR) (State Clearinghouse No. 2004011009) was adopted by the City Council on November 21, 2023.This application introduces no new significant environmental impacts; and

(2) The previous Certified EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Certified EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Certified EIR reflects the independent judgment of the Planning Commission; and

(5) The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the previous Certified EIR, and all mitigation measures previously adopted with the Certified EIR, are incorporated herein by this reference.

SECTION 2: ***Subsequent or Supplemental Environmental Review Not Required.*** Based on the information presented to the Planning Commission, and the specific findings set forth in Section 1, above, the Planning Commission finds that the preparation of a subsequent or supplemental Certified EIR is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the Certified EIR that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

(2) Does not constitute substantial changes with respect to the circumstances under which the Certified EIR was prepared, that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(3) Does not contain new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Certified EIR was certified/adopted, that shows any of the following:

(a) The project will have one or more significant effects not discussed in the Certified EIR; or

(b) Significant effects previously examined will be substantially more severe than shown in the Certified EIR; or

(c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the City declined to adopt such measures; or

(d) Mitigation measures or alternatives considerably different from those analyzed in the Certified EIR would substantially reduce one or more significant effects on the environment, but which the City declined to adopt.

SECTION 3: ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending authority for the Project, the Planning Commission finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is 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.

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.

(1) On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the recommending authority for the Project, the Planning Commission has reviewed and considered the facts and information contained in the Application and supporting documentation against the ONT ALUCP compatibility factors, including [1] Safety Criteria (ONT ALUCP Table 2-2) and Safety Zones (ONT ALUCP Map 2-2), [2] Noise Criteria (ONT ALUCP Table 2-3) and Noise Impact Zones (ONT ALUCP Map 2-3), [3] Airspace protection Zones (ONT ALUCP Map 2-4), and [4] Overflight Notification Zones (ONT ALUCP Map 2-5). As a result, the PLANNING COMMISSION, therefore, finds and determines that the Project, is will be consistent with the policies and criteria set forth within the ONT ALUCP; and

(2) On August 2, 2022, the City Council of the City of Ontario approved and adopted a Development Code Amendment to establish the Chino Airport ("CNO") Overlay Zoning District ("OZD") and Reference I, Chino Airport Land Use Compatibility Plan ("CNO ALUCP"). The CNO OZD and CNO ALUCP established the Airport Influence Area for Chino Airport, solely within the City of Ontario, and limits future land uses and development within the Airport Influence Area, as they relate to safety, airspace protection, and overflight impacts of current and future airport activity. The CNO ALUCP

is consistent with policies and criteria set forth within the Caltrans 2011 California Airport Land Use Planning Handbook. The proposed Project is located within the Airport Influence Area of Chino Airport and was evaluated and found to be consistent with the California Airport Land Use Planning Handbook and the CNO ALUCP. As the recommending authority for the Project, the Planning Commission has reviewed and considered the facts and information contained in the Application and supporting documentation against the CNO ALUCP compatibility factors, including Safety, Airspace Protection, Overflight. As a result, the Planning Commission, therefore, finds and determines that the Project is consistent with the policies and criteria set forth within the California Airport Land Use Planning Handbook and the Chino ALUCP.

SECTION 5: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 4, above, the Planning Commission hereby concludes as follows:

(1) The Development Agreement applies to approximately 62.69 acres of land located at the southeast corner of Eucalyptus Avenue and Haven Avenue, within Planning Area 32 (Mixed-Residential) and Planning Area 34 (School) of the Subarea 29 Specific Plan. (File No. PSPA21-005); and

(2) The Development Agreement establishes parameters for the development of land within Subarea 29 Specific Plan. The Development Agreement also grants the Applicant, the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the Subarea 29 Specific Plan; and

(3) The Development Agreement grants the Applicant a vested right to develop Tentative Tract Map 20562 (File No. PMTT22-022) as long as the Applicant complies with the terms and conditions of the Subarea 29 Specific Plan and EIR. Tentative Tract Map 20562 located at the southeast corner of Eucalyptus Avenue and Haven Avenue, within Planning Area 32 (Mixed-Residential) and Planning Area 34 (School) of the Subarea 29 Specific Plan, and proposes to subdivide 62.69 acres of land into 8 numbered lots and 3 lettered lots for residential uses, a public school, private drives, landscape edges, and common open space purposes; and

(4) The Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

(5) The Development Agreement does not conflict with the Land Use Policies of The Ontario Plan Policy Plan (General Plan) and will provide for development, within

the district, in a manner consistent with the Policy Plan and with related development; and

(6) This Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

(7) This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will not have a significant impact on the environment or the surrounding properties a Specific Plan Amendment for which a Subsequent Environmental Impact Report (SEIR) (State Clearinghouse No. 2004011009) was adopted by the City Council on November 21, 2023.

SECTION 6: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 5, above, the Planning Commission hereby RECOMMENDS THE CITY COUNCIL APPROVE the herein described Application, subject to each and every condition set forth in the Development Agreement (File No. PDA21-010 attached hereto as "Attachment A," 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: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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The Secretary Pro Tempore for the Planning Commission of the City of Ontario shall certify as to the adoption of this Resolution.

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a special meeting thereof held on the 28th of May, 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

ATTEST:

Henry K. Noh
Planning Director and
Secretary to the Planning Commission

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

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC24-012, was duly passed and adopted by the Planning Commission of the City of Ontario at their special meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

FILE NO. PDA21-010

DEVELOPMENT AGREEMENT

By and Between

City of Ontario
a California municipal corporation

and

SL Ontario Development Company LLC
a Delaware limited liability company

(Development Agreement to follow this page)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

CITY OF ONTARIO
CITY CLERK / RECORDS MANAGEMENT
303 EAST "B" STREET
ONTARIO, CA 91764-4196

Exempt from Fees Per Gov. Code § 6103

Space above this line for Recorder's Use Only

FILE NO. PDA21-010

DEVELOPMENT AGREEMENT

By and Between

City of Ontario
a California municipal corporation

and

SL Ontario Development Company LLC
a Delaware limited liability company

_____, 2024

San Bernardino County, California

DEVELOPMENT AGREEMENT PDA21-010

This Development Agreement (hereinafter "Agreement") is entered into effective as of the ____ day of _____, 2024 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and SL Ontario Development Company, LLC., a Delaware limited liability company (hereinafter "OWNER"):

RECITALS

WHEREAS, CITY is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code; and

WHEREAS, OWNER has requested CITY to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of CITY; and

WHEREAS, by electing to enter into this Agreement, CITY shall bind future City Councils of CITY by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of CITY; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by CITY and the City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of the CITY and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement in that Subarea 29 Specific Plan (State Clearinghouse No. 2004011009 (the "FEIR"). The City Council found and determined that the FEIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the project described in the FEIR, which included consideration of this Agreement; and

WHEREAS, this Agreement and the Project are consistent with the CITY's Comprehensive General Plan and the Subarea 29 Specific Plan; and

WHEREAS, all actions taken and approvals given by CITY have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

WHEREAS, development of the Property in accordance with this Agreement will provide substantial benefits to CITY and will further important policies and goals of CITY; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, ensure progressive installation of necessary improvements, provide for public services appropriate to the development of the Project, and generally serve the purposes for which development agreements under Sections 65864 et seq. of the Government Code are intended; and

WHEREAS, OWNER has incurred and will in the future incur substantial costs in excess of the generally applicable requirements in order to assure vesting of legal rights to develop the Property in accordance with this Agreement.

WHEREAS, the Property is located in an area of the City of Ontario that has been known as the "New Model Colony" area and the New Model Colony area has now been renamed as "Ontario Ranch."

WHEREAS, the property developer/owners are made aware of the South Archibald Trichloroethylene (TCE) Plume Disclosure Letter (Exhibit "G"). Property owner may wish to provide the attached Letter as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq. This may include notifications in the Covenants, Conditions and Restrictions (CC&Rs) or other documents related to property transfer and disclosures. Additional information on the plume is available from the Santa Ana Regional Water Quality Control Board at http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T10000004658

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "CITY" means the City of Ontario, California, a California municipal corporation.

1.1.3 "Construction Agreement" means that certain Agreement for the Financing and Construction of Phases I and II Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony, entered into between the CITY and NMC Builders as of the 4th day of October, 2005, and all amendments thereto and "Construction Agreement Amendment" means that First Amended and Restated Agreement for the

Financing and Construction of Limited Infrastructure Improvements to Serve and Easterly Portion of the New Model Colony entered into between the CITY and NMC Builders as of the 21st day of August 2012.

1.1.4 "Development" means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of public infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping. "Development" does not include the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

1.1.5 "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by CITY in connection with development of the Property including, but not limited to:

(a) specific plans and specific plan amendments;

(b) tentative and final subdivision and parcel maps;

(c) development plan review;

(d) conditional use permits (including model home use permits), public use permits and plot plans;

(e) zoning;

(f) grading and building permits.

1.1.6 "Development Exaction" means any requirement of CITY in connection with or pursuant to any Land Use Regulation or Development Approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

1.1.7 "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether characterized as a fee or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4, For purposes of this Agreement only, "Development Impact Fee" shall not include processing fees and charges imposed by CITY to cover

the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superceded, including by amendment or replacement.

1.1.8 "Development Plan" means the Existing Development Approvals and the Existing Land Use Regulations applicable to development of the Property.

1.1.9 "Effective Date" means the date that the ordinance approving this Agreement goes into effect.

1.1.10 "Existing Development Approvals" means all Development Approvals approved or issued prior to the Effective Date. Existing Development Approvals includes the Approvals incorporated herein as Exhibit "C" and all other Approvals which are a matter of public record on the Effective Date.

1.1.11 "Existing Land Use Regulations" means all Land Use Regulations in effect on the Effective Date. Existing Land Use Regulations includes the Regulations incorporated herein as Exhibit "D" and all other Land Use Regulations that are in effect and a matter of public record on the Effective Date.

1.1.12 "General Plan" means the General Plan adopted on August 16, 2022

1.1.13 "Improvement" or "Improvements" means those public improvements required to support the development of the Project as described in the Tract Map conditions for Tract No(s). 20562 as further described in Exhibit "F" (the "Infrastructure Improvements Exhibit").

1.1.14 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of CITY governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable

to the development of the Property. “Land Use Regulations” does not include any CITY ordinance, resolution, code, rule, regulation or official policy, governing:

(a) the conduct of businesses, professions, and occupations;

(b) taxes and assessments;

(c) the control and abatement of nuisances;

(d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property;

(e) the exercise of the power of eminent domain.

1.1.15 “Mortgagee” means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns.

1.1.16 “Net MDD” means net maximum daily water demand.

1.1.17 “NMC Builders” means the consortium of investors and developers responsible for the construction of infrastructure within the New Model Colony incorporated as NMC Builders, LLC.

1.1.18 “Model Units” means a maximum of Thirty (30) model units, private common recreation facilities and sales facilities constructed by OWNER prior to the construction of any Production units and not offered for sale and occupancy for a period of time after the issuance of permits for Production Units.

1.1.19 “OWNER” means the persons and entities listed as owner on page 1 of this Agreement and their permitted successors in interest to all or any part of the Property.

1.1.20 “Production Unit(s)” means all units constructed for sale and occupancy by OWNER and excludes the specified number of Model Units constructed by OWNER for promotion of sales.

1.1.21 “Project” means the development of the Property contemplated by the Development Plan, as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.1.22 “Property” means the real property described on Exhibit “A” and shown on Exhibit “B” to this Agreement.

1.1.23 “Reservations of Authority” means the rights and authority excepted from the assurances and rights provided to OWNER under this Agreement and reserved to CITY under Section 3.6 of this Agreement.

1.1.24 “Specific Plan” means that certain specific plan adopted by the City Council, and entitled, “Subarea 29 Specific Plan.”

1.1.25 "Storm Water Treatment Capacity Availability” means a designated portion of the total Storm Water Treatment Capacity Availability made available through the completion of construction of a Phase of regional storm water treatment facilities by the NMC Builders LLC as described in the Construction Agreement Amendment. The amount, in acres, of Storm Water Treatment Capacity Availability required for the issuance of a grading permit shall be based upon the factors and assumptions listed in the Construction Agreement Amendment.

1.1.26 “Subsequent Development Approvals” means all Development Approvals required subsequent to the Effective Date in connection with development of the Property.

1.1.27 “Subsequent Land Use Regulations” means any Land Use Regulations adopted and effective after the Effective Date of this Agreement.

1.1.28 “Water Availability Equivalent (WAE)” means a designated portion of the total Net MDD made available through the construction of each Phase described in the Water Phasing Plan of the Construction Agreement. The number of Water Availability Equivalents (of portions thereof) required for the issuance of each building permit shall be based upon water demand factors and assumptions listed in the Construction Agreement and Construction Agreement Amendment as “Water Availability Equivalents by Land Use” for each land use category.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit “A” — Legal Description of the Property.

Exhibit “B” — Map showing Property and its location.

Exhibit “C” — Existing Development Approvals.

Exhibit “D” — Existing Land Use Regulations.

Exhibit “E” — Description of Required Infrastructure Improvements

Exhibit “F” — Depiction of Required Infrastructure Improvements Exhibit

Exhibit “G” - Form of Plume Disclosure Letter

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out only in accordance with the terms of this Agreement.

2.2 Ownership of Property. OWNER represents and covenants that it is the owner of the fee simple title to the Property or a portion thereof, or has the right to acquire fee simple title to the Property or a portion thereof from the current owner(s) thereof. To the extent OWNER does not own fee simple title to the Property, OWNER shall obtain written consent from the current fee owner of the Property agreeing to the terms of this Agreement and the recordation thereof.

2.3 Term. The term of this Agreement shall commence on the Effective Date and shall continue for an initial term of ten (10) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement. The term of this Agreement may be extended for an additional five (5) years following expiration of the initial ten (10) year term, provided the following have occurred:

(a) OWNER provides at least 180 days written notice to CITY prior to expiration of the initial term; and

(b) In non-mixed use and residential use only projects, the OWNER shall have obtained, as applicable, building permits for at least seventy percent (70%) of the actual number of residential units permitted under this Agreement; and

(c) OWNER is not then in uncured default of this Agreement.

2.4 Assignment.

2.4.1 Right to Assign. OWNER shall have the right to sell, transfer or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.), to any person, partnership, limited liability company, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following:

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property. OWNER may be required to provide disclosure that the Property is within the South Archibald Trichloroethylene (TCE) Plume. OWNER may wish to provide the attached Disclosure Letter (Exhibit G) as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq.

(b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, OWNER shall notify CITY's City Manager, in

writing, of such sale, transfer or assignment and shall provide CITY with: (1) an executed agreement, in a form reasonably acceptable to CITY, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties and obligations of OWNER under this Agreement with respect to the portion of the Property so sold, transferred or assigned; and (2) the payment of the applicable processing charge to cover the CITY's review and consideration of such sale, transfer or assignment.

(c) Any sale, transfer or assignment not made in strict compliance with the foregoing conditions shall constitute a default by OWNER under this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by Paragraph (b) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee or assignee until and unless such agreement is executed. The City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny any proposed sale, transfer or assignment that is not made in compliance with this section 2.4.

2.4.2 Release of Transferring Owner. Notwithstanding any sale, transfer or assignment, a transferring OWNER shall continue to be obligated under this Agreement unless such transferring owner is given a release in writing by CITY, which release shall be provided by CITY upon the full satisfaction by such transferring owner of the following conditions:

(a) OWNER no longer has a legal or equitable interest in all or any part of the portion of the Property sold, transferred or assigned.

(b) OWNER is not then in default under this Agreement.

(c) OWNER has provided CITY with the notice and executed agreement required under Paragraph (b) of Subsection 2.4.1 above.

(d) The purchaser, transferee or assignee provides CITY with security equivalent to any security previously provided by OWNER to secure performance of its obligations hereunder.

2.4.3 Effect of Assignment and Release of Obligations. In the event of a sale, transfer or assignment pursuant to the provisions of Section 2.4.2 above:

(a) The assignee shall be liable for the performance of all obligations of OWNER with respect to transferred property, but shall have no obligations with respect to the portions of the Property, if any, not transferred (the "Retained Property").

(b) The owner of the Retained Property shall be liable for the performance of all obligations of OWNER with respect to Retained Property, but shall have no further obligations with respect to the transferred property.

(c) The assignee's exercise, use and enjoyment of the Property or portion thereof shall be subject to the terms of this Agreement to the same extent as if the assignee were the OWNER.

2.4.4 Subsequent Assignment. Any subsequent sale, transfer or assignment after an initial sale, transfer or assignment shall be made only in accordance with and subject to the terms and conditions of this Section 2.4.

2.4.5 Termination of Agreement with Respect to Individual Lots Upon Sale to Public and Completion of Construction. The provisions of Subsection 2.4.1 shall not apply to the sale or lease (for a period longer than one year) of any lot which has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

(a) The lot has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and,

(b) A certificate of occupancy has been issued for a building on the lot, and the fees set forth under Section 4 of this Agreement have been paid.

2.4.6 Partial Assignment and Assumption. CITY and OWNER agree OWNER may partially assign its obligations and rights under this Agreement, and all amendments hereto, to a purchaser, transferee or assignee of a lot, which has been subdivided subject to provisions of a partial assignment and assumption agreement in a form approved by CITY. Any such complete and executed partial assignment and assumption of this Agreement shall be submitted to CITY for approval pursuant to Section 2.4.1 of this Agreement. CITY shall review, and if the above conditions, including but not limited to, those conditions in Section 2.4.2, are satisfied, CITY may approve the partial assignment and release and notify the purchaser, transferee or assignee in writing thereof. No such release approved pursuant to this Subsection 2.4.6 shall cause, or otherwise affect, a release of OWNER from the duties and obligations under this Agreement that are retained by OWNER and excluded from the transfer or assignment.

2.5 Amendment or Cancellation of Agreement. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section 65868.1. Any amendment of this Agreement, which amendment has been requested by OWNER, shall be considered by the CITY only upon the payment of the applicable processing charge. This provision shall not limit any remedy of CITY or OWNER as provided by this Agreement. Either Party or successor in interest, may propose an amendment to or cancellation, in whole or in part, of this Agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors

in interest except as provided otherwise in this Agreement or in Government Code Section 65865.1. For purposes of this section, the term "successor in interest" shall mean any person having a legal or equitable interest in the whole of the Property, or any portion thereof as to which such person wishes to amend or cancel this Agreement. The procedure for proposing and adopting an amendment to, or cancellation of, in whole or in part, this Agreement shall be the same as the procedure for adopting and entering into this Agreement in the first instance. Notwithstanding the foregoing sentence, if the CITY initiates the proposed amendment to, or cancellation of, in whole or in part, this Agreement, CITY shall first give notice to the OWNER of its intention to initiate such proceedings at least sixty (60) days in advance of the giving the public notice of intention to consider the amendment or cancellation.

2.5.1 Amendment to Reflect Consistency With Future Amendments to the Construction Agreement. To the extent any future amendment to the Construction Agreement provides for modifications to rights or obligations that differ from or alter the same or similar rights or obligations contained in this Development Agreement, OWNER reserves the right to request an amendment to the Development Agreement to reflect any or all of such modifications.

2.5.2 Minor Modification. Upon the written application of OWNER, minor modifications and changes to the Development Plan including modifications to building design or footprint (not affecting minimum setbacks), parking layout and design, and landscape area design may be approved by the Director of the Planning Department without the need to amend this Development Agreement. Other changes in the Development Plan shall be processed pursuant to the City Zoning Ordinance. It is also contemplated by CITY and OWNER that OWNER may, from time to time, seek amendments to one or more of the Development Approvals. Any such amendments are contemplated by CITY and OWNER as being within the scope of this Agreement as long as they are consistent with the Land Use Regulations and shall, upon approval by CITY, continue to constitute the Development Approvals as referenced herein. The parties agree that any such modifications or amendments shall not constitute an amendment to this Agreement nor require an amendment to this Agreement.

2.6 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 2.3.

(b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

(c) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.

(d) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by CITY or applicable public agency of all required dedications.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant to Section 4.2 of this Agreement by OWNER to CITY for residential units on which construction has not yet begun shall be refunded to OWNER by CITY.

2.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to CITY:
Scott Ochoa, City Manager
City of Ontario
303 East "B" Street
Ontario, CA 91764

If to OWNER:
SL Ontario Development Company, LLC
c/o Lewis Management Corp.
Attn: Sage McCleve
1156 N. Mountain Avenue
Upland, CA 91786

with a copy to:
Ruben Duran, City Attorney
Best Best & Krieger, LLP
2855 E Guasti Road
Ontario, CA 91761

with a copy to:
Lewis Management Corp.
Attn: Brad Franke
Aa56 N. Mountain Avenue
Upland, CA 91786

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Development Plan.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, CITY shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

3.3 Timing of Development. The parties acknowledge that OWNER cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of OWNER, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Ca1. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that OWNER shall have the right to develop the Property in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment.

3.4 Requirement for Public Infrastructure Improvements. Development of the Property is contingent in part on the phasing of area-wide infrastructure improvements over which the OWNER has control. The issuance of building permits by CITY for Model Units and Production Units is, in general, contingent on OWNER's completion of needed infrastructure improvements and the availability of improvements and services to serve the Property.

3.4.1 Attached hereto as Exhibits "E" and "F" are a description and depiction, respectively, of the improvements needed for development of the Property. In

the event of any discrepancy between Exhibit E and Exhibit F, Exhibit F shall control.

3.4.2 Subject to the prior submittal by OWNER and approval by CITY of a plan to provide sufficient public infrastructure for the construction of a maximum number of Thirty (30) Model Units, private common recreation facilities and sales facilities. CITY may issue a maximum of Thirty (30) building permits for Model Units, private common recreation facilities and sales facilities. The plan to be submitted by OWNER for CITY approval shall describe the utilities and other infrastructure necessary to provide sufficient fire protection and other public health and safety requirements for the Model Units and other facilities.

3.5 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event OWNER finds that a change in the Existing Development Approvals is necessary or appropriate, OWNER shall apply for a Subsequent Development Approval to effectuate such change and CITY shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. If approved, any such change in the Existing Development Approvals shall be incorporated herein as an addendum to Exhibit "C", and may be further changed from time to time as provided in this Section. Unless otherwise required by law, as determined in CITY's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

(a) Alter the permitted uses of the Property as a whole; or,

(b) Increase the density or intensity of use of the Property as a whole; or,

(c) Increase the maximum height and size of permitted buildings; or,

(d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,

(e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

3.6 Reservations of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the CITY shall not be prevented from applying new rules, regulations and policies upon the OWNER, nor shall a development agreement prevent the CITY from denying or conditionally approving any

subsequent development project application on the basis of such new rules, regulations and policies where the new rules, regulations and policies consist of the following:

(a) Processing fees by CITY to cover costs of processing applications for development approvals or for monitoring compliance with any development approvals;

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records and any other matter of procedure;

(c) Regulations, policies and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the CITY and any local amendments to those codes adopted by the CITY; provided however that, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan;

(d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the residents of the project and/or of the immediate community from a condition perilous to their health or safety;

(e) Regulations that do not conflict with those rules, regulations and policies set forth in this Agreement or the Development Plan;

(f) Regulations that may conflict but to which the OWNER consents.

3.6.2 Subsequent Development Approvals. This Agreement shall not prevent CITY, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations that do not conflict with the Development Plan, nor shall this Agreement prevent CITY from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Plan.

3.6.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and

effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce. In the event OWNER alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Agreement, and the CITY does not agree, the OWNER may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided however, that nothing contained in this Section 3.6.3 shall impose on CITY any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

3.6.4 Intent. The parties acknowledge and agree that CITY is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations and exceptions are intended to reserve to CITY all of its police power which cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to CITY all such power and authority which cannot be restricted by contract.

3.7 Public Works; Utilities. If OWNER is required by this Agreement to construct any public works facilities which will be dedicated to CITY or any other public agency upon completion, and if required by applicable laws to do so, OWNER shall perform such work in the same manner and subject to the same requirements as would be applicable to CITY or such other public agency should it have undertaken such construction. As a condition of development approval, OWNER shall connect the Project to all utilities necessary to provide adequate water, recycled water, sewer, gas, electric, and other utility service to the Project. As a further condition of development approval, OWNER shall contract with the CITY for CITY-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the CITY.

3.7.1 OWNER agrees that development of the Project shall require the construction of storm drain improvements as described in Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the storm drain improvements for each Phase, as described in Exhibit E and depicted in Exhibit F.

3.7.2 OWNER agrees that development of the Project shall require the construction of street improvements as described in Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the street improvements for each Phase, as described in Exhibit E and depicted in Exhibit F.

3.7.3 OWNER agrees that development of the Property shall require the construction of potable water and recycled water improvements as described in Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the potable

water and recycled water improvements for each Phase, as described in Exhibit E and depicted in Exhibit F. OWNER also agrees that recycled water shall be available and utilized by OWNER for all construction-related water uses including prior to, and during, any grading of the Property.

3.7.4 OWNER agrees that development of the Property shall require the construction of sewer improvements, as described in the attached Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the sewer improvements for each Phase, as described in Exhibit E and depicted in Exhibit F.

3.7.5 OWNER agrees that development of the Property shall require the extension of fiber optic communications improvements as described in the attached Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the fiber optic communication improvements for each Phase, as described in Exhibit E and depicted in Exhibit F.

3.7.6 OWNER shall pay their fair share contribution, for the design and construction of one (1) non-DIF traffic signal at Bellegrave Avenue and Delicious Way (50%). OWNER shall provide CITY with the estimated costs of the one (1) non-DIF traffic signal improvements and OWNER shall make such fair share contribution payment to CITY, prior to and as a condition precedent to, CITY's issuance of the 330th building permit for Production Units.

3.8 Acquisition of Offsite Provision of Real Property Interests. In any instance where OWNER is required by any Development Approval or Land Use Regulation and the Construction Agreement to construct any public improvement on land not owned by OWNER ("Offsite Improvements"), the CITY and OWNER shall cooperate in acquiring the necessary legal interest ("Offsite Property") in accordance with the procedures set forth in Section 2.4 of the Construction Agreement. This section 3.8 is not intended by the parties to impose upon the OWNER an enforceable duty to acquire land or construct any public improvements on land not owned by OWNER, except to the extent that the OWNER elects to proceed with the development of the Project, and then only in accordance with valid conditions imposed by the CITY upon the development of the Project under the Subdivision Map Act or other legal authority.

3.8.1 CITY Acquisition of Non-Construction Agreement Offsite Property. In the event OWNER is required to construct any public improvements on land not owned by OWNER, but such requirement is not based upon the Construction Agreement, Sections 3.8.1 and 3.8.2 shall control the acquisition of the necessary property interest(s) ("Non-Construction Agreement Offsite Property"). If the OWNER is unable to acquire such Non-Construction Agreement Offsite Property, and following the written request from the OWNER to CITY, CITY agrees to use reasonable and diligent good faith efforts to acquire the Non-

Construction Agreement Offsite Property from the owner or owners of record by negotiation to the extent permitted by law and consistent with this Agreement. If CITY is unable to acquire the Non-Construction Agreement Offsite Property by negotiation within thirty (30) days after OWNER'S written request, CITY shall, initiate proceedings utilizing its power of eminent domain to acquire that Non-Construction Agreement Subject Property at a public hearing noticed and conducted in accordance with California Code of Civil Procedure Section 1245.235 for the purpose of considering the adoption of a resolution of necessity concerning the Non-Construction Agreement Offsite Property, subject to the conditions set forth in this Section 3.8. The CITY and OWNER acknowledge that the timelines set forth in this Section 3.8.1 represent the maximum time periods which CITY and OWNER reasonably believe will be necessary to complete the acquisition of any Non-Construction Agreement Offsite Property. CITY agrees to use reasonable good faith efforts to complete the actions described within lesser time periods, to the extent that it is reasonably able to do so, consistent with the legal constraints imposed upon CITY.

3.8.2 Owner's Option to Terminate Proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to making an offer to the owner of the Non-Construction Agreement Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease all acquisition proceedings with respect to that Non-Construction Agreement Offsite Property, whereupon CITY shall cease such proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to the date of the hearing on CITY'S intent to consider the adoption of a resolution of necessity as to any Non-Construction Agreement Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease condemnation proceedings, whereupon CITY shall cease such proceedings. If OWNER does not notify CITY to cease condemnation proceedings within said fifteen (15) day period, then the CITY may proceed to consider and act upon the Non-Construction Agreement Offsite Property resolution of necessity. If CITY adopts such resolution of necessity, then CITY shall diligently institute condemnation proceedings and file a complaint in condemnation and seek an order of immediate possession with respect to the Non-Construction Agreement Offsite Property.

3.9 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of CITY possess authority to regulate aspects of the development of the Property separately from or jointly with CITY and this Agreement does not limit the authority of such other public agencies. CITY agrees to cooperate fully, at no cost to CITY, with OWNER in obtaining any required permits or compliance with the regulations of other public agencies provided such cooperation is not in conflict with any laws, regulations or policies of the CITY.

3.10 Tentative Tract Maps; Extension. With respect to applications by OWNER for tentative subdivision maps for portions of the Property, CITY agrees that OWNER may file and process tentative maps in accordance with Chapter 4.5 (commencing with Section 66498.1) of Division 2 of Title 7 of the California Government Code and the applicable provisions of CITY's subdivision ordinance, as the same may be amended from time to time. In accordance with the provisions of Section 66452.6 of the Government Code, each tentative subdivision map or tentative parcel map, heretofore or hereafter approved in connection with development of the Property, shall be deemed to have been granted an extension of time to and until the date that is five (5) years following the Effective Date of this Agreement.; The CITY's City Council may, in its discretion, extend any such map for an additional period of up to five (5) years beyond its original term, so long as the subdivider files a written request for an extension with the City prior to the expiration of the initial five (5) year term.

4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs that will not be fully met by the Development Plan and further acknowledge and agree that this Agreement confers substantial private benefits on OWNER that should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on OWNER by providing more fully for the satisfaction of the public needs resulting from the Project.

4.2 Development Impact Fees.

4.2.1 Amount of Development Impact Fee. Development Impact Fees (DIF) shall be paid by OWNER. The Development Impact Fee amounts to be paid by OWNER shall be the amounts that are in effect at the time such amounts are due. Nothing contained in this Agreement shall affect the ability of the CITY to impose new Development Impact Fees or amend the amounts of existing Development Impact Fees. Additionally, nothing contained in this Agreement shall affect the ability of other public agencies that are not controlled by CITY to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by CITY.

4.2.2 Time of Payment. The Development Impact Fees required pursuant to Subsection 4.2.1 shall be paid to CITY prior to the issuance of building permit for each applicable residential or other unit, except for the Open Space and Habitat Acquisition Development Impact fee, which shall be paid by OWNER to CITY prior to the issuance of a grading permit. Deferral of the payment of Development Impact Fees may be granted pursuant to a separate agreement approved by City pursuant to City policy.

4.2.3 Parkland and Quimby Act Fees. Pursuant to the General Plan (Ontario Plan) Goal PR1, Policy PR1-5 (achievement of a park standard of 5 acres of parkland per 1,000 residents) OWNER shall provide improved parks, developed in accordance with the City's park standards in an amount equal to two (2) acres per 1,000 of projected population without credit, reimbursement, offset or consideration from City. Such areas shall either be dedicated to the City or transferred to a homeowners' association. If approved by the City Manager, OWNER may satisfy this requirement through the development of non-public recreation facilities such as private recreational clubhouses or pool facilities. Credit for such private recreational facilities areas shall be limited to a maximum of 50% of the foregoing park development requirement. If OWNER's Project does not provide dedicated and developed park acreage equal to two (2) acres per 1,000 projected population, OWNER shall pay a fee in-lieu equal to the per acre estimated costs of acquisition and development of parkland in the City's Development Impact Fee for the calculated park acreage deficiency. Such in-lieu fee shall be due and payable prior to the issuance of the first building permit for Production Units issued to OWNER. Any park dedication and/or improvements in excess of such two (2) acres per thousand standard, provided such park has been developed in accordance with the City's park standards and is open to the public generally, shall entitle OWNER to a credit toward its obligations under the Quimby Act (Gov. Code, § 64477) and the City's implementing ordinance and/or resolution (collectively "**Quimby Act Obligations**"), and to the extent OWNER's Quimby Act Obligations are satisfied, OWNER shall be entitled to have the City acquire such developed and publicly available parks as Non-Program Interests in accordance with Section 4.3.3 below.

4.3 Responsibility for Construction of Public Improvements.

4.3.1 Timely Construction of Public Infrastructure. The phasing of the areawide infrastructure construction within Ontario Ranch will be as approved by the CITY. OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the Project as shown on the attached Exhibit "F" and any and all tentative tract map conditions. Unless otherwise specified in the Subdivision Agreement/Tract Map conditions, all other required Improvements for each Tract Map, shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of the first building permit for Production Units for each such Tract Map. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Tract Map conditions for Tract No(s). 20562.

4.3.2 Construction of DIF Program Infrastructure (Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and the Construction Agreement between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit in accordance with the provisions of the

Construction Agreement and any amendments thereto. Use of DIF Credit issued to OWNER as a member of NMC Builders LLC to offset OWNER's DIF payment obligations shall also be subject to the provisions of the Construction Agreement and any amendments thereto.

4.3.3 Construction of DIF Program Infrastructure (Non-Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and such public improvements are not included the Construction Agreement between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitation on the use of DIF Credit issued to OWNER to offset OWNER's DIF payment obligations shall also be subject to the provisions of a separate Fee Credit Agreement. CITY and OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements.

4.4 Affordable Housing Requirement.

4.4.1 Affordable Housing- Number of Units. OWNER shall provide a minimum number of affordable housing units, equivalent to 10% of the OWNER's total approved residential units within the Project, that are affordable to very low, low- and moderate-income households. Such requirement for affordable housing shall be met through one, or a combination of one or more, of the options provided in the following Sections 4.4.2.1 through 4.4.2.5. For the purposes of this Section, any term not defined in this Agreement shall be as defined by California Community Redevelopment Law (California Health and Safety Code Section 33000 et seq.).

4.4.2 Affordability Spread. Of the total number of residential dwelling units specified in Section 4.4.1, to be constructed or rehabilitated pursuant to Sections 4.4.2.1 or 4.4.2.2 respectively, thirty percent (30%) shall be available to very low income, thirty percent (30%) shall be available to low income and forty percent (40%) shall be available to moderate income households. "**Households**" shall be as defined by California Health and Safety Code Section 50053.

4.4.2.1 New Construction. If OWNER elects to fully or partially satisfy the affordable housing requirement by the construction of new residential units, it shall construct and restrict the affordability of residential dwelling units within its Project or, at OWNER's option and with the approval of the City, within another project elsewhere within the City. The affordable units constructed shall be intermingled with other units as part of the Project, and shall be built to the same construction, design and aesthetic standards, as well as number of rooms, as other units constructed as part of that OWNER's Project. In addition, the percentage ratio of affordable units offered for sale versus those offered for rent shall equal the percentage

ratio of other units offered for sale versus for rent within OWNER's Project. Such construction shall be completed no later than the date that is five (5) years following the issuance of the first building permit for OWNER's Project; provided however that to the extent OWNER has not constructed the required percentage of units, based on the number of building permits for non-restricted units, OWNER shall, prior to the issuance of such building permits, provide security (in the form and substance approved by the City Manager and City Attorney) to City in order to ensure the faithful completion of such required percentage of construction of affordable units. If OWNER elects the option of constructing new affordable units, a detailed Affordable Housing Agreement specifying terms for the allowable monthly housing costs or rents (as applicable) and maintenance and occupancy standards shall be prepared, executed and recorded against such units as a condition to the issuance of a building permit. The Affordable Housing Agreement shall hold a recorded priority position senior to any other non-statutory lien or encumbrance affecting the unit.

4.4.2.2 Rehabilitation. If OWNER elects to fully or partially satisfy the affordable housing requirement by the substantial rehabilitation of existing residential units in the City, it shall substantially rehabilitate and restrict the affordability of, the number of residential units specified in Section 4.4.1, provided that such units shall be provided elsewhere within the City. The rehabilitation work shall be substantial and of high quality and shall also address any deferred property maintenance issues on the property. "**Substantial rehabilitation**" shall mean rehabilitated multi-family rented dwelling units with three or more units and the value of the rehabilitation constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of land value pursuant to Health and Safety Code Section 33413(b)(2)(A)(iii-iv) as such section exists as of the Effective Date of this Agreement. If OWNER chooses the option of rehabilitation of existing housing units within the City, a detailed Affordable Housing Agreement specifying the terms for the allowable month housing costs or rents (as applicable) and maintenance and occupancy standards shall be prepared, executed and recorded against such units as a condition to the issuance of a building permit. Such rehabilitation shall be completed no later than the date that is five (5) years following the issuance of the first building permit for OWNER's Project; provided however that to the extent OWNER has not rehabilitated the required percentage of units, based on the number of building permits, OWNER shall, prior to the issuance of such building permits, provide security (in the form and substance approved by the City Manager and City Attorney) to the City in order to ensure the faithful completion of such required percentage of rehabilitation.

4.4.2.3 In-Lieu Fee. If OWNER has not fully complied with the requirements of Section 4.4.1 by providing the minimum number of

affordable units through the construction of new affordable units or by the substantial rehabilitation of existing units, shall pay an "**Affordability In-Lieu Fee**". If OWNER has not provided any affordable residential units by construction or rehabilitation, the Affordability In-Lieu fee shall be equal to Three Dollars Twenty Four Cents ($3.24) per square foot of residential development within OWNER's Project or, if pre-paid as set forth below, Two Dollars Eighty Five Cents ($2.85) per square foot of residential development within OWNER's Project. If OWNER has partially complied with the requirements of Section 4.4.1 by construction or rehabilitation of less than the minimum number of units, then the Affordability In-lieu Fee shall be recalculated and reduced in consideration of the number and type of affordable units provided. The Affordability In-Lieu Fee shall be paid by OWNER to City no later than prior to the issuance of each building permit within OWNER's Project based on the square footage of the residential unit for which such building permit is sought; provided however that OWNER may, at OWNER's election, pre-pay such Affordability In-Lieu Fee by paying such Affordability In-Lieu Fee within thirty (30) days following the earliest discretionary approval by the City for OWNER's Project, including, but not limited to, any general plan amendment, specific plan adoption, development agreement, tentative map approval, variance, conditional use permit, or resolution of intention to form any public financing mechanism. The Three Dollars Twenty Four ($3.24) and the Two Dollars Eighty Five Cents ($2.85) per square foot amounts shall automatically be increased annually, commencing on July 1, 2024, and automatically each July 1 thereafter. Such adjustment shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Riverside - San Bernardino - Ontario, CA), (December 2017=100) over the preceding year. The pre-paid Affordability In-Lieu Fee shall be calculated based on the maximum floor area ratio (FAR) permitted within the General Plan and any applicable FAR contained within the applicable specific plan, whichever is greater, and the Maximum Development Density. For purposes of this Agreement, "**Maximum Development Density**" shall be determined by multiplying the OWNER's Project's density for residential development potential as set forth in the General Plan or the applicable Specific Plan, whichever is less, by the net acreage of land within OWNER's Project. All "Affordability In-Lieu Fees" collected by the City shall be used to promote the construction of affordable housing within the City.

4.4.2.4 Affordability Covenants. Prior to the issuance of the first building permit for any affordable unit, the CITY and OWNER shall enter into an Affordable Housing Agreement Affordability shall be assured for a period of forty-five (45) years for for-sale units and fifty-five (55) years for rentals. For rental units, base rents shall be established by the CITY and rental adjustments required by the CITY shall be performed on an annual basis. In addition, the Affordable Housing Agreement shall impose maximum

occupancy limits of two (2) occupants per bedroom plus one (1) additional occupant per dwelling unit, and a requirement for the owner or tenant to properly maintain each dwelling unit.

4.4.2.5 Transfer of Affordable Project. No transfer of title to any affordable housing project shall occur without the prior written consent of the CITY. In the event OWNER transfers title to any affordable housing project required to be constructed pursuant to this Agreement to a non-profit entity, or other entity, that receives an exemption from ad valorem real property taxes, the CITY shall be required to assure payment of an annual in lieu fee to the CITY on July 1 of each year equal to one-tenth of one percent (0.1%) of the assessed value of such project. The CITY may permit OWNER to satisfy this obligation by recorded covenants against the property and enforceable against said entity by the CITY. Any such covenants shall be approved by the Planning Director and the City Attorney.

4.5 Schools Obligations.

4.5.1 Written Evidence of Compliance with Schools Obligations.
OWNER shall, either through joint or individual agreements between OWNER and the applicable school district(s), shall satisfy its new school obligations. The new school obligations for the Mountain View School District in the Ontario Ranch area have been projected to include the acquisition or dedication of school sites for, and construction of, up to eight (8) schools. Of these eight (8) schools, six (6) are to be elementary (K-5) grade schools and two (2) are to be middle grade schools. The new school obligations for the Chaffey Joint Union High School District in the Ontario Ranch area have been projected to include the dedication of a school site for, and construction of, an additional high school. The new school obligations for the applicable school district shall be met by a combination of the following: (1) designating and dedicating school site(s) within the Property as set forth in the General Plan, and/or (2) paying school impact fees, (3) entering into a joint mitigation agreement or individual mitigation agreements, or (4) any combination of the foregoing. Written evidence of approval by the applicable school district that OWNER has met their school obligations may be required by the City as the condition to the issuance by the City of any entitlements for OWNER's Project. In the event OWNER is unable to provide such written evidence from the applicable school district(s), the City shall have the right to decline to honor any DIF Credit, Certificates of MDD Availability, Certificates of Storm Water Treatment Capacity Availability, or any combination thereof, presented by such OWNER, without liability to the City. To the extent that a joint mitigation agreement is approved by the applicable school district(s), and OWNER is a participant in good standing in such mitigation agreement, OWNER shall be deemed to have mitigated its new school obligations under this Section 4.4.1.

4.6 Net MDD/Water Availability Equivalents.

4.6.1 Assigned Net MDD/Water Availability Equivalents. The City has agreed with NMC Builders LLC to reserve exclusively for Members of NMC Builders, including OWNER, Net MDD made available through the construction of water system improvements funded by NMC Builders LLC. NMC Builders has assigned to OWNER its allocable share of the Net MDD issued by City. The provisions of the Construction Agreement Amendment requires that the City shall not approval a final tract map or issue building permits or certificates of occupancy for the area of development within the New Model Colony served by the water system improvements funded by NMC Builders LLC, except to the bearer of an Assignment of Net MDD Water Availability.

4.6.2 Use of Assigned Net MDD Water Availability. OWNER shall provide evidence of sufficient Net MDD Water Availability Equivalents (or portions thereof) prior to and as a condition precedent to, the City's approval of any and all tract maps for the Property. The amount of Net MDD Water Availability Equivalents required for City's approval of a tract map shall be based upon water demand factors and assumptions listed in Exhibit C-2R of the Construction Agreement Amendment as "Water Demand Equivalents by Land Use" for each land use category.

4.6.3 Requirement for other Water System Improvements. A Certificate of Net MDD Availability is evidence only of available water capacity and does not satisfy any other conditions applicable to an OWNER's Project, including those relating to design and construction of master-planned potable water and recycled water transmission and distribution system for the respective pressure zone and other public infrastructure requirements.

4.6.4 Effectiveness of Agreement. Notwithstanding anything set forth in this Agreement, CITY and OWNER each acknowledge, confirm, and agree that (i) the CITY approval of this Agreement and (ii) the effectiveness of this Agreement, in each case, are conditioned upon OWNER's admission to NMC Builders as a "Member" (if not already a Member) thereof pursuant to the terms and conditions of the operating agreement of NMC Builders within thirty (30) days following the Effective Date of this Agreement. OWNER'S failure to maintain membership in NMC Builders LLC is and shall be a Default under this Agreement

4.7 Storm Water Capacity Availability.

4.7.1 Requirement for Storm Water Treatment Capacity Availability. OWNER shall provide evidence of sufficient Storm Water Treatment Capacity Availability as reserved in a Certificate of Storm Water Treatment Capacity Availability the same manner and subject to the same limitations as provided for the assignment of Certificates of Net MDD Availability in Section 4.6 of this Agreement.

4.72 Use of Storm Water Treatment Capacity Availability. The amount of Storm Water Treatment Capacity Availability required for the issuance of a grading

permit to OWNER shall be based upon the Net Residential Acreage of the area to be graded regardless of the corresponding use.

4.7.3 Requirement for other Storm Water Improvements. The Certificate of Storm Water Treatment Capacity Availability is evidence only of available storm water treatment capacity and does not satisfy any other conditions applicable to a particular development project, including those relating to on-site water treatment, water quality, connection to the storm water collection system, or other public infrastructure requirements.

4.8 Maintenance of Open Space. OWNER shall provide for the ongoing maintenance of all park, common areas and open space areas within the Project as more particularly set forth in the Specific Plan, through a homeowners' association as approved by the CITY. Covenants, conditions and restrictions establishing any homeowners' association shall be approved by the Planning Director and City Attorney.

4.9 Compliance with Public Benefits Requirements.

4.9.1 Failure to Provide Public Benefits. In the event OWNER fails or refuses to comply with any condition referenced in Section 4.1 through 4.9, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, OWNER shall be deemed in default of this Agreement pursuant to Section 8.4 hereof, thereby entitling the City to any and all remedies available to it, including, without limitation, the right of the City to withhold OWNER's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). In accordance with the Memorandum of Agreement between the CITY and NMC Builders, CITY will cooperate with OWNER in the formation of a CFD, or CFDs, to include all of the Project, to provide a financing mechanism to reimburse the OWNER for funds paid to NMC Builders LLC for OWNER's share of the costs of public infrastructure pursuant to the Construction Agreement and to acquire other public facilities constructed by OWNER subject to the provisions of the Memorandum of Agreement between CITY and NMC Builders LLC. Notwithstanding such reimbursements and acquisitions, OWNER shall remain entitled to DIF Credits as provided for in Article 3 of the Construction Agreement and/or as provided for in a separate Fee Credit Agreement between CITY and OWNER. OWNER agrees that, prior to the recordation of any Tract Map for the Property, the Property shall be included in a CFD to finance City services through annual special taxes that will initially be $1,443.71 per Single Family Detached Dwelling Unit, $1,251.15 per Multiple-Family Dwelling Unit, $1,048.96 per Gated Apartment Community Dwelling Unit, and $.27 per square foot for Non-Residential buildings. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year, unless otherwise modified by the CITY. CITY shall be the sole and exclusive lead agency in

the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. In addition to the rights of the CITY pursuant to section 5.2 hereof, CITY shall have the right, but not the obligation, to condition the formation of any CFD, assessment district or other public financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the condition to the formation of any CFD, assessment district or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit the City's ability to take any and all necessary steps requisite to the formation of the CFD to finance City services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district or to issue and sell bonds.

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

6.1.1 Time for and Initiation of Periodic Review. The CITY shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by the OWNER with the terms of this Agreement. The OWNER shall submit an Annual Monitoring Report to CITY, in a form acceptable to the City Manager, along with any applicable processing charge within ten (10) days after each anniversary date of the Effective Date of this Agreement. Within fifteen (15) days after the receipt of the Annual Monitoring Report, CITY shall review the Annual Monitoring Report. Prior to the expiration of the fifteen (15) day review period, CITY shall either issue a notice of continuing compliance or a notice of non-compliance and a notice of CITY's intent to conduct a Special Review pursuant to Sections 6.1.2 through 6.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his designee.

6.1.2 Initiation of Special Review. A special review may be called either by agreement between the parties or by initiation in one or more of the following ways:

(1) Recommendation of the Planning staff;

(2) Affirmative vote of at least four (4) members of the Planning Commission; or

(3) Affirmative vote of at least three (3) members of the City Council.

6.1.3 Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that the CITY intends to undertake a special review of this Agreement to the OWNER. Such notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission.

6.1.4 Public Hearing. The Planning Commission shall conduct a hearing at which the OWNER must demonstrate good faith compliance with the terms of this Agreement. The burden of proof on this issue is upon the OWNER.

6.1.5 Findings Upon Public Hearing. The Planning Commission shall determine upon the basis of substantial evidence whether or not the OWNER has, for the period under review, complied in good faith with the terms and conditions of this Agreement.

6.1.6 Procedure Upon Findings.

(a) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.

(b) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has not complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission may recommend to the City Council to modify or terminate this Agreement.

(c) The OWNER may appeal a determination pursuant to paragraph (b) to the City Council in accordance with the CITY's rule for consideration of appeals in zoning matters generally.

6.2 Proceedings Upon Modification or Termination. If, upon a finding under Section 6.1.6(b), the CITY determines to proceed with modification or termination of this

Agreement, the CITY shall give notice to the property OWNER of its intention so to do. The notice shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not the CITY proposes to terminate or to modify this Agreement; and

(c) Other information that the CITY considers necessary to inform the OWNER of the nature of the proceeding.

6.3 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, the OWNER shall be given an opportunity to be heard. The OWNER shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the OWNER. If the City Council finds, based upon substantial evidence in the administrative record, that the OWNER has not complied in good faith with the terms and conditions of the agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the CITY. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, OWNER is found to be in compliance with this Agreement, CITY shall, upon written request by OWNER, issue a Certificate of Agreement Compliance ("Certificate") to OWNER stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) OWNER is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. OWNER may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or OWNER, CITY shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [RESERVED]

8. DEFAULT AND REMEDIES.

8.1 Remedies in General. It is acknowledged by the parties that CITY would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that CITY shall not be liable in damages to OWNER, or to any successor in interest of OWNER, or to any other person, and OWNER covenants not to sue for damages or claim any damages:

(a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or

(b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

(c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

8.2 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all parties for the following reasons:

(a) Money damages are unavailable against CITY as provided in Section 8.1 above.

(b) Due to the size, nature and scope of the project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts.

8.3 Release. Except for nondamage remedies, including the remedy of specific performance and judicial review as provided for in Section 6.5, OWNER, for itself, its successors and assignees, hereby releases the CITY, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the CITY because it entered into this Agreement or because of the terms of this Agreement.

8.4 Termination or Modification of Agreement for Default of OWNER. Subject to the provisions contained in Subsection 6.3 herein, CITY may terminate or modify this Agreement for any failure of OWNER to perform any material duty or obligation of

OWNER under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate or modify this Agreement pursuant to this Section only after providing written notice to OWNER of default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

8.5 Termination of Agreement for Default of CITY. OWNER may terminate this Agreement only in the event of a default by CITY in the performance of a material term of this Agreement and only after providing written notice to CITY of default setting forth the nature of the default and the actions, if any, required by CITY to cure such default and, where the default can be cured, CITY has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

9. THIRD PARTY LITIGATION.

9.1 General Plan Litigation. CITY has determined that this Agreement is consistent with its Comprehensive General Plan, as such General Plan exists as of the Effective Date ("General Plan"), and that the General Plan meets all requirements of law. OWNER has reviewed the General Plan and concurs with CITY's determination. CITY shall have no liability in damages under this Agreement for any failure of CITY to perform under this Agreement or the inability of OWNER to develop the Property as contemplated by the Development Plan of this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

9.2 Third Party Litigation Concerning Agreement. OWNER shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless CITY, its agents, officers and employees from any claim, action or proceeding against CITY, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. CITY shall promptly notify OWNER of any such claim, action or proceeding, and CITY shall cooperate in the defense. If CITY fails to promptly notify OWNER of any such claim, action or proceeding, or if CITY fails to cooperate in the defense, OWNER shall not thereafter be responsible to defend, indemnify, or hold harmless CITY. CITY may in its discretion participate in the defense of any such claim, action or proceeding.

9.3 Indemnity. In addition to the provisions of 9.2 above, OWNER shall indemnify and hold CITY, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of OWNER, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (OWNER's employees included) or any other element of damage of any kind or nature, relating to or in any way connected with or arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, failure and conveyance of the public improvements, save and except claims for damages arising through the sole active negligence or sole willful misconduct of CITY. OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions. CITY may in its discretion participate in the defense of any such legal action.

9.4 Environment Assurances. OWNER shall indemnify and hold CITY, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any act or omission of OWNER, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions, and OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. CITY may in its discretion participate in the defense of any such action.

9.5 Reservation of Rights. With respect to Sections 9.2, 9.3 and 9.4 herein, CITY reserves the right to either (1) approve the attorney(s) which OWNER selects, hires or otherwise engages to defend CITY hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense, provided, however, that OWNER shall reimburse CITY forthwith for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefor.

9.6 Survival. The provisions of this Sections 9.1 through 9.6, inclusive, shall survive the termination of this Agreement.

10. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit OWNER, in any manner, at OWNER's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. CITY acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with OWNER and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. CITY will not unreasonably withhold its consent to any

such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee, has submitted a request in writing to the CITY in the manner specified herein for giving notices, shall be entitled to receive written notification from CITY of any default by OWNER in the performance of OWNER's obligations under this Agreement.

(c) If CITY timely receives a request from a Mortgagee requesting a copy of any notice of default given to OWNER under the terms of this Agreement, CITY shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to OWNER. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of OWNER's obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by OWNER is a condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement.

11. MISCELLANEOUS PROVISIONS.

11.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the San Bernardino County Recorder by the City Clerk within the ten (10) days after the CITY executes this Agreement, as required by Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if the CITY terminates or modifies the agreement as provided for herein and in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the San Bernardino County Recorder.

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

11.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provision of the Public Benefits set forth in Section 4 of this Agreement, including the payment of the fees set forth therein, are essential elements of this Agreement and CITY would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

11.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

11.6 Singular and Plural. As used herein, the singular of any word includes the plural.

11.7 Joint and Several Obligations. Subject to section 2.4, if at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one owner, all obligations of such owners under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners. Notwithstanding the foregoing, no owner of a single lot which has been finally subdivided and sold to such owner as a member of the general public or otherwise as an ultimate user shall have any obligation under this Agreement except as provided under Section 4 hereof.

11.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

11.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

11.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

11.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control, (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

11.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

11.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

11.14 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

11.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Bernardino, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the development of private property and the owner of such property.

11.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The City Manager may delegate his powers and duties under this Agreement to an Assistant City Manager or other management level employee of the CITY.

11.18 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by CITY of its power of eminent domain.

11.19 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, OWNER shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this County and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. OWNER for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

11.20 Estoppel Certificate. Within thirty (30) business days following a written request by any of the parties, the other party shall execute and deliver to the requesting party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the

Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party. OWNER shall pay to CITY all costs incurred by CITY in connection with the issuance of estoppel certificates under this Section 11.20 prior to CITY's issuance of such certificates.

11.21 Authority to Execute. The person or persons executing this Agreement on behalf of OWNER warrants and represents that he or she/they have the authority to execute this Agreement on behalf of his or her/their corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind OWNER to the performance of its obligations hereunder.

11.22 Prevailing Wage. OWNER, for itself, its successors, and assigns, agrees, covenants, and warrants that the development of the Property, if any, shall comply with all applicable federal and state labor laws (including, without limitation, the requirement under California law to pay prevailing wages and hire apprentices), and all obligations as set forth herein.

11.22.1 CITY makes no representations concerning prevailing wages in compliance with California Labor Code Section 1770 et seq.

11.22.2 OWNER acknowledges and agrees that it shall be independently responsible for reviewing the applicable laws and regulations with respect to the payment of prevailing wages and complying therewith. OWNER shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law.

11.22.3 The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction and development of the Property by OWNER, its successors or assigns. OWNER shall be solely responsible for determining and effectuating compliance with such laws.

11.22.4 OWNER, ON BEHALF OF ITSELF, ITS SUCCESSORS, AND ASSIGNS, WAIVES AND RELEASES CITY FROM ANY RIGHT OF ACTION THAT MAY BE AVAILABLE TO OWNER PURSUANT TO LABOR CODE SECTION 1781 OR THE DAVIS BACON ACT. RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 11.22, OWNER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542, WHICH READS AS FOLLOWS: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES

NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

INITIALS. BY INITIALING BELOW, OWNER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES:

_____

(Owner's Initials)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT PDA21-010

"OWNER"

SL Ontario Development Company, LLC a Delaware limited liability company

By: _____
Name: Bryan Goodman
Its: Authorized Lewis Agent

By: _____
Name: Jeff Evans
Its: Authorized Stratham Agent

"CITY"

CITY OF ONTARIO

By:_____
Scott Ochoa
City Manager

Date: _____

ATTEST:

_____
City Clerk, Ontario

APPROVED AS TO FORM:
BEST BEST KRIEGER, LLP

_____
City Attorney

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
COUNTY OF_____)

On _____, 20_____, before me,_____,
Date *Insert Name and Title of the Officer*

personally appeared _____
Name(s) of Signer(s)
_____, who proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____
Signature of Notary Public

Place Notary Seal Above

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
COUNTY OF_____)

On _____, 20_____, before me_____,
Date *Insert Name and Title of the Officer*

personally appeared _____
Name(s) of Signer(s)
_____,
who proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____
Signature of Notary Public

Place Notary Seal Above

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

Legal Description of Property

Parcel 1:
The North 20 acres of the West 80 acres of the following described property: Lots 1, 2, 5, 6 and 7, Section 24, Township 2 South, Range 7 West, San Bernardino Meridian, and the fractional Northwest 1/4 of Section 24, Township 2 South, Range 7 West, San Bernardino Meridian, in the City of Ontario, County of San Bernardino, State of California, as shown by Sectionized Survey of the Jurupa Rancho, recorded in Book 9 of Maps, Page 33, Records of said County; said fractional Northwest 1/4 being all that portion of the Northwest 1/4 of said Section 24, lying in the Jurupa Rancho and in Riverside County, according to the Official Plat thereof. Excepting therefrom that portion conveyed to the City of Ontario by deeds recorded July 8, 2008 as Instrument No. 2008-0307387and 2008-0307388 of Official Records.

Parcel 2:
The North 1/2 of the South 20 acres of the North 40 acres of the West 80 acres of the following described property: Lots 1, 2, 5, 6 and 7, Section 24, Township 2 South, Range 7 West, San Bernardino Meridian, and the fractional Northwest 1/4 of Section 24, Township 2 South, Range 7 West, San Bernardino Meridian, in the City of Ontario, County of San Bernardino, State of California, as shown by Sectionized Survey of the Jurupa Rancho, recorded in Book 9 of Maps, Page 33, Records of said County; said fractional Northwest 1/4 being all that portion of the Northwest 1/4 of said Section 24, lying in the Jurupa Rancho and in Riverside County, according to the Official Plat thereof. Excepting therefrom that portion conveyed to the City of Ontario by Deeds recorded July 8, 2008 as Instrument No. 2008-0307387 and 2008-0307388 and be Deed recorded May 25, 2017, as Instrument No. 2017-216939, all of Official Records.
Parcel 3: The South 30 acres of the North 60 acres of the West 80 acres of the land comprised of Lots 1, 2, 5, 6 and 7, Section 24, Township 2 South, Range 7 West, San Bernardino Meridian, in the City of Ontario, County of San Bernardino, State of California, and the fractional Northwest 1/4 of Section 24, Township 2 South, Range 7 West, San Bernardino Meridian, as shown by Sectionized Survey of the Jurupa Rancho, recorded in Book 9, Page 33 of Maps, in the office of the County Recorder of said County, said fractional Northwest 1/4 being all that portion of the Northwest 1/4 of said Section 24, lying in the Jurupa Rancho, and in Riverside County, according to the Official Plat thereof. Except therefrom that portion conveyed to the City of Ontario by Deed recorded May 25, 2017 as Instrument No. 2017-216939 of Official Records.

Parcel 3:
The west 80 acres of the following described property: Lots 1, 2, 5, 6 and 7, Section 24, Township 2 South, Range 7 West, San Bernardino Meridian, in the County of San Bernardino, State of California, according to the Official Plat of said land filed in the District Land Office July 9, 1887 and the fractional northwest quarter, Section 24, Township 2 South, Range 7 West, San Bernardino Meridian, as shown by Sectionized Survey of the Jurupa Rancho, recorded in Book 9 of Maps, page 33 in the office of the County Recorder of San Bernardino, State of California, said fractional northwest quarter being all that portion of the northwest quarter of said Section 24, lying in the Jurupa Rancho and in Riverside County, EXCEPTING from said 80 acres the North 60 acres thereof. ALSO EXCEPTING any portion lying with the boundaries of Tract 30633 as filed in book 350, page(s) 51 through 61, inclusive, of maps records of Riverside County, State of California.

Assessor's Parcel Numbers(s):
1: 1073-171-04
2: 1073-171-08
3: 1073-171-09
4: 0218-331-14

EXHIBIT "B"
TO DEVELOPMENT AGREEMENT

Map showing Property and its location

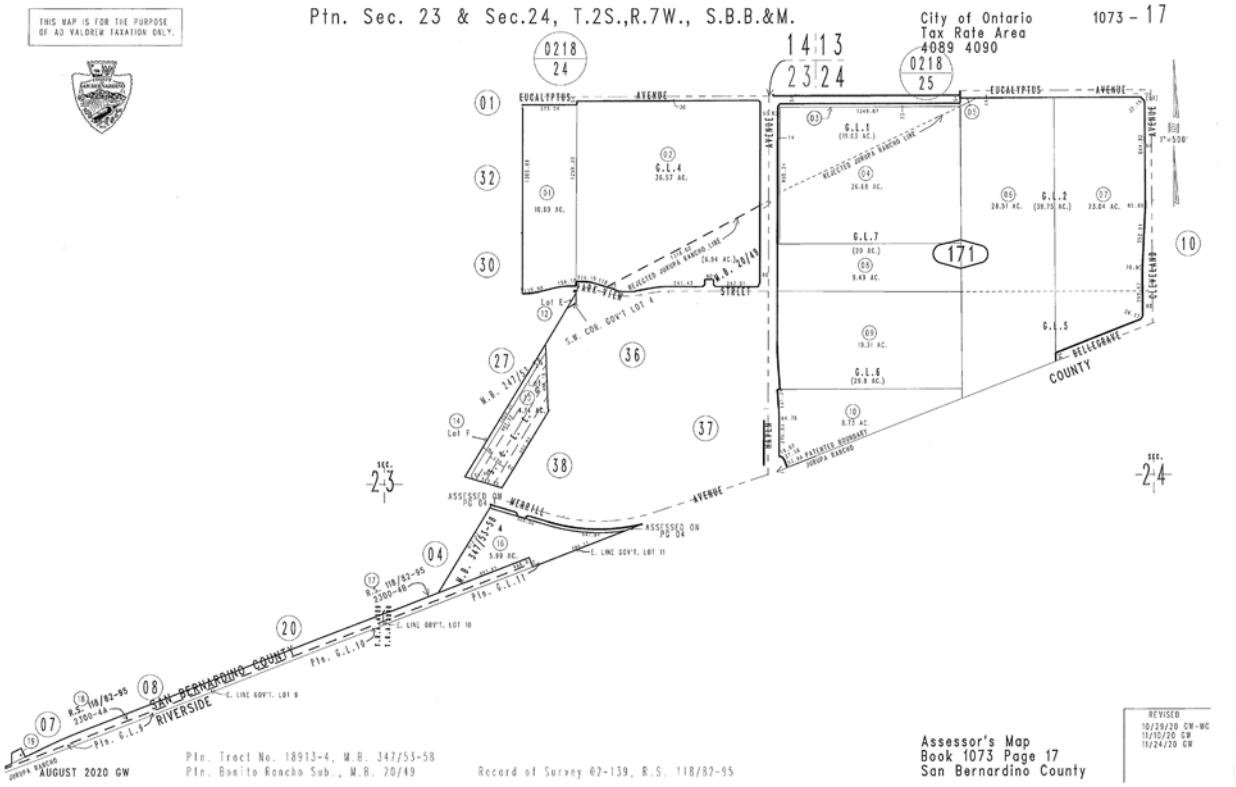


EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Existing Development Approvals

On September 26, 2006, the Planning Commission:

a) Issued Resolution No. PC06-095 recommending City Council adopt and certify the Subarea 29 (Park place) Environmental Impact Report;
b) Issued Resolution No. PC06-096 recommending City Council approval of the General Plan Amendment (PGPA06-003); and
c) Issued Resolution No. PC06-097 recommending City Council approval of the Subarea 29 (Park Place) Specific Plan (PSP03-003).

On October 19, 2006, the City Council:

a) Issued Resolution No. 2006-089 certifying the Subarea 29 (Park place) Environmental Impact Report; and
b) Issued Resolution No. 2006-090 approving the General Plan Amendment (PGPA06-003).

On November 7, 2006, the City Council:

a) Issued Ordinance No. 2845 approving of the Subarea 29 (Park Place) Specific Plan (PSP03-003).

On March 27, 2007, the Planning Commission:

a) Issued Resolution No. PC07-036 recommending City Council approval of an amendment to the Subarea 29 Specific Plan (PSPA07-007).

On May 1, 2007, the City Council:

a) Issued Resolution No. 2007-053 approving an amendment to the Subarea 29 Specific Plan.

On August 28, 2013, the Zoning Administrator:

a) Issued Decision No. 2013-025 approving a minor amendment to the Subarea 29 Specific Plan (PSPA13-002).

EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Existing Development Approvals (Continued)

On March 24, 2015, the Planning Commission:

a) Issued Resolution No. PC15-035 recommending City Council approval of an amendment to the Subarea 29 Specific Plan (PSPA14-002).

On April 21, 2015, the City Council:

a) Issued Resolution No. 2015-030 approving an amendment to the Subarea 29 Specific Plan.

EXHIBIT "D"
TO DEVELOPMENT AGREEMENT

Existing Land Use Regulations

These documents are listed for reference only:

1. Subarea 29 (Park place) Environmental Impact Report, Resolution No. 2006-089
2. Subarea 29 (Park Place) General Plan Amendment (PGPA06-003), Resolution No. 2006-090
3. Subarea 29 (Park Place) Specific Plan (PSP03-003), Ordinance No. 2845
4. Amendment to the Subarea 29 Specific Plan (PSPA07-003), Resolution No. 2007-053
5. Amendment to the Subarea 29 Specific Plan (PSPA13-002), Decision No. 2013-025
6. Amendment to the Subarea 29 Specific Plan (PSPA14-002), Resolution No. 2015-030
7. City of Ontario Municipal Code
    a. Six – Sanitation & Health
    b. Seven – Public Works
    c. Eight – Building Regulations
    d. Nine – Development Code
    e. Ten – Parks & Recreation

EXHIBIT "E"
TO DEVELOPMENT AGREEMENT

Description of Required Infrastructure Improvements

OWNER shall design, construct, and complete all improvements including but not limited to Sewer (SW), Potable Water (PW), Recycled Water (RW), Storm Drain (SD), Fiber Optic (FO), and Street (ST) improvements necessary to serve the Property, prior to the request of any Production Units.

PHASE 1 IMPROVEMENTS

1. PW on Haven Avenue, between Eucalyptus Avenue and Bellegrave Avenue.
2. RW on Haven Avenue, between Eucalyptus Avenue and Bellegrave Avenue.
3. FO on Haven Avenue, between Eucalyptus Avenue and Bellegrave Avenue.
4. FO on Streets “A”, “B”, “C”, “D”,“E”, “F”, and “G”.
5. ST improvements on Haven Avenue, between Eucalyptus Avenue and Bellegrave Avenue.
6. SD on Haven Avenue and Street “A”.
7. Traffic Signal at Haven Avenue and Street “D”.
8. Traffic Signal at Haven Avenue and Street “A”.
9. Traffic Signal at Haven Avenue and Eucalyptus Avenue.

PHASE 2 IMPROVEMENTS

1. All Phase 1 Improvements are required for Phase 2.
2. SW on Eucalyptus Avenue, between Haven Avenue and Street “G”
3. ST improvements on Eucalyptus Avenue, between Haven Avenue and Street “G”.
4. Traffic Signal at Eucalyptus Avenue and Street “G”.

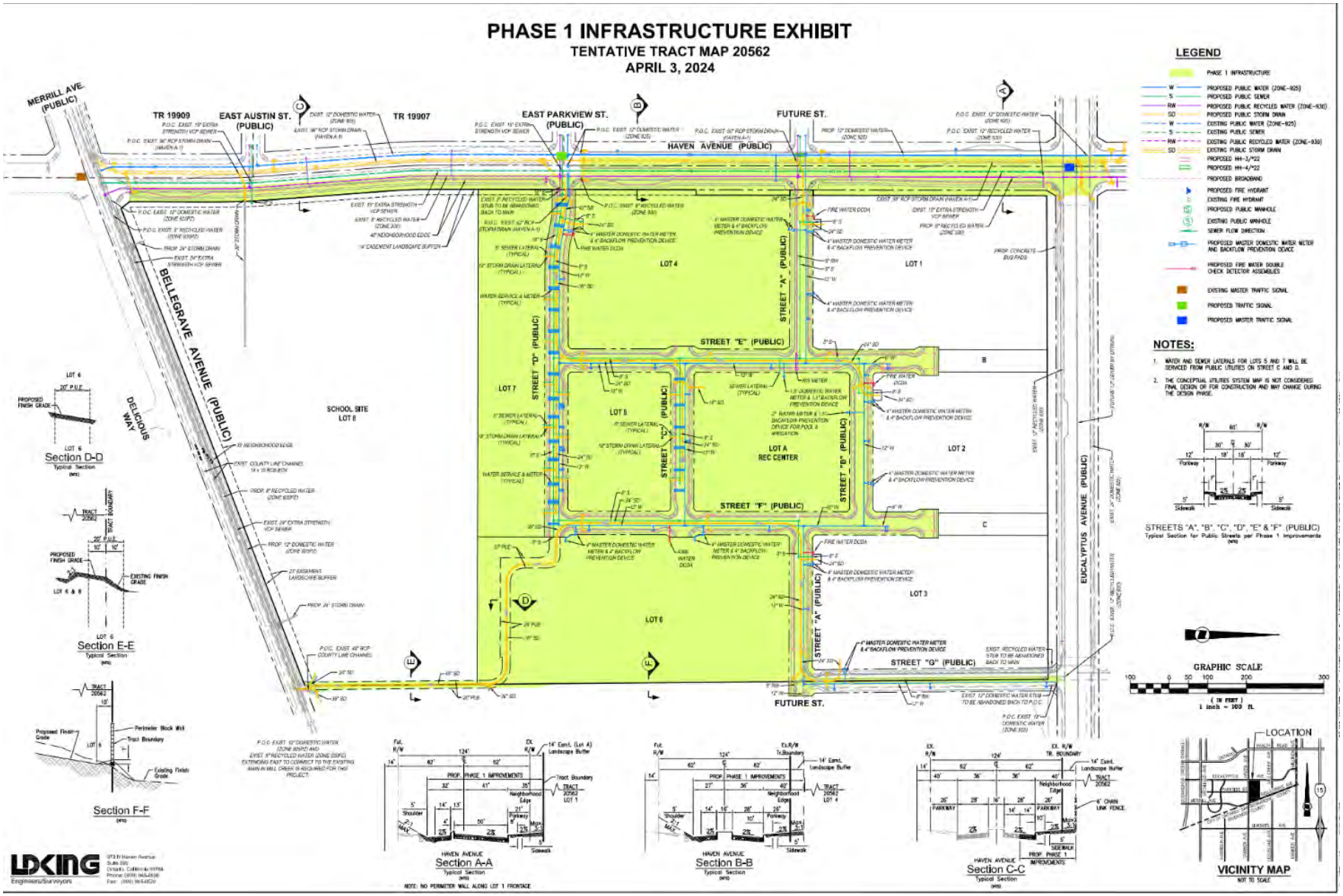
PHASE 3 IMPROVEMENTS

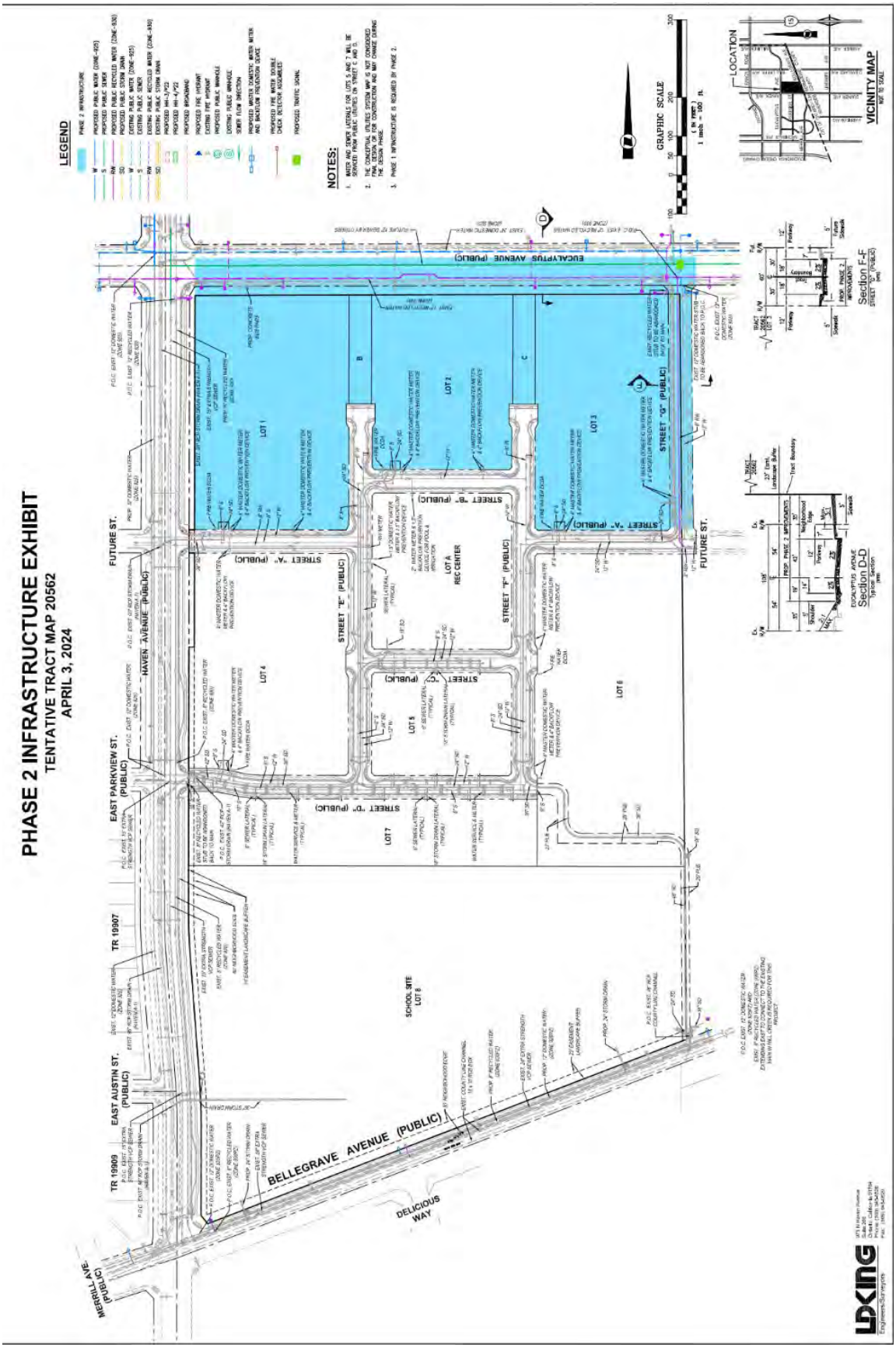
1. PW on Bellegrave Avenue, between Haven Avenue and Mill Creek Avenue.
2. RW on Bellegrave Avenue, between Haven Avenue and Mill Creek Avenue.
3. ST improvements on Bellegrave Avenue, between Haven Avenue and easterly tract boundary.
4. ST improvements on Bellegrave Avenue, between Haven Avenue and easterly tract boundary.
5. Traffic Signal at Bellegrave Avenue and Haven Avenue.
6. Traffic Signal at Bellegrave Avenue and Delicious Way.

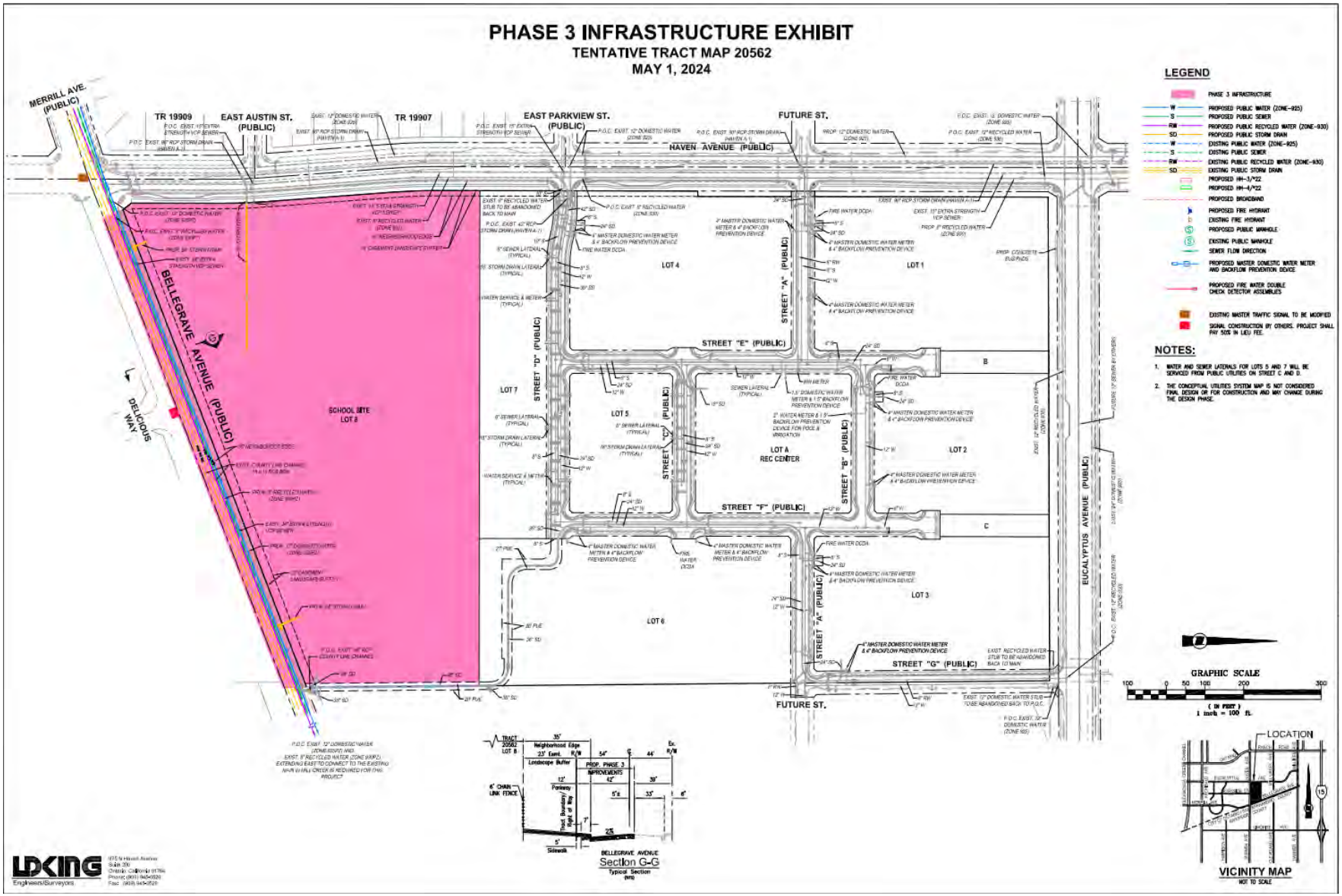
EXHIBIT “F”
TO DEVELOPMENT AGREEMENT

Depiction of required Infrastructure Improvements

(SEE ATTACHED EXHIBITS)


PHASE 1 INFRASTRUCTURE EXHIBIT
TENTATIVE TRACT MAP 20562
APRIL 3, 2024
LEGEND
NOTES:
1. WATER AND SEWER LATERALS FOR LOTS 5 AND 7 WILL BE SERVICED FROM PUBLIC UTILITIES ON STREET C AND D.
2. THE CONCEPTUAL UTILITIES SYSTEM MAP IS NOT CONSIDERED FINAL DESIGN OR FOR CONSTRUCTION AND MAY CHANGE DURING THE DESIGN PHASE.
MERRILL AVE. (PUBLIC)
TR 19909
EAST AUSTIN ST. (PUBLIC)
TR 19907
EAST PARKVIEW ST. (PUBLIC)
FUTURE ST.
HAVEN AVENUE (PUBLIC)
BELLEGRAVE AVENUE (PUBLIC)
DELICIOUS WAY
EUCALYPTUS AVENUE (PUBLIC)
STREET "A" (PUBLIC)
STREET "B" (PUBLIC)
STREET "C" (PUBLIC)
STREET "D" (PUBLIC)
STREET "E" (PUBLIC)
STREET "F" (PUBLIC)
STREET "G" (PUBLIC)
SCHOOL SITE
LOT 8
LOT A
REC CENTER
LOT 1
LOT 2
LOT 3
LOT 4
LOT 5
LOT 6
LOT 7
Section D-D
Section E-E
Section F-F
Section A-A
Section B-B
Section C-C
STREETS "A", "B", "C", "D", "E" & "F" (PUBLIC)
Typical Section for Public Streets per Phase 1 Improvements
GRAPHIC SCALE
1 inch = 100 ft.
LOCATION
VICINITY MAP
NOT TO SCALE
LDKING
Engineers/Surveyors


PHASE 2 INFRASTRUCTURE EXHIBIT
TENTATIVE TRACT MAP 20562
APRIL 3, 2024
LEGEND
NOTES:
GRAPHIC SCALE
VICINITY MAP
LOCATION
EUCALYPTUS AVENUE (PUBLIC)
FUTURE ST.
EAST PARKVIEW ST. (PUBLIC)
HAVEN AVENUE (PUBLIC)
EAST AUSTIN ST. (PUBLIC)
MERRILL AVE (PUBLIC)
BELLEGRAVE AVENUE (PUBLIC)
DELICIOUS WAY
STREET "A" (PUBLIC)
STREET "B" (PUBLIC)
STREET "C" (PUBLIC)
STREET "D" (PUBLIC)
STREET "E" (PUBLIC)
STREET "F" (PUBLIC)
STREET "G" (PUBLIC)
LOT 1
LOT 2
LOT 3
LOT 4
LOT 5
LOT 6
LOT 7
LOT A
REC CENTER
SCHOOL SITE
LOT 8
TR 19907
TR 19909
Section F-F
Section D-D
LDKING


PHASE 3 INFRASTRUCTURE EXHIBIT
TENTATIVE TRACT MAP 20562
MAY 1, 2024
LEGEND
PHASE 3 INFRASTRUCTURE
PROPOSED PUBLIC WATER (ZONE-925)
PROPOSED PUBLIC SEWER
PROPOSED PUBLIC RECYCLED WATER (ZONE-930)
PROPOSED PUBLIC STORM DRAIN
EXISTING PUBLIC WATER (ZONE-925)
EXISTING PUBLIC SEWER
EXISTING PUBLIC RECYCLED WATER (ZONE-930)
EXISTING PUBLIC STORM DRAIN
PROPOSED HH-3/*22
PROPOSED HH-4/*22
PROPOSED BROADBAND
PROPOSED FIRE HYDRANT
EXISTING FIRE HYDRANT
PROPOSED PUBLIC MANHOLE
EXISTING PUBLIC MANHOLE
SEWER FLOW DIRECTION
PROPOSED MASTER DOMESTIC WATER METER AND BACKFLOW PREVENTION DEVICE
PROPOSED FIRE WATER DOUBLE CHECK DETECTOR ASSEMBLIES
EXISTING MASTER TRAFFIC SIGNAL TO BE MODIFIED
SIGNAL CONSTRUCTION BY OTHERS. PROJECT SHALL PAY 50% IN LIEU FEE.
NOTES:
1. WATER AND SEWER LATERALS FOR LOTS 5 AND 7 WILL BE SERVICED FROM PUBLIC UTILITIES ON STREET C AND D.
2. THE CONCEPTUAL UTILITIES SYSTEM MAP IS NOT CONSIDERED FINAL DESIGN OR FOR CONSTRUCTION AND MAY CHANGE DURING THE DESIGN PHASE.
MERRILL AVE. (PUBLIC)
TR 19909
EAST AUSTIN ST. (PUBLIC)
TR 19907
EAST PARKVIEW ST. (PUBLIC)
FUTURE ST.
HAVEN AVENUE (PUBLIC)
BELLEGRAVE AVENUE (PUBLIC)
DELICIOUS WAY
SCHOOL SITE LOT 8
LOT 4
LOT 1
LOT 7
LOT 5
LOT A REC CENTER
LOT 2
LOT 6
LOT 3
STREET "A" (PUBLIC)
STREET "D" (PUBLIC)
STREET "E" (PUBLIC)
STREET "C" (PUBLIC)
STREET "B" (PUBLIC)
STREET "F" (PUBLIC)
STREET "G" (PUBLIC)
EUCALYPTUS AVENUE (PUBLIC)
B
C
FUTURE ST.
GRAPHIC SCALE
100 0 50 100 200 300
(IN FEET)
1 inch = 100 ft.
LOCATION
VICINITY MAP
NOT TO SCALE
TRACT 20562 LOT 8
Neighborhood Edge
Landscape Buffer
PROP. PHASE 3 IMPROVEMENTS
Parkway
6' CHAIN LINK FENCE
Front Boundary Right of Way
Sidewalk
BELLEGRAVE AVENUE
Section G-G
Typical Section
LDKING
Engineers/Surveyors

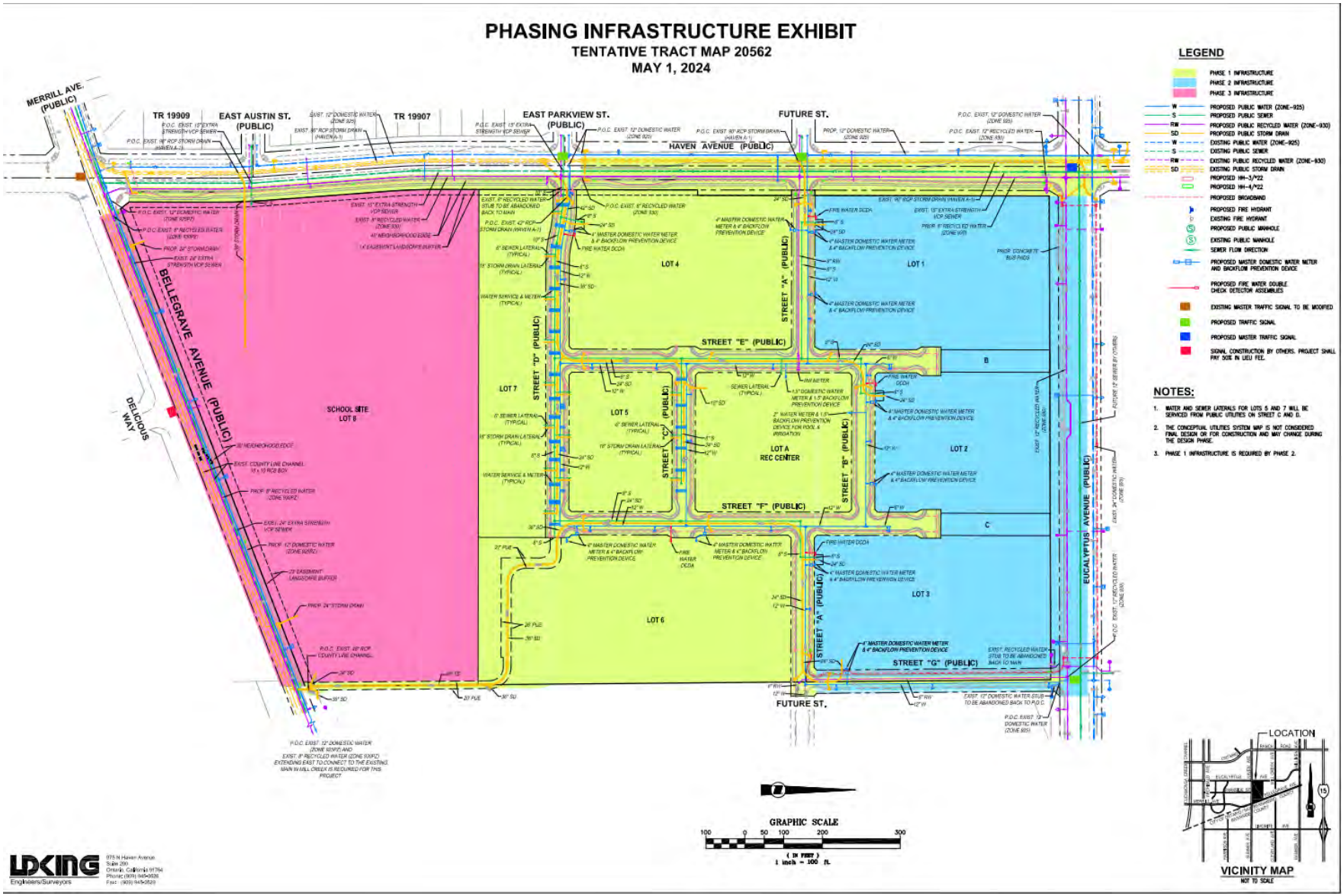

PHASING INFRASTRUCTURE EXHIBIT
TENTATIVE TRACT MAP 20562
MAY 1, 2024
LEGEND
PHASE 1 INFRASTRUCTURE
PHASE 2 INFRASTRUCTURE
PHASE 3 INFRASTRUCTURE
PROPOSED PUBLIC WATER (ZONE-925)
PROPOSED PUBLIC SEWER
PROPOSED PUBLIC RECYCLED WATER (ZONE-930)
PROPOSED PUBLIC STORM DRAIN
EXISTING PUBLIC WATER (ZONE-925)
EXISTING PUBLIC SEWER
EXISTING PUBLIC RECYCLED WATER (ZONE-930)
EXISTING PUBLIC STORM DRAIN
PROPOSED HH-3/P22
PROPOSED HH-4/P22
PROPOSED BROADBAND
PROPOSED FIRE HYDRANT
EXISTING FIRE HYDRANT
PROPOSED PUBLIC MANHOLE
EXISTING PUBLIC MANHOLE
SEWER FLOW DIRECTION
PROPOSED MASTER DOMESTIC WATER METER AND BACKFLOW PREVENTION DEVICE
PROPOSED FIRE WATER DOUBLE CHECK DETECTOR ASSEMBLIES
EXISTING MASTER TRAFFIC SIGNAL TO BE MODIFIED
PROPOSED TRAFFIC SIGNAL
PROPOSED MASTER TRAFFIC SIGNAL
SIGNAL CONSTRUCTION BY OTHERS. PROJECT SHALL PAY 50% IN LIEU FEE.
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3. PHASE 1 INFRASTRUCTURE IS REQUIRED BY PHASE 2.
MERRILL AVE. (PUBLIC)
TR 19909
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HAVEN AVENUE (PUBLIC)
BELLEGRAVE AVENUE (PUBLIC)
DELICIOUS WAY
EUCALYPTUS AVENUE (PUBLIC)
SCHOOL SITE LOT 8
LOT 1
LOT 2
LOT 3
LOT 4
LOT 5
LOT 6
LOT 7
LOT A REC CENTER
STREET "A" (PUBLIC)
STREET "B" (PUBLIC)
STREET "C" (PUBLIC)
STREET "D" (PUBLIC)
STREET "E" (PUBLIC)
STREET "F" (PUBLIC)
STREET "G" (PUBLIC)
FUTURE ST.
GRAPHIC SCALE
100 0 50 100 200 300
(IN FEET)
1 inch = 100 ft.
LOCATION
VICINITY MAP
NOT TO SCALE
LDKING
Engineers/Surveyors

EXHIBIT "G"
TO DEVELOPMENT AGREEMENT

Form of Plume Disclosure Letter

CITY OF ONTARIO

ONTARIO MUNICIPAL UTILITIES COMPANY

PAUL S. LEON
MAYOR

DEBRA DORST-PORADA
MAYOR PRO TEM

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

AL C. BOLING
CITY MANAGER

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT BURTON
UTILITIES GENERAL MANAGER

March 2017

DISCLOSURE NOTICE
SOUTH ARCHIBALD TRICHLOROETHYLENE PLUME

Dear Property Owner/Developer/Applicant:

The City of Ontario ("City") has approved or will be approving development in the Ontario Ranch area in the next few years, subject to the appropriate and required statutory process. This letter is intended to serve as notice to all potential property owners of the existence of a groundwater plume, known as the South Archibald Trichloroethylene (TCE) Plume which may exist in, under or near owner's property.

The groundwater plume is in an area in the central Chino Basin south of the Pomona Freeway, west of Turner Avenue, east of Grove Avenue, and north of Kimball Avenue. The plume primarily consists of TCE, a discontinued industrial solvent, and is subject to a clean-up under the oversight and direction of the Santa Ana Regional Water Quality Control Board ("Regional Board").

The Regional Board's approved clean-up procedure involves the removal and treatment of groundwater containing TCE via groundwater wells to reduce the plume concentrations and control its migration. In addition, the City is providing potable water supplies for domestic purposes to residences with private domestic wells affected by the plume. Finally, the Regional Board will continue to monitor all impacted areas and private domestic wells to ensure that residents' health and the environment are properly safeguarded. These remedial actions are documented in a Remedial Action Plan approved by the Regional Board in September 2016.

Further and current information may be found on the Regional Board's Geotracker website at https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000004658.

Property owners may wish to include this letter as a part of a Real Estate Transfer Disclosure under California Civil Code Section 1102 et seq.

1425 SOUTH BON VIEW - ONTARIO, CALIFORNIA 91761-4406 - (909) 395-2605 - FAX (909) 395-2601

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA21-010, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND SL ONTARIO DEVELOPMENT COMPANY LLC, TO ESTABLISH THE TERMS AND CONDITIONS ASSOCIATED WITH TENTATIVE TRACT MAP 20562 (FILE NO. PMTT22-022), A 62.69 ACRE PROPERTY, LOCATED AT THE SOUTHEAST CORNER OF EUCALYPTUS AVENUE AND HAVEN AVENUE, WITHIN PLANNING AREA 32 (MIXED-RESIDENTIAL) AND PLANNING AREA 34 (SCHOOL) OF THE SUBAREA 29 SPECIFIC PLAN. (FILE NO. PSPA21-005), (APNS: 1073-171-04, 1073-171-08, 1073-171-09 AND 1073-171-10).

WHEREAS, SL Ontario Development Company, LLC ("Applicant") has filed an Application for the approval of a Development Agreement, File No. PDA21-010, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 62.69 acres of located at the southeast corner of Eucalyptus Avenue and Haven Avenue, within Planning Area 32 (Mixed-Residential) and Planning Area 34 (School) of the Subarea 29 Specific Plan. (File No. PSPA21-005); and

WHEREAS, the Applicant submitted Tentative Tract Map No. 20562 (File No. PMTT22-022), subdividing 62.69 acres of land into 8 numbered lots and 3 lettered lots for residential uses, a public school, private drives, landscape edges, and common open space purposes; and

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with an Amendment to the Subarea 29 Specific Plan (File No. PSPA21-005), for which a Subsequent Environmental Impact Report (SEIR) (State Clearinghouse No. 2004011009) was adopted by the City Council on November 21, 2023. This application introduces no new significant environmental impacts; 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, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and make recommendations to the City Council on the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan, 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 May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, on June 18, 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 Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the City Council of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the recommending authority for the Project, the City Council has reviewed and considered the information contained in the previous Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of this Project were previously reviewed in conjunction with File No. PSPA21-005, a Specific Plan Amendment for which a Subsequent Environmental Impact Report (SEIR) (State Clearinghouse No. 2004011009) was adopted by the City Council on November 21, 2023.This application introduces no new significant environmental impacts; and

(2) The previous Certified EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Certified EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Certified EIR reflects the independent judgment of the City Council; and

(5) The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the previous Certified EIR, and all mitigation measures previously adopted with the Certified EIR, are incorporated herein by this reference.

SECTION 2: ***Subsequent or Supplemental Environmental Review Not Required.*** Based on the information presented to the City Council and the specific findings set forth in Section 1, above, the City Council finds that the preparation of a subsequent or supplemental Certified EIR is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the Certified EIR that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

(2) Does not constitute substantial changes with respect to the circumstances under which the Certified EIR was prepared, that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(3) Does not contain new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Certified EIR was certified/adopted, that shows any of the following:

(a) The project will have one or more significant effects not discussed in the Certified EIR; or

(b) Significant effects previously examined will be substantially more severe than shown in the Certified EIR; or

(c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the City declined to adopt such measures; or

(d) Mitigation measures or alternatives considerably different from those analyzed in the Certified EIR would substantially reduce one or more significant effects on the environment, but which the City declined to adopt.

SECTION 3: ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending authority for the Project, the City Council finds that based on the facts and information contained in the Application and supporting documentation, at the time

of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is 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.

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.

(1) On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the recommending authority 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, is will be consistent with the policies and criteria set forth within the ONT ALUCP; and

(2) On August 2, 2022, the City Council of the City of Ontario approved and adopted a Development Code Amendment to establish the Chino Airport ("CNO") Overlay Zoning District ("OZD") and Reference I, Chino Airport Land Use Compatibility Plan ("CNO ALUCP"). The CNO OZD and CNO ALUCP established the Airport Influence Area for Chino Airport, solely within the City of Ontario, and limits future land uses and development within the Airport Influence Area, as they relate to safety, airspace protection, and overflight impacts of current and future airport activity. The CNO ALUCP is consistent with policies and criteria set forth within the Caltrans 2011 California Airport Land Use Planning Handbook. The proposed Project is located within the Airport Influence Area of Chino Airport and was evaluated and found to be consistent with the California Airport Land Use Planning Handbook and the CNO ALUCP. As the recommending body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the CNO ALUCP compatibility factors, including Safety, Airspace Protection, Overflight. As a result, the City Council, therefore, finds and determines that the Project is consistent with the policies and criteria set

forth within the California Airport Land Use Planning Handbook and the Chino ALUCP.

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 Section 1 through 4, above, the City Council hereby concludes as follows:

(1) The Development Agreement applies to approximately 62.69 acres of land located AT the southeast corner of Eucalyptus Avenue and Haven Avenue, within Planning Area 32 (Mixed-Residential) and Planning Area 34 (School) of the Subarea 29 Specific Plan. (File No. PSPA21-005); and

(2) The Development Agreement establishes parameters for the development of land within Subarea 29 Specific Plan. The Development Agreement also grants the Applicant, the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the Subarea 29 Specific Plan; and

(3) The Development Agreement grants the Applicant a vested right to develop Tentative Tract Map 20562 (File No. PMTT22-022) as long as the Applicant complies with the terms and conditions of the Subarea 29 Specific Plan and EIR. Tentative Tract Map 20562 located at the southeast corner of Eucalyptus Avenue and Haven Avenue, within Planning Area 32 (Mixed-Residential) and Planning Area 34 (School) of the Subarea 29 Specific Plan, and proposes to subdivide 62.69 acres of land into 8 numbered lots and 3 lettered lots for residential uses, a public school, private drives, landscape edges, and common open space purposes; and

(4) The Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

(5) The Development Agreement does not conflict with the Land Use Policies of The Ontario Plan Policy Plan (General Plan) and will provide for development, within the district, in a manner consistent with the Policy Plan and with related development; and

(6) This Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

(7) This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will not have a significant impact on the environment or the surrounding properties a Specific Plan Amendment for which a Subsequent Environmental Impact Report (SEIR) (State Clearinghouse No. 2004011009) was adopted by the City Council on November 21, 2023.

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 Development Agreement (File No. PDA21-010), attached hereto as "Attachment A," and incorporated herein by this reference.

SECTION 7: **City Manager Administrative Authority.** The City Council acknowledges that refinements and further development of the Ontario Ranch development area may demonstrate that changes are appropriate with respect to the details and performance of the parties under the Development Agreement. The City Council desires to retain a certain degree of flexibility with respect to the details of the Ontario Ranch developments, and with respect to those items covered in general terms under the Development Agreement. If and when the City Manager (or designee) and the Developer mutually find that changes, adjustments, or clarifications are appropriate to further the intended purposes of the Development Agreement, and such are not materially inconsistent with the Development Agreement, they may, unless otherwise required by law, effectuate such changes, adjustments, or clarifications by written amendment to this Agreement, or through one or more memoranda which are mutually approved by the City Manager on behalf of the City and by the Developer, and, after execution, shall be attached to the Development Agreement and become a part thereof. Unless otherwise required by law, no such changes, adjustments, or clarifications shall require prior notice or hearing before the City Council. The City Manager, with the approval of the City Attorney, shall have the authority but not the obligation to execute amendments, memoranda or other documents, and may take any action necessary to implement the Development Agreement.

SECTION 8 ***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 9: ***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 10: ***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 11: ***Effective Date.*** This Ordinance shall become effective 30 days following its adoption.

SECTION 12: ***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 _____ day of _____ 2024.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held _____ and adopted at the regular meeting held _____, 2024 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held _____ and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

FILE NO. PDA21-010

DEVELOPMENT AGREEMENT

By and Between

City of Ontario
a California municipal corporation

and

SL Ontario Development Company LLC
a Delaware limited liability company

(Development Agreement to follow this page)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

CITY OF ONTARIO
CITY CLERK / RECORDS MANAGEMENT
303 EAST "B" STREET
ONTARIO, CA 91764-4196

Exempt from Fees Per Gov. Code § 6103

Space above this line for Recorder's Use Only

FILE NO. PDA21-010

DEVELOPMENT AGREEMENT

By and Between

City of Ontario
a California municipal corporation

and

SL Ontario Development Company LLC
a Delaware limited liability company

_____, 2024

San Bernardino County, California

DEVELOPMENT AGREEMENT PDA21-010

This Development Agreement (hereinafter "Agreement") is entered into effective as of the ____ day of _____, 2024 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and SL Ontario Development Company, LLC., a Delaware limited liability company (hereinafter "OWNER"):

RECITALS

WHEREAS, CITY is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code; and

WHEREAS, OWNER has requested CITY to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of CITY; and

WHEREAS, by electing to enter into this Agreement, CITY shall bind future City Councils of CITY by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of CITY; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by CITY and the City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of the CITY and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement in that Subarea 29 Specific Plan (State Clearinghouse No. 2004011009 (the "FEIR"). The City Council found and determined that the FEIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the project described in the FEIR, which included consideration of this Agreement; and

WHEREAS, this Agreement and the Project are consistent with the CITY's Comprehensive General Plan and the Subarea 29 Specific Plan; and

WHEREAS, all actions taken and approvals given by CITY have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

WHEREAS, development of the Property in accordance with this Agreement will provide substantial benefits to CITY and will further important policies and goals of CITY; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, ensure progressive installation of necessary improvements, provide for public services appropriate to the development of the Project, and generally serve the purposes for which development agreements under Sections 65864 et seq. of the Government Code are intended; and

WHEREAS, OWNER has incurred and will in the future incur substantial costs in excess of the generally applicable requirements in order to assure vesting of legal rights to develop the Property in accordance with this Agreement.

WHEREAS, the Property is located in an area of the City of Ontario that has been known as the "New Model Colony" area and the New Model Colony area has now been renamed as "Ontario Ranch."

WHEREAS, the property developer/owners are made aware of the South Archibald Trichloroethylene (TCE) Plume Disclosure Letter (Exhibit "G"). Property owner may wish to provide the attached Letter as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq. This may include notifications in the Covenants, Conditions and Restrictions (CC&Rs) or other documents related to property transfer and disclosures. Additional information on the plume is available from the Santa Ana Regional Water Quality Control Board at http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T10000004658

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "CITY" means the City of Ontario, California, a California municipal corporation.

1.1.3 "Construction Agreement" means that certain Agreement for the Financing and Construction of Phases I and II Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony, entered into between the CITY and NMC Builders as of the 4th day of October, 2005, and all amendments thereto and "Construction Agreement Amendment" means that First Amended and Restated Agreement for the

Financing and Construction of Limited Infrastructure Improvements to Serve and Easterly Portion of the New Model Colony entered into between the CITY and NMC Builders as of the 21st day of August 2012.

1.1.4 "Development" means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of public infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping. "Development" does not include the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

1.1.5 "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by CITY in connection with development of the Property including, but not limited to:

(a) specific plans and specific plan amendments;

(b) tentative and final subdivision and parcel maps;

(c) development plan review;

(d) conditional use permits (including model home use permits), public use permits and plot plans;

(e) zoning;

(f) grading and building permits.

1.1.6 "Development Exaction" means any requirement of CITY in connection with or pursuant to any Land Use Regulation or Development Approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

1.1.7 "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether characterized as a fee or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4, For purposes of this Agreement only, "Development Impact Fee" shall not include processing fees and charges imposed by CITY to cover

the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superceded, including by amendment or replacement.

1.1.8 "Development Plan" means the Existing Development Approvals and the Existing Land Use Regulations applicable to development of the Property.

1.1.9 "Effective Date" means the date that the ordinance approving this Agreement goes into effect.

1.1.10 "Existing Development Approvals" means all Development Approvals approved or issued prior to the Effective Date. Existing Development Approvals includes the Approvals incorporated herein as Exhibit "C" and all other Approvals which are a matter of public record on the Effective Date.

1.1.11 "Existing Land Use Regulations" means all Land Use Regulations in effect on the Effective Date. Existing Land Use Regulations includes the Regulations incorporated herein as Exhibit "D" and all other Land Use Regulations that are in effect and a matter of public record on the Effective Date.

1.1.12 "General Plan" means the General Plan adopted on August 16, 2022

1.1.13 "Improvement" or "Improvements" means those public improvements required to support the development of the Project as described in the Tract Map conditions for Tract No(s). 20562 as further described in Exhibit "F" (the "Infrastructure Improvements Exhibit").

1.1.14 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of CITY governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable

to the development of the Property. “Land Use Regulations” does not include any CITY ordinance, resolution, code, rule, regulation or official policy, governing:

(a) the conduct of businesses, professions, and occupations;

(b) taxes and assessments;

(c) the control and abatement of nuisances;

(d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property;

(e) the exercise of the power of eminent domain.

1.1.15 “Mortgagee” means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns.

1.1.16 “Net MDD” means net maximum daily water demand.

1.1.17 “NMC Builders” means the consortium of investors and developers responsible for the construction of infrastructure within the New Model Colony incorporated as NMC Builders, LLC.

1.1.18 “Model Units” means a maximum of Thirty (30) model units, private common recreation facilities and sales facilities constructed by OWNER prior to the construction of any Production units and not offered for sale and occupancy for a period of time after the issuance of permits for Production Units.

1.1.19 “OWNER” means the persons and entities listed as owner on page 1 of this Agreement and their permitted successors in interest to all or any part of the Property.

1.1.20 “Production Unit(s)” means all units constructed for sale and occupancy by OWNER and excludes the specified number of Model Units constructed by OWNER for promotion of sales.

1.1.21 “Project” means the development of the Property contemplated by the Development Plan, as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.1.22 “Property” means the real property described on Exhibit “A” and shown on Exhibit “B” to this Agreement.

1.1.23 “Reservations of Authority” means the rights and authority excepted from the assurances and rights provided to OWNER under this Agreement and reserved to CITY under Section 3.6 of this Agreement.

1.1.24 “Specific Plan” means that certain specific plan adopted by the City Council, and entitled, “Subarea 29 Specific Plan.”

1.1.25 "Storm Water Treatment Capacity Availability” means a designated portion of the total Storm Water Treatment Capacity Availability made available through the completion of construction of a Phase of regional storm water treatment facilities by the NMC Builders LLC as described in the Construction Agreement Amendment. The amount, in acres, of Storm Water Treatment Capacity Availability required for the issuance of a grading permit shall be based upon the factors and assumptions listed in the Construction Agreement Amendment.

1.1.26 “Subsequent Development Approvals” means all Development Approvals required subsequent to the Effective Date in connection with development of the Property.

1.1.27 “Subsequent Land Use Regulations” means any Land Use Regulations adopted and effective after the Effective Date of this Agreement.

1.1.28 “Water Availability Equivalent (WAE)” means a designated portion of the total Net MDD made available through the construction of each Phase described in the Water Phasing Plan of the Construction Agreement. The number of Water Availability Equivalents (of portions thereof) required for the issuance of each building permit shall be based upon water demand factors and assumptions listed in the Construction Agreement and Construction Agreement Amendment as “Water Availability Equivalents by Land Use” for each land use category.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit “A” — Legal Description of the Property.

Exhibit “B” — Map showing Property and its location.

Exhibit “C” — Existing Development Approvals.

Exhibit “D” — Existing Land Use Regulations.

Exhibit “E” — Description of Required Infrastructure Improvements

Exhibit “F” — Depiction of Required Infrastructure Improvements Exhibit

Exhibit “G” - Form of Plume Disclosure Letter

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out only in accordance with the terms of this Agreement.

2.2 Ownership of Property. OWNER represents and covenants that it is the owner of the fee simple title to the Property or a portion thereof, or has the right to acquire fee simple title to the Property or a portion thereof from the current owner(s) thereof. To the extent OWNER does not own fee simple title to the Property, OWNER shall obtain written consent from the current fee owner of the Property agreeing to the terms of this Agreement and the recordation thereof.

2.3 Term. The term of this Agreement shall commence on the Effective Date and shall continue for an initial term of ten (10) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement. The term of this Agreement may be extended for an additional five (5) years following expiration of the initial ten (10) year term, provided the following have occurred:

(a) OWNER provides at least 180 days written notice to CITY prior to expiration of the initial term; and

(b) In non-mixed use and residential use only projects, the OWNER shall have obtained, as applicable, building permits for at least seventy percent (70%) of the actual number of residential units permitted under this Agreement; and

(c) OWNER is not then in uncured default of this Agreement.

2.4 Assignment.

2.4.1 Right to Assign. OWNER shall have the right to sell, transfer or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.), to any person, partnership, limited liability company, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following:

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property. OWNER may be required to provide disclosure that the Property is within the South Archibald Trichloroethylene (TCE) Plume. OWNER may wish to provide the attached Disclosure Letter (Exhibit G) as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq.

(b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, OWNER shall notify CITY's City Manager, in

writing, of such sale, transfer or assignment and shall provide CITY with: (1) an executed agreement, in a form reasonably acceptable to CITY, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties and obligations of OWNER under this Agreement with respect to the portion of the Property so sold, transferred or assigned; and (2) the payment of the applicable processing charge to cover the CITY's review and consideration of such sale, transfer or assignment.

(c) Any sale, transfer or assignment not made in strict compliance with the foregoing conditions shall constitute a default by OWNER under this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by Paragraph (b) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee or assignee until and unless such agreement is executed. The City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny any proposed sale, transfer or assignment that is not made in compliance with this section 2.4.

2.4.2 Release of Transferring Owner. Notwithstanding any sale, transfer or assignment, a transferring OWNER shall continue to be obligated under this Agreement unless such transferring owner is given a release in writing by CITY, which release shall be provided by CITY upon the full satisfaction by such transferring owner of the following conditions:

(a) OWNER no longer has a legal or equitable interest in all or any part of the portion of the Property sold, transferred or assigned.

(b) OWNER is not then in default under this Agreement.

(c) OWNER has provided CITY with the notice and executed agreement required under Paragraph (b) of Subsection 2.4.1 above.

(d) The purchaser, transferee or assignee provides CITY with security equivalent to any security previously provided by OWNER to secure performance of its obligations hereunder.

2.4.3 Effect of Assignment and Release of Obligations. In the event of a sale, transfer or assignment pursuant to the provisions of Section 2.4.2 above:

(a) The assignee shall be liable for the performance of all obligations of OWNER with respect to transferred property, but shall have no obligations with respect to the portions of the Property, if any, not transferred (the "Retained Property").

(b) The owner of the Retained Property shall be liable for the performance of all obligations of OWNER with respect to Retained Property, but shall have no further obligations with respect to the transferred property.

(c) The assignee's exercise, use and enjoyment of the Property or portion thereof shall be subject to the terms of this Agreement to the same extent as if the assignee were the OWNER.

2.4.4 Subsequent Assignment. Any subsequent sale, transfer or assignment after an initial sale, transfer or assignment shall be made only in accordance with and subject to the terms and conditions of this Section 2.4.

2.4.5 Termination of Agreement with Respect to Individual Lots Upon Sale to Public and Completion of Construction. The provisions of Subsection 2.4.1 shall not apply to the sale or lease (for a period longer than one year) of any lot which has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

(a) The lot has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and,

(b) A certificate of occupancy has been issued for a building on the lot, and the fees set forth under Section 4 of this Agreement have been paid.

2.4.6 Partial Assignment and Assumption. CITY and OWNER agree OWNER may partially assign its obligations and rights under this Agreement, and all amendments hereto, to a purchaser, transferee or assignee of a lot, which has been subdivided subject to provisions of a partial assignment and assumption agreement in a form approved by CITY. Any such complete and executed partial assignment and assumption of this Agreement shall be submitted to CITY for approval pursuant to Section 2.4.1 of this Agreement. CITY shall review, and if the above conditions, including but not limited to, those conditions in Section 2.4.2, are satisfied, CITY may approve the partial assignment and release and notify the purchaser, transferee or assignee in writing thereof. No such release approved pursuant to this Subsection 2.4.6 shall cause, or otherwise affect, a release of OWNER from the duties and obligations under this Agreement that are retained by OWNER and excluded from the transfer or assignment.

2.5 Amendment or Cancellation of Agreement. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section 65868.1. Any amendment of this Agreement, which amendment has been requested by OWNER, shall be considered by the CITY only upon the payment of the applicable processing charge. This provision shall not limit any remedy of CITY or OWNER as provided by this Agreement. Either Party or successor in interest, may propose an amendment to or cancellation, in whole or in part, of this Agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors

in interest except as provided otherwise in this Agreement or in Government Code Section 65865.1. For purposes of this section, the term "successor in interest" shall mean any person having a legal or equitable interest in the whole of the Property, or any portion thereof as to which such person wishes to amend or cancel this Agreement. The procedure for proposing and adopting an amendment to, or cancellation of, in whole or in part, this Agreement shall be the same as the procedure for adopting and entering into this Agreement in the first instance. Notwithstanding the foregoing sentence, if the CITY initiates the proposed amendment to, or cancellation of, in whole or in part, this Agreement, CITY shall first give notice to the OWNER of its intention to initiate such proceedings at least sixty (60) days in advance of the giving the public notice of intention to consider the amendment or cancellation.

2.5.1 Amendment to Reflect Consistency With Future Amendments to the Construction Agreement. To the extent any future amendment to the Construction Agreement provides for modifications to rights or obligations that differ from or alter the same or similar rights or obligations contained in this Development Agreement, OWNER reserves the right to request an amendment to the Development Agreement to reflect any or all of such modifications.

2.5.2 Minor Modification. Upon the written application of OWNER, minor modifications and changes to the Development Plan including modifications to building design or footprint (not affecting minimum setbacks), parking layout and design, and landscape area design may be approved by the Director of the Planning Department without the need to amend this Development Agreement. Other changes in the Development Plan shall be processed pursuant to the City Zoning Ordinance. It is also contemplated by CITY and OWNER that OWNER may, from time to time, seek amendments to one or more of the Development Approvals. Any such amendments are contemplated by CITY and OWNER as being within the scope of this Agreement as long as they are consistent with the Land Use Regulations and shall, upon approval by CITY, continue to constitute the Development Approvals as referenced herein. The parties agree that any such modifications or amendments shall not constitute an amendment to this Agreement nor require an amendment to this Agreement.

2.6 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 2.3.

(b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

(c) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.

(d) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by CITY or applicable public agency of all required dedications.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant to Section 4.2 of this Agreement by OWNER to CITY for residential units on which construction has not yet begun shall be refunded to OWNER by CITY.

2.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to CITY:
Scott Ochoa, City Manager
City of Ontario
303 East "B" Street
Ontario, CA 91764

If to OWNER:
SL Ontario Development Company, LLC
c/o Lewis Management Corp.
Attn: Sage McCleve
1156 N. Mountain Avenue
Upland, CA 91786

with a copy to:
Ruben Duran, City Attorney
Best Best & Krieger, LLP
2855 E Guasti Road
Ontario, CA 91761

with a copy to:
Lewis Management Corp.
Attn: Brad Franke
Aa56 N. Mountain Avenue
Upland, CA 91786

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Development Plan.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, CITY shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

3.3 Timing of Development. The parties acknowledge that OWNER cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of OWNER, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Ca1. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that OWNER shall have the right to develop the Property in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment.

3.4 Requirement for Public Infrastructure Improvements. Development of the Property is contingent in part on the phasing of area-wide infrastructure improvements over which the OWNER has control. The issuance of building permits by CITY for Model Units and Production Units is, in general, contingent on OWNER's completion of needed infrastructure improvements and the availability of improvements and services to serve the Property.

3.4.1 Attached hereto as Exhibits "E" and "F" are a description and depiction, respectively, of the improvements needed for development of the Property. In

the event of any discrepancy between Exhibit E and Exhibit F, Exhibit F shall control.

3.4.2 Subject to the prior submittal by OWNER and approval by CITY of a plan to provide sufficient public infrastructure for the construction of a maximum number of Thirty (30) Model Units, private common recreation facilities and sales facilities. CITY may issue a maximum of Thirty (30) building permits for Model Units, private common recreation facilities and sales facilities. The plan to be submitted by OWNER for CITY approval shall describe the utilities and other infrastructure necessary to provide sufficient fire protection and other public health and safety requirements for the Model Units and other facilities.

3.5 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event OWNER finds that a change in the Existing Development Approvals is necessary or appropriate, OWNER shall apply for a Subsequent Development Approval to effectuate such change and CITY shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. If approved, any such change in the Existing Development Approvals shall be incorporated herein as an addendum to Exhibit "C", and may be further changed from time to time as provided in this Section. Unless otherwise required by law, as determined in CITY's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

(a) Alter the permitted uses of the Property as a whole; or,

(b) Increase the density or intensity of use of the Property as a whole; or,

(c) Increase the maximum height and size of permitted buildings; or,

(d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,

(e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

3.6 Reservations of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the CITY shall not be prevented from applying new rules, regulations and policies upon the OWNER, nor shall a development agreement prevent the CITY from denying or conditionally approving any

subsequent development project application on the basis of such new rules, regulations and policies where the new rules, regulations and policies consist of the following:

(a) Processing fees by CITY to cover costs of processing applications for development approvals or for monitoring compliance with any development approvals;

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records and any other matter of procedure;

(c) Regulations, policies and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the CITY and any local amendments to those codes adopted by the CITY; provided however that, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan;

(d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the residents of the project and/or of the immediate community from a condition perilous to their health or safety;

(e) Regulations that do not conflict with those rules, regulations and policies set forth in this Agreement or the Development Plan;

(f) Regulations that may conflict but to which the OWNER consents.

3.6.2 Subsequent Development Approvals. This Agreement shall not prevent CITY, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations that do not conflict with the Development Plan, nor shall this Agreement prevent CITY from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Plan.

3.6.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and

effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce. In the event OWNER alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Agreement, and the CITY does not agree, the OWNER may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided however, that nothing contained in this Section 3.6.3 shall impose on CITY any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

3.6.4 Intent. The parties acknowledge and agree that CITY is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations and exceptions are intended to reserve to CITY all of its police power which cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to CITY all such power and authority which cannot be restricted by contract.

3.7 Public Works; Utilities. If OWNER is required by this Agreement to construct any public works facilities which will be dedicated to CITY or any other public agency upon completion, and if required by applicable laws to do so, OWNER shall perform such work in the same manner and subject to the same requirements as would be applicable to CITY or such other public agency should it have undertaken such construction. As a condition of development approval, OWNER shall connect the Project to all utilities necessary to provide adequate water, recycled water, sewer, gas, electric, and other utility service to the Project. As a further condition of development approval, OWNER shall contract with the CITY for CITY-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the CITY.

3.7.1 OWNER agrees that development of the Project shall require the construction of storm drain improvements as described in Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the storm drain improvements for each Phase, as described in Exhibit E and depicted in Exhibit F.

3.7.2 OWNER agrees that development of the Project shall require the construction of street improvements as described in Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the street improvements for each Phase, as described in Exhibit E and depicted in Exhibit F.

3.7.3 OWNER agrees that development of the Property shall require the construction of potable water and recycled water improvements as described in Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the potable

water and recycled water improvements for each Phase, as described in Exhibit E and depicted in Exhibit F. OWNER also agrees that recycled water shall be available and utilized by OWNER for all construction-related water uses including prior to, and during, any grading of the Property.

3.7.4 OWNER agrees that development of the Property shall require the construction of sewer improvements, as described in the attached Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the sewer improvements for each Phase, as described in Exhibit E and depicted in Exhibit F.

3.7.5 OWNER agrees that development of the Property shall require the extension of fiber optic communications improvements as described in the attached Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the fiber optic communication improvements for each Phase, as described in Exhibit E and depicted in Exhibit F.

3.7.6 OWNER shall pay their fair share contribution, for the design and construction of one (1) non-DIF traffic signal at Bellegrave Avenue and Delicious Way (50%). OWNER shall provide CITY with the estimated costs of the one (1) non-DIF traffic signal improvements and OWNER shall make such fair share contribution payment to CITY, prior to and as a condition precedent to, CITY's issuance of the 330th building permit for Production Units.

3.8 Acquisition of Offsite Provision of Real Property Interests. In any instance where OWNER is required by any Development Approval or Land Use Regulation and the Construction Agreement to construct any public improvement on land not owned by OWNER ("Offsite Improvements"), the CITY and OWNER shall cooperate in acquiring the necessary legal interest ("Offsite Property") in accordance with the procedures set forth in Section 2.4 of the Construction Agreement. This section 3.8 is not intended by the parties to impose upon the OWNER an enforceable duty to acquire land or construct any public improvements on land not owned by OWNER, except to the extent that the OWNER elects to proceed with the development of the Project, and then only in accordance with valid conditions imposed by the CITY upon the development of the Project under the Subdivision Map Act or other legal authority.

3.8.1 CITY Acquisition of Non-Construction Agreement Offsite Property. In the event OWNER is required to construct any public improvements on land not owned by OWNER, but such requirement is not based upon the Construction Agreement, Sections 3.8.1 and 3.8.2 shall control the acquisition of the necessary property interest(s) ("Non-Construction Agreement Offsite Property"). If the OWNER is unable to acquire such Non-Construction Agreement Offsite Property, and following the written request from the OWNER to CITY, CITY agrees to use reasonable and diligent good faith efforts to acquire the Non-

Construction Agreement Offsite Property from the owner or owners of record by negotiation to the extent permitted by law and consistent with this Agreement. If CITY is unable to acquire the Non-Construction Agreement Offsite Property by negotiation within thirty (30) days after OWNER'S written request, CITY shall, initiate proceedings utilizing its power of eminent domain to acquire that Non-Construction Agreement Subject Property at a public hearing noticed and conducted in accordance with California Code of Civil Procedure Section 1245.235 for the purpose of considering the adoption of a resolution of necessity concerning the Non-Construction Agreement Offsite Property, subject to the conditions set forth in this Section 3.8. The CITY and OWNER acknowledge that the timelines set forth in this Section 3.8.1 represent the maximum time periods which CITY and OWNER reasonably believe will be necessary to complete the acquisition of any Non-Construction Agreement Offsite Property. CITY agrees to use reasonable good faith efforts to complete the actions described within lesser time periods, to the extent that it is reasonably able to do so, consistent with the legal constraints imposed upon CITY.

3.8.2 Owner's Option to Terminate Proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to making an offer to the owner of the Non-Construction Agreement Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease all acquisition proceedings with respect to that Non-Construction Agreement Offsite Property, whereupon CITY shall cease such proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to the date of the hearing on CITY'S intent to consider the adoption of a resolution of necessity as to any Non-Construction Agreement Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease condemnation proceedings, whereupon CITY shall cease such proceedings. If OWNER does not notify CITY to cease condemnation proceedings within said fifteen (15) day period, then the CITY may proceed to consider and act upon the Non-Construction Agreement Offsite Property resolution of necessity. If CITY adopts such resolution of necessity, then CITY shall diligently institute condemnation proceedings and file a complaint in condemnation and seek an order of immediate possession with respect to the Non-Construction Agreement Offsite Property.

3.9 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of CITY possess authority to regulate aspects of the development of the Property separately from or jointly with CITY and this Agreement does not limit the authority of such other public agencies. CITY agrees to cooperate fully, at no cost to CITY, with OWNER in obtaining any required permits or compliance with the regulations of other public agencies provided such cooperation is not in conflict with any laws, regulations or policies of the CITY.

3.10 Tentative Tract Maps; Extension. With respect to applications by OWNER for tentative subdivision maps for portions of the Property, CITY agrees that OWNER may file and process tentative maps in accordance with Chapter 4.5 (commencing with Section 66498.1) of Division 2 of Title 7 of the California Government Code and the applicable provisions of CITY's subdivision ordinance, as the same may be amended from time to time. In accordance with the provisions of Section 66452.6 of the Government Code, each tentative subdivision map or tentative parcel map, heretofore or hereafter approved in connection with development of the Property, shall be deemed to have been granted an extension of time to and until the date that is five (5) years following the Effective Date of this Agreement.; The CITY's City Council may, in its discretion, extend any such map for an additional period of up to five (5) years beyond its original term, so long as the subdivider files a written request for an extension with the City prior to the expiration of the initial five (5) year term.

4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs that will not be fully met by the Development Plan and further acknowledge and agree that this Agreement confers substantial private benefits on OWNER that should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on OWNER by providing more fully for the satisfaction of the public needs resulting from the Project.

4.2 Development Impact Fees.

4.2.1 Amount of Development Impact Fee. Development Impact Fees (DIF) shall be paid by OWNER. The Development Impact Fee amounts to be paid by OWNER shall be the amounts that are in effect at the time such amounts are due. Nothing contained in this Agreement shall affect the ability of the CITY to impose new Development Impact Fees or amend the amounts of existing Development Impact Fees. Additionally, nothing contained in this Agreement shall affect the ability of other public agencies that are not controlled by CITY to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by CITY.

4.2.2 Time of Payment. The Development Impact Fees required pursuant to Subsection 4.2.1 shall be paid to CITY prior to the issuance of building permit for each applicable residential or other unit, except for the Open Space and Habitat Acquisition Development Impact fee, which shall be paid by OWNER to CITY prior to the issuance of a grading permit. Deferral of the payment of Development Impact Fees may be granted pursuant to a separate agreement approved by City pursuant to City policy.

4.2.3 Parkland and Quimby Act Fees. Pursuant to the General Plan (Ontario Plan) Goal PR1, Policy PR1-5 (achievement of a park standard of 5 acres of parkland per 1,000 residents) OWNER shall provide improved parks, developed in accordance with the City's park standards in an amount equal to two (2) acres per 1,000 of projected population without credit, reimbursement, offset or consideration from City. Such areas shall either be dedicated to the City or transferred to a homeowners' association. If approved by the City Manager, OWNER may satisfy this requirement through the development of non-public recreation facilities such as private recreational clubhouses or pool facilities. Credit for such private recreational facilities areas shall be limited to a maximum of 50% of the foregoing park development requirement. If OWNER's Project does not provide dedicated and developed park acreage equal to two (2) acres per 1,000 projected population, OWNER shall pay a fee in-lieu equal to the per acre estimated costs of acquisition and development of parkland in the City's Development Impact Fee for the calculated park acreage deficiency. Such in-lieu fee shall be due and payable prior to the issuance of the first building permit for Production Units issued to OWNER. Any park dedication and/or improvements in excess of such two (2) acres per thousand standard, provided such park has been developed in accordance with the City's park standards and is open to the public generally, shall entitle OWNER to a credit toward its obligations under the Quimby Act (Gov. Code, § 64477) and the City's implementing ordinance and/or resolution (collectively "**Quimby Act Obligations**"), and to the extent OWNER's Quimby Act Obligations are satisfied, OWNER shall be entitled to have the City acquire such developed and publicly available parks as Non-Program Interests in accordance with Section 4.3.3 below.

4.3 Responsibility for Construction of Public Improvements.

4.3.1 Timely Construction of Public Infrastructure. The phasing of the areawide infrastructure construction within Ontario Ranch will be as approved by the CITY. OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the Project as shown on the attached Exhibit "F" and any and all tentative tract map conditions. Unless otherwise specified in the Subdivision Agreement/Tract Map conditions, all other required Improvements for each Tract Map, shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of the first building permit for Production Units for each such Tract Map. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Tract Map conditions for Tract No(s). 20562.

4.3.2 Construction of DIF Program Infrastructure (Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and the Construction Agreement between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit in accordance with the provisions of the

Construction Agreement and any amendments thereto. Use of DIF Credit issued to OWNER as a member of NMC Builders LLC to offset OWNER's DIF payment obligations shall also be subject to the provisions of the Construction Agreement and any amendments thereto.

4.3.3 Construction of DIF Program Infrastructure (Non-Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and such public improvements are not included the Construction Agreement between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitation on the use of DIF Credit issued to OWNER to offset OWNER's DIF payment obligations shall also be subject to the provisions of a separate Fee Credit Agreement. CITY and OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements.

4.4 Affordable Housing Requirement.

4.4.1 Affordable Housing- Number of Units. OWNER shall provide a minimum number of affordable housing units, equivalent to 10% of the OWNER's total approved residential units within the Project, that are affordable to very low, low- and moderate-income households. Such requirement for affordable housing shall be met through one, or a combination of one or more, of the options provided in the following Sections 4.4.2.1 through 4.4.2.5. For the purposes of this Section, any term not defined in this Agreement shall be as defined by California Community Redevelopment Law (California Health and Safety Code Section 33000 et seq.).

4.4.2 Affordability Spread. Of the total number of residential dwelling units specified in Section 4.4.1, to be constructed or rehabilitated pursuant to Sections 4.4.2.1 or 4.4.2.2 respectively, thirty percent (30%) shall be available to very low income, thirty percent (30%) shall be available to low income and forty percent (40%) shall be available to moderate income households. "**Households**" shall be as defined by California Health and Safety Code Section 50053.

4.4.2.1 New Construction. If OWNER elects to fully or partially satisfy the affordable housing requirement by the construction of new residential units, it shall construct and restrict the affordability of residential dwelling units within its Project or, at OWNER's option and with the approval of the City, within another project elsewhere within the City. The affordable units constructed shall be intermingled with other units as part of the Project, and shall be built to the same construction, design and aesthetic standards, as well as number of rooms, as other units constructed as part of that OWNER's Project. In addition, the percentage ratio of affordable units offered for sale versus those offered for rent shall equal the percentage

ratio of other units offered for sale versus for rent within OWNER's Project. Such construction shall be completed no later than the date that is five (5) years following the issuance of the first building permit for OWNER's Project; provided however that to the extent OWNER has not constructed the required percentage of units, based on the number of building permits for non-restricted units, OWNER shall, prior to the issuance of such building permits, provide security (in the form and substance approved by the City Manager and City Attorney) to City in order to ensure the faithful completion of such required percentage of construction of affordable units. If OWNER elects the option of constructing new affordable units, a detailed Affordable Housing Agreement specifying terms for the allowable monthly housing costs or rents (as applicable) and maintenance and occupancy standards shall be prepared, executed and recorded against such units as a condition to the issuance of a building permit. The Affordable Housing Agreement shall hold a recorded priority position senior to any other non-statutory lien or encumbrance affecting the unit.

4.4.2.2 Rehabilitation. If OWNER elects to fully or partially satisfy the affordable housing requirement by the substantial rehabilitation of existing residential units in the City, it shall substantially rehabilitate and restrict the affordability of, the number of residential units specified in Section 4.4.1, provided that such units shall be provided elsewhere within the City. The rehabilitation work shall be substantial and of high quality and shall also address any deferred property maintenance issues on the property. "**Substantial rehabilitation**" shall mean rehabilitated multi-family rented dwelling units with three or more units and the value of the rehabilitation constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of land value pursuant to Health and Safety Code Section 33413(b)(2)(A)(iii-iv) as such section exists as of the Effective Date of this Agreement. If OWNER chooses the option of rehabilitation of existing housing units within the City, a detailed Affordable Housing Agreement specifying the terms for the allowable month housing costs or rents (as applicable) and maintenance and occupancy standards shall be prepared, executed and recorded against such units as a condition to the issuance of a building permit. Such rehabilitation shall be completed no later than the date that is five (5) years following the issuance of the first building permit for OWNER's Project; provided however that to the extent OWNER has not rehabilitated the required percentage of units, based on the number of building permits, OWNER shall, prior to the issuance of such building permits, provide security (in the form and substance approved by the City Manager and City Attorney) to the City in order to ensure the faithful completion of such required percentage of rehabilitation.

4.4.2.3 In-Lieu Fee. If OWNER has not fully complied with the requirements of Section 4.4.1 by providing the minimum number of

affordable units through the construction of new affordable units or by the substantial rehabilitation of existing units, shall pay an "**Affordability In-Lieu Fee**". If OWNER has not provided any affordable residential units by construction or rehabilitation, the Affordability In-Lieu fee shall be equal to Three Dollars Twenty Four Cents ($3.24) per square foot of residential development within OWNER's Project or, if pre-paid as set forth below, Two Dollars Eighty Five Cents ($2.85) per square foot of residential development within OWNER's Project. If OWNER has partially complied with the requirements of Section 4.4.1 by construction or rehabilitation of less than the minimum number of units, then the Affordability In-lieu Fee shall be recalculated and reduced in consideration of the number and type of affordable units provided. The Affordability In-Lieu Fee shall be paid by OWNER to City no later than prior to the issuance of each building permit within OWNER's Project based on the square footage of the residential unit for which such building permit is sought; provided however that OWNER may, at OWNER's election, pre-pay such Affordability In-Lieu Fee by paying such Affordability In-Lieu Fee within thirty (30) days following the earliest discretionary approval by the City for OWNER's Project, including, but not limited to, any general plan amendment, specific plan adoption, development agreement, tentative map approval, variance, conditional use permit, or resolution of intention to form any public financing mechanism. The Three Dollars Twenty Four ($3.24) and the Two Dollars Eighty Five Cents ($2.85) per square foot amounts shall automatically be increased annually, commencing on July 1, 2024, and automatically each July 1 thereafter. Such adjustment shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Riverside - San Bernardino - Ontario, CA), (December 2017=100) over the preceding year. The pre-paid Affordability In-Lieu Fee shall be calculated based on the maximum floor area ratio (FAR) permitted within the General Plan and any applicable FAR contained within the applicable specific plan, whichever is greater, and the Maximum Development Density. For purposes of this Agreement, "**Maximum Development Density**" shall be determined by multiplying the OWNER's Project's density for residential development potential as set forth in the General Plan or the applicable Specific Plan, whichever is less, by the net acreage of land within OWNER's Project. All "Affordability In-Lieu Fees" collected by the City shall be used to promote the construction of affordable housing within the City.

4.4.2.4 Affordability Covenants. Prior to the issuance of the first building permit for any affordable unit, the CITY and OWNER shall enter into an Affordable Housing Agreement Affordability shall be assured for a period of forty-five (45) years for for-sale units and fifty-five (55) years for rentals. For rental units, base rents shall be established by the CITY and rental adjustments required by the CITY shall be performed on an annual basis. In addition, the Affordable Housing Agreement shall impose maximum

occupancy limits of two (2) occupants per bedroom plus one (1) additional occupant per dwelling unit, and a requirement for the owner or tenant to properly maintain each dwelling unit.

4.4.2.5 Transfer of Affordable Project. No transfer of title to any affordable housing project shall occur without the prior written consent of the CITY. In the event OWNER transfers title to any affordable housing project required to be constructed pursuant to this Agreement to a non-profit entity, or other entity, that receives an exemption from ad valorem real property taxes, the CITY shall be required to assure payment of an annual in lieu fee to the CITY on July 1 of each year equal to one-tenth of one percent (0.1%) of the assessed value of such project. The CITY may permit OWNER to satisfy this obligation by recorded covenants against the property and enforceable against said entity by the CITY. Any such covenants shall be approved by the Planning Director and the City Attorney.

4.5 Schools Obligations.

4.5.1 Written Evidence of Compliance with Schools Obligations.
OWNER shall, either through joint or individual agreements between OWNER and the applicable school district(s), shall satisfy its new school obligations. The new school obligations for the Mountain View School District in the Ontario Ranch area have been projected to include the acquisition or dedication of school sites for, and construction of, up to eight (8) schools. Of these eight (8) schools, six (6) are to be elementary (K-5) grade schools and two (2) are to be middle grade schools. The new school obligations for the Chaffey Joint Union High School District in the Ontario Ranch area have been projected to include the dedication of a school site for, and construction of, an additional high school. The new school obligations for the applicable school district shall be met by a combination of the following: (1) designating and dedicating school site(s) within the Property as set forth in the General Plan, and/or (2) paying school impact fees, (3) entering into a joint mitigation agreement or individual mitigation agreements, or (4) any combination of the foregoing. Written evidence of approval by the applicable school district that OWNER has met their school obligations may be required by the City as the condition to the issuance by the City of any entitlements for OWNER's Project. In the event OWNER is unable to provide such written evidence from the applicable school district(s), the City shall have the right to decline to honor any DIF Credit, Certificates of MDD Availability, Certificates of Storm Water Treatment Capacity Availability, or any combination thereof, presented by such OWNER, without liability to the City. To the extent that a joint mitigation agreement is approved by the applicable school district(s), and OWNER is a participant in good standing in such mitigation agreement, OWNER shall be deemed to have mitigated its new school obligations under this Section 4.4.1.

4.6 Net MDD/Water Availability Equivalents.

4.6.1 Assigned Net MDD/Water Availability Equivalents. The City has agreed with NMC Builders LLC to reserve exclusively for Members of NMC Builders, including OWNER, Net MDD made available through the construction of water system improvements funded by NMC Builders LLC. NMC Builders has assigned to OWNER its allocable share of the Net MDD issued by City. The provisions of the Construction Agreement Amendment requires that the City shall not approval a final tract map or issue building permits or certificates of occupancy for the area of development within the New Model Colony served by the water system improvements funded by NMC Builders LLC, except to the bearer of an Assignment of Net MDD Water Availability.

4.6.2 Use of Assigned Net MDD Water Availability. OWNER shall provide evidence of sufficient Net MDD Water Availability Equivalents (or portions thereof) prior to and as a condition precedent to, the City's approval of any and all tract maps for the Property. The amount of Net MDD Water Availability Equivalents required for City's approval of a tract map shall be based upon water demand factors and assumptions listed in Exhibit C-2R of the Construction Agreement Amendment as "Water Demand Equivalents by Land Use" for each land use category.

4.6.3 Requirement for other Water System Improvements. A Certificate of Net MDD Availability is evidence only of available water capacity and does not satisfy any other conditions applicable to an OWNER's Project, including those relating to design and construction of master-planned potable water and recycled water transmission and distribution system for the respective pressure zone and other public infrastructure requirements.

4.6.4 Effectiveness of Agreement. Notwithstanding anything set forth in this Agreement, CITY and OWNER each acknowledge, confirm, and agree that (i) the CITY approval of this Agreement and (ii) the effectiveness of this Agreement, in each case, are conditioned upon OWNER's admission to NMC Builders as a "Member" (if not already a Member) thereof pursuant to the terms and conditions of the operating agreement of NMC Builders within thirty (30) days following the Effective Date of this Agreement. OWNER'S failure to maintain membership in NMC Builders LLC is and shall be a Default under this Agreement

4.7 Storm Water Capacity Availability.

4.7.1 Requirement for Storm Water Treatment Capacity Availability. OWNER shall provide evidence of sufficient Storm Water Treatment Capacity Availability as reserved in a Certificate of Storm Water Treatment Capacity Availability the same manner and subject to the same limitations as provided for the assignment of Certificates of Net MDD Availability in Section 4.6 of this Agreement.

4.72 Use of Storm Water Treatment Capacity Availability. The amount of Storm Water Treatment Capacity Availability required for the issuance of a grading

permit to OWNER shall be based upon the Net Residential Acreage of the area to be graded regardless of the corresponding use.

4.7.3 Requirement for other Storm Water Improvements. The Certificate of Storm Water Treatment Capacity Availability is evidence only of available storm water treatment capacity and does not satisfy any other conditions applicable to a particular development project, including those relating to on-site water treatment, water quality, connection to the storm water collection system, or other public infrastructure requirements.

4.8 Maintenance of Open Space. OWNER shall provide for the ongoing maintenance of all park, common areas and open space areas within the Project as more particularly set forth in the Specific Plan, through a homeowners' association as approved by the CITY. Covenants, conditions and restrictions establishing any homeowners' association shall be approved by the Planning Director and City Attorney.

4.9 Compliance with Public Benefits Requirements.

4.9.1 Failure to Provide Public Benefits. In the event OWNER fails or refuses to comply with any condition referenced in Section 4.1 through 4.9, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, OWNER shall be deemed in default of this Agreement pursuant to Section 8.4 hereof, thereby entitling the City to any and all remedies available to it, including, without limitation, the right of the City to withhold OWNER's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). In accordance with the Memorandum of Agreement between the CITY and NMC Builders, CITY will cooperate with OWNER in the formation of a CFD, or CFDs, to include all of the Project, to provide a financing mechanism to reimburse the OWNER for funds paid to NMC Builders LLC for OWNER's share of the costs of public infrastructure pursuant to the Construction Agreement and to acquire other public facilities constructed by OWNER subject to the provisions of the Memorandum of Agreement between CITY and NMC Builders LLC. Notwithstanding such reimbursements and acquisitions, OWNER shall remain entitled to DIF Credits as provided for in Article 3 of the Construction Agreement and/or as provided for in a separate Fee Credit Agreement between CITY and OWNER. OWNER agrees that, prior to the recordation of any Tract Map for the Property, the Property shall be included in a CFD to finance City services through annual special taxes that will initially be $1,443.71 per Single Family Detached Dwelling Unit, $1,251.15 per Multiple-Family Dwelling Unit, $1,048.96 per Gated Apartment Community Dwelling Unit, and $.27 per square foot for Non-Residential buildings. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year, unless otherwise modified by the CITY. CITY shall be the sole and exclusive lead agency in

the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. In addition to the rights of the CITY pursuant to section 5.2 hereof, CITY shall have the right, but not the obligation, to condition the formation of any CFD, assessment district or other public financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the condition to the formation of any CFD, assessment district or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit the City's ability to take any and all necessary steps requisite to the formation of the CFD to finance City services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district or to issue and sell bonds.

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

6.1.1 Time for and Initiation of Periodic Review. The CITY shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by the OWNER with the terms of this Agreement. The OWNER shall submit an Annual Monitoring Report to CITY, in a form acceptable to the City Manager, along with any applicable processing charge within ten (10) days after each anniversary date of the Effective Date of this Agreement. Within fifteen (15) days after the receipt of the Annual Monitoring Report, CITY shall review the Annual Monitoring Report. Prior to the expiration of the fifteen (15) day review period, CITY shall either issue a notice of continuing compliance or a notice of non-compliance and a notice of CITY's intent to conduct a Special Review pursuant to Sections 6.1.2 through 6.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his designee.

6.1.2 Initiation of Special Review. A special review may be called either by agreement between the parties or by initiation in one or more of the following ways:

(1) Recommendation of the Planning staff;

(2) Affirmative vote of at least four (4) members of the Planning Commission; or

(3) Affirmative vote of at least three (3) members of the City Council.

6.1.3 Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that the CITY intends to undertake a special review of this Agreement to the OWNER. Such notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission.

6.1.4 Public Hearing. The Planning Commission shall conduct a hearing at which the OWNER must demonstrate good faith compliance with the terms of this Agreement. The burden of proof on this issue is upon the OWNER.

6.1.5 Findings Upon Public Hearing. The Planning Commission shall determine upon the basis of substantial evidence whether or not the OWNER has, for the period under review, complied in good faith with the terms and conditions of this Agreement.

6.1.6 Procedure Upon Findings.

(a) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.

(b) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has not complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission may recommend to the City Council to modify or terminate this Agreement.

(c) The OWNER may appeal a determination pursuant to paragraph (b) to the City Council in accordance with the CITY's rule for consideration of appeals in zoning matters generally.

6.2 Proceedings Upon Modification or Termination. If, upon a finding under Section 6.1.6(b), the CITY determines to proceed with modification or termination of this

Agreement, the CITY shall give notice to the property OWNER of its intention so to do. The notice shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not the CITY proposes to terminate or to modify this Agreement; and

(c) Other information that the CITY considers necessary to inform the OWNER of the nature of the proceeding.

6.3 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, the OWNER shall be given an opportunity to be heard. The OWNER shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the OWNER. If the City Council finds, based upon substantial evidence in the administrative record, that the OWNER has not complied in good faith with the terms and conditions of the agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the CITY. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, OWNER is found to be in compliance with this Agreement, CITY shall, upon written request by OWNER, issue a Certificate of Agreement Compliance ("Certificate") to OWNER stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) OWNER is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. OWNER may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or OWNER, CITY shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [RESERVED]

8. DEFAULT AND REMEDIES.

8.1 Remedies in General. It is acknowledged by the parties that CITY would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that CITY shall not be liable in damages to OWNER, or to any successor in interest of OWNER, or to any other person, and OWNER covenants not to sue for damages or claim any damages:

(a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or

(b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

(c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

8.2 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all parties for the following reasons:

(a) Money damages are unavailable against CITY as provided in Section 8.1 above.

(b) Due to the size, nature and scope of the project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts.

8.3 Release. Except for nondamage remedies, including the remedy of specific performance and judicial review as provided for in Section 6.5, OWNER, for itself, its successors and assignees, hereby releases the CITY, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the CITY because it entered into this Agreement or because of the terms of this Agreement.

8.4 Termination or Modification of Agreement for Default of OWNER. Subject to the provisions contained in Subsection 6.3 herein, CITY may terminate or modify this Agreement for any failure of OWNER to perform any material duty or obligation of

OWNER under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate or modify this Agreement pursuant to this Section only after providing written notice to OWNER of default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

8.5 Termination of Agreement for Default of CITY. OWNER may terminate this Agreement only in the event of a default by CITY in the performance of a material term of this Agreement and only after providing written notice to CITY of default setting forth the nature of the default and the actions, if any, required by CITY to cure such default and, where the default can be cured, CITY has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

9. THIRD PARTY LITIGATION.

9.1 General Plan Litigation. CITY has determined that this Agreement is consistent with its Comprehensive General Plan, as such General Plan exists as of the Effective Date ("General Plan"), and that the General Plan meets all requirements of law. OWNER has reviewed the General Plan and concurs with CITY's determination. CITY shall have no liability in damages under this Agreement for any failure of CITY to perform under this Agreement or the inability of OWNER to develop the Property as contemplated by the Development Plan of this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

9.2 Third Party Litigation Concerning Agreement. OWNER shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless CITY, its agents, officers and employees from any claim, action or proceeding against CITY, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. CITY shall promptly notify OWNER of any such claim, action or proceeding, and CITY shall cooperate in the defense. If CITY fails to promptly notify OWNER of any such claim, action or proceeding, or if CITY fails to cooperate in the defense, OWNER shall not thereafter be responsible to defend, indemnify, or hold harmless CITY. CITY may in its discretion participate in the defense of any such claim, action or proceeding.

9.3 Indemnity. In addition to the provisions of 9.2 above, OWNER shall indemnify and hold CITY, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of OWNER, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (OWNER's employees included) or any other element of damage of any kind or nature, relating to or in any way connected with or arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, failure and conveyance of the public improvements, save and except claims for damages arising through the sole active negligence or sole willful misconduct of CITY. OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions. CITY may in its discretion participate in the defense of any such legal action.

9.4 Environment Assurances. OWNER shall indemnify and hold CITY, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any act or omission of OWNER, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions, and OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. CITY may in its discretion participate in the defense of any such action.

9.5 Reservation of Rights. With respect to Sections 9.2, 9.3 and 9.4 herein, CITY reserves the right to either (1) approve the attorney(s) which OWNER selects, hires or otherwise engages to defend CITY hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense, provided, however, that OWNER shall reimburse CITY forthwith for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefor.

9.6 Survival. The provisions of this Sections 9.1 through 9.6, inclusive, shall survive the termination of this Agreement.

10. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit OWNER, in any manner, at OWNER's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. CITY acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with OWNER and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. CITY will not unreasonably withhold its consent to any

such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee, has submitted a request in writing to the CITY in the manner specified herein for giving notices, shall be entitled to receive written notification from CITY of any default by OWNER in the performance of OWNER's obligations under this Agreement.

(c) If CITY timely receives a request from a Mortgagee requesting a copy of any notice of default given to OWNER under the terms of this Agreement, CITY shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to OWNER. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of OWNER's obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by OWNER is a condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement.

11. MISCELLANEOUS PROVISIONS.

11.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the San Bernardino County Recorder by the City Clerk within the ten (10) days after the CITY executes this Agreement, as required by Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if the CITY terminates or modifies the agreement as provided for herein and in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the San Bernardino County Recorder.

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

11.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provision of the Public Benefits set forth in Section 4 of this Agreement, including the payment of the fees set forth therein, are essential elements of this Agreement and CITY would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

11.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

11.6 Singular and Plural. As used herein, the singular of any word includes the plural.

11.7 Joint and Several Obligations. Subject to section 2.4, if at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one owner, all obligations of such owners under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners. Notwithstanding the foregoing, no owner of a single lot which has been finally subdivided and sold to such owner as a member of the general public or otherwise as an ultimate user shall have any obligation under this Agreement except as provided under Section 4 hereof.

11.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

11.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

11.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

11.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control, (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

11.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

11.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

11.14 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

11.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Bernardino, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the development of private property and the owner of such property.

11.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The City Manager may delegate his powers and duties under this Agreement to an Assistant City Manager or other management level employee of the CITY.

11.18 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by CITY of its power of eminent domain.

11.19 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, OWNER shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this County and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. OWNER for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

11.20 Estoppel Certificate. Within thirty (30) business days following a written request by any of the parties, the other party shall execute and deliver to the requesting party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the

Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party. OWNER shall pay to CITY all costs incurred by CITY in connection with the issuance of estoppel certificates under this Section 11.20 prior to CITY's issuance of such certificates.

11.21 Authority to Execute. The person or persons executing this Agreement on behalf of OWNER warrants and represents that he or she/they have the authority to execute this Agreement on behalf of his or her/their corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind OWNER to the performance of its obligations hereunder.

11.22 Prevailing Wage. OWNER, for itself, its successors, and assigns, agrees, covenants, and warrants that the development of the Property, if any, shall comply with all applicable federal and state labor laws (including, without limitation, the requirement under California law to pay prevailing wages and hire apprentices), and all obligations as set forth herein.

11.22.1 CITY makes no representations concerning prevailing wages in compliance with California Labor Code Section 1770 et seq.

11.22.2 OWNER acknowledges and agrees that it shall be independently responsible for reviewing the applicable laws and regulations with respect to the payment of prevailing wages and complying therewith. OWNER shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law.

11.22.3 The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction and development of the Property by OWNER, its successors or assigns. OWNER shall be solely responsible for determining and effectuating compliance with such laws.

11.22.4 OWNER, ON BEHALF OF ITSELF, ITS SUCCESSORS, AND ASSIGNS, WAIVES AND RELEASES CITY FROM ANY RIGHT OF ACTION THAT MAY BE AVAILABLE TO OWNER PURSUANT TO LABOR CODE SECTION 1781 OR THE DAVIS BACON ACT. RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 11.22, OWNER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542, WHICH READS AS FOLLOWS: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES

NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

INITIALS. BY INITIALING BELOW, OWNER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES:

_____

(Owner's Initials)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT PDA21-010

"OWNER"

SL Ontario Development Company, LLC a Delaware limited liability company

By: _____
Name: Bryan Goodman
Its: Authorized Lewis Agent

By: _____
Name: Jeff Evans
Its: Authorized Stratham Agent

"CITY"

CITY OF ONTARIO

By:_____
Scott Ochoa
City Manager

Date: _____

ATTEST:

_____
City Clerk, Ontario

APPROVED AS TO FORM:
BEST BEST KRIEGER, LLP

_____
City Attorney

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
COUNTY OF_____)

On _____, 20_____, before me,_____,
Date *Insert Name and Title of the Officer*

personally appeared _____
Name(s) of Signer(s)
_____, who proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____
Signature of Notary Public

Place Notary Seal Above

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
COUNTY OF_____)

On _____, 20_____, before me_____,
Date *Insert Name and Title of the Officer*

personally appeared _____
Name(s) of Signer(s)
_____,
who proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____
Signature of Notary Public

Place Notary Seal Above

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

Legal Description of Property

Parcel 1:
The North 20 acres of the West 80 acres of the following described property: Lots 1, 2, 5, 6 and 7, Section 24, Township 2 South, Range 7 West, San Bernardino Meridian, and the fractional Northwest 1/4 of Section 24, Township 2 South, Range 7 West, San Bernardino Meridian, in the City of Ontario, County of San Bernardino, State of California, as shown by Sectionized Survey of the Jurupa Rancho, recorded in Book 9 of Maps, Page 33, Records of said County; said fractional Northwest 1/4 being all that portion of the Northwest 1/4 of said Section 24, lying in the Jurupa Rancho and in Riverside County, according to the Official Plat thereof. Excepting therefrom that portion conveyed to the City of Ontario by deeds recorded July 8, 2008 as Instrument No. 2008-0307387and 2008-0307388 of Official Records.

Parcel 2:
The North 1/2 of the South 20 acres of the North 40 acres of the West 80 acres of the following described property: Lots 1, 2, 5, 6 and 7, Section 24, Township 2 South, Range 7 West, San Bernardino Meridian, and the fractional Northwest 1/4 of Section 24, Township 2 South, Range 7 West, San Bernardino Meridian, in the City of Ontario, County of San Bernardino, State of California, as shown by Sectionized Survey of the Jurupa Rancho, recorded in Book 9 of Maps, Page 33, Records of said County; said fractional Northwest 1/4 being all that portion of the Northwest 1/4 of said Section 24, lying in the Jurupa Rancho and in Riverside County, according to the Official Plat thereof. Excepting therefrom that portion conveyed to the City of Ontario by Deeds recorded July 8, 2008 as Instrument No. 2008-0307387 and 2008-0307388 and be Deed recorded May 25, 2017, as Instrument No. 2017-216939, all of Official Records.
Parcel 3: The South 30 acres of the North 60 acres of the West 80 acres of the land comprised of Lots 1, 2, 5, 6 and 7, Section 24, Township 2 South, Range 7 West, San Bernardino Meridian, in the City of Ontario, County of San Bernardino, State of California, and the fractional Northwest 1/4 of Section 24, Township 2 South, Range 7 West, San Bernardino Meridian, as shown by Sectionized Survey of the Jurupa Rancho, recorded in Book 9, Page 33 of Maps, in the office of the County Recorder of said County, said fractional Northwest 1/4 being all that portion of the Northwest 1/4 of said Section 24, lying in the Jurupa Rancho, and in Riverside County, according to the Official Plat thereof. Except therefrom that portion conveyed to the City of Ontario by Deed recorded May 25, 2017 as Instrument No. 2017-216939 of Official Records.

Parcel 3:
The west 80 acres of the following described property: Lots 1, 2, 5, 6 and 7, Section 24, Township 2 South, Range 7 West, San Bernardino Meridian, in the County of San Bernardino, State of California, according to the Official Plat of said land filed in the District Land Office July 9, 1887 and the fractional northwest quarter, Section 24, Township 2 South, Range 7 West, San Bernardino Meridian, as shown by Sectionized Survey of the Jurupa Rancho, recorded in Book 9 of Maps, page 33 in the office of the County Recorder of San Bernardino, State of California, said fractional northwest quarter being all that portion of the northwest quarter of said Section 24, lying in the Jurupa Rancho and in Riverside County, EXCEPTING from said 80 acres the North 60 acres thereof. ALSO EXCEPTING any portion lying with the boundaries of Tract 30633 as filed in book 350, page(s) 51 through 61, inclusive, of maps records of Riverside County, State of California.

Assessor's Parcel Numbers(s):
1: 1073-171-04
2: 1073-171-08
3: 1073-171-09
4: 0218-331-14

EXHIBIT "B"
TO DEVELOPMENT AGREEMENT

Map showing Property and its location

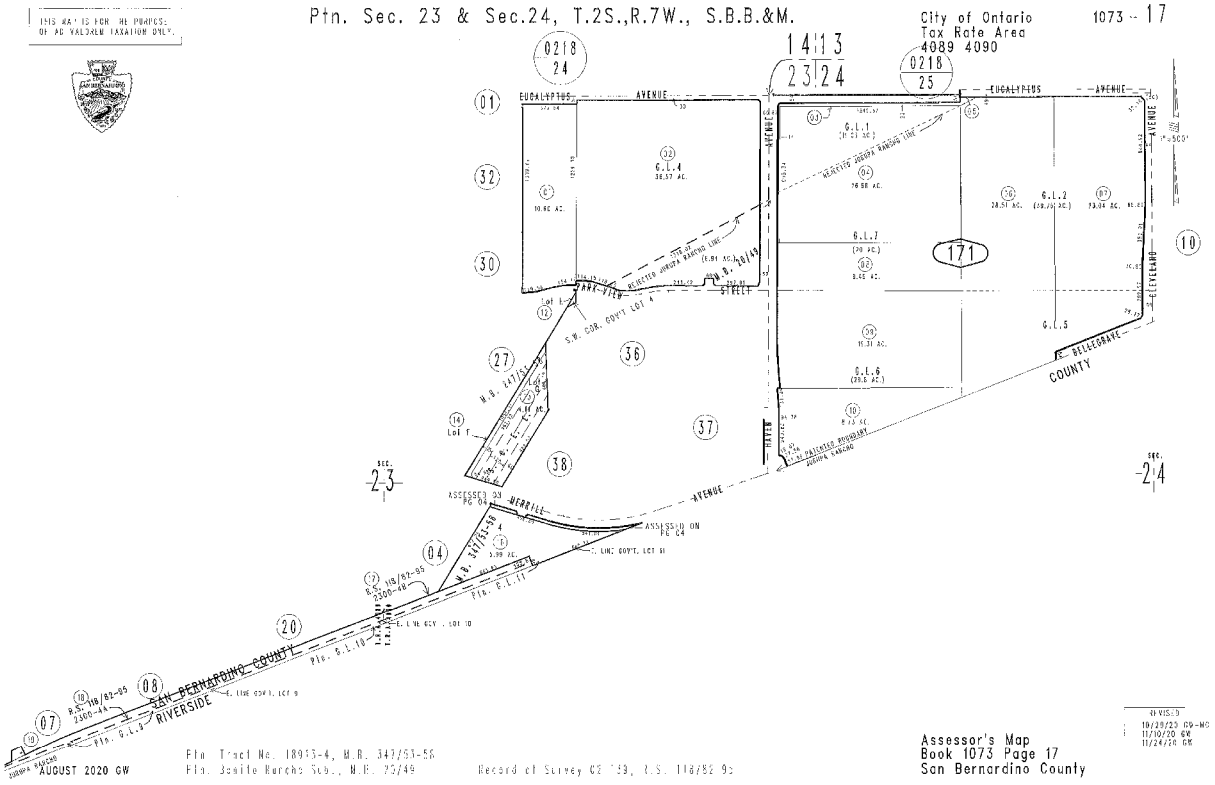


EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Existing Development Approvals

On September 26, 2006, the Planning Commission:

a) Issued Resolution No. PC06-095 recommending City Council adopt and certify the Subarea 29 (Park place) Environmental Impact Report;
b) Issued Resolution No. PC06-096 recommending City Council approval of the General Plan Amendment (PGPA06-003); and
c) Issued Resolution No. PC06-097 recommending City Council approval of the Subarea 29 (Park Place) Specific Plan (PSP03-003).

On October 19, 2006, the City Council:

a) Issued Resolution No. 2006-089 certifying the Subarea 29 (Park place) Environmental Impact Report; and
b) Issued Resolution No. 2006-090 approving the General Plan Amendment (PGPA06-003).

On November 7, 2006, the City Council:

a) Issued Ordinance No. 2845 approving of the Subarea 29 (Park Place) Specific Plan (PSP03-003).

On March 27, 2007, the Planning Commission:

a) Issued Resolution No. PC07-036 recommending City Council approval of an amendment to the Subarea 29 Specific Plan (PSPA07-007).

On May 1, 2007, the City Council:

a) Issued Resolution No. 2007-053 approving an amendment to the Subarea 29 Specific Plan.

On August 28, 2013, the Zoning Administrator:

a) Issued Decision No. 2013-025 approving a minor amendment to the Subarea 29 Specific Plan (PSPA13-002).

EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Existing Development Approvals (Continued)

On March 24, 2015, the Planning Commission:

a) Issued Resolution No. PC15-035 recommending City Council approval of an amendment to the Subarea 29 Specific Plan (PSPA14-002).

On April 21, 2015, the City Council:

a) Issued Resolution No. 2015-030 approving an amendment to the Subarea 29 Specific Plan.

EXHIBIT "D"
TO DEVELOPMENT AGREEMENT

Existing Land Use Regulations

These documents are listed for reference only:

1. Subarea 29 (Park place) Environmental Impact Report, Resolution No. 2006-089
2. Subarea 29 (Park Place) General Plan Amendment (PGPA06-003), Resolution No. 2006-090
3. Subarea 29 (Park Place) Specific Plan (PSP03-003), Ordinance No. 2845
4. Amendment to the Subarea 29 Specific Plan (PSPA07-003), Resolution No. 2007-053
5. Amendment to the Subarea 29 Specific Plan (PSPA13-002), Decision No. 2013-025
6. Amendment to the Subarea 29 Specific Plan (PSPA14-002), Resolution No. 2015-030
7. City of Ontario Municipal Code
    a. Six – Sanitation & Health
    b. Seven – Public Works
    c. Eight – Building Regulations
    d. Nine – Development Code
    e. Ten – Parks & Recreation

EXHIBIT "E"
TO DEVELOPMENT AGREEMENT

Description of Required Infrastructure Improvements

OWNER shall design, construct, and complete all improvements including but not limited to Sewer (SW), Potable Water (PW), Recycled Water (RW), Storm Drain (SD), Fiber Optic (FO), and Street (ST) improvements necessary to serve the Property, prior to the request of any Production Units.

PHASE 1 IMPROVEMENTS

1. PW on Haven Avenue, between Eucalyptus Avenue and Bellegrave Avenue.
2. RW on Haven Avenue, between Eucalyptus Avenue and Bellegrave Avenue.
3. FO on Haven Avenue, between Eucalyptus Avenue and Bellegrave Avenue.
4. FO on Streets “A”, “B”, “C”, “D”,“E”, “F”, and “G”.
5. ST improvements on Haven Avenue, between Eucalyptus Avenue and Bellegrave Avenue.
6. SD on Haven Avenue and Street “A”.
7. Traffic Signal at Haven Avenue and Street “D”.
8. Traffic Signal at Haven Avenue and Street “A”.
9. Traffic Signal at Haven Avenue and Eucalyptus Avenue.

PHASE 2 IMPROVEMENTS

1. All Phase 1 Improvements are required for Phase 2.
2. SW on Eucalyptus Avenue, between Haven Avenue and Street “G”
3. ST improvements on Eucalyptus Avenue, between Haven Avenue and Street “G”.
4. Traffic Signal at Eucalyptus Avenue and Street “G”.

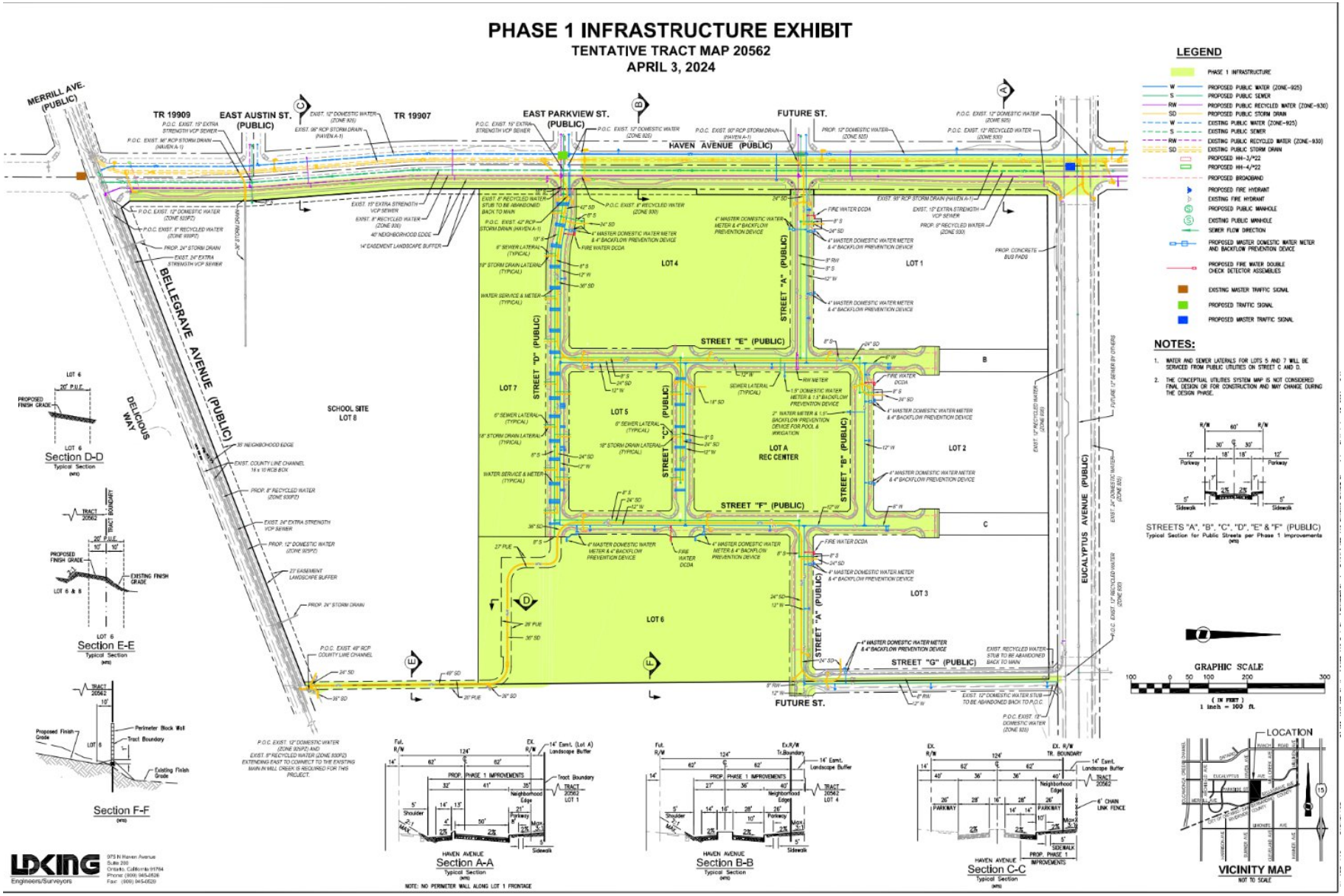
PHASE 3 IMPROVEMENTS

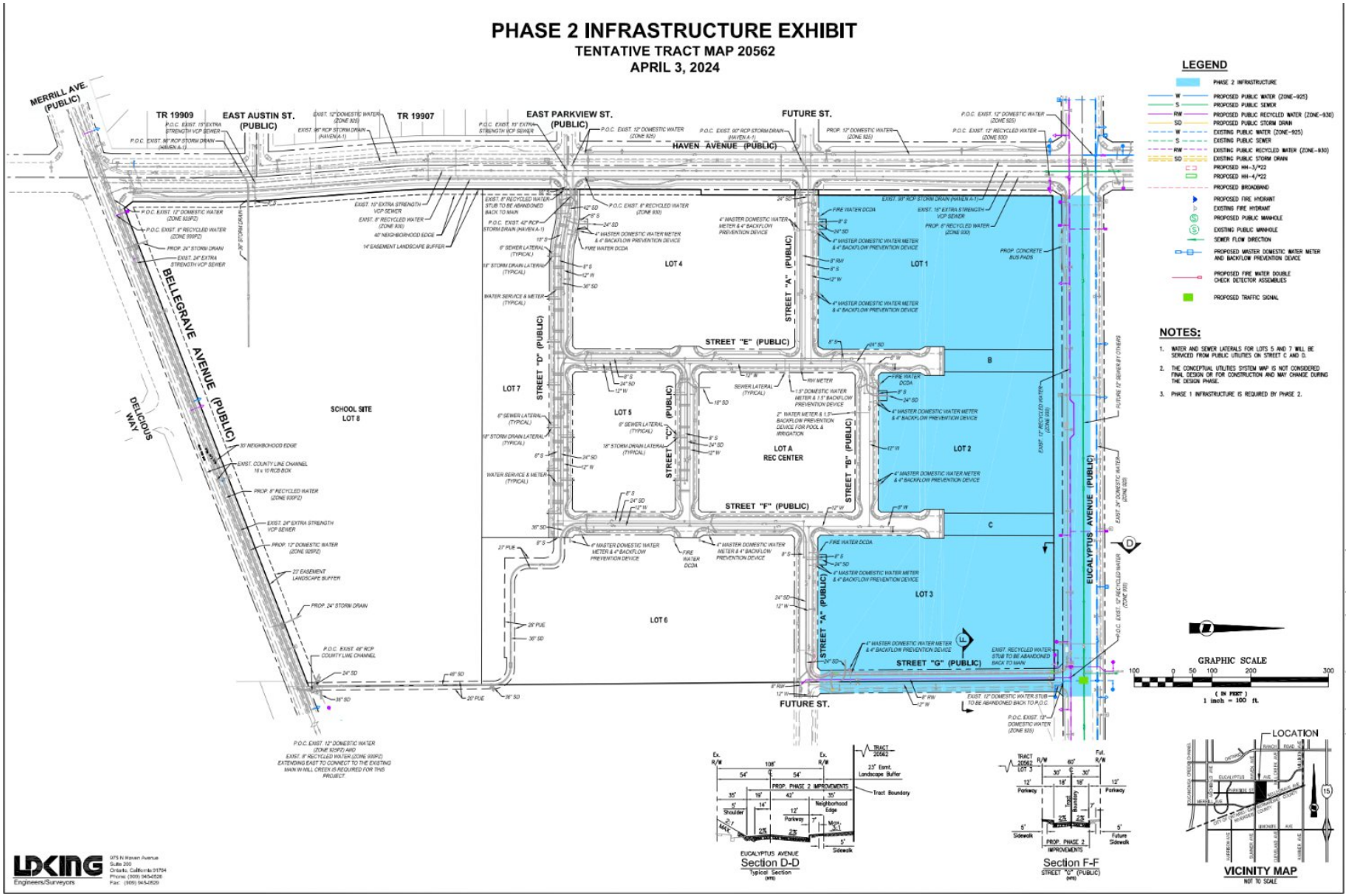
1. PW on Bellegrave Avenue, between Haven Avenue and Mill Creek Avenue.
2. RW on Bellegrave Avenue, between Haven Avenue and Mill Creek Avenue.
3. ST improvements on Bellegrave Avenue, between Haven Avenue and easterly tract boundary.
4. ST improvements on Bellegrave Avenue, between Haven Avenue and easterly tract boundary.
5. Traffic Signal at Bellegrave Avenue and Haven Avenue.
6. Traffic Signal at Bellegrave Avenue and Delicious Way.

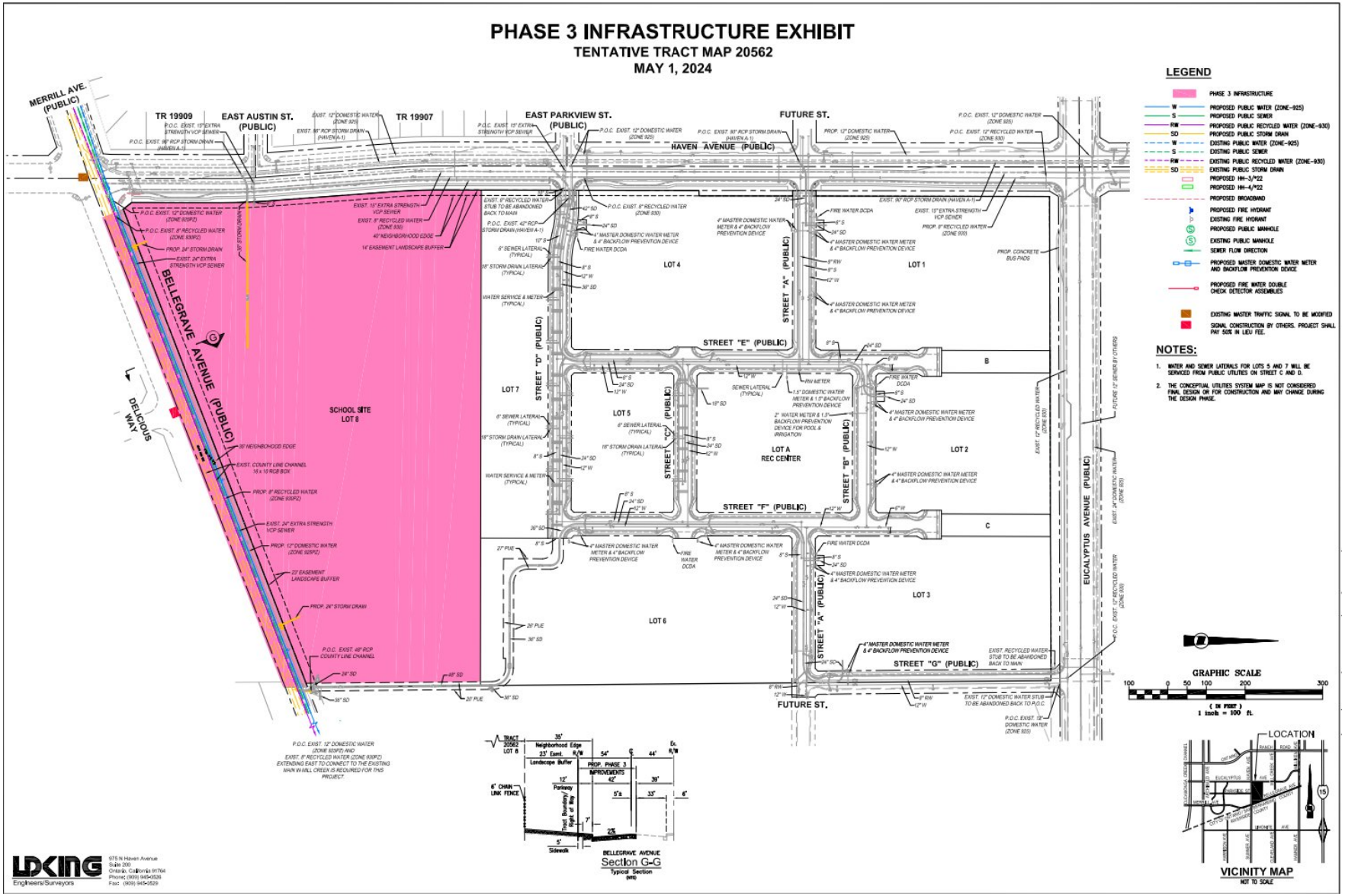
EXHIBIT “F”
TO DEVELOPMENT AGREEMENT

Depiction of required Infrastructure Improvements

(SEE ATTACHED EXHIBITS)


PHASE 1 INFRASTRUCTURE EXHIBIT
TENTATIVE TRACT MAP 20562
APRIL 3, 2024
LEGEND
PHASE 1 INFRASTRUCTURE
PROPOSED PUBLIC WATER (ZONE-925)
PROPOSED PUBLIC SEWER
PROPOSED PUBLIC RECYCLED WATER (ZONE-930)
PROPOSED PUBLIC STORM DRAIN
EXISTING PUBLIC WATER (ZONE-925)
EXISTING PUBLIC SEWER
EXISTING PUBLIC RECYCLED WATER (ZONE-930)
EXISTING PUBLIC STORM DRAIN
PROPOSED HH-3/"22
PROPOSED HH-4/"22
PROPOSED BROADBAND
PROPOSED FIRE HYDRANT
EXISTING FIRE HYDRANT
PROPOSED PUBLIC MANHOLE
EXISTING PUBLIC MANHOLE
SEWER FLOW DIRECTION
PROPOSED MASTER DOMESTIC WATER METER AND BACKFLOW PREVENTION DEVICE
PROPOSED FIRE WATER DOUBLE CHECK DETECTOR ASSEMBLIES
EXISTING MASTER TRAFFIC SIGNAL
PROPOSED TRAFFIC SIGNAL
PROPOSED MASTER TRAFFIC SIGNAL
NOTES:
1. WATER AND SEWER LATERALS FOR LOTS 5 AND 7 WILL BE SERVICED FROM PUBLIC UTILITIES ON STREET C AND D.
2. THE CONCEPTUAL UTILITIES SYSTEM MAP IS NOT CONSIDERED FINAL DESIGN OR FOR CONSTRUCTION AND MAY CHANGE DURING THE DESIGN PHASE.
MERRILL AVE. (PUBLIC)
TR 19909
EAST AUSTIN ST. (PUBLIC)
TR 19907
EAST PARKVIEW ST. (PUBLIC)
FUTURE ST.
HAVEN AVENUE (PUBLIC)
BELLEGRAVE AVENUE (PUBLIC)
DELICIOUS WAY
EUCALYPTUS AVENUE (PUBLIC)
SCHOOL SITE LOT 8
LOT 1
LOT 2
LOT 3
LOT 4
LOT 5
LOT 6
LOT 7
LOT A REC CENTER
STREET "A" (PUBLIC)
STREET "B" (PUBLIC)
STREET "C" (PUBLIC)
STREET "D" (PUBLIC)
STREET "E" (PUBLIC)
STREET "F" (PUBLIC)
STREET "G" (PUBLIC)
Section D-D
Typical Section
Section E-E
Typical Section
Section F-F
Typical Section
Section A-A
Typical Section
Section B-B
Typical Section
Section C-C
Typical Section
STREETS "A", "B", "C", "D", "E" & "F" (PUBLIC)
Typical Section for Public Streets per Phase 1 Improvements
GRAPHIC SCALE
1 inch = 100 ft.
VICINITY MAP
NOT TO SCALE
LOCATION
LDKING
Engineers/Surveyors


PHASE 2 INFRASTRUCTURE EXHIBIT
TENTATIVE TRACT MAP 20562
APRIL 3, 2024
LEGEND
PHASE 2 INFRASTRUCTURE
PROPOSED PUBLIC WATER (ZONE-925)
PROPOSED PUBLIC SEWER
PROPOSED PUBLIC RECYCLED WATER (ZONE-930)
PROPOSED PUBLIC STORM DRAIN
EXISTING PUBLIC WATER (ZONE-925)
EXISTING PUBLIC SEWER
EXISTING PUBLIC RECYCLED WATER (ZONE-930)
EXISTING PUBLIC STORM DRAIN
PROPOSED HH-3/*22
PROPOSED HH-4/*22
PROPOSED BROADBAND
PROPOSED FIRE HYDRANT
EXISTING FIRE HYDRANT
PROPOSED PUBLIC MANHOLE
EXISTING PUBLIC MANHOLE
SEWER FLOW DIRECTION
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PROPOSED FIRE WATER DOUBLE CHECK DETECTOR ASSEMBLIES
PROPOSED TRAFFIC SIGNAL
NOTES:
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3. PHASE 1 INFRASTRUCTURE IS REQUIRED BY PHASE 2.
MERRILL AVE. (PUBLIC)
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LOT 4
LOT 7
LOT 5
LOT A REC CENTER
LOT 6
LOT 1
LOT 2
LOT 3
STREET "A" (PUBLIC)
STREET "B" (PUBLIC)
STREET "C" (PUBLIC)
STREET "D" (PUBLIC)
STREET "E" (PUBLIC)
STREET "F" (PUBLIC)
STREET "G" (PUBLIC)
EUCALYPTUS AVENUE (PUBLIC)
FUTURE ST.
GRAPHIC SCALE
1 inch = 100 ft.
Section D-D
Typical Section
Section F-F
STREET "G" (PUBLIC)
LOCATION
VICINITY MAP
NOT TO SCALE
LDKING
Engineers/Surveyors


PHASE 3 INFRASTRUCTURE EXHIBIT
TENTATIVE TRACT MAP 20562
MAY 1, 2024
LEGEND
PHASE 3 INFRASTRUCTURE
PROPOSED PUBLIC WATER (ZONE-925)
PROPOSED PUBLIC SEWER
PROPOSED PUBLIC RECYCLED WATER (ZONE-930)
PROPOSED PUBLIC STORM DRAIN
EXISTING PUBLIC WATER (ZONE-925)
EXISTING PUBLIC SEWER
EXISTING PUBLIC RECYCLED WATER (ZONE-930)
EXISTING PUBLIC STORM DRAIN
PROPOSED HH-3/*22
PROPOSED HH-4/*22
PROPOSED BROADBAND
PROPOSED FIRE HYDRANT
EXISTING FIRE HYDRANT
PROPOSED PUBLIC MANHOLE
EXISTING PUBLIC MANHOLE
SEWER FLOW DIRECTION
PROPOSED MASTER DOMESTIC WATER METER AND BACKFLOW PREVENTION DEVICE
PROPOSED FIRE WATER DOUBLE CHECK DETECTOR ASSEMBLIES
EXISTING MASTER TRAFFIC SIGNAL TO BE MODIFIED
SIGNAL CONSTRUCTION BY OTHERS. PROJECT SHALL PAY 50% IN LIEU FEE.
NOTES:
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FUTURE ST.
HAVEN AVENUE (PUBLIC)
BELLEGRAVE AVENUE (PUBLIC)
DELICIOUS WAY
SCHOOL SITE LOT 8
LOT 4
LOT 1
LOT 7
LOT 5
LOT A REC CENTER
LOT 2
LOT 6
LOT 3
STREET "A" (PUBLIC)
STREET "B" (PUBLIC)
STREET "C" (PUBLIC)
STREET "D" (PUBLIC)
STREET "E" (PUBLIC)
STREET "F" (PUBLIC)
STREET "G" (PUBLIC)
EUCALYPTUS AVENUE (PUBLIC)
A
B
C
GRAPHIC SCALE
100 0 50 100 200 300
(IN FEET)
1 inch = 100 ft.
LOCATION
VICINITY MAP
NOT TO SCALE
Section G-G
Typical Section
BELLEGRAVE AVENUE
LDKING
Engineers/Surveyors
975 N Haven Avenue
Suite 200
Ontario, California 91764
Phone: (909) 945-0529
Fax: (909) 945-0529

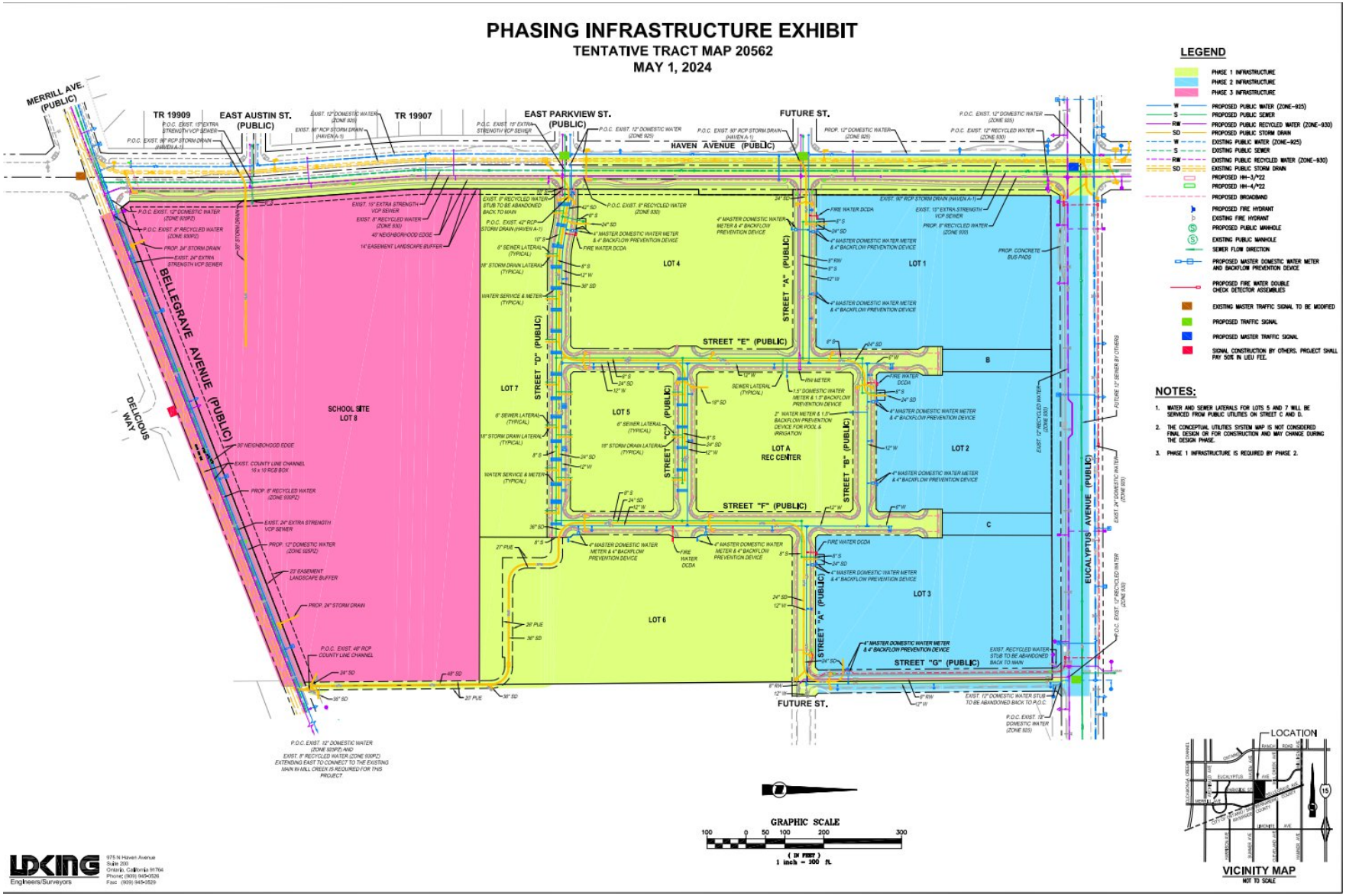

PHASING INFRASTRUCTURE EXHIBIT
TENTATIVE TRACT MAP 20562
MAY 1, 2024
LEGEND
PHASE 1 INFRASTRUCTURE
PHASE 2 INFRASTRUCTURE
PHASE 3 INFRASTRUCTURE
PROPOSED PUBLIC WATER (ZONE-925)
PROPOSED PUBLIC SEWER
PROPOSED PUBLIC RECYCLED WATER (ZONE-930)
PROPOSED PUBLIC STORM DRAIN
EXISTING PUBLIC WATER (ZONE-925)
EXISTING PUBLIC SEWER
EXISTING PUBLIC RECYCLED WATER (ZONE-930)
EXISTING PUBLIC STORM DRAIN
PROPOSED HH-3/P22
PROPOSED HH-4/P22
PROPOSED BROADBAND
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EXISTING FIRE HYDRANT
PROPOSED PUBLIC MANHOLE
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LOT 6
LOT 7
LOT A REC CENTER
B
C
STREET "A" (PUBLIC)
STREET "B" (PUBLIC)
STREET "D" (PUBLIC)
STREET "E" (PUBLIC)
STREET "F" (PUBLIC)
STREET "G" (PUBLIC)
FUTURE ST.
GRAPHIC SCALE
100 0 50 100 200 300
(IN FEET)
1 inch = 100 ft.
LOCATION
VICINITY MAP
NOT TO SCALE
LDKING
Engineers/Surveyors
975 N Haven Avenue
Suite 200
Ontario, California 91764
Phone: (909) 945-0526
Fax: (909) 945-0529

EXHIBIT "G"
TO DEVELOPMENT AGREEMENT

Form of Plume Disclosure Letter

CITY OF ONTARIO

ONTARIO MUNICIPAL UTILITIES COMPANY

PAUL S. LEON
MAYOR

DEBRA DORST-PORADA
MAYOR PRO TEM

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

AL C. BOLING
CITY MANAGER

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT BURTON
UTILITIES GENERAL MANAGER

March 2017

DISCLOSURE NOTICE
SOUTH ARCHIBALD TRICHLOROETHYLENE PLUME

Dear Property Owner/Developer/Applicant:

The City of Ontario ("City") has approved or will be approving development in the Ontario Ranch area in the next few years, subject to the appropriate and required statutory process. This letter is intended to serve as notice to all potential property owners of the existence of a groundwater plume, known as the South Archibald Trichloroethylene (TCE) Plume which may exist in, under or near owner's property.

The groundwater plume is in an area in the central Chino Basin south of the Pomona Freeway, west of Turner Avenue, east of Grove Avenue, and north of Kimball Avenue. The plume primarily consists of TCE, a discontinued industrial solvent, and is subject to a clean-up under the oversight and direction of the Santa Ana Regional Water Quality Control Board ("Regional Board").

The Regional Board's approved clean-up procedure involves the removal and treatment of groundwater containing TCE via groundwater wells to reduce the plume concentrations and control its migration. In addition, the City is providing potable water supplies for domestic purposes to residences with private domestic wells affected by the plume. Finally, the Regional Board will continue to monitor all impacted areas and private domestic wells to ensure that residents' health and the environment are properly safeguarded. These remedial actions are documented in a Remedial Action Plan approved by the Regional Board in September 2016.

Further and current information may be found on the Regional Board's Geotracker website at https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000004658.

Property owners may wish to include this letter as a part of a Real Estate Transfer Disclosure under California Civil Code Section 1102 et seq.

1425 SOUTH BON VIEW - ONTARIO, CALIFORNIA 91761-4406 - (909) 395-2605 - FAX (909) 395-2601

CITY OF ONTARIO *Agenda Report* **June 18, 2024**	**SECTION:** **ADMINISTRATIVE REPORTS/DISCUSSION/ACTION**
Department: Financial Services Prepared By: Jennifer Schaefer Staff Member Presenting: Armen Harkalyan, Executive Director of Finance Reviewed By: Claudia Hernandez, Doreen Nunes Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 21

SUBJECT: **A RESOLUTION AUTHORIZING THE ISSUANCE OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 66 (OLIVE AND OLEANDER FACILITIES) SPECIAL TAX BONDS, SERIES 2024 AND RELATED MATTERS**

RECOMMENDATION: That the City Council take the following actions:

A. Consider and adopt a Resolution authorizing the issuance of City of Ontario Community Facilities District No. 66 (Olive and Oleander Facilities) Special Tax Bonds, Series 2024, in an aggregate principal amount not-to-exceed $12 million, authorizing the execution and delivery of an Indenture, a Bond Purchase Agreement, a Continuing Disclosure Agreement, and an Amended and Restated Acquisition and Funding Agreement, authorizing the distribution of an Official Statement, authorizing the execution of necessary documents and certificates and related actions;
B. Consider and adopt a Resolution of the City of Ontario making a declaration of official intent to reimburse facilities expenditures with bond proceeds and related actions;
C. Authorize the issuance of special tax bonds for public improvements required to facilitate the development of the Olive and Oleander Facilities project and the Ontario Ranch development;
D. Approve the forms of the Indenture, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Amended and Restated Acquisition and Funding Agreement, and the Preliminary Official Statement;
E. Authorize a negotiated sale of the special tax bonds to Samuel A. Ramirez & Co., in accordance with the terms of the Bond Purchase Agreement; and
F. Authorize the execution of the Indenture, the Bond Purchase Agreement, the Continuing Disclosure Agreement, a deemed final certification in connection with the Preliminary Official Statement, a final Official Statement and other documents in connection with the issuance of the bonds by the City Manager or the other specified authorized officers.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public

Facilities)

Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch

FISCAL IMPACT: The use of Mello-Roos financing for public facilities in the residential development of the Olive and Oleander Facilities project in the Ontario Ranch development, is estimated to generate approximately $12 million in bond proceeds based on current market interest rates. These funds will be used to help fund a portion of the public infrastructure improvements that will serve the project area. The Resolution authorizing the issuance of City of Ontario Community Facilities District No. 66 (Olive and Oleander Facilities) Special Tax Bonds, Series 2024, and related matters, limits the principal amount of the bonds to $12 million. The City currently expects the bonds to be sold no later than December 2024; however, such schedule could change based on market volatility and market conditions. Since Mello-Roos bonds are not a direct obligation of the City and are paid from special taxes levied on each taxable parcels in the applicable community facilities district, there is no direct impact to the General Fund from the issuance of Mello-Roos bonds. Annual approval by the City Council will be required to process the special tax levies necessary to fund the ongoing debt service obligations of the Ontario Community Facilities District No. 66 (Olive and Oleander Facilities).

BACKGROUND & ANALYSIS: The Mello-Roos Community Facilities Act of 1982 provides local government, with the requisite consent and approval from the property owners, the authority to establish community facilities districts for levying special taxes to fund governmental services and finance various kinds of public infrastructure facilities. Under the Mello-Roos Act, the initial steps in the formation of a community facilities district to finance public improvements are adopting a Resolution declaring the City's intention to establish a community facilities district and levy special taxes, a Resolution to issue bonds, and a Resolution of the City of Ontario making a declaration of official intent to reimburse facilities expenditures with bond proceeds and related matters. On May 17, 2022, the City Council, in accordance with the Mello-Roos Act, took the initial steps in the formation of the District with the adoption of Resolution No. 2022-042, declaring the City's intention to establish the District and to authorize the levy of special taxes, and Resolution No. 2022-043 deeming it necessary for the District to incur bonded indebtedness. On June 21, 2022, the City Council adopted Resolution No. 2022-061 forming the District. Based on a successful property owner election held on June 21, 2022, the City Council adopted Ordinance No. 3215 on July 5, 2022, authorizing the levy of special taxes within the District to finance public improvements related to the Olive and Oleander Facilities project.

The public improvements to be financed by the District are as follows:

- Storm Drain System Facilities;
- Fiber Optic System Facilities;
- Sewer System Facilities;
- Water and Recycled Water System Facilities; and
- Streets and Traffic Circulation System Facilities.

The Olive and Oleander Facilities project addresses the residential development of approximately 21.09 gross acres located south of Ontario Ranch Road, west of Hamner Avenue, east of Mill Creek

Avenue, and north of Edison Avenue. At build out, the project is projected to include 224 units, comprised of 137 attached residential units and 87 detached residential units.

The proposed Resolutions references several bond documents and other matters related to the proposed issuance of bonds by City of Ontario Community Facilities District No. 66 (Olive and Oleander). The documents are listed below and are on file with the Records Management Department:

- Indenture;
- Bond Purchase Agreement;
- Continuing Disclosure Agreement;
- Amended and Restated Acquisition and Funding Agreement; and
- Preliminary Official Statement.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE ISSUANCE OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 66 (OLIVE AND OLEANDER FACILITIES) SPECIAL TAX BONDS, SERIES 2024, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED $12,000,000, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND AN AMENDED AND RESTATED ACQUISITION AND FUNDING AGREEMENT, AUTHORIZING THE DISTRIBUTION OF AN OFFICIAL STATEMENT IN CONNECTION THEREWITH AND AUTHORIZING THE EXECUTION OF NECESSARY DOCUMENTS AND CERTIFICATES AND RELATED ACTIONS

WHEREAS, the City Council (the "City Council") of the City of Ontario (the "City") has formed City of Ontario Community Facilities District No. 66 (Olive and Oleander Facilities) (the "Community Facilities District") under the provisions of the Mello-Roos Community Facilities Act of 1982 (the "Act");

WHEREAS, the Community Facilities District is authorized under the Act to levy a special tax (the "Special Tax") to pay for the costs of certain public facilities (the "Facilities") and to issue bonds payable from the Special Tax;

WHEREAS, in order to provide funds to finance certain of the Facilities, the Community Facilities District proposes to issue its City of Ontario Community Facilities District No. 66 (Olive and Oleander Facilities) Special Tax Bonds, Series 2024 (the "Series 2024 Bonds"), in the aggregate principal amount of not to exceed $12,000,000;

WHEREAS, in order to provide for the authentication and delivery of the Series 2024 Bonds, to establish and declare the terms and conditions upon which the Series 2024 Bonds are to be issued and secured and to secure the payment of the principal thereof, premium, if any, and interest thereon, the Community Facilities District proposes to enter into an Indenture with Zions Bancorporation, National Association, as trustee (the "Trustee") (such Indenture, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Indenture");

WHEREAS, Samuel A. Ramirez & Co., Inc. (the "Underwriter"), has presented the Community Facilities District with a proposal, in the form of a Bond Purchase Agreement, to purchase the Series 2024 Bonds from the Community Facilities District (such Bond Purchase Agreement, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Purchase Agreement");

WHEREAS, Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 ("Rule 15c2-12") requires that, in order to be able to purchase or sell the Series 2024 Bonds, the underwriter thereof must have reasonably determined that the Community Facilities District, as the issuer of the Series 2024 Bonds, has undertaken in a written agreement or contract for the benefit of the holders of the Series 2024 Bonds to provide disclosure of certain financial information and certain listed events on an ongoing basis;

WHEREAS, in order to cause such requirement to be satisfied, the Community Facilities District desires to enter into a Continuing Disclosure Agreement with the Trustee (such Continuing Disclosure Agreement, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Continuing Disclosure Agreement");

WHEREAS, a form of the Preliminary Official Statement to be distributed in connection with the public offering of the Series 2024 Bonds has been prepared (such Preliminary Official Statement, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Preliminary Official Statement");

WHEREAS, the City and Shea Homes Limited Partnership (the "Developer") previously entered into the Acquisition and Funding Agreement, dated as of June 1, 2022 (the "Original Acquisition Agreement"), pursuant to which, in accordance with the terms set forth therein, the Developer is to construct or cause to be constructed certain of the Facilities that, upon satisfaction of the conditions specified therein, the City is to acquire and take title to, and the Developer is to be paid the purchase price of, determined as set forth therein, which purchase price is to be paid from the proceeds of the special tax or bonds of the Community Facilities District;

WHEREAS, the Original Acquisition Agreement provides that the Original Acquisition Agreement may be amended by an instrument in writing executed and delivered by the City and the Developer;

WHEREAS, the City and the Developer desire to amend certain provisions of, and restate, the Original Acquisition Agreement;

WHEREAS, there has been presented to this meeting a form of an Amended and Restated Acquisition and Funding Agreement that so amends and restates the Original Acquisition Agreement (such Amended and Restated Acquisition and Funding Agreement, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Amended and Restated Acquisition Agreement");

WHEREAS, there have been prepared and submitted to this meeting forms of:

(a) the Indenture;

(b) the Purchase Agreement;

(c) the Continuing Disclosure Agreement;

(d) the Preliminary Official Statement; and

(e) the Amended and Restated Acquisition Agreement;

WHEREAS, Kitty Siino & Associates, Inc. has prepared and provided to the Community Facilities District an appraisal report, dated May 13, 2024 (the "Appraisal"), providing an opinion of value of the property in the Community Facilities District, which has been submitted to this meeting;

WHEREAS, Section 5852.1 of the California Government Code requires that the City Council obtain from an underwriter, financial advisor or private lender and disclose, in a meeting open to the public, prior to authorization of the issuance of the Series 2024 Bonds, good faith estimates of (a) the true interest cost of the Series 2024 Bonds, (b) the sum of all fees and charges paid to third parties with respect to the Series 2024 Bonds, (c) the amount of proceeds of the Series 2024 Bonds expected to be received net of the fees and charges paid to third parties and any reserves or capitalized interest paid or funded with proceeds of the Series 2024 Bonds, and (d) the sum total of all debt service payments on the Series 2024 Bonds calculated to the final maturity of the Series 2024 Bonds plus the fees and charges paid to third parties not paid with the proceeds of the Series 2024 Bonds;

WHEREAS, in compliance with Section 5852.1 of the California Government Code, the City Council has obtained from Urban Futures, Inc., as the Community Facilities District's municipal advisor (the "Municipal Advisor"), the required good faith estimates, which the Municipal Advisor has prepared in consultation with the Underwriter, and such estimates are disclosed and set forth in Exhibit A attached hereto;

WHEREAS, the Community Facilities District desires to proceed to issue and sell the Series 2024 Bonds and to authorize the execution of such documents and the performance of such acts as may be necessary or desirable to effect the offering, sale and issuance of the Series 2024 Bonds; and

WHEREAS, the City Council is the legislative body of the Community Facilities District;

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

Section 1. The foregoing recitals are true and correct, and the City Council so finds and determines.

Section 2. Subject to the provisions of Section 3 hereof, the issuance of the Series 2024 Bonds, in an aggregate principal amount of not to exceed $12,000,000, on the terms and conditions set forth in, and subject to the limitations specified in, the Indenture, be and the same is hereby authorized and approved. The Series 2024 Bonds shall be dated, shall bear interest at the rates, shall mature on the dates, shall be subject to call and redemption, shall be issued in the form and shall be as otherwise provided in the Indenture, as the same shall be completed as provided in this Resolution.

Section 3. The Indenture, in substantially the form submitted to this meeting and made a part hereof as though set forth herein, be and the same is hereby approved. Each of the Mayor of the City, and such other member of the City Council as the Mayor may designate, the City Manager of the City, the Assistant City Manager of the City, the Executive Director of Finance of the City, the Deputy City Treasurer of the City, and such other officer or employee of the City as the City Manager may designate (the "Authorized Officers") is hereby authorized, and any one of the Authorized Officers is hereby directed, for and in the name of the Community Facilities District, to execute and deliver the Indenture in the form submitted to this meeting, with such changes, insertions and omissions as the Authorized Officer executing the same may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Indenture by such Authorized Officer; provided, however, that such changes, insertions and omissions shall not authorize an aggregate principal amount of Series 2024 Bonds in excess of $12,000,000, shall not result in a final maturity date of the Series 2024 Bonds later than September 1, 2055, and shall not result in a true interest cost for the Series 2024 Bonds in excess of 6.00%.

Section 4. The Purchase Agreement, in substantially the form submitted to this meeting and made a part hereof as though set forth in full herein, be and the same is hereby approved. Each of the Authorized Officers is hereby authorized, and any one of the Authorized Officers is hereby directed, for and in the name of the Community Facilities District, to execute and deliver the Purchase Agreement in the form presented to this meeting, with such changes, insertions and omissions as the Authorized Officer executing the same may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Purchase Agreement by such Authorized Officer; provided, however, that such changes, insertions and omissions shall not result in an aggregate underwriter's discount (not including any original issue discount) from the principal amount of the Series 2024 Bonds in excess of 1.50% of the aggregate principal amount of the Series 2024 Bonds. The City Council hereby finds and determines that the sale of the Series 2024 Bonds at negotiated sale as contemplated by the Purchase Agreement will result in a lower overall cost.

Section 5. The Continuing Disclosure Agreement, in substantially the form submitted to this meeting and made a part hereof as though set forth in full herein, be and the same is hereby approved. Each of the Authorized Officers is hereby authorized, and any one of the Authorized Officers is hereby directed, for and in the name of the Community Facilities District, to execute and deliver the Continuing Disclosure Agreement in the form presented to this meeting, with such changes, insertions and

omissions as the Authorized Officer executing the same may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Continuing Disclosure Agreement by such Authorized Officer.

Section 6. The Preliminary Official Statement, in substantially the form presented to this meeting and made a part hereof as though set forth in full herein, with such changes, insertions and omissions therein as may be approved by an Authorized Officer, be and the same is hereby approved, and the use of the Preliminary Official Statement in connection with the offering and sale of the Series 2024 Bonds is hereby authorized and approved. Each of the Authorized Officers is hereby authorized, and any one of the Authorized Officers is hereby directed, to certify on behalf of the Community Facilities District that the Preliminary Official Statement is deemed final as of its date, within the meaning of Rule 15c2-12 (except for the omission of certain final pricing, rating and related information as permitted by Rule 15c2-12).

Section 7. The preparation and delivery of a final Official Statement (the "Official Statement"), and its use in connection with the offering and sale of the Series 2024 Bonds, be and the same is hereby authorized and approved. The Official Statement shall be in substantially the form of the Preliminary Official Statement, with such changes, insertions and omissions as may be approved by an Authorized Officer, such approval to be conclusively evidenced by the execution and delivery thereof. Each of the Authorized Officers is hereby authorized, and any one of the Authorized Officers is hereby directed, for and in the name of the Community Facilities District, to execute the final Official Statement and any amendment or supplement thereto.

Section 8. The Amended and Restated Acquisition Agreement, in substantially the form submitted to this meeting and made a part hereof as though set forth in full herein, be and the same is hereby approved. Each of the Authorized Officers is hereby authorized, and any one of the Authorized Officers is hereby directed, for and in the name of the City, to execute and deliver the Amended and Restated Acquisition Agreement in the form presented to this meeting, with such changes, insertions and omissions as the Authorized Officer executing the same may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Amended and Restated Acquisition Agreement by such Authorized Officer.

Section 9. Based upon the value of the property within the Community Facilities District reported in the Appraisal and the value-to-lien information for such property set forth in the Preliminary Official Statement, the City Council, for purposes of Section 53345.8 of the Act, hereby finds and determines that the value of the real property that would be subject to the Special Tax to pay debt service on the Series 2024 Bonds will be at least three times the principal amount of the Series 2024 Bonds to be sold and the principal amount of all other bonds outstanding that are secured by a special tax levied pursuant to the Act on property within the Community Facilities District or a special assessment levied on property within the Community Facilities District.

Section 10. If and to the extent that any feature or aspect of the Series 2024

Bond structure, the rate and method of apportionment of the Special Tax, the method of financing the Facilities, the appraisal, the absorption study or other components of the Series 2024 Bond issue approved and authorized hereby is inconsistent or in conflict with any requirement, standard, measure or procedure set forth in the City's Mello-Roos Community Facilities Act of 1982 Local Goals and Policies, such requirement, standard, measure or procedure is, to the extent necessary to eliminate such inconsistency or conflict, hereby waived, and the City Council hereby finds and determines that benefit inures to the ultimate property owners, the Community Facilities District and/or the City as a result of such waiver.

Section 11. The City Council hereby approves the execution and delivery of all agreements, documents, certificates and instruments referred to herein with electronic signatures as may be permitted under the California Uniform Electronic Transactions Act and digital signatures as may be permitted under Section 16.5 of the California Government Code using DocuSign.

Section 12. All actions heretofore taken by the officers, employees and agents of the City with respect to the issuance and sale of the Series 2024 Bonds, or in connection with or related to any of the agreements, documents, certificates or instruments referred to herein, are hereby approved, confirmed and ratified.

Section 13. The Authorized Officers and the officers, employees and agents of the City are, and each of them is, hereby authorized and directed, for and in the name of the Community Facilities District to take all actions and do any and all things and to execute and deliver any and all agreements, documents, certificates or instruments that they, or any of them, may deem necessary or advisable in order to consummate the transactions contemplated by this Resolution and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution not inconsistent with the provisions hereof.

Section 14. This Resolution shall take effect immediately upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 18th day of June, 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 June 18, 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 June 18, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

GOOD FAITH ESTIMATES

The good faith estimates set forth herein are provided with respect to the Series 2024 Bonds in accordance with Section 5852.1 of the California Government Code. Such good faith estimates have been provided to the Community Facilities District by the Municipal Advisor, which the Municipal Advisor has prepared in consultation with the Underwriter.

Principal Amount. The Municipal Advisor has informed the Community Facilities District that, based on the Community Facilities District's financing plan and current market conditions, its good faith estimate of the aggregate principal amount of the Series 2024 Bonds to be issued and sold is $10,050,000 (the "Estimated Principal Amount"), which does not include approximately $78,458 of net premium estimated to be generated based on current market conditions. Net premium is generated when, on a net aggregate basis for a single issuance of bonds, the price paid for such bonds is higher than the face value of such bonds. Such Estimated Principal Amount and such estimated net premium amount would produce approximately $10,128,458 of gross proceeds.

True Interest Cost of the Series 2024 Bonds. The Municipal Advisor has informed the Community Facilities District that, assuming that the Estimated Principal Amount of the Series 2024 Bonds is issued and sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the true interest cost of the Series 2024 Bonds, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the Series 2024 Bonds, is 5.32%.

Finance Charge of the Series 2024 Bonds. The Municipal Advisor has informed the Community Facilities District that, assuming that the Estimated Principal Amount of the Series 2024 Bonds is issued and sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the finance charge for the Series 2024 Bonds, which means the sum of all fees and charges paid to third parties (or costs associated with the Series 2024 Bonds), is $425,750.

Amount of Proceeds to be Received. The Municipal Advisor has informed the Community Facilities District that, assuming that the Estimated Principal Amount of the Series 2024 Bonds is issued and sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the amount of proceeds expected to be received by the Community Facilities District for sale of the Series 2024 Bonds, less the finance charge of the Series 2024 Bonds, as estimated above, and any reserves or capitalized interest paid or funded with proceeds of the Series 2024 Bonds, is $9,023,789.

Total Payment Amount. The Municipal Advisor has informed the Community Facilities District that, assuming that the Estimated Principal Amount of the Series 2024 Bonds is issued and sold, and based on market interest rates prevailing at the time of

preparation of such estimate, its good faith estimate of the total payment amount, which means the sum total of all payments the Community Facilities District will make to pay debt service on the Series 2024 Bonds, plus the finance charge for the Series 2024 Bonds, as described above, not paid with the proceeds of the Series 2024 Bonds, calculated to the final maturity of the Series 2024 Bonds, is $20,296,146, which excludes any reserves (or interest accrued thereon) or capitalized interest funded or paid with proceeds of the Series 2024 Bonds (which may offset such total payment amount).

The foregoing estimates constitute good faith estimates only and are based on market conditions prevailing at the time of preparation of such estimates. The actual principal amount of the Series 2024 Bonds issued and sold, the true interest cost thereof, the finance charges thereof, the amount of proceeds received therefrom and total payment amount with respect thereto may differ from such good faith estimates due to (a) the actual date of the sale of the Series 2024 Bonds being different than the date assumed for purposes of such estimates, (b) the actual principal amount of Series 2024 Bonds issued and sold being different from the Estimated Principal Amount, (c) the actual amortization of the Series 2024 Bonds being different than the amortization assumed for purposes of such estimates, (d) the actual market interest rates at the time of sale of the Series 2024 Bonds being different than those estimated for purposes of such estimates, (e) other market conditions, or (f) alterations in the Community Facilities District's financing plan, or a combination of such factors. The actual date of sale of the Series 2024 Bonds and the actual principal amount of Series 2024 Bonds issued and sold will be determined by the Community Facilities District based on the timing of the need for proceeds of the Series 2024 Bonds and other factors. The actual interest rates borne by the Series 2024 Bonds will depend on market interest rates at the time of sale thereof. The actual amortization of the Series 2024 Bonds will also depend, in part, on market interest rates at the time of sale thereof. Market interest rates are affected by economic and other factors beyond the control of the Community Facilities District.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, MAKING A DECLARATION OF OFFICIAL INTENT TO REIMBURSE FACILITIES EXPENDITURES WITH BOND PROCEEDS AND RELATED ACTIONS

WHEREAS, the City Council (the "City Council") of the City of Ontario (the "City") has formed City of Ontario Community Facilities District No. 66 (Olive and Oleander Facilities) (the "Community Facilities District") under the provisions of the Mello-Roos Community Facilities Act of 1982 (the "Act");

WHEREAS, the Community Facilities District is authorized under the Act to levy a special tax (the "Special Tax") to pay for the costs of certain public facilities (the "Facilities") and to issue bonds payable from the Special Tax;

WHEREAS, in order to provide funds to finance certain of the Facilities, the Community Facilities District proposes to issue its City of Ontario Community Facilities District No. 66 (Olive and Oleander Facilities) Special Tax Bonds, Series 2024 (the "Series 2024 Bonds");

WHEREAS, beginning the 60-day period prior to the date hereof, the City has paid or incurred, or expects to pay or incur, costs with respect to the Facilities prior to the issuance of the Series 2024 Bonds in order to finance the Facilities;

WHEREAS, the City also may pay or incur certain 'preliminary expenditures' in connection with the Facilities, which term includes architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs that are incurred prior to commencement of acquisition, construction, or rehabilitation of a project, other than land acquisition, site preparation, and similar costs incident to commencement of construction;

WHEREAS, in order to reimburse itself for the payment, or pay unpaid costs, of the Facilities, the City anticipates it will issue Series 2024 Bonds in an amount not expected to exceed $12,000,000 for the purpose of financing costs of the Facilities;

WHEREAS, proceeds of the Series 2024 Bonds will be allocated to reimbursement expenditures no later than 18 months after the later of (i) the date the cost is paid, or (ii) the date the Facilities (or each component thereof) is placed in service or abandoned (but in no event more than three years after the cost is paid);

WHEREAS, Section 1.150-2 of the Treasury Regulations requires the City to declare its reasonable official intent to reimburse prior expenditures for the Facilities with proceeds of indebtedness; and

WHEREAS, the City wishes to declare its official intent to use proceeds of indebtedness (such as the Series 2024 Bonds) to reimburse expenditures of the

Facilities paid before its obligations are issued and to finance the Facilities costs on a long-term basis with the proceeds of such indebtedness.

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

Section 1. The foregoing recitals are true and correct, and the City Council so finds and determines.

Section 2. This Resolution is adopted by the City Council solely for purposes of establishing compliance with the requirements of Section 1.150-2 of the Treasury Regulations. Unless otherwise defined, terms used herein shall have the meaning set forth in the Internal Revenue Code of 1986 and in Section 1.150-2 of the Treasury Regulations. This Resolution does not bind the City to make any expenditure, incur any indebtedness, or proceed with construction of the Facilities.

Section 3. All actions heretofore taken by the officers, employees and agents of the City with respect to the actions set forth above are hereby approved, confirmed and ratified.

Section 4. The officers, employees and agents of the City are, and each of them is, hereby authorized and directed, for and in the name of the Community Facilities District to take all actions and do any and all things that they, or any of them, may deem necessary or advisable in order to consummate the transactions contemplated by this Resolution and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution not inconsistent with the provisions hereof.

Section 5. This Resolution shall take effect immediately upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 18th day of June, 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 June 18, 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 June 18, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)