CITY OF ONTARIO

Regular City Council/Housing Authority Meeting
NOVEMBER 5, 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.

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 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

PLEDGE OF ALLEGIANCE

Council Member Valencia

INVOCATION

Pastor Enoch Zesati, Victory Outreach Ontario Bilingual

PUBLIC COMMENTS 6:30 P.M.

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

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

AGENDA REVIEW/ANNOUNCEMENTS

The City Manager will go over all updated materials and correspondence received after the Agenda was distributed to ensure Council Members have received them. He will also make any

necessary recommendations regarding Agenda modifications or announcements regarding Agenda items to be considered.

INFORMATION RELATIVE TO POSSIBLE CONFLICT OF INTEREST

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

CONSENT CALENDAR

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

1. APPROVAL OF MINUTES

Minutes for the regular meetings of the City Council, Housing Authority and Ontario Public Financing Authority of October 1, 2024 and approving same as on file in the Records Management Department.

ATTACHMENT: 20241001 Meeting Minutes (Not Official Until Approved)

2. BILLS & PAYROLL

Bills September 27, 2024 through October 24, 2024, and Payroll September 7, 2024 through October 5, 2024.

3. A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT AND IMPROVEMENT SECURITY FOR DEVELOPMENT PLAN NO. PDEV23-013 GENERALLY LOCATED AT THE SOUTHWEST CORNER OF MILL CREEK AVENUE AND CHINO AVENUE WITHIN THE RICH-HAVEN SPECIFIC PLAN

That the City Council adopt a Resolution approving an Improvement Agreement and Improvement Security for Project No. PDEV23-013, generally located at the southwest corner of Mill Creek Avenue and Chino Avenue within the Rich-Haven Specific Plan.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT AND IMPROVEMENT SECURITY FOR DEVELOPMENT PLAN NO. PDEV23-013 GENERALLY LOCATED AT THE SOUTHWEST CORNER OF MILL CREEK AVENUE AND CHINO AVENUE WITHIN THE RICH-HAVEN SPECIFIC PLAN.

ATTACHMENT: 20241105 PDEV23-013^01 EX A.pdf
ATTACHMENT: 20241105 PDEV23-013 02^RESO^RM.docx

4. **A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 20529 GENERALLY LOCATED SOUTH OF CHINO AVENUE BETWEEN HAVEN AVENUE AND MILL CREEK AVENUE WITHIN THE RICH-HAVEN SPECIFIC PLAN**

That the City Council adopt a Resolution approving an Improvement Agreement, Improvement Security and Final Tract Map No. 20529, generally located south of Chino Avenue between Haven Avenue and Mill Creek Avenue within the Rich-Haven Specific Plan.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 20529 GENERALLY LOCATED SOUTH OF CHINO AVENUE BETWEEN HAVEN AVENUE AND MILL CREEK AVENUE WITHIN THE RICH-HAVEN SPECIFIC PLAN.

ATTACHMENT: 20241105 TM-20529^01 Exhibit A.pdf
ATTACHMENT: 20241105 TM-20529 02^RESO^RM

5. **AWARD PROFESSIONAL SERVICES AGREEMENT FOR COST ALLOCATION PLAN, CERTIFIED OMB PLAN, AND INTERNAL SERVICE FUNDS RATE PLANS FOR VARIOUS CITY FUNDS**

That the City Council award a Professional Services Agreement for Cost Allocation Plan, Certified OMB Plan, and Internal Service Funds rate plans to Cherry Bekaert, LLC, for a three-year term for an amount not-to-exceed $180,000 with the option to extend the Agreement for two (2) additional one-year terms for $60,000 per fiscal year; and authorize the City Manager, or his designee, to execute the Agreement.

ATTACHMENT: Cherry Bekaert PSA - CAP.pdf

6. **A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL PARCEL MAP NO. 20517 GENERALLY LOCATED AT THE NORTHEAST CORNER OF MERRILL AND SULTANA AVENUES**

That the City Council adopt a Resolution approving an Improvement Agreement, Improvement Security and Final Parcel Map No. 20517, generally located at the northeast corner of Merrill and Sultana Avenues within the Ontario Ranch Business Park Specific Plan.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL PARCEL MAP NO. 20517 GENERALLY LOCATED AT THE NORTHEAST CORNER OF MERRILL AND SULTANA AVENUES.

ATTACHMENT: 20241105 PM-20517^01 EX.pdf
ATTACHMENT: 20241105 PM-20517 02^RESO^RM.docx

7. **FISCAL YEAR 2024-25 FIRST QUARTER BUDGET UPDATE REPORT**

That the City Council approve the budget adjustments and recommendations as presented in the Fiscal Year 2024-25 First Quarter Budget Update Report (Exhibit A).

ATTACHMENT: FY 2024-25 First Quarter Budget Update Report_EXHIBIT A.pdf

8. **THE RENEWAL OF THE EXISTING WORK ORDER AND ASSET MANAGEMENT SYSTEM WITH AZTECA SYSTEMS, LLC FOR PUBLIC WORKS AND ONTARIO MUNICIPAL UTILITIES COMPANY**

That the City Council authorize the City Manager, or his designee, to execute the renewal of the CityWorks work order and asset management system used by Public Works and Ontario Municipal Utilities Company (OMUC) with Azteca Systems, LLC, of Sandy, Utah for three years with an optional renewal period for two years for a total contract amount not-to-exceed $662,917.

ATTACHMENT: FINAL_Ontario_ CA_Cityworks MASTER - Public Sector - Order Form and Terms.pdf

9. **ACCEPT AND APPROVE LAW ENFORCEMENT EQUIPMENT GRANT FROM CITIZEN'S OPTION FOR PUBLIC SAFETY (COPS)/ENHANCING LAW ENFORCEMENT ACTIVITIES SUBACCOUNT (ELEAS) ADDITIONAL AWARD FOR FISCAL YEAR 2023-24**

That the City Council authorize the City Manager, or his designee, to execute all documents necessary to accept and approve the Citizen' s Option for Public Safety (COPS)/Enhancing Law Enforcement Activities Subaccount (ELEAS) Grant for Fiscal Year 2023-24 in the amount of $266,069.

ATTACHMENT: 2024-COPS-GROWTH.pdf

10. **ACCEPT AND APPROVE LAW ENFORCEMENT GRANT FROM CITIZEN'S OPTION FOR PUBLIC SAFETY (COPS)/ENHANCING LAW ENFORCEMENT ACTIVITIES SUBACCOUNT (ELEAS) FOR FISCAL YEAR 2024-25**

That the City Council authorize the City Manager, or his designee, to execute all documents necessary to accept and approve the Citizen's Option for Public Safety (COPS)/Enhancing Law Enforcement Activities Subaccount (ELEAS) Grant for Fiscal Year 2024-25 in the amount of $279,859.

ATTACHMENT: FY 2025 COPS State Allocation Letter (Growth Not Included).pdf

11. **A CHANGE ORDER TO THE CONSTRUCTION CONTRACT WITH GRBCON, INC. FOR THE EASEMENT AND STORM DRAINPIPE REPLACEMENT PROJECT**

That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to approve Change Order No. 2 to the Construction Contract with GRBCON, Inc., of Baldwin Park, California, for the Easement and Storm Drainpipe Replacement Project in the amount of $467,191 for a total not-to-exceed contract amount of $1,245,101; and
B. Authorize the City Manager, or his designee, to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, easements, reduction of retention accounts, and filing a notice of completion at the conclusion of construction related activities.

ATTACHMENT: Change Order No. 2.pdf

ATTACHMENT: GRBCON 10.28 PCO MISSION AND BON VIEW and Emporia and Plum Drywell.pdf

12. A CONSTRUCTION CONTRACT WITH MARINA LANDSCAPE, INC. FOR THE MISSION BOULEVARD MEDIAN IMPROVEMENT PROJECT

That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to execute Construction Contract No. PM 2425-19 with Marina Landscape, Inc., of Orange, California, for the Mission Landscape and Irrigation Project for a total contract amount of $1,849,000 and authorize a 10% contingency of $184,900 for a total not-to-exceed contract amount of $2,033,900; and
B. Authorize the City Manager, or his designee, to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, reductions of retention accounts, and filing a notice of completion at the conclusion of all construction-related activities.

ATTACHMENT: Mission Landscape Renovation PM 2425-19 Long Form Bid and Contract.pdf

13. AN AMENDMENT TO THE GOODS AND SERVICES AGREEMENT WITH SAFARILAND LLC FOR LAW ENFORCEMENT SAFETY EQUIPMENT

That the City Council authorize the City Manager, or his designee, to execute Amendment No. 2 to the Goods and Services Agreement with Safariland LLC, with its principal place of business in Jacksonville, Florida, increasing the authorized contract amount for specialized law enforcement safety equipment by $450,000, for a total not-to-exceed amount of $1,250,000.

ATTACHMENT: Amendment No 2 Model Amendment (non-construction contract)-c1_0.pdf

PUBLIC HEARINGS

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

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14. A PUBLIC HEARING TO CONSIDER A RESOLUTION REGARDING THE FORMATION OF THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 72 (LOMA CREEK LOGISTICS CENTER 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. 72 (Loma Creek Logistics Center 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. 72 (Loma Creek Logistics Center 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. 72 (Loma Creek Logistics Center Services).

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF FORMATION OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 72 (LOMA CREEK LOGISTICS CENTER 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.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CALLING SPECIAL ELECTION FOR CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 72 (LOMA CREEK LOGISTICS CENTER 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 CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 72 (LOMA CREEK LOGISTICS CENTER SERVICES).

ATTACHMENT: CFD 72 Loma Creek Logistics Center Services Formation 01^RESO^RM.doc
ATTACHMENT: CFD 72 (Loma Creek Logistics Center Services)^01A RMA EXH B.pdf
ATTACHMENT: CFD 72 Loma Creek Logistics Center Services Calling Election 02^RESO^RM.doc
ATTACHMENT: CFD 72 Loma Creek Logistics Center Services Declaring Election 03^RESO^RM.doc
ATTACHMENT: CFD 72 Loma Creek Logistics Center Services 04^ORD^RM.doc

15. A PUBLIC HEARING REGARDING AN ECONOMIC DEVELOPMENT SUBSIDY REPORT AND LOAN AGREEMENT BETWEEN THE CITY OF ONTARIO AND CORE HOTEL VENTURE, LLC AND CONSIDERATION OF RESOLUTION

That the City Council take the following actions:

A. Consider and adopt a Resolution authorizing the execution of a Loan Agreement and other related documents in connection with providing a loan to CORE Hotel Venture, LLC and accepting the Economic Development Subsidy Report prepared pursuant to Government Code Section 53083.
B. Direct City Staff to file a Notice of Exemption based upon the City Council's finding that there is no possibility that the approval of this Loan Agreement will have a significant effect on the environment and therefore, no environmental analysis is required.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND CORE HOTEL VENTURE LLC AND ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 53083.

ATTACHMENT: CORE Ontario Airport Hotel Loan 01^RESO^RM
ATTACHMENT: CORE Ontario Airport Hotel Loan^02 LOAN AGREEMENT.pdf
ATTACHMENT: CORE Ontario Airport Hotel Loan^03 NOTE.pdf
ATTACHMENT: CORE Ontario Airport Hotel Loan^04 DEED OF TRUST.pdf
ATTACHMENT: CORE Ontario Airport Hotel Loan^05 ECON DEV SUBSIDY REPORT.pdf

ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

16. A RESOLUTION AUTHORIZING THE ISSUANCE OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 64 (SUNSET RANCH) 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. 64 (Sunset Ranch) Special Tax Bonds, Series 2024, in an aggregate principal amount not-to-exceed $30 million, authorizing the execution and delivery of an Indenture, a Bond Purchase Agreement, and a Continuing Disclosure 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 Sunset Ranch project and the Ontario Ranch development;
D. Approve the forms of the Indenture, the Bond Purchase Agreement, the Continuing Disclosure 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 an Indenture, the Bond Purchase Agreement, the Continuing Disclosure Agreement, a deemed final certification 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. 64 (SUNSET RANCH) SPECIAL TAX BONDS, SERIES 2024, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED $30,000,000 AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A BOND PURCHASE AGREEMENT AND A CONTINUING DISCLOSURE 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 64 Sunset Ranch Authorizing the Issuance of Bonds 01^RESO^RM.doc
ATTACHMENT: CFD 64 Sunset Ranch Declaration Intent to Reimburse Facilities Expenditures 02^RESO^RM.doc
ATTACHMENT: CFD 64 Sunset Ranch^03 Indenture.pdf
ATTACHMENT: CFD 64 Sunset Ranch^04 Bond Purchase Agreement.pdf
ATTACHMENT: CFD 64 Sunset Ranch^05 Continuing Disclosure Agreement.pdf

STAFF MATTERS

City Manager Ochoa

COUNCIL MATTERS

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

ADJOURNMENT

ONTARIO CITY COUNCIL/
ONTARIO HOUSING AUTHORITY/
ONTARIO PUBLIC FINANCING AUTHORITY
MINUTES
OCTOBER 1, 2024
(Not Official Until Approved)

JOINT MEETINGS

The regular meetings of the Ontario City Council, Housing Authority and Public Financing Authority were held on Tuesday, October 1, 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 6:15 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 (excused)

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 6:15 p.m. for discussion of the following:

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

OPEN MEETING CALLED TO ORDER

Mayor Leon reconvened the meetings at 6:31 p.m. for the regular session.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Bowman.

INVOCATION

The invocation was led by Senior Pastor Thomas Ontario Seventh-Day Adventist Church.

REPORT ON CLOSED SESSION

City Attorney Duran announced there was no reportable action.

PUBLIC COMMENT

Assistant City Clerk Isbell announced there was one written comment:
Nicole J. Ventress, regarding Justice for Joseph Anthony Benavente.

Mayor Leon called upon the first speaker:
Yvette, invited Council and residents to the San Secondo d'Asti in Ontario.
Brad Neumann, spoke on his personnel grievance.
Sabrina Robles, announced the Ontario Police Department's 3rd Annual Community Open House.
Fire Chief Michael Gerken, announced the Ontario Fire Department's Annual Open House.

AGENDA REVIEW/ANNOUNCEMENTS

City Manager Ochoa announced the need to move Public Hearing Item No. 19 to the regular meeting on October 15, 2024.

CONSENT CALENDAR

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

1. APPROVAL OF MINUTES

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

2. BILLS & PAYROLL

Approved bills August 30, 2024 through September 12, 2024, in the amount of $25,125,527.85, and Payroll August 11, 2024 through August 24, 2024 in the amount of $5,952,815.40.

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

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

RESOLUTION NO. 2024-165 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF AN EASEMENT FOR PUBLIC STREET AND UTILITY PURPOSES LOCATED ON SIXTH STREET WEST OF MOUNTAIN AVENUE.

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

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

RESOLUTION NO. 2024-166 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT AND IMPROVEMENT SECURITY FOR TRACT MAP NO. 20316 LOCATED AT THE NORTHWEST CORNER OF ARCHIBALD AVENUE AND EUCALYPTUS AVENUE.

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

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

RESOLUTION NO. 2024-167 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF AN EASEMENT FOR STORM DRAIN PURPOSES LOCATED NEAR THE SOUTHEAST CORNER OF COMMERCE PARKWAY AND SANTA ANA STREET.

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

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

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

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

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

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

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

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

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

The City Council took the following actions:

A. Authorized the City Manager, or his designee, to complete and execute Amendment No. 6 to the Professional Services Agreement with CalTek Technologies, Inc., of Ontario, California, for the Ontario Municipal Utilities

Company (OMUC) Engineering Workstation Project in the amount of $3,788 for a total not-to-exceed contract amount of $175,957; and

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

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

The City Council took the following actions:

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

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

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

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

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

The City Council approved and authorized the City Manager, or designee, to execute a three-year Professional Services Agreement with Capo Projects Group (CPG), of San Clemente, California, for On-Call Integrated Project Controls, Assessment and

Reporting Services in the amount of $334,848 for Fiscal Year 2024-25 to Fiscal Year 2026-27, with the option to extend the term for up to two successive one-year periods (Fiscal Year 2027-28 to Fiscal Year 2028-29), with up to a one-time 6% increase for a total not-to-exceed amount of $571,474.

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

The City Council took the following actions:

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

RESOLUTION NO. 2024-168 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A SUBDIVISION IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY, AND FINAL PARCEL MAP NO. 20465, LOCATED AT THE SOUTHWEST CORNER OF ONTARIO RANCH ROAD AND HAMNER AVENUE.

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

The City Council considered and:

A. Adopted a Resolution approving a First Amendment to a Disposition and Development Agreement between the Euclid Investment Group, LLC.
B. Authorized the City Manager, or his designee, to sign all documents necessary to implement the Disposition and Development Agreement.

RESOLUTION NO. 2024-169 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND EUCLID INVESTMENT GROUP, LLC FOR THE DEVELOPMENT OF REAL PROPERTY LOCATED AT THE SOUTHEAST CORNER OF D STREET AND LEMON AVENUE (APN'S: 1048-556-01, 1048-556-02, 1048-556-03, 1048-

556-04, 1048-556-05, AND 1048-556-14).

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

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

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

The City Council considered and:

A. Adopted a Resolution approving a First Amendment to a Disposition and Development Agreement between the Laurel Investment Property Group Fund, LLC.
B. Authorized the City Manager, or his designee, to sign all documents necessary to implement the Disposition and Development Agreement.

RESOLUTION NO. 2024-170 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND LAUREL INVESTMENT PROPERTY GROUP FUND, LLC FOR THE DEVELOPMENT OF REAL PROPERTY LOCATED AT 404, 416 AND 414 NORTH EUCLID AVENUE AND 401 AND 418 NORTH LEMON AVENUE (APNS: PORTION OF 1048-363-02, 1048-363-03, 1048-363-04, AND 1048-363-05)

PUBLIC HEARINGS

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

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

RESOLUTION NO. 2024-171 RESOLUTION OF NECESSITY OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR THE ACQUISITION BY EMINENT DOMAIN OF A FEE SIMPLE INTEREST IN CERTAIN REAL PROPERTY LOCATED ON THE SOUTHEAST CORNER OF RIVERSIDE DRIVE AND VINEYARD AVENUE IN THE ARMSTRONG SPECIFIC PLAN AREA OF ONTARIO, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS ASSESSOR PARCEL NUMBERS 0218-101-03, 0218-101-04, 0218-101-05 AND 0218-101-06, FOR THE ONTARIO REGIONAL SPORTS COMPLEX PROJECT, IN ONTARIO, CALIFORNIA

Notice of public hearing was duly given. Affidavits of compliance are on file. There was one written communication in opposition from Charles S. Krolikowski.

Mayor Leon opened the public hearing and inquired if anyone was interested in speaking to the item.

Chuck Krolikowski: spoke in opposition.

Hearing no one else, Mayor Leon closed the public hearing and opened the item for Council discussion.

MOTION: Moved by Council Member Wapner, seconded by Council Member Bowman and carried by a unanimous vote 4-0 with Mayor pro Tem Porada absent, to adopt Resolution No. 2024-171

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

Item was continued to October 15, 2024.

ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

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

The City Council introduced and waived further reading of Ordinance Amending Section 2-1.203 of the Ontario Municipal Code relating to Salary Compensation for

the Mayor and the City Council.

ORDINANCE NO. 3287 (FIRST READING) AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING SECTION 2-1.203 OF THE ONTARIO MUNICIPAL CODE RELATING TO SALARY COMPENSATION FOR THE CITY COUNCIL.

MOTION: Moved by Council Member Wapner, seconded by Council Member Bowman and carried by a unanimous vote 4-0 with Mayor pro Tem Porada absent, to introduce Ordinance No. 3287 for its first reading.

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

The City Council and the Ontario Public Financing Authority took the following actions:

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

RESOLUTION NO. 2024-172 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF AMENDMENT NO. 1 TO LEASE AGREEMENT.

RESOLUTION NO. OPFA-10 A RESOLUTION OF THE BOARD OF DIRECTORS OF THE ONTARIO PUBLIC FINANCING AUTHORITY OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF AMENDMENT NO. 1 TO LEASE AGREEMENT.

MOTION: Moved by Council Member Wapner, seconded by Council Member Bowman and carried by a unanimous vote 4-0 with Mayor pro Tem Porada absent, to adopt Resolution Nos. 2024-172 and OPFA-10.

STAFF MATTERS

City Manager Ochoa made no announcements.

COUNCIL MATTERS

Council Member Valencia had no comments.

Council Member Bowman had no comments.

Council Member Wapner brought awareness to Breast Cancer Awareness month.

Mayor Leon thanked everyone who participated in the Route 66 Cruisin Reunion.

ADJOURNMENT

Mayor Leon adjourned the meetings of the Joint Agencies at 7:10 p.m. in memory of Madalena Riboli and announced the next regular meeting was scheduled for October 15, 2024.

Respectfully submitted,

_____
SHEILA MAUTZ, CITY CLERK/SECRETARY

APPROVED:

_____
PAUL S. LEON, MAYOR/CHAIRMAN

CITY OF ONTARIO *Agenda Report* **November 5, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Angela Truong Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Raymond Lee, Khoi Do Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 3

SUBJECT: **A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT AND IMPROVEMENT SECURITY FOR DEVELOPMENT PLAN NO. PDEV23-013 GENERALLY LOCATED AT THE SOUTHWEST CORNER OF MILL CREEK AVENUE AND CHINO AVENUE WITHIN THE RICH-HAVEN SPECIFIC PLAN**

RECOMMENDATION: That the City Council adopt a Resolution approving an Improvement Agreement and Improvement Security for Project No. PDEV23-013, generally located at the southwest corner of Mill Creek Avenue and Chino Avenue within the Rich-Haven Specific Plan.

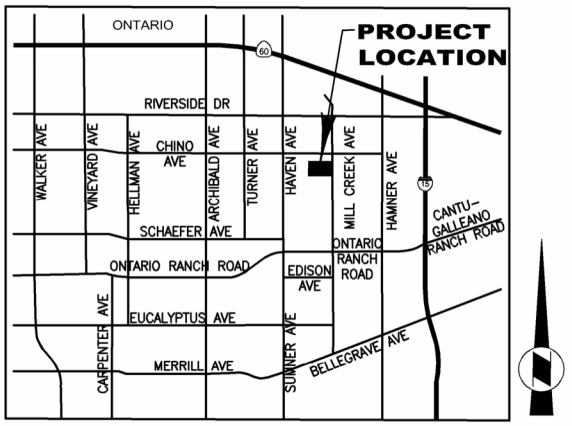
THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch

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

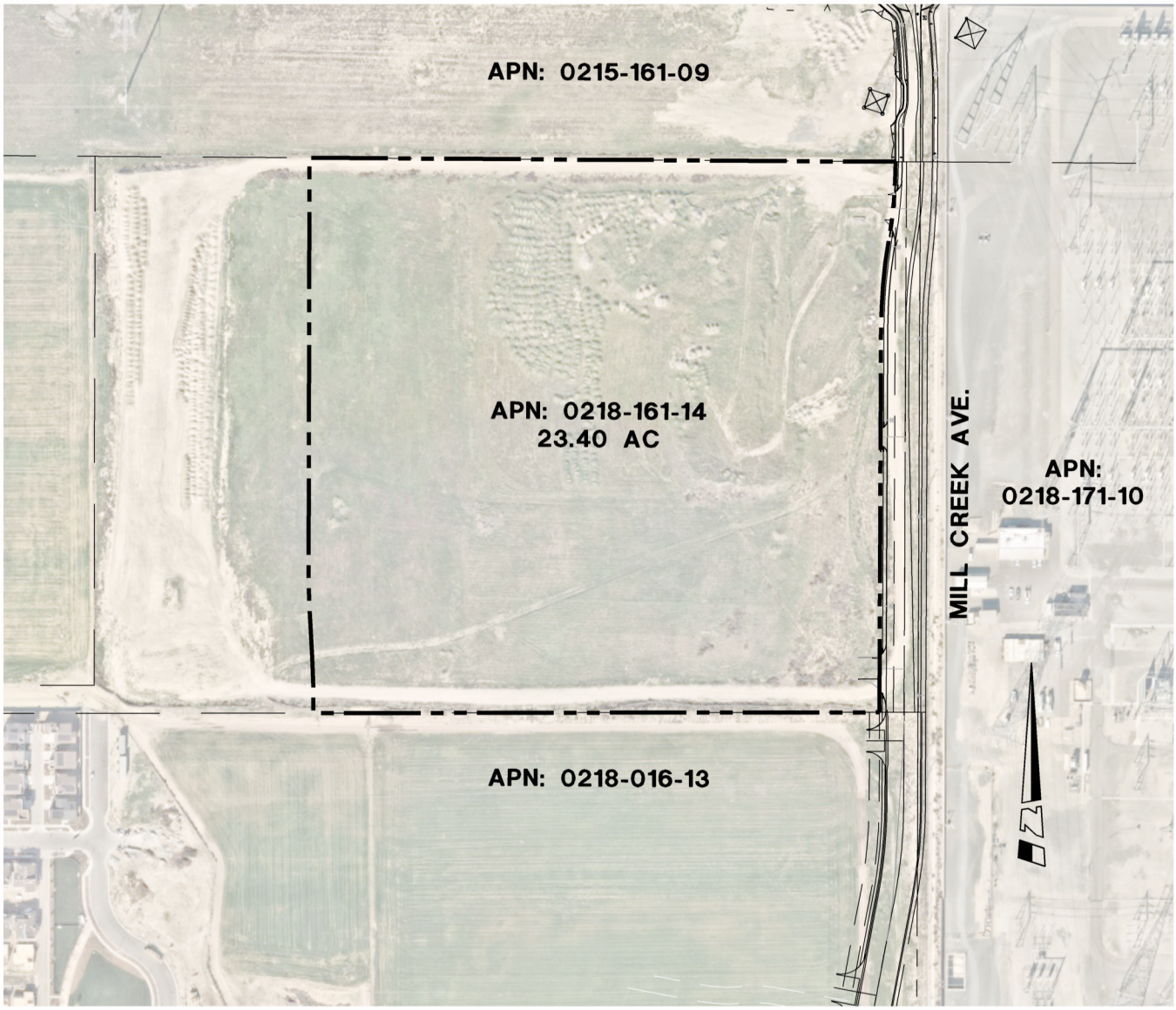
BACKGROUND & ANALYSIS: Brookfield Socal Land Constructors LLC. , Developer, has submitted an Improvement Agreement and Improvement Security for a Development Plan (File No. PDEV23-013) to construct a 547,800-square foot industrial building on 25 acres of land, as shown on Exhibit A. The Development Plan was approved by the Development Advisory Board on November 20, 2023.

The Development Plan improvements will include streets, sidewalk, parkway landscaping, sewer, water, recycled water, traffic signal, signing and striping, streetlight, and fiber optic. All landscape improvements will be consistent with current City's Landscape Design Guidelines and the Model Water Efficient Landscape Ordinance (MWELO).

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



VICINITY MAP
N.T.S.



PREPARED BY:

HUITT ZOLLARS

2603 Main Street, Suite 400, Irvine, California 92614
Phone: 949.988.5815 | www.huitt-zollars.com

EXHIBIT A
PDEV23-013

SCALE	1"=300'
DRAWN BY	JTT
CHECKED BY	AJL
DATE	09/12/2024
JOB NO.	R310721.02

Q:\R310721.02\10 CADD & BIM\10.13 CIVIL\EXHIBITS\310721-EX16_SUBDIVISION IMPROVEMENT EXHIBIT.DWG

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT AND IMPROVEMENT SECURITY FOR DEVELOPMENT PLAN NO. PDEV23-013 GENERALLY LOCATED AT THE SOUTHWEST CORNER OF MILL CREEK AVENUE AND CHINO AVENUE WITHIN THE RICH-HAVEN SPECIFIC PLAN.

WHEREAS, Development Plan No. PDEV23-013 submitted for approval by Brookfield Socal Land Constructors LLC, was approved by the Development Advisory Board of the City of Ontario on November 20, 2023; and

WHEREAS, Development Plan No. PDEV23-013, a 547,800-square foot industrial building on 25 acres of land being Parcel 'B' as described in Lot Line Adjustment No. LLA22-004 recorded November 17, 2022 in the Office of County Recorder of San Bernardino County; and

WHEREAS, to meet the requirements established as prerequisite to final approval of Development Plan No. PDEV23-013, Brookfield Socal Land Constructors LLC., has offered the Improvement Agreement together with good and sufficient improvement security, in conformance with the City Attorney's approved format, for approval and execution by the City; and

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

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

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

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

PASSED, APPROVED, AND ADOPTED this 5th day of November, 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 November 5, 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 November 5, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **November 5, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Angela Truong Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Raymond Lee, Khoi Do Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 4

SUBJECT: **A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 20529 GENERALLY LOCATED SOUTH OF CHINO AVENUE BETWEEN HAVEN AVENUE AND MILL CREEK AVENUE WITHIN THE RICH-HAVEN SPECIFIC PLAN**

RECOMMENDATION: That the City Council adopt a Resolution approving an Improvement Agreement, Improvement Security and Final Tract Map No. 20529, generally located south of Chino Avenue between Haven Avenue and Mill Creek Avenue within the Rich-Haven Specific Plan.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch

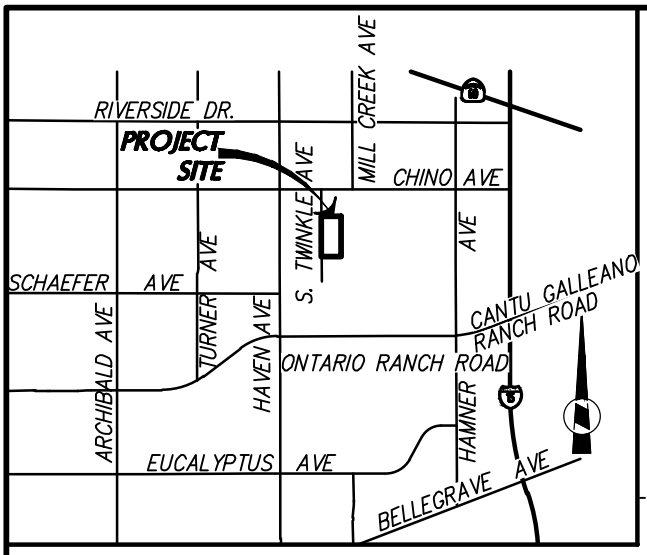
FISCAL IMPACT: There is not a direct fiscal impact associated with this action. All public infrastructure improvements required for this project will be constructed by the Developer at its sole cost.

BACKGROUND & ANALYSIS: Tri Pointe Homes Holdings, Inc. (Developer) has submitted Final Tract Map No. 20529, consisting of 3 numbered lots and 15 lettered lots on 9 acres of land, as shown on Exhibit A. Tentative Tract Map No. 20529 was approved by the Planning Commission on October 25, 2022.

The Final Tract Map improvements will include streets, sewer main and lateral, water main and lateral, recycled water main and lateral, fiber optic conduits, and parkway landscaping with irrigation. All landscape improvements will be consistent with the City's Landscape Development Guidelines and the Model Water Efficiency Landscape Ordinance.

The Developer has entered into an Improvement Agreement with the City for Final Tract Map No. 20529 and posted adequate security to ensure construction of the required improvements. This map meets all conditions of the Subdivision Map Act and the Ontario Municipal Code and has been reviewed and approved by the City Engineer.

EXHIBIT A
TM - 20529



VICINITY MAP
NOT TO SCALE

SOUTHERN CALIFORNIA EDISON COMPANY APN 0218-161-09

LOT C (PRIVATE)
LOT 1
LOT D (PRIVATE)
E. TILDEN PASEO (PRIVATE)
LOT E (PRIVATE)
LOT F (PRIVATE)
LOT 2
LOT G (PRIVATE)
LOT H (PRIVATE)
LOT 2
LOT I (PRIVATE)
LOT J (PRIVATE)
LOT 2
LOT K (PRIVATE)
LOT L (PRIVATE)
LOT 2
LOT N
LOT O
S. TWINKLE AVENUE (PUBLIC)
S. EICHLER PASEO (PRIVATE)
BROOKCAL ONTARIO LLC APN 0218-161-14
DITOMMASO APN 0218-161-13
S. HAVEN AVENUE (PUBLIC)
LOT M
TR 20135 AND TR 20136
TR 20134 AND TR 20530

200' 0' 200'
SCALE 1"=200'

PREPARED BY:
rtm engineering consultants
357 N. Sheridan St.
Suite 117
Corona, CA 92878
Phone: 951.279.1800
Fax: 951.279.4380

APPLICANT/OWNER:
TRI POINTE HOMES HOLDINGS, INC.,
5 PETERS CANYON ROAD, SUITE 100
IRVINE, CA 92606
TEL: (949) 478-8600

CITY OF ONTARIO
ENGINEERING DEPARTMENT

FILE NO. TM-20529

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 20529 GENERALLY LOCATED SOUTH OF CHINO AVENUE BETWEEN HAVEN AVENUE AND MILL CREEK AVENUE WITHIN THE RICH-HAVEN SPECIFIC PLAN.

WHEREAS, Tentative Tract Map No. 20529, submitted by Tri Pointe Homes Holdings, Inc., was approved by the Planning Commission of the City of Ontario on October 25, 2022; and

WHEREAS, Tentative Tract Map No. 20529 consists of 3 numbered lots and 15 lettered lots, in the City of Ontario, County of San Bernardino, State of California, being a subdivision of all of Parcel H of Lot Line Adjustment No. LLA 23-007, recorded May 17, 2023 as Document No. 2023-0119994, deed recorded November 11, 2023 as Document No. 2023-0124572, both of Official Records, in the Office of the County Recorder of Said County, located in Section 12, Township 2 South, Range 7 West, S.B.M.; and

WHEREAS, to meet the requirements established as prerequisite to final approval of Tract Map No. 20529, Tri Pointe Homes Holdings, Inc. has offered the Improvement Agreement together with good and sufficient improvement security, in conformance with the City Attorney's approved format, for approval and execution by the City; and

WHEREAS, the requirement for the preparation of Covenants, Conditions and Restriction (CC&R's), approved by the City Attorney's Office, to ensure the right to mutual ingress and egress and continued maintenance of common facilities by the commonly affected property owners has been deferred to a date that coincides with the recordation of the subject Tract Map; and

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

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

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

3. That Final Tract Map No. 20529 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 5th day of November, 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 November 5, 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 November 5, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **November 5, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Budget Prepared By: Evan Erickson Staff Member Presenting: Armen Harkalyan, Executive Director of Finance Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 5

SUBJECT: **AWARD PROFESSIONAL SERVICES AGREEMENT FOR COST ALLOCATION PLAN, CERTIFIED OMB PLAN, AND INTERNAL SERVICE FUNDS RATE PLANS FOR VARIOUS CITY FUNDS**

RECOMMENDATION: That the City Council award a Professional Services Agreement for Cost Allocation Plan, Certified OMB Plan, and Internal Service Funds rate plans to Cherry Bekaert, LLC, for a three-year term for an amount not-to-exceed $180,000 with the option to extend the Agreement for two (2) additional one-year terms for $60,000 per fiscal year; and authorize the City Manager, or his designee, to execute the Agreement.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner

FISCAL IMPACT: The recommended Agreement with Cherry Bekaert, LLC, is for an amount not-to-exceed $180,000 for the first three-year term ($60,000 average per year), with the option to extend the Agreement for two (2) additional one-year terms for $60,000 per fiscal year. The total compensation shall not exceed $300,000. The Fiscal Year 2024-25 Adopted Budget includes appropriations in the General Fund for the Cost Allocation Plan, Certified OMB Plan, and Internal Service Funds Rate Plans for various City funds.

BACKGROUND & ANALYSIS: The purpose of a Cost Allocation Plan is to recover overhead costs from Enterprise Funds, Special Revenue Funds and Internal Service Funds. The City may also recover indirect costs on Federal and State grants and awards under the Federal Office of Management and Budget (OMB) Circular A-87 guidelines, which are now codified in the Code of Federal Regulations (CFR) at 2 CFR Part 200. A formal Cost Allocation Plan certified by third party supports a fair and defensible cost recovery program for the General Fund.

In addition to a Cost Allocation Plan, the City allocates Internal Service Fund (ISF) costs, via chargeback rates, to various funds which include Enterprise Funds, Special Revenue Funds, the General Fund, and other Internal Service Funds. The cost allocation consultant will develop ISF cost of service plans for General Liability, Facilities Maintenance, Equipment Services, and Information Technology Funds.

In July 2024, City Staff issued a Request For Proposals (RFP) for Cost Allocation, OMB and Internal Service Funds Rate Plans. Staff received proposals from the following vendors:

Vendor (Alphabetical Order)	**Location**
Cherry Bekaert, LLC	Los Angeles, CA
Matrix Consulting Group	San Mateo, CA
Wildan Financial Services	Temecula, CA

Each proposal was screened by a selection committee comprised of staff from the Financial Services Agency who evaluated the proposals based on criteria listed in the RFP, including qualifications and experience with similar projects, capacity and technical capabilities, proposed work plan, cost, and references. Of the three proposals received, the committee selected Cherry Bekaert, LLC as the preferable choice to develop City's Cost Allocation, OMB and Internal Service Fund Rate Plans.

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

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND CHERRY BEKAERT, LLC

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 **Cherry Bekaert Advisory,** a **Limited Liability Company,** with its principal place of business at **3800 Glenwood Ave Ste 200, Raleigh, NC 27612,** services for this contract are operating out of **777 S Figueroa Street, Suite 825, Los Angeles, CA 90017** ("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 **Cost Allocation Plan, Certified OMB Plan, & Internal Service Fund Rate Plans** 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 **Cost Allocation Plan, Certified OMB Plan, & Internal Service Fund Rate Plans** 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 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 **November 5, 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. 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 **One Hundred and Eighty Thousand Dollars and Zero cents ($180,000**) without written approval of the City Council or City Manager, as applicable. If the contract is extended by the City for two (2) additional one-year terms the compensation shall not exceed **Sixty Thousand Dollars and Zero cents ($60,000)** per fiscal year. The total compensation shall not exceed **Three Hundred Thousand dollars and Zero cents ($300,000).** 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.

3.2.5 Automated Clearing House (“ACH”) payments. It is the City’s policy to pay its consultant invoices via electronic fund transfers through the ACH network. All payments due and owing pursuant to a properly issued and correct invoice or under this Agreement shall be

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

3.3 Responsibilities of Consultant.

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

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

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

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

3.3.5 City's Representative. The City hereby designates **Armen Harkalyan, Executive Director of Finance** 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 **Nicolie Lettini, Managing Director** or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

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

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

3.3.9 Period of Performance.

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

Performance Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage.

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

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

3.3.10 Laws and Regulations; Employee/Labor Certification.

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

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

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

Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

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

3.3.10.5 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq*.); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant must additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. City may seek damages from Consultant for delay in completing the Services caused by Consultant's failure to comply with the laws, regulations and policies described in this Section, or any other relevant water quality law, regulation, or policy.

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

3.3.11 Insurance.

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

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

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

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

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

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

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

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

(B) Automobile Liability: (1) Additional Insured: The City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Vendor or for which the Vendor is responsible. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a

thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

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

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

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

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

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

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

cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

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

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

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

3.3.11.11 Additional Insurance Provisions

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

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

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

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

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

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

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

3.4 Labor Code Requirements.

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

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

3.4.3 Compliance Monitoring. This Project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll

records directly to the DIR. Any stop orders issued by the DIR against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Consultant or any subconsultant.

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

3.5 Termination of Agreement.

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

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

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

3.6 Indemnification.

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

volunteers.

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

3.7 General Provisions.

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

3.7.2 Independent Contractors and Subcontracting.

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

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

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

Consultant: Cherry Bekaert Advisory LLC
3800 Glenwood Ave Ste 200
Raleigh, NC 27612

ATTN: Nicolie Lettini, Managing Director

City: City of Ontario
303 East “B” Street
Ontario, CA 91764
ATTN: Armen Harkalyan, Executive Director of Finance

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 Cherry Bekaert Advisory LLC

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

Cherry Bekaert Advisory LLC

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

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

EXHIBIT "A"
SCOPE OF SERVICES

A. Work with the applicable Department in developing service provisions, cost categories, and allocation criteria for current and future programs.

B. Develop an electronic cost allocation model for calculating the full costs of providing each City service.

C. The cost allocation model developed shall be provided to the City electronically in Microsoft Excel, tabulated for compatibility with Excel Pivot Tables, and formatted to provide the ability to add or delete, and/or update information as needed. If the vendor uses its own software, system and/or web portal, then the City also shall have access to mentioned systems and have the ability to add or delete, and/or update information as needed.

D. Develop an Overhead Cost Allocation Plan Model for calculating the full costs of providing each City service and an OMB plan (applicable plan for use with Federal Grants and Programs). These Cost Allocation Plans must comply with all aspects of Federal Office of Management and Budget's Circular 2 CFR Part 225 (formerly known as OMB A-87, which is titled *Part 225 Cost Principles for State, Local and Indian Tribal Governments*), Proposition 218 and the California State Controller's Hand book of Cost Plan Procedures for Counties.

E. The Cost Allocation Plan, the Certified OMB Plan and ISF Rate Plans may include recovering costs for the following City Funds / Operations:
    1. Cost Allocation & Certified OMB Plans:
        a. General Fund
        b. Citywide Fully-Burdened Hourly Staff Labor Rates
    2. ISF Rate Plans:
        a. Information Technology
        b. Equipment Services
        c. Facilities Maintenance
        d. Liability

F. Develop a model and methodology for gathering data and periodically updating the model as new costs are added or old costs are eliminated or modified. The model should use a spreadsheet or database format that automatically recalculates as cost items are inputted.

G. The model shall provide for "what if"/sensitivity analysis that would easily determine how cost allocations are charged to a department and how a department would be impacted as costs, allocation methods, and services are modified, added, or removed from the plan.

H. The requirements of the model shall allow for the addition or removal of direct and overhead costs so that the cost allocation plans can be developed from a simple plan to a progressively more inclusive plan.

I. Shall have the ability to continuously update the model from year to year as the organization changes.

J. Evaluate the City's administrative costs associated with the Capital Improvement Projects and establish a rate structure for recovery of costs from these projects.

K. The cost allocation model developed shall include a summary report or a file highlighting changes and significant variances by version and fiscal years as revisions are made until the Cost Plan is finalized.

L. Reports should be provided in summary format that compares allocations from version to version, and year to year. End users should be able to drill down into the details via the use of Microsoft Excel Pivot Tables or other suitable methods.

M. Summary reports or schedules shall be available to verify the inputs, amounts, and costs that are to be spread among the departments. The reports should be prepared in a manner so that is not an administrative burden to the City to verify the plan. The final Cost Plan shall include a Summary Report or a Walk-Through Report to demonstrate how costs flow from the cost to be allocated schedules to the cost exhibit. This report is in addition to the full-cost allocation plan and can be used as a reference by all staff reading the report.

N. All reports shall be prepared in a manner that is easy to read and understand by City staff.

O. Prepare overhead cost allocation plan and participate in the presentation to the City Manager, City staff and/or City Council. Collect and document comments and concerns from City staff and Council members

EXHIBIT "B"
SCHEDULE OF SERVICES

Project Milestone & Timing	Key Activities, Tasks & Deliverables
Milestone 1: Project Initiation 2 days	Our cost allocation plan model begins and ends with client staff interviews to verify accuracy and maximum utility. We understand that your employees are busy, and we have refined our interviews and workshops to be efficient with their time. **Task:** Plan meetings with necessary staff **Deliverable:** Meet with the City's staff to refine scope and review schedule.
Milestone 2: Interview Departmental Staff 1 week	We conduct interviews with applicable departments to develop service provisions, cost categories, and allocation criteria for current programs. We identify, if possible, any available data that can be incorporated into cost allocation plans and will look for opportunities to simplify data collection for future years. We schedule and hold individual interviews with necessary staff to discuss information needed by our consultants to complete the cost plan. These meetings uncover each department's major functions and provide a framework for allocating costs to all departments that receive their services. **Task:** Interview departments, identify functions and structure of the City. **Deliverable:** Meet with staff, conduct interviews, define functions and identify costs.
Milestone 3: Collect Data and Prepare Cost Allocation Plan 6 weeks	We collect all necessary information from the City to prepare the draft cost allocation plan, such as revenue and expenditure reports, functional information and statistical data. **Task:** the City sends over data to use in plan
Milestone 4: Develop Allocation Measures and Statistics 5 days	We work with your team to develop key service provisions, cost categories and allocation criteria for future programs. **Deliverable:** Identify total cost of providing each service at appropriate activity level per OMB standards. **Deliverable:** Work with Finance and Budget to develop service provisions, cost categories and allocation criteria for current and future programs.
Milestone 5: Review Draft Plan 1 week	Our subject matter experts review the draft CAP with your staff to explain methodologies, answer questions and collaborate on necessary revisions based on staff feedback. We then meet with department heads to present and discuss the plan so there is a clear understanding of the content and to verify accuracy. **Task:** the City reviews plan for any changes **Deliverable:** Develop Cost Allocation Model and adjust for any additions, revisions or changes.

Project Milestone & Timing	Key Activities, Tasks & Deliverables
	Deliverable: Report any matters that surface that the City should consider.
Milestone 6: Submit to Management for Approval 1 week	Following departmental approval, we submit the CAP to management to receive the final approval. We will ensure understanding of all necessary parties on the impact of the cost plan and answer any questions that might arise. **Task:** Make any additional changes from meeting **Deliverable:** Present plan to management
Milestone 7: Finalize Cost Plan 1 week	We update the draft CAP based on stakeholder inputs, questions and other revisions to provide a final CAP. Our team walks through the final report to demonstrate how costs flow from allocation schedules to the cost exhibit that will be submitted. **Deliverable:** Final Cost Plan will be provided the City's requested format **Deliverable :** Prepare final electronic report with PDF of Cost Recovery Plan available to all staff, Council and Committees.
Milestone 8: Present Cost Plan and Implementation 1 week	We deliver presentations to your leadership and stakeholders, as requested, to facilitate greater understanding of the CAP and cost allocation methodologies. **Deliverable:** Prepare and deliver presentation to Council

EXHIBIT "C"
COMPENSATION

Service	Fee
Cost Allocation Plan, Certified OMB Plan, ISF Rate Plans	$60,000.00 per year

Our fees are generally based on the time required to complete the work at our established billing rates, plus clerical and computer charges and out-of-pocket expenses. Our fees are also based on other factors such as the complexity of the work, the skill required, time limits, the experience and abilities of our personnel, and the value of the services rendered.

- Please Note: “Cherry Bekaert” is the brand name under which Cherry Bekaert LLP and Cherry Bekaert Advisory LLC, independently owned entities, provide professional services in an alternative practice structure in accordance with applicable professional standards. Cherry Bekaert Advisory LLC is not a licensed CPA firm. Cherry Bekaert LLP is a licensed CPA firm that provides attest services, and Cherry Bekaert Advisory LLC and its subsidiary entities provide business advisory and non-attest services. For more details, visit cbh.com/disclosure.
- A change in fees will apply should the scope of work change significantly. Should this occur, or there is a change in scope because of a change in your operations, we would meet with you to obtain your agreement on any increase in the fee ranges before proceeding.
- These fees represent our good faith estimate based upon our experience and current understanding of your company and scopes of work. If we have misunderstood the scope requirements or company structure in any way, we are happy to reassess fees and present an updated cost proposal.

Start Up Costs
The proposed fees do not include the additional time we expect to establish our understanding of the City, get introduced with your personnel and become familiar with the structure and allocation criteria. This effort typically amounts to 15 – 25% more hours in the first service year. We will absorb this additional time as an investment in the long-term relationship with the City.

Out-of-Scope Services
We encourage open lines of communication throughout the year and generally do not bill for routine telephone consultations. However, should a matter require major research or services not included above, we will bill for these services at established hourly rates as rendered. Before beginning any additional work, we will discuss anticipated fees with your management to obtain understanding and approval, as well as any anticipated discount based on the timing and complexity of the service.

Hourly Rates

Staff Level	Hourly Rate
Partner/Managing Director	$225
Manager	$180
Senior Associate	$125

CITY OF ONTARIO *Agenda Report* **November 5, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Raymond Lee Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Khoi Do Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 6

SUBJECT: **A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL PARCEL MAP NO. 20517 GENERALLY LOCATED AT THE NORTHEAST CORNER OF MERRILL AND SULTANA AVENUES**

RECOMMENDATION: That the City Council adopt a Resolution approving an Improvement Agreement, Improvement Security and Final Parcel Map No. 20517, generally located at the northeast corner of Merrill and Sultana Avenues within the Ontario Ranch Business Park Specific Plan.

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)
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch

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

BACKGROUND & ANALYSIS: Euclid Land Venture 2, LLC., Developer, has submitted a Final Parcel Map No. 20517, consisting of 6 parcels on approximately 80 acres of land, as shown on Exhibit A. Tentative Parcel Map No. 20517 was approved by the Planning Commission on May 23, 2023.

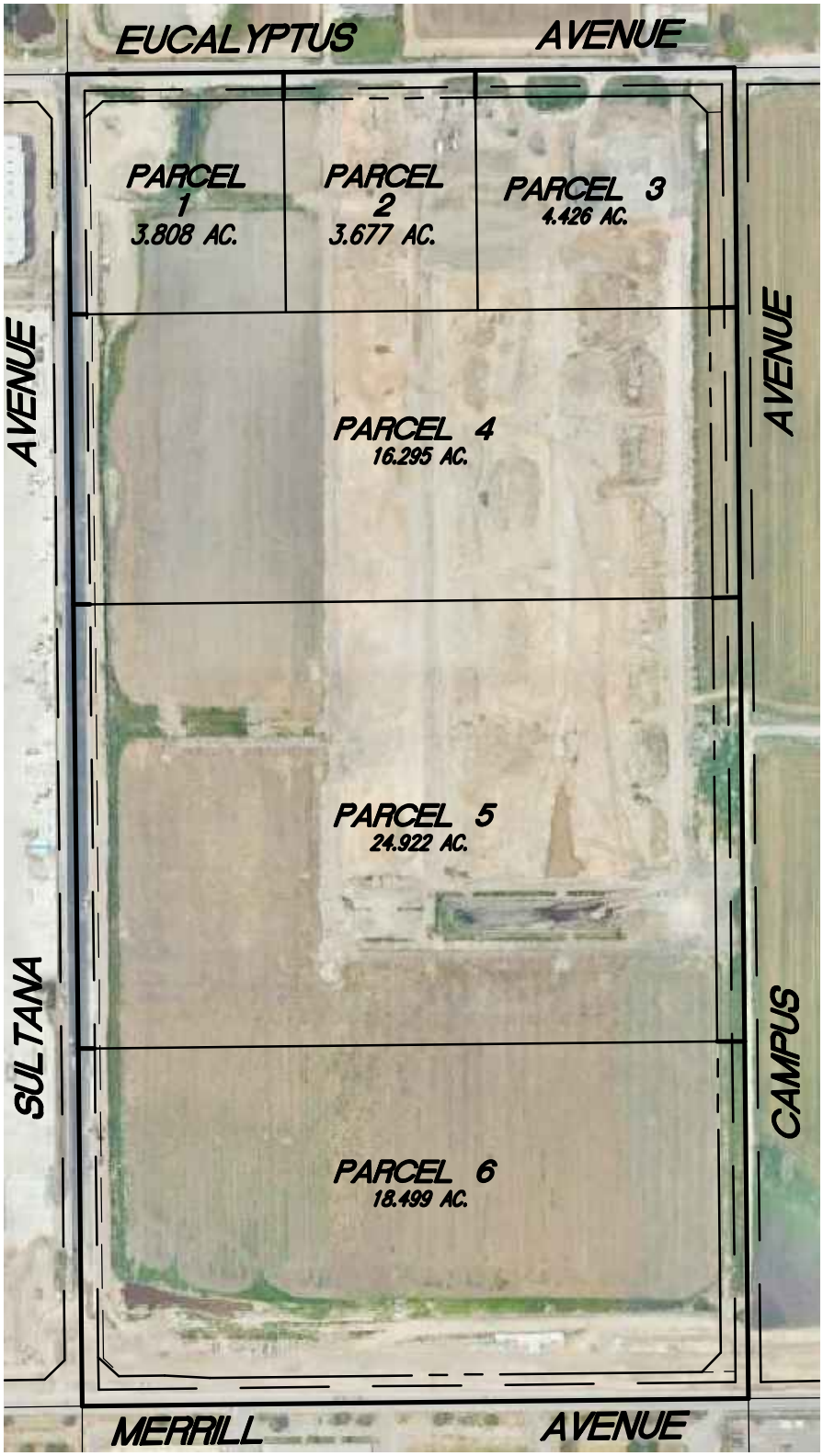
Improvements will include streets, water main and laterals, recycled water main and laterals, storm drain main and laterals, fiber optic conduits, and parkway landscaping with irrigation. All landscape improvements will be consistent with current City's Landscape Design Guidelines and the Model Water Efficient Landscape Ordinance (MWELO).

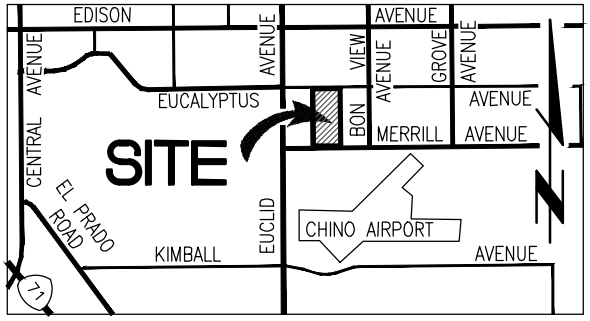
The Developer has entered into an Improvement Agreement with the City for Final Parcel No. 20517 and posted adequate security to ensure construction of the required improvements. This map meets all conditions of the Subdivision Map Act and the Ontario Municipal Code and has been reviewed and approved by the City Engineer.

SCALE: 1"=350'

EXHIBIT A
PM-20517

SHEET 1 OF 1





VICINITY MAP

N.T.S.

PREPARED BY:

Thienes Engineering, Inc.
CIVIL ENGINEERING • LAND SURVEYING
14349 FIRESTONE BOULEVARD
LA MIRADA, CALIFORNIA 90638
PH.(714)521-4811 FAX(714)521-4173

CITY OF ONTARIO
ENGINEERING DEPARTMENT

FILE NO. PM - 20517

PROJECT: PARCEL MAP NO. 20517

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL PARCEL MAP NO. 20517 GENERALLY LOCATED AT THE NORTHEAST CORNER OF MERRILL AND SULTANA AVENUES.

WHEREAS, Tentative Parcel Map No. 20517, submitted by Euclid Land Venture 2, LLC., was approved by the Planning Commission of the City of Ontario on May 23, 2023; and

WHEREAS, Tentative Parcel Map No. 20517 consists of 6 parcels, in the City of Ontario, County of San Bernardino, State of California, a subdivision of Lots 7, 8, 9, 10, 23, 24, 25 and 26 in Section 20, Township 2 South, Range 7 West, San Bernardino Base and Meridian, according to Map of subdivision of part of the Rancho Santa Ana Del Chino, recorded in Book 6 of Maps, Page 15, records of said County; and

WHEREAS, to meet the requirements established as prerequisite to final approval of Parcel Map No. 20517, Euclid Land Venture 2, LLC. has offered the Improvement Agreement together with good and sufficient improvement security, in conformance with the City Attorney's approved format, for approval and execution by the City; and

WHEREAS, the requirement for the preparation of Covenants, Conditions and Restriction (CC&R's), approved by the City Attorney's Office, to ensure the right to mutual ingress and egress and continued maintenance of common facilities by the commonly affected property owners has been deferred to a date that coincides with the recordation of the subject Parcel Map; and

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

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

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

3. That Final Parcel Map No. 20517 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 5th day of October, 2024.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 5, 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 November 5, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **November 5, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Financial Services Prepared By: Doreen Nunes Staff Member Presenting: Armen Harkalyan, Executive Director of Finance Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 7

SUBJECT: FISCAL YEAR 2024-25 FIRST QUARTER BUDGET UPDATE REPORT

RECOMMENDATION: That the City Council approve the budget adjustments and recommendations as presented in the Fiscal Year 2024-25 First Quarter Budget Update Report (Exhibit A).

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner

FISCAL IMPACT: The recommended actions will affect several fund budgets as outlined in the Fiscal Year 2024-25 First Quarter Budget Update Report.

BACKGROUND & ANALYSIS: The First Quarter Budget Update Report for Fiscal Year 2024-25 reflects the Financial Services Agency's continued efforts to provide timely, accurate, and understandable financial information to assist the City Council with decision making and achievement of core goals. All Funds have been reviewed in preparing this report. The emphasis of this report is on the General Fund, which funds the majority of government services including public safety, recreation, library, museum, parks, building and planning.

The primary purposes of this report are to:
Discuss Fiscal Year 2023-24 Year-End Results and Fiscal Year 2024-25 First Quarter Budget Update and provide a reconciliation of budgeted-to-actual financial data;

- Address annual carryforward obligations across all funds;
- Recognize budgetary carryforward amounts for the prior fiscal year's approved Capital Improvement Projects and Grant appropriations, which are ongoing;
- Revise the City's budget to reflect the City Council's actions taken since the beginning of the current fiscal year;
- Recommend personnel and organizational changes to enhance program operations and efficiencies;
- Recommend budget adjustments that are consistent with the City Council goals and objectives; and
- Comment on significant budget and economic trends which may impact this fiscal year's budget development.

Fiscal Year 2023-24 General Fund Year-End Results (unaudited)

The General Fund activity for FY 2023-24 resulted in a net positive year-end balance of approximately $12.6 million. This is primarily due to increased miscellaneous revenues from the City's share of the revenues generated from the Toyota Arena, higher charges for services revenues (development related revenue) than projected as Ontario Ranch and commercial/industrial development in the City continues to move forward at a steady pace, and gains in business license revenues due to audit efforts. The City was also able to realize approximately $8.8 million of American Rescue Plan Act (ARPA) funding for the negative economic impacts the City incurred during the COVID-19 pandemic period. The sales tax revenues were higher than estimated by approximately $1.4 million for the Bradley-Burns (local tax); however, the Measure Q (transactions use tax) was lower by $4.2 million than projected. As a result, the total sales tax revenues compared to the estimate was short by $2.8 million but was a gain of $43.8 million compared to the previous fiscal year due to the City receiving a full year of Measure Q sales tax revenues. Additionally, the actual expenditures as of June 30, 2024, were underspent and reflected 97.7% of the total General Fund budget. An attributable factor to this variance included savings in operating expenditures, contractual services, and capital expenditures.

Fiscal Year 2024-25 First Quarter Budget Update Recommendations

First Quarter Budget Update recommendations are routine in nature and comprised predominately by City Council actions taken since the beginning of the fiscal year, obligations carryforward items to rollover purchase orders that have not yet been expended, and Capital Improvement Program (CIP) and Grant carryforward appropriations on projects and grants that have not been completed or fully expended. In addition, First Quarter includes proposed new expenditure budget requests, as well as revised revenue estimates for FY 2024-25. For the General Fund, the net result of these actions will bring the General Fund estimated available and unencumbered ending fund balance to $78.0 million or 20.2% of total appropriations. This amount achieves the goal set by City Council as a reserve for specific and defined emergency events (such as an earthquake or pandemic) and to address immediate needs in resources without impacting City services. This goal was temporarily decreased to 15% during the COVID pandemic but has since been brought back up to the previous set goal of 20%, effective July 1, 2023, with the goal of increasing the reserves up to 25% in future fiscal years.

General Fund Highlights

$2.4 million revenue for the sale of the City's police helicopter
$1.9 million appropriations for the roof repair of the Toyota Arena (offset by increase in the City's share of revenues from the arena)
$1.7 million appropriations for the carryforward obligations from FY 2023-24
$1.1 million revenue for the sale of City owned property (322 North Lemon Street)
$1.1 million appropriations for the FY 2023-24 Gainshare Program
$1.0 million appropriations for the City's share of the West End Animal Services Agency start-up costs
$1.0 million funding transfer to the water operating fund for replenishment of the loss on the sale of City owned property (400 North Euclid Avenue)

Other Funds (non-General Fund) Highlights

$336.3 million appropriations for the carryforward obligations from FY 2023-24
$3.6 million additional appropriations for street sweeping services
$3.0 million appropriations to include the remaining unspent loan funding for the Broadband Fiber Network Expansion project
$3.2 million revenue for the sale of City owned property, including the $1.0 million funding transfer from the General Fund (400 North Euclid Avenue)
$1.6 million appropriations for the infill mixed use project at 125 West Emporia Avenue/The Vault Project
$1.5 million additional appropriations for the Potable Well Number 53 project
$1.1 million appropriations for the demolition and fencing at Jay Littleton Ballpark
$1.0 million appropriations and revenues for the OmniTrans Measure I Grant

Interim budget updates also present recommendations for personnel and organizational changes necessary to enhance program operations and efficiencies. Current recommendations for this First Quarter Budget report include reclassification changes, adds/deletes, title changes, and other modifications to the authorized full-time positions which result in a net zero impact to the Citywide position total of 1,517. In addition, a recommended organizational changes of moving the Engineering Department (a total of 41 positions) from the Community Development Agency to the Public Works Agency to facilitate collaboration and efficiencies with the management of City development and Capital Improvement Program (CIP) projects. More detail is presented in the attached Exhibit A under Recommended Personnel Changes section, pages 18 through 24, of the FY 2024-25 First Quarter Budget Update Report.

Gainshare Program

The Gainshare Program was developed by the City in 2020 to recognize employees' collective progress towards City goals and objectives. The program is intended to reward high-performance and cost-efficient operations in accomplishing Agency Strategic Objectives (ASOs) and achievements as measured by Key Performance Indicators (KPIs). ASOs are outcome-driven objectives that the City uses to communicate and commit to our Agencies' missions, visions, and values. KPIs are intended to be output-driven and are measurable values that demonstrate how effectively the City is achieving key objectives. Together, ASOs and KPIs are used as guides to keep score of our successes and challenges.

Through dedication, hard work and overall contributions, Ontario employees achieved program requirements for FY 2023-24 and have unlocked a Gainshare incentive of 0.96% of base compensation for all employees. Included in the First Quarter Budget Update Report is appropriations of $1,431,959 for this Gainshare, with the General Fund's share at $1,124,941 and the Other Funds' share at $307,018.

Economic Outlook

The following economic indicators are the most recent measures of economic activity.

Gross Domestic Product (GDP): The broadest measure of economic output, increased at an annual rate of 3.0% in the second quarter of 2024, according to the most recent released estimate

as a result of increased consumer spending. This was a gain compared to the first quarter of 2024, in which the real GDP increased by only 1.6%. The increase in the second quarter primarily reflected increases in consumer spending, inventory investment, and business investment. However, imports, which are a subtraction in the calculation of GDP, increased. (Source: Bureau of Economic Analysis)

Unemployment Rate: The national unemployment rate slightly declined to 4.1% in September 2024 compared to the 4.2% reported for August 2024. Comparing the current national rate to the previous year rate of 3.8%, it is an increase of 0.3%. California's unemployment rate remains unchanged in September 2024 with a slight increase compared to the prior year's rate of 5.3%. Locally, the Inland Empire's unemployment rate decreased to 5.5% compared to 6.0% in August 2024; however, it is above the year-ago estimate of 5.1%. The Inland Empire's labor market has recovered from the COVID-19 pandemic and is still strong. Since April 2020, the region has added over 316,000 jobs, which is more than the 228,700 jobs lost during the national lockdown. (Source: US Bureau of Labor Statistics)

Consumer Price Index (CPI): This rate is utilized to track changes in the prices of goods and services, and is a useful tool for tracking inflation or the cost of living. For September 2024, the Riverside-San Bernardino-Ontario metropolitan area's CPI rate increased slightly by 1.4% over the last 12-month period. However, this increase is minimal compared to the last two years CPI increase with a high of 8.4% experienced in 2022 and 4.9% in 2023. This small increase in CPI indicates a colling of the economy due to the various tools the federal government has implemented to hamper the exponential economic growth occurring as a result of the COVID-19 pandemic. (Source: US Bureau of Labor Statistics)

Housing Market: A continued shortage of homes for sale and high costs of borrowing continues to have a negative impact on the housing inventory and demand. With the recent declining of mortgage rates and the expectation that the rates will continue to decrease in 2025, it is anticipated that home sales will bounce back as buyers and sellers return to a more favorable housing market. Statewide sales for existing single-family homes in June 2024 were 2.7% lower than they were for the same time period in the previous year. Overall, home sales in the Inland Empire for June 2024 decreased 7.3% compared to the previous month, and a 13.2% decline compared to the same time period in the previous year. (Source: HdL Coren and Cone)

Conclusion

As the City recovers from the last four years of economic disruption from the COVID pandemic, other challenges still exist with the continued war in Ukraine; rising consumer good prices; the high interest rates even with the recent rate cut of 1/2 percent by the Federal Reserve; the possibility of a recession due to accelerated inflation levels not seen since the early 1980's; and the recent conflict in the middle east. Even with the anticipated additional resources, the City will need to continue to practice fiscal discipline and establish proactive measures to safely navigate the current and upcoming fiscal challenges, as well as deliver an unparalleled level of service and commitment to our community.

The Adopted Operating Budget for Fiscal Year 2024-25, as modified through this First Quarter

Budget Update, reflects the City Council's continued commitment to support high quality public safety and municipal services, provides for the maintenance and expansion needs of the City's infrastructure and facilities, profiles an aggressive economic development strategy, and assures the investment and reinvestment of the City's resources into the community - all in the name of affording Ontario residents and businesses an exceptional quality of life. With the City Council's leadership and their prudent fiscal policies, the City's long-term financial health will further solidify its standing as the economic leader in the Inland Empire, and a formidable player in California and the nation.



Fiscal Year 2024-25
First Quarter Budget Update

November 5, 2024

City of Ontario
Fiscal Year 2024-25
First Quarter Budget Update Report

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FY 2023-24
General Fund Year-End Results
(unaudited)

City of Ontario
General Fund Year-End Results - Revenues by Category
Fiscal Year 2023-24

	FY 2022-23 Actuals	FY 2023-24 Adopted Budget	FY 2023-24 Current Budget[1]	FY 2023-24 Actuals[2]	FY 2023-24 Budget Variance	% Received
Sales Tax	$ 126,820,107	$ 131,065,000	$ 122,142,000	$ 123,541,852 [5]	$ 1,399,852	**101.1%**
Sales Tax - Measure Q	13,680,957	95,792,000	65,000,000	60,766,143 [6]	(4,233,857)	**93.5%**
Property Tax	89,800,425	89,198,000	99,921,314	98,742,225 [7]	(1,179,089)	**98.8%**
Transient Occupancy Tax	16,964,564	16,500,000	16,500,000	16,625,996	125,996	**100.8%**
Business License Tax	9,729,862	8,914,000	9,264,000	10,902,422 [8]	1,638,422	**117.7%**
Parking Tax	3,925,403	3,500,000	4,300,000	4,289,371	(10,629)	**99.8%**
Other Taxes	6,167,862	5,267,000	5,900,000	6,273,890	373,890	**106.3%**
License & Permits	12,608,106	8,477,000	8,477,000	7,879,656	(597,344)	**93.0%**
Intergovernmental	10,164,809	13,366,516	13,571,528	14,051,025	479,497	**103.5%**
Intergovernmental - ARPA[3]	6,228,568	9,932,965	9,932,965	8,774,045 [9]	(1,158,920)	**88.3%**
Charges for Services	31,006,358	28,875,200	30,644,200	33,173,015 [10]	2,528,815	**108.3%**
Charges for Services - OIAA[4]	20,902,300	21,529,369	22,723,451	22,723,451	-	**100.0%**
Use of Money & Property	1,232,723	1,401,379	1,487,379	3,201,340 [11]	1,713,961	**215.2%**
Fines & Forfeitures	959,216	741,000	901,000	1,140,828	239,828	**126.6%**
Miscellaneous Revenue	6,603,603	2,020,000	5,651,773	11,936,006 [12]	6,284,233	**211.2%**
Sub-Total	**$ 356,794,863**	**$ 436,579,429**	**$ 416,416,610**	**$ 424,021,265**	**$ 7,604,655**	**101.8%**
Transfers-In	2,000,000	2,000,000	15,000,000	17,000,000 [13]	2,000,000	**113.3%**
Total Resources	**$ 358,794,863**	**$ 438,579,429**	**$ 431,416,610**	**$ 441,021,265**	**$ 9,604,655**	**102.2%**

[1] Reflects adjustments made at First Quarter, Mid-Year, and Year-End.
[2] FY 2023-24 Actuals are unaudited.
[3] ARPA: American Rescue Plan Act.
[4] OIAA: Ontario International Airport Authority.
[5] Sales Tax came in higher than estimates, but less than prior fiscal year due to high interest rates, increased commodity costs, and less consumer spending.
[6] Measure Q came in lower than estimates due to lag in receipts of newly implemented tax, still analyzing revenue source.
[7] Property Tax was less than estimated due to county adjustment for discrepancy of parcels between City of Ontario and City of Chino.
[8] Business License Tax ended the year higher than estimates due to increased audit efforts.
[9] Less ARPA resources used to cover personnel expenditures than anticipated, remainder of fund will be utilized in FY 2024-25.
[10] Charges for Services increased due to Building Plan Check Fees and Toyota Arena Security Revenues.
[11] Use of Money and Property includes Change in Fair Market Value estimate.
[12] Toyota Arena City share of revenues for FY 2023-24 ($6.5M).
[13] Transfers-In from Pension Benefit Fund ($9.0M), Workers Comp Fund ($5.0M), and Ontario Ranch Public Services Fund ($3.0M).

City of Ontario
General Fund Year-End Results - Expenditures by Category
Fiscal Year 2023-24

	FY 2022-23 Actuals	FY 2023-24 Adopted Budget	FY 2023-24 Current Budget[1]	FY 2023-24 Actuals[2]	FY 2023-24 Budget Variance	% Received
Personnel Costs	$ 198,648,123	$ 236,623,473	$ 236,852,436	$ 240,211,094	$ (3,358,658)[3]	**101.4%**
Operating Expenditures	29,667,539	35,870,083	40,456,494	39,858,032	598,462	**98.5%**
Contractual Services	18,318,733	22,863,974	27,203,998	24,560,814	2,643,184[4]	**90.3%**
Internal Service Allocations	43,030,077	49,664,706	49,657,718	49,328,910	328,808	**99.3%**
Reimbursement Agreements	11,091,642	10,739,000	11,607,590	13,284,025	(1,676,435)[5]	**114.4%**
Contribution Expense	6,921	-	-	34,616	(34,616)[6]	
Capital Expenditures	1,808,260	1,292,130	1,366,905	783,355	583,550	**57.3%**
Transfers-Out	80,167,807	70,874,441	71,494,441	60,311,783	11,182,658[7]	**84.4%**
Total Expenditures & Transfers-Out	**$ 382,739,102**	**$ 427,927,807**	**$ 438,639,582**	**$ 428,372,629**	**$ 10,266,953**	**97.7%**

[1] Reflects adjustments made at First Quarter, Mid-Year, and Year-End.
[2] FY 2023-24 Actuals are unaudited.
[3] FY 2023-24 Personnel over budget due to negotiations of Skills and Certification Pays and Safety Agencies exceeding overtime budgets.
[4] Contractual Services savings in Engineering plan check services and HR legal services.
[5] Increase in sales tax incentive agreements.
[6] General Fund contribution to OHA for their special tax assessment for downtown properties owned by OHA (DOIA).
[7] Reduced Transfers-Out to Facilities Maintenance ($10.0M), Police Helicopter Reserve ($1.0M), and Parkway Maintenance Contribution ($180k).

City of Ontario
General Fund Year-End Results - Expenditures by Agency
Fiscal Year 2023-24

	FY 2022-23 Actuals	FY 2023-24 Adopted Budget	FY 2023-24 Current Budget[1]	FY 2023-24 Actuals[2]	FY 2023-24 Budget Variance	% Received
Community Development	$ 26,434,828	$ 33,109,939	$ 37,220,488	$ 33,602,008	$ 3,618,480[3]	**90.3%**
Community Life & Culture	20,370,625	35,069,334	35,428,205	31,292,564	4,135,641[4]	**88.3%**
Economic Development	18,808,193	17,926,421	20,580,605	22,721,351	(2,140,746)[5]	**110.4%**
Financial Services	17,255,257	23,663,563	24,036,879	23,608,273	428,606	**98.2%**
Human Resources/Risk Management	5,014,539	6,961,702	7,532,049	5,906,900	1,625,149[6]	**78.4%**
Management Services	9,200,382	9,772,741	9,797,568	10,811,719	(1,014,151)[7]	**110.4%**
Ontario Fire Department	79,747,483	88,583,579	89,158,668	94,651,958	(5,493,290)[8]	**106.2%**
Ontario Police Department	116,831,309	131,392,502	132,309,585	136,006,980	(3,697,395)[9]	**102.8%**
Public Works	8,908,679	10,573,585	11,081,094	9,459,093	1,622,001[10]	**85.4%**
Transfers-Out	80,167,807	70,874,441	71,494,441	60,311,783	11,182,658[11]	**84.4%**
Total Expenditures & Transfers-Out	**$ 382,739,102**	**$ 427,927,807**	**$ 438,639,582**	**$ 428,372,629**	**$ 10,266,953**	**97.7%**

[1] Reflects adjustments made at First Quarter, Mid-Year, and Year-End.
[2] FY 2023-24 Actuals are unaudited.
[3] Community Development budget savings mainly in personnel salaries and Engineering plan check services.
[4] Community Life & Culture savings mainly made up of full-time and part-time salaries, other expense, and Motel Voucher program.
[5] Economic Development overages mainly due to increases in sales tax incentive agreements.
[6] Human Resources / Risk Management budget savings mainly in legal services and other professional services.
[7] City Attorney Legal services increase due to unanticipated City matters.
[8] Fire Department had a higher expended amount due to a miscalculation in Fire safety budgeted salaries and increase in overtime. ($5.0M in Safety Hours/Skills Certifications, $1.2M in OT).
[9] Police Department exceeded budget due to increases in overtime costs.
[10] Public Works had lower than expected actuals in salaries, maintenance services contracts, and improvement costs.
[11] Reduced transfers out to Facilities Maintenance ($10.0M), Police Helicopter Reserve ($1.0M), and Parkway Maintenance Contribution ($180k).

City of Ontario General Fund Year-End Reconciliation (unaudited) Fiscal Year 2023-24		
Fiscal Year 2023-24 Current Budget:		
Beginning Fund Balance 7/01/2023		**$ 65,673,529**
Resources & Transfers-In[1]	441,021,265	
Appropriations & Transfers-Out	(428,372,629)	
Surplus/(Deficit)		***$ 12,648,636***
Estimated Ending Fund Balance 6/30/2024		**$ 78,322,165**
Estimated General Fund Reserve %[2]		**21.3%**
Fiscal Year 2023-24 Carryforward Obligations[3]		(1,688,618)
Revised Estimated Fund Balance		**$ 76,633,547**
Revised General Fund Reserve %		**20.8%**

[1] Includes $8.8M in American Rescue Plan Act (ARPA) funding.

[2] Council adopted the FY 2023-24 budget with a 20% reserve level. Reserve % excludes Transfers-Out.

[3] Excludes Parks Maintenance obligations carryforward as amount will be funded via transfer from Facilities Maintenance Fund 6030.

City of Ontario General Fund Year-End Reserve Balances (unaudited) Fiscal Year 2023-24			
Fund	**Description**	**Balance**	**Comments**
1000 - General Fund	Assigned to Economic Uncertainties	$ 20,000,000	
1000 - General Fund	Assigned Fund Balance for 20% Stabilization Plan	73,612,169	Unaudited FY 2023-24 fund balance
1000 - General Fund	Reserve Needed for FY 2024-25	4,709,996	Required for FY 2024-25 reserves
1000 - General Fund	Restricted for Denton Endowment	257,190	Interest restricted for Museum use; principal cannot be used
1000 - General Fund	Restricted for Barnes Trust	126,256	Museum use for donated family artifacts only
1000 - General Fund	Public Art Fee - Developers	310,000	Restricted use for the commission, acquisition, and/or development of Public Art
6010 - Equipment Services	Police Helicopter Public Safety Reserve	3,627,310	Assigned for replacement of Police Helicopter

FY 2024-25
First Quarter
Budget Update

City of Ontario General Fund Revenue by Category Fiscal Year 2024-25 First Quarter Budget Update					
	FY 2024-25 Adopted Budget	First Quarter Budget Update	FY 2024-25 Current Budget	Actuals as of 9/30/2024	% Received
Sales Tax	$ 128,375,000	$ -	$ 128,375,000	$ 10,655,472	8.3%
Sales Tax - Measure Q	66,000,000	-	66,000,000	4,360,344	6.6%
Property Tax	106,025,000	-	106,025,000	-	0.0%
Transient Occupancy Tax	17,000,000	-	17,000,000	1,493,715	8.8%
Business License Tax	10,150,000	-	10,150,000	1,988,790	19.6%
Parking Tax	4,000,000	-	4,000,000	806,546	20.2%
Other Taxes [1]	5,975,000	-	5,975,000	86,977	1.5%
Licenses and Permits	7,057,000	-	7,057,000	2,174,934	30.8%
Intergovernmental [2]	11,010,721	-	11,010,721	2,826,488	25.7%
Intergovernmental - ARPA [3]	7,250,000	(712,132) [6]	6,537,868	-	0.0%
Charges for Services [4]	30,494,370	66,925 [7]	30,561,295	3,882,582	12.7%
Charges for Services - OIAA [5]	24,500,591	(634,012) [8]	23,866,579	4,083,567	17.1%
Use of Money & Property	1,480,000	-	1,480,000	176,502	11.9%
Fines and Forfeitures	901,000	-	901,000	235,870	26.2%
Miscellaneous	5,647,747	5,516,612 [9]	11,164,359	2,685,849	24.1%
Total General Fund Revenues	**$ 425,866,429**	**$ 4,237,393**	**$ 430,103,822**	**$ 35,457,636**	**8.2%**
Transfers-In	3,000,000	459,374 [10]	3,459,374	3,000,000	86.7%
TOTAL RESOURCES	**$ 428,866,429**	**$ 4,696,767**	**$ 433,563,196**	**$ 38,457,636**	**8.9%**

[1] Other Taxes includes Franchise Tax ($3.5M) and Property Transfer Tax ($1.5M).
[2] Intergovernmental includes Cost Allocation Plan Revenue, Disability, Worker's Compensation, & Unemployment Internal Service Allocation Revenue.
[3] Funding from American Rescue Plan Act (ARPA).
[4] Charges for Services includes Special Districts Service Charges ($12.2M).
[5] City Services including Police & Fire to Ontario International Airport Authority (OIAA).
[6] Includes reduction in ARPA to be in line with remaining balance.
[7] Includes Planning Deposit Revenues ($40K).
[8] Includes reduction for Ontario International Airport Contract Amendment (CC Approved 10/15/24).
[9] Includes Sale Proceeds for City Asset for 322 N. Lemon St / Library Parking ($1.1M), increased SMG/Toyota Arena Revenues ($1.9M), and revenue for sale of Police Helicopter ($2.4M).
[10] Includes Facilities Maintenance Transfer to General Fund for Parks Maintenance FY 2023-24 Obligation Carryforwards.

City of Ontario
General Fund Expenditures by Category
Fiscal Year 2024-25
First Quarter Budget Update

	FY 2024-25 Adopted Budget	CIP/Grants/POs Carryforward	First Quarter Budget Update	FY2024-25 Current Budget	Actuals as of 9/30/2024 [1]	% Expended
Personnel Costs	$ 253,011,211	-	$ 689,391 [2]	$ 253,700,602	$ 58,087,584	22.9%
Operating Expenditures	42,749,833	283,874	2,006,052 [3]	45,039,759	11,315,103	25.1%
Contractual Services	23,139,834	917,174	1,060,250 [4]	25,117,258	4,481,415	17.8%
Internal Service Allocations	50,843,137	-	(4,585) [5]	50,838,552	11,906,803	23.4%
Reimbursement Agreements	10,519,656	-	-	10,519,656	355,798	3.4%
Contribution Expense	20,000	-	-	20,000	-	0.0%
Capital Expenditures	-	487,570	-	487,570	152,551	31.3%
Transfers-Out	47,146,250 [5]	-	992,332 [6]	48,138,582	3,162,834	6.6%
Total General Fund Appropriations	**$ 427,429,921**	**$ 1,688,618**	**$ 4,743,440**	**$ 433,861,979**	**$ 89,462,088**	**20.6%**
FTE General Fund	1,055.13	-	-	1,055.13		
FTE Other Funds	461.87	-	-	461.87		
Total FTE All Funds	1,517.00	-	-	1,517.00		

[1] Excludes obligations/PO's.

[2] Personnel Costs includes $1.1M for Gainshare Program and ($440k) reduction for Recommended Personnel Changes.

[3] Operating Expenditures includes $1.9M for Toyota Arena Capital Reimbursement - Roof Repair.

[4] Contractual Services includes $1.0M for the City Share of Start Up Costs for the West End Animal Services Agency.

[5] Internal Service Allocations includes a ($5k) reduction for FY 2024-25 Ontario International Airport Contract Amendment (Freezing 6 FTEs).

[6] Transfers includes $1.0M transfer from General Fund to Water Operating Fund to shore up the loss on sale of property of 400 Block North Euclid.

City of Ontario
General Fund Expenditures by Agency
Fiscal Year 2024-25
First Quarter Budget Update

	FY 2024-25 Adopted Budget	CIP/Grants/POs Carryforward	First Quarter Budget Update	FY2024-25 Current Budget	Actuals as of 9/30/2024 [1]	% Expended
Community Development	$ 33,889,520	$ -	$ 1,006,604 [2]	$ 34,896,124	$ 6,207,436	17.8%
Community Life & Culture	30,435,855	-	15,926 [3]	30,451,781	6,912,469	22.7%
Economic Development	17,376,851	464,387	1,954,180 [4]	19,795,418	3,676,508	18.6%
Financial Services	25,798,621	-	93,274 [5]	25,891,895	6,155,584	23.8%
Human Resources/Risk Management	6,432,579	-	100,059 [6]	6,532,638	1,544,776	23.6%
Management Services	10,137,836	-	49,509 [7]	10,187,345	2,513,691	24.7%
Ontario Fire Department	102,590,549	487,570	323,007 [8]	103,401,126	22,403,680	21.7%
Ontario Police Department	132,629,021	277,287	(168,349) [9]	132,737,959	31,967,023	24.1%
Public Works	20,992,839	459,374	376,898 [10]	21,829,111	4,918,087	22.5%
Transfers-Out	47,146,250	-	992,332 [11]	48,138,582	3,162,834	6.6%
Total Appropriations & Transfers-Out	**$ 427,429,921**	**$ 1,688,618**	**$ 4,743,440**	**$ 433,861,979**	**$ 89,462,088**	**20.6%**
FTE General Fund	1,055.13	-	-	1,055.13		
FTE Other Funds	461.87	-	-	461.87		
Total FTE All Funds	1,517.00	-	-	1,517.00		

[1] Excludes obligations/PO's.

[2] Community Development includes $1.0M for the City Share of Start Up Costs for the West End Animal Services Agency.

[3] Community Life & Culture includes $39k in Library Donations and Deposit Funded Furniture Purchase, $111k for Gainshare Program, and ($134k) in Recommended Personnel Changes

[4] Economic Development includes $1.9M for Toyota Arena Capital Reimbursement - Roof Repair.

[5] Financial Services includes $50k in Recommended Personnel Changes and $43k for Gainshare Program.

[6] Human Resources / Risk Management includes $74k in Recommended Personnel Changes and $25k for Gainshare Program.

[7] Management Services includes $30k for Gainshare Program and $20k in Recommended Personnel Changes.

[8] Fire Department includes $300k for Gainshare Program.

[9] Police Department includes $450k for Gainshare Program and ($600k) reduction for Recommended Personnel Changes.

[10] Public Works includes $200k in Recommended Personnel Changes and $80k for Gainshare Program.

[11] Transfers-Out includes $1.0M transfer from General Fund to Water Operating Fund for replenishment of loss on sale of property of 400 Block North Euclid.

City of Ontario General Fund Budget Summary Fiscal Year 2024-25 First Quarter Budget Update		
Fiscal Year 2024-25 Current Budget:		
Estimated Beginning Fund Balance [1]		**$ 78,322,165**
Fiscal Year 2024-25 Adopted Budget:		
Resources & Transfers-In	428,866,429	
Appropriations & Transfers-Out	(427,429,921)	
First Quarter Budget Recommendations		
Resources & Transfers-In	4,696,767	
Appropriations & Transfers-Out	(4,743,440)	
Fiscal Year 2023-24 Carryforward Obligations	(1,688,618)	
Budget Surplus/(Deficit)		***$ (298,783)***
Estimated Ending Fund Balance		**$ 78,023,382**
Estimated General Fund Reserve 20% [2]		**20.2%**

[1] Estimated Beginning Fund Balance for 07/01/2024 is unaudited.

[2] For FY 2024-25, the Council approved reserve level is 20% with the goal of increasing the reserves up to 25% in future fiscal years.

City of Ontario
Update on General Fund Reserve Balances
Fiscal Year 2024-25
First Quarter Budget Update

Fund	Description	Balance	Comments
1000 - General Fund	Assigned to Economic Uncertainties	$ 20,000,000	
1000 - General Fund	Assigned Fund Balance for 20% Stabilization Plan	78,023,382	Estimated Fund Balance at FY 2024-25 First Quarter Budget Update
1000 - General Fund	Restricted for Denton Endowment	257,190	Interest restricted for Museum use; principal cannot be used
1000 - General Fund	Restricted for Barnes Trust	126,256	Museum use for donated family artifacts only
1000 - General Fund	Public Art Fee - Developers	395,000	Restricted use for the commission, acquisition, and/or development of Public Art
6010 - Equipment Services	Police Helicopter Public Safety Reserve	5,127,310	Assigned for replacement of Police Helicopter
6010 - Equipment Services	Fire Safety Equipment Reserve	500,000	Assigned for replacement of Fire Safety Equipment

City of Ontario
Citywide Expenditures by Category
Fiscal Year 2024-25
First Quarter Budget Update

	FY 2024-25 Adopted Budget	CIP/Grants/POs Carryforward	First Quarter Budget Update	FY2024-25 Current Budget	Actuals as of 9/30/2024 [1]	% Expended
Personnel Costs	$ 329,697,821	$ 2,594,665	$ 2,184,358 [2]	$ 334,476,844	$ 77,670,492	23.2%
Operating Expenditures	235,838,586	26,151,174	9,976,889 [3]	271,966,649	45,886,591	16.9%
Contractual Services	342,008,603	249,843,829	6,566,276 [4]	598,418,708	22,393,958	3.7%
Internal Service Allocations	84,288,353	2,879	(4,585)	84,286,647	20,161,281	23.9%
Reimbursement Agreements	12,534,650	13,804,854	1,612,056 [5]	27,951,560	355,798	1.3%
Debt Service	49,809,379	13,744,612	-	63,553,991	7,611,712	12.0%
Contribution Expense	12,600,232	-	385,435 [6]	12,985,667	-	0.0%
Capital Expenditures	23,854,502	31,839,525	606,787 [7]	56,300,814	12,766,307	22.7%
Transfers-Out	70,798,042	-	1,451,706 [8]	72,249,748	25,575,782	35.4%
Total Citywide Appropriations	**$ 1,161,430,168**	**$ 337,981,538**	**$ 22,778,922**	**$ 1,522,190,628**	**$ 212,421,921**	**14.0%**
FTE General Fund	1,055.13	-	-	1,055.13		
FTE Other Funds	461.87	-	-	461.87		
Total FTE All Funds	1,517.00	-	-	1,517.00		

[1] Includes expenses and obligations/PO's.

[2] Personnel Costs includes $1.4M for Gainshare Program, $921k in various grants, ($173k) reduction for Recommended Personnel Changes and FY 2024-25 Ontario International Airport Contract Amendment.

[3] Operating Expenditures includes $3.6M for increased Street Sweeping Services (prevailing wages), $2.9M for remaining balance of Fiber Loan for the Broadband Fiber Network Expansion Project, $1.9M for Toyota Arena Capital Reimbursement - Roof Repair, $875k for various Grants, and $818k in multiple Agency requests Citywide.

[4] Contractual Services includes $3.5M in various Grants and Projects, $1.0M for the City share of start up costs for the West End Animal Services Agency, $629k in Professional Services for Utilities Customer Services, and $40k in Planning services funded from developer deposits.

[5] Reimbursement Agreements includes $1.6M for Water Main at Emporia and Vault Project.

[6] Contribution Expense includes $385k DIF Contribution to Equipment Services Fund for purchase of Integrated Waste vehicle.

[7] Capital Expenditures includes DIF Funded $385k for purchase of vehicle for Integrated Waste, $185k for OmniTrans Measure I Grant, and $36k for Equipment to be purchased by Asset Seizure Fund.

[8] Transfers includes $1.0M Transfer from General Fund to Water Operating Fund to shore up the loss on sale of property of 400 Block North Euclid and $459k transfer from Facilities Maintenance to General Fund for PO Obligation from prior year.

City of Ontario
Citywide Expenditures by Fund Type
Fiscal Year 2024-25
First Quarter Budget Update

	FY 2024-25 Adopted Budget	CIP/Grants/POs Carryforward	First Quarter Budget Update	FY2024-25 Current Budget	Actuals as of 9/30/2024 [1]	% Expended
General Fund	$ 427,429,921	$ 1,688,618	$ 4,743,440 [2]	$ 433,861,979	$ 89,462,088	20.6%
Special Revenue Fund	107,422,499	82,047,684	5,205,766 [3]	194,675,949	12,724,131	6.5%
Capital Projects Fund	245,897,110	213,085,453	426,726 [4]	459,409,289	24,618,928	5.4%
Enterprise Funds	251,609,889	24,784,873	9,960,222 [5]	286,354,984	55,574,199	19.4%
Internal Service Funds	127,503,074	6,003,351	2,452,763 [6]	135,959,188	29,692,690	21.8%
Total City Funds	**$ 1,159,862,493**	**$ 327,609,979**	**$ 22,788,917**	**$ 1,510,261,389**	**$ 212,072,036**	**14.0%**
Ontario Housing Authority	1,567,675	10,371,559	(9,995)	11,929,239	349,885	2.9%
Total All Funds	**$ 1,161,430,168**	**$ 337,981,538**	**$ 22,778,922**	**$ 1,522,190,628**	**$ 212,421,921**	**14.0%**
FTE General Fund	1,055.13	-	-	1,055.13		
FTE Other Funds	461.87	-	-	461.87		
Total FTE All Funds	1,517.00	-	-	1,517.00		

[1] Includes expenses and encumbrances/PO's.

[2] General Fund includes $1.9M for Toyota Arena Capital Reimbursement - Roof Repair, $1.1M for Gainshare Program, $1.0M for the City Share of Start Up Costs for the West End Animal Services Agency, $1.0M Transfer from General Fund to Water Operating Fund for replenishment of loss on sale of property of 400 Block North Euclid, $119k in multiple Agency requests Citywide, and ($440k) reduction for Recommended Personnel Changes and FY 2024-25 Ontario International Airport Contract Amendment.

[3] Special Revenue Funds includes $2.9M for remaining balance of Fiber Loan for the Broadband Fiber Network Expansion Project, $2.0M in various Grants and Projects, $177k in multiple Agency requests Citywide, $70k in Recommended Personnel Changes, and $27k for Gainshare Program.

[4] Capital Projects Funds includes $385k DIF Contribution to Equipment Services Fund for purchase of Integrated Waste vehicle and $41k in additional appropriations to San Antonio Storm Drain Project reimbursed by City of Chino.

[5] Enterprise Funds includes $5.3M for various Grants and Projects, $3.6M for increased Street Sweeping Services (prevailing wages), $1.1M in multiple Agency requests Citywide, $187k for Gainshare Program, and ($24k) reduction for Recommended Personnel Changes.

[6] Internal Service Funds includes $1.2M for various Grants and Projects, DIF Funded $385k for purchase of Integrated Waste vehicle, $220k for Recommended Personnel Changes, $86k in Gainshare Program, and $75k for equipping of Fire Department Fire Trucks.

City of Ontario
General Fund Five-Year Financial Forecast
Fiscal Year 2024-25
First Quarter Budget Update

	FY 2023-24 Unaudited Year-End	FY 2024-25 Current Budget	FY 2025-26 Projected	FY 2026-27 Projected	FY 2027-28 Projected	FY 2028-29 Projected
Resources [1]	$ 380,255,122	$ 367,563,196	$ 367,039,511	$ 384,672,918	$ 399,659,046	$ 417,442,709
Measure Q Sales Tax	60,766,143	66,000,000	67,320,000	68,666,400	70,039,728	71,440,523
Appropriations [2]	(318,731,936)	(334,884,845)	(354,128,446)	(365,959,047)	(366,691,894)	(373,085,452)
Internal Service Funds (ISF) Allocations	(49,328,910)	(50,838,552)	(52,554,329)	(54,445,416)	(56,458,324)	(58,603,891)
CIP Transfers	(44,279,888)	(40,210,000) [3]	(30,427,129)	(36,748,614)	(44,981,202)	(46,379,815)
Other Transfers	(16,031,895)	(7,928,582) [4]	(8,329,948)	(8,676,304)	(9,046,905)	-
Budget Surplus/(Deficit)	**$ 12,648,636**	**$ (298,783)**	**$ (11,080,341)**	**$ (12,490,063)**	**$ (7,479,551)**	**$ 10,814,074**
Estimated Beginning Fund Balance	$ 65,673,529	$ 78,322,165	$ 78,023,382	$ 66,943,041	$ 54,452,978	$ 46,973,427
Estimated Ending Fund Balance	$ 78,322,165	$ 78,023,382	$ 66,943,041	$ 54,452,978	$ 46,973,427	$ 57,787,501
Projected Percent of GF Reserve level	**21.3%**	**20.2%**	**16.5%**	**13.0%**	**11.1%**	**13.4%**

[1] Resources include Revenues & Transfers-In.
[2] Appropriations excludes Transfers-Out and ISF Allocations.
[3] CIP Transfers includes $35.2M of Measure Q Revenues and $5.0M of Bradley Burns Revenues.
[4] Other Transfers includes $4.6M for Retiree Medical Contribution, $1.5M for Police Helicopter Reserve, $500k for Fire Safety Equipment Reserve, and $300k for Parkway Maintenance.

City of Ontario Authorized Full-Time Positions Fiscal Year 2024-25 First Quarter Budget Update			
Agency	**FY 2024-25 Adopted Budget**	**Recommended First Quarter Budget Update**	**Total Authorized Full-Time Positions**
Community Development [1]	125.00	(41.00)	84.00
Community Life & Culture	102.00	-	102.00
Economic Development	9.00	-	9.00
Financial Services	56.00	-	56.00
Human Resources	31.00	-	31.00
Information Technology	53.00	-	53.00
Management Services	42.00	-	42.00
Ontario Fire Department [2]	265.00	-	265.00
Ontario Municipal Utilities Company	139.00	-	139.00
Ontario Police Department [3]	429.00	-	429.00
Public Works [1]	266.00	41.00	307.00
Total Authorized Full-Time Positions	**1,517.00**	**-**	**1,517.00**
General Fund	1,055.13	-	1,055.13
Other Funds	461.87	-	461.87
Total FTE All Funds	**1,517.00**	**-**	**1,517.00**
[1] Transfer of Engineering Department from CDA to PW			
[2] OFD positions includes the following sworn positions	213.00	-	213.00
[3] OPD positions includes the following sworn positions	312.00	-	312.00

City of Ontario
Recommended Personnel Changes
Fiscal Year 2024-25
First Quarter Budget Update

Agency	Department	Proposed Change			Position	Action	Salary Range	
		General Fund	Other Fund	Total				
Community Development								
	Building	(1.00)	-	(1.00)	Supervising Plans Examiner	Deletion	$ 8,057 -	$ 9,788
	Building	1.00	-	1.00	Building Manager	Addition	$ 11,757 -	$ 14,291
	Building	(2.00)	-	(2.00)	Senior Permit Tech	Deletion	$ 6,304 -	$ 7,663
	Building	2.00	-	2.00	Permit Tech	Addition	$ 5,663 -	$ 6,881
	Community Development Administration	(1.00)	-	(1.00)	Community Development Assistant Director	Deletion	$ 16,799 -	$ 22,353
	Planning	(1.00)	-	(1.00)	Assistant Planner	Deletion	$ 7,160 -	$ 8,703
	Planning	1.00	-	1.00	Associate Planner	Addition	$ 8,783 -	$ 10,669
		(1.00)	-	(1.00)				
Community Life & Culture								
	Housing	(0.50)	-	(0.50)	Senior Management Analyst	Deletion	$ 8,982 -	$ 10,913
	Housing	-	(0.50)	(0.50)	Senior Management Analyst	Deletion	$ 8,982 -	$ 10,913
	Housing	0.50	-	0.50	Administrative Assistant	Addition	$ 5,484 -	$ 6,665
	Housing	-	0.50	0.50	Administrative Assistant	Addition	$ 5,484 -	$ 6,665
	Housing	-	(1.00)	(1.00)	Housing Technician	Deletion	$ 5,112 -	$ 6,212
	Housing	-	1.00	1.00	Project Coordinator	Addition	$ 7,391 -	$ 8,980
	Museum	(1.00)	-	(1.00)	Project Manager	Deletion	$ 9,883 -	$ 12,007
	Museum	1.00	-	1.00	Recreation/Community Services Coordinator	Addition	$ 5,379 -	$ 6,531
	Recreation	(1.00)	-	(1.00)	Management Analyst	Deletion	$ 7,245 -	$ 8,807
	Recreation	1.00	-	1.00	Recreation/Community Services Coordinator	Addition	$ 5,379 -	$ 6,531
		-	-	-				
Economic Development								
	Economic Development	(1.00)	-	(1.00)	Economic Development Coordinator	Deletion	$ 8,982 -	$ 10,913
	Economic Development	1.00	-	1.00	Senior Project Manager	Addition	$ 10,913 -	$ 13,269
	Economic Development	(1.00)	-	(1.00)	Project Manager	Deletion	$ 9,883 -	$ 12,007
	Economic Development	1.00	-	1.00	Economic Development Coordinator	Addition	$ 8,982 -	$ 10,913
		-	-	-				
Financial Services								
	Accounting	(0.75)	-	(0.75)	Accounting Technician	Deletion	$ 5,767 -	$ 7,008
	Accounting	-	(0.25)	(0.25)	Accounting Technician	Deletion	$ 5,767 -	$ 7,008
	Accounting	0.75	-	0.75	Accountant	Addition	$ 6,878 -	$ 8,358
	Accounting	-	0.25	0.25	Accountant	Addition	$ 6,878 -	$ 8,358
	Financial Services Administration	(1.00)	-	(1.00)	General Services Director	Deletion	$ 13,822 -	$ 18,391
	Accounting	1.00	-	1.00	Accounting Administrator	Addition	$ 11,939 -	$ 15,888
	Budget	(1.00)	-	(1.00)	Senior Financial Analyst	Deletion	$ 10,052 -	$ 12,217
	Budget	1.00	-	1.00	Budget Administrator	Addition	$ 11,939 -	$ 15,888
	Budget	(1.00)	-	(1.00)	Management Analyst	Deletion	$ 7,245 -	$ 8,807
	Budget	1.00	-	1.00	Financial Analyst	Addition	$ 9,072 -	$ 11,021
		-	-	-				

City of Ontario
Recommended Personnel Changes
Fiscal Year 2024-25
First Quarter Budget Update

Agency	Department	Proposed Change			Position	Action	Salary Range
		General Fund	Other Fund	Total			
Human Resources/Risk Management							
	Human Resources Administration	(5.00)	-	(5.00)	Human Resources Analyst	Deletion	$ 7,989 - $ 9,705
	Human Resources Administration	5.00	-	5.00	Senior Human Resources Analyst	Addition	$ 8,982 - $ 10,913
	Human Resources Administration	(1.00)	-	(1.00)	Management Analyst	Deletion	$ 7,245 - $ 8,807
	Human Resources Administration	1.00	-	1.00	Senior Human Resources Analyst	Addition	$ 8,982 - $ 10,913
	Human Resources Administration	(1.00)	-	(1.00)	Human Resources Technician	Deletion	$ 6,367 - $ 7,739
	Human Resources Administration	1.00	-	1.00	Human Resources Analyst	Addition	$ 7,989 - $ 9,705
	Risk Management	-	(1.00)	(1.00)	Risk Management Specialist	Deletion	$ 5,938 - $ 7,218
	Risk Management	-	1.00	1.00	Human Resources Technician	Addition	$ 6,367 - $ 7,739
	Risk Management	-	(0.50)	(0.50)	Human Resources Specialist	Deletion	$ 5,938 - $ 7,218
	Risk Management	-	(0.50)	(0.50)	Human Resources Specialist	Deletion	$ 5,938 - $ 7,218
	Risk Management	-	0.50	0.50	Principal Human Resources Agency Partner	Addition	$ 10,906 - $ 13,260
	Risk Management	-	0.50	0.50	Principal Human Resources Agency Partner	Addition	$ 10,906 - $ 13,260
	Risk Management	-	(1.00)	(1.00)	Management Analyst	Deletion	$ 7,245 - $ 8,807
	Risk Management	-	1.00	1.00	Human Resources Analyst	Addition	$ 7,989 - $ 9,705
	Risk Management	-	(0.50)	(0.50)	Senior Management Analyst	Deletion	$ 8,982 - $ 10,913
	Risk Management	-	(0.50)	(0.50)	Senior Management Analyst	Deletion	$ 8,982 - $ 10,913
	Risk Management	-	0.50	0.50	Human Resources Analyst	Addition	$ 7,989 - $ 9,705
	Risk Management	-	0.50	0.50	Human Resources Analyst	Addition	$ 7,989 - $ 9,705
	Risk Management	-	(1.00)	(1.00)	Principal Risk Management/Benefits Agency Partner	Deletion	$ 10,906 - $ 13,260
	Risk Management	-	1.00	1.00	Principal Human Resources Agency Partner	Addition	$ 10,906 - $ 13,260
		-	-	-			
Information Technology							
	Administration	-	(1.00)	(1.00)	Management Assistant - Confidential	Deletion	$ 6,367 - $ 7,739
	Administration	-	1.00	1.00	Management Analyst - Confidential	Addition	$ 7,245 - $ 8,807
	Operations	-	(1.00)	(1.00)	Systems Specialist	Deletion	$ 6,699 - $ 8,143
	Operations	-	1.00	1.00	IT Specialist	Addition	$ 6,699 - $ 8,143
		-	-	-			
Management Services							
	Office of the City Manager	(0.50)	-	(0.50)	Management Services Director	Deletion	$ 14,513 - $ 19,309
	Innovation Performance & Audit	(0.50)	-	(0.50)	Management Services Director	Deletion	$ 14,513 - $ 19,309
	Office of the City Manager	1.00	-	1.00	Deputy City Manager	Addition	$ 15,234 - $ 20,275
	Communications & Community Relations	(1.00)	-	(1.00)	Communications & Community Relations Director	Deletion	$ 14,513 - $ 19,309
	Communications & Community Relations	1.00	-	1.00	Executive Director, Communications & Community Relations	Addition	$ 16,397 - $ 21,807
	Communications & Community Relations	(1.00)	-	(1.00)	Administrative Officer	Deletion	$ 10,906 - $ 13,260
	Communications & Community Relations	1.00	-	1.00	Government Affairs Manager	Addition	$ 10,906 - $ 13,260
	Communications & Community Relations	(1.00)	-	(1.00)	Central Services Specialist	Deletion	$ 4,540 - $ 5,512
	Records Management	1.00	-	1.00	Deputy City Clerk / Records Manager	Addition	$ 10,906 - $ 13,260
	Innovation Performance & Audit	(1.00)	-	(1.00)	City Auditor	Deletion	$ 10,715 - $ 13,023
	Innovation Performance & Audit	1.00	-	1.00	Administrative Specialist	Addition	$ 8,046 - $ 9,778
	Innovation Performance & Audit	(1.00)	-	(1.00)	Administrative Officer	Deletion	$ 10,906 - $ 13,260
	Innovation Performance & Audit	1.00	-	1.00	Deputy Director, Innovation Performance & Audit	Addition	$ 11,939 - $ 15,888
		-	-	-			

City of Ontario
Recommended Personnel Changes
Fiscal Year 2024-25
First Quarter Budget Update

Agency	Department	Proposed Change			Position	Action	Salary Range
		General Fund	Other Fund	Total			
Ontario Fire Department							
	Fire Administration	(1.00)	-	(1.00)	Administrative Technician	Deletion	$ 5,112 - $ 6,212
	Fire Administration	1.00	-	1.00	Management Analyst	Addition	$ 7,245 - $ 8,807
	Fire Administration	(1.00)	-	(1.00)	Office Specialist	Deletion	$ 4,538 - $ 5,512
	Fire Administration	1.00	-	1.00	Administrative Technician	Addition	$ 5,112 - $ 6,212
		-	-	-			
Ontario Municipal Utilities							
	Water Line Maintenance	-	(1.00)	(1.00)	Utilities Maintenance Worker	Deletion	$ 4,872 - $ 5,923
	Environmental Engineering / Water	-	1.00	1.00	Water Quality Specialist	Addition	$ 7,845 - $ 9,535
	Water Capital Utilities	-	(1.00)	(1.00)	Senior Associate Engineer	Deletion	$ 11,138 - $ 13,534
	Water Capital Utilities	-	0.70	0.70	Associate Engineer	Addition	$ 10,052 - $ 12,217
	Sewer Capital/Utilities	-	0.30	0.30	Associate Engineer	Addition	$ 10,052 - $ 12,217
	Water Capital Utilities	-	(0.75)	(0.75)	Assistant Engineer	Deletion	$ 9,136 - $ 11,104
	Sewer Capital/Utilities	-	(0.25)	(0.25)	Assistant Engineer	Deletion	$ 9,136 - $ 11,104
	Water Capital Utilities	-	0.75	0.75	Engineering Assistant	Addition	$ 7,618 - $ 9,254
	Sewer Capital/Utilities	-	0.25	0.25	Engineering Assistant	Addition	$ 7,618 - $ 9,254
	Sewer Administration	-	(0.25)	(0.25)	Senior Administrative Assistant	Deletion	$ 6,030 - $ 7,327
	Sewer Capital/Utilities	-	(0.15)	(0.15)	Senior Administrative Assistant	Deletion	$ 6,030 - $ 7,327
	Water Administration	-	(0.40)	(0.40)	Senior Administrative Assistant	Deletion	$ 6,030 - $ 7,327
	Water Capital Utilities	-	(0.20)	(0.20)	Senior Administrative Assistant	Deletion	$ 6,030 - $ 7,327
	Sewer Administration	-	0.25	0.25	Management Analyst	Addition	$ 7,245 - $ 8,807
	Sewer Capital/Utilities	-	0.15	0.15	Management Analyst	Addition	$ 7,245 - $ 8,807
	Water Administration	-	0.40	0.40	Management Analyst	Addition	$ 7,245 - $ 8,807
	Water Capital Utilities	-	0.20	0.20	Management Analyst	Addition	$ 7,245 - $ 8,807
	Environmental Engineering/Sewer	-	(1.00)	(1.00)	Environmental Programs Manager	Title Change	$ 9,592 - $ 11,651
	Environmental Engineering/Sewer	-	1.00	1.00	Wastewater Compliance Manager	Title Change	$ 9,592 - $ 11,651
	Utilities Customer Service	-	(4.00)	(4.00)	Utilities Customer Services Supervisor	Title Change	$ 8,109 - $ 9,859
	Utilities Customer Service	-	4.00	4.00	Customer Service Supervisor	Title Change	$ 8,109 - $ 9,859
	Water Capital/Utilities	-	(1.00)	(1.00)	Utilities Engineering Division Manager	Title Change	$ 15,142 - $ 18,405
	Water Capital/Utilities	-	1.00	1.00	Utilities Engineering Manager	Title Change	$ 15,142 - $ 18,405
	Water Operations	-	(1.00)	(1.00)	Utilities Operations Division Manager	Title Change	$ 11,754 - $ 14,283
	Water Operations	-	1.00	1.00	Utilities Operations Manager	Title Change	$ 11,754 - $ 14,283
		-	-	-			
Ontario Police Department							
	Police Communications/Records	(1.00)	-	(1.00)	Office Specialist	Deletion	$ 4,538 - $ 5,512
	Detective Division	1.00	-	1.00	Police Records Specialist	Addition	$ 4,538 - $ 5,512
	Ontario Ranch	(1.00)	-	(1.00)	Community Service Officer	Deletion	$ 4,938 - $ 6,001
	Ontario Ranch	1.00	-	1.00	Senior Community Service Officer	Addition	$ 5,429 - $ 6,663
	Police Communications/Records	(1.00)	-	(1.00)	Police Communications Manager	Deletion	$ 10,702 - $ 13,002
	Police Communications/Records	1.00	-	1.00	Community Relations Supervisor	Addition	$ 11,757 - $ 14,291
	Traffic (Airport)	-	-	-	Community Service Officer	Freeze	$ 4,938 - $ 6,001
	Patrol (Airport)	-	-	-	Community Service Officer	Freeze	$ 4,938 - $ 6,001
	Police Administration (Airport)	-	-	-	Office Specialist	Freeze	$ 4,538 - $ 5,512
	Police Administration (Airport)	-	-	-	Office Specialist	Freeze	$ 4,538 - $ 5,512
	Police Administration (Airport)	-	-	-	Office Specialist	Freeze	$ 4,538 - $ 5,512
	Traffic (Airport)	-	-	-	Equipment Service Technician	Freeze	$ 4,983 - $ 6,056
		-	-	-			

City of Ontario
Recommended Personnel Changes
Fiscal Year 2024-25
First Quarter Budget Update

Agency	Department	Proposed Change			Position	Action	Salary Range	
		General Fund	Other Fund	Total				
Public Works								
	Parks Maintenance	(1.00)	-	(1.00)	Parks and Maintenance Director	Title Change	$ 11,939 -	$ 15,888
	Parks Maintenance	1.00	-	1.00	Parks and Streets Maintenance Director	Title Change	$ 11,939 -	$ 15,888
	Fleet Management	-	(1.00)	(1.00)	Assistant Director Municipal Services	Title Change	$ 10,052 -	$ 12,217
	Fleet Management	-	1.00	1.00	Municipal Services Manager	Title Change	$ 10,052 -	$ 12,217
	Fleet Management	-	(1.00)	(1.00)	Fleet Services Manager	Title Change	$ 9,305 -	$ 11,305
	Fleet Management	-	1.00	1.00	Fleet Services Superintendent	Title Change	$ 9,305 -	$ 11,305
	Integrated Waste	-	(2.00)	(2.00)	Integrated Waste Assistant Division Manager	Title Change	$ 9,305 -	$ 11,305
	Integrated Waste	-	2.00	2.00	Integrated Waste Superintendent	Title Change	$ 9,305 -	$ 11,305
	Integrated Waste	-	(1.00)	(1.00)	Integrated Waste Division Manager	Title Change	$ 11,022 -	$ 13,400
	Integrated Waste	-	1.00	1.00	Integrated Waste Manager	Title Change	$ 11,022 -	$ 13,400
	Parks Maintenance	(1.00)	-	(1.00)	Parks and Maintenance Manager	Title Change	$ 9,305 -	$ 11,305
	Parks Maintenance	1.00	-	1.00	Parks and Streets Maintenance Superintendent	Title Change	$ 9,305 -	$ 11,305
	Facilities & Parks Maintenance	-	(1.00)	(1.00)	Principal Project Manager	Title Change	$ 12,457 -	$ 15,135
	Facilities & Parks Maintenance	-	1.00	1.00	Principal Construction Project Manager	Title Change	$ 12,457 -	$ 15,135
	Public Works Administration	(3.00)	-	(3.00)	Project Manager	Title Change	$ 9,883 -	$ 12,007
	Public Works Administration	3.00	-	3.00	Construction Project Manager	Title Change	$ 9,883 -	$ 12,007
	Public Facilities Building Maintenance	-	(1.00)	(1.00)	Public Facilities Maintenance Manager	Title Change	$ 9,305 -	$ 11,305
	Public Facilities Building Maintenance	-	1.00	1.00	Facilities Maintenance Superintendent	Title Change	$ 9,305 -	$ 11,305
	Public Grounds Maintenance	(1.00)	-	(1.00)	Urban Forestry Manager	Title Change	$ 9,305 -	$ 11,305
	Public Grounds Maintenance	1.00	-	1.00	Urban Forestry Superintendent	Title Change	$ 9,305 -	$ 11,305
	Municipal Facilities	(0.89)	-	(0.89)	Senior Electrician	Deletion	$ 6,909 -	$ 8,394
	Municipal Facilities	-	(0.01)	(0.01)	Senior Electrician	Deletion	$ 6,909 -	$ 8,394
	Municipal Facilities	-	(0.10)	(0.10)	Senior Electrician	Deletion	$ 6,909 -	$ 8,394
	Municipal Facilities	0.89	-	0.89	Facilities Maintenance Supervisor	Addition	$ 7,101 -	$ 8,630
	Municipal Facilities	-	0.01	0.01	Facilities Maintenance Supervisor	Addition	$ 7,101 -	$ 8,630
	Municipal Facilities	-	0.10	0.10	Facilities Maintenance Supervisor	Addition	$ 7,101 -	$ 8,630
	Municipal Facilities	-	(1.00)	(1.00)	Custodial Services Supervisor	Deletion	$ 6,101 -	$ 7,410
	Municipal Facilities	-	1.00	1.00	Facilities Maintenance Supervisor	Addition	$ 7,101 -	$ 8,630
	Engineering	1.00	-	1.00	Public Works Assistant Director	Addition	$ 16,799 -	$ 22,353
	Engineering	(1.00)	-	(1.00)	Engineering Assistant	Deletion	$ 7,618 -	$ 9,254
	Engineering	1.00	-	1.00	Assistant Engineer	Addition	$ 9,136 -	$ 11,104
	Engineering	(0.30)	-	(0.30)	Public Works Inspector	Deletion	$ 7,455 -	$ 9,060
	Engineering	(0.20)	-	(0.20)	Public Works Inspector	Deletion	$ 7,455 -	$ 9,060
	Engineering	-	(0.20)	(0.20)	Public Works Inspector	Deletion	$ 7,455 -	$ 9,060
	Engineering	-	(0.15)	(0.15)	Public Works Inspector	Deletion	$ 7,455 -	$ 9,060
	Engineering	-	(0.15)	(0.15)	Public Works Inspector	Deletion	$ 7,455 -	$ 9,060
	Engineering	-	0.30	0.30	Senior Public Works Inspector	Addition	$ 8,322 -	$ 10,116
	Engineering	-	0.20	0.20	Senior Public Works Inspector	Addition	$ 8,322 -	$ 10,116
	Engineering	-	0.20	0.20	Senior Public Works Inspector	Addition	$ 8,322 -	$ 10,116
	Engineering	-	0.15	0.15	Senior Public Works Inspector	Addition	$ 8,322 -	$ 10,116
	Engineering	-	0.15	0.15	Senior Public Works Inspector	Addition	$ 8,322 -	$ 10,116
	Engineering	-	(1.00)	(1.00)	Associate Engineer	Deletion	$ 10,052 -	$ 12,217
	Engineering	-	1.00	1.00	Senior Associate Civil Engineer	Addition	$ 11,138 -	$ 13,534

City of Ontario
Recommended Personnel Changes
Fiscal Year 2024-25
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Agency	Department	Proposed Change			Position	Action	Salary Range
		General Fund	Other Fund	Total			
Public Works (cont.)	Engineering	(0.70)	-	(0.70)	Senior Associate Civil Engineer	Deletion	$ 11,138 - $ 13,534
	Engineering	-	(0.15)	(0.15)	Senior Associate Civil Engineer	Deletion	$ 11,138 - $ 13,534
	Engineering	-	(0.15)	(0.15)	Senior Associate Civil Engineer	Deletion	$ 11,138 - $ 13,534
	Engineering	0.70		0.70	Assistant Engineer	Addition	$ 9,136 - $ 11,104
	Engineering	-	0.15	0.15	Assistant Engineer	Addition	$ 9,136 - $ 11,104
	Engineering	-	0.15	0.15	Assistant Engineer	Addition	$ 9,136 - $ 11,104
	Engineering	(0.25)	-	(0.25)	Public Works Inspector	Deletion	$ 7,455 - $ 9,060
	Engineering	(0.20)	-	(0.20)	Public Works Inspector	Deletion	$ 7,455 - $ 9,060
	Engineering	-	(0.20)	(0.20)	Public Works Inspector	Deletion	$ 7,455 - $ 9,060
	Engineering	-	(0.20)	(0.20)	Public Works Inspector	Deletion	$ 7,455 - $ 9,060
	Engineering	-	(0.15)	(0.15)	Public Works Inspector	Deletion	$ 7,455 - $ 9,060
	Engineering	0.25	-	0.25	Senior Public Works Inspector	Addition	$ 8,322 - $ 10,116
	Engineering	0.20	-	0.20	Senior Public Works Inspector	Addition	$ 8,322 - $ 10,116
	Engineering	-	0.20	0.20	Senior Public Works Inspector	Addition	$ 8,322 - $ 10,116
	Engineering	-	0.20	0.20	Senior Public Works Inspector	Addition	$ 8,322 - $ 10,116
	Engineering	-	0.15	0.15	Senior Public Works Inspector	Addition	$ 8,322 - $ 10,116
	Engineering	(0.70)	-	(0.70)	Engineering Assistant	Deletion	$ 7,618 - $ 9,254
	Engineering	-	(0.30)	(0.30)	Engineering Assistant	Deletion	$ 7,618 - $ 9,254
	Engineering	0.70	-	0.70	Assistant Engineer	Addition	$ 9,136 - $ 11,104
	Engineering	-	0.30	0.30	Assistant Engineer	Addition	$ 9,136 - $ 11,104
	Engineering	(1.00)	-	(1.00)	Engineering Assistant	Deletion	$ 7,618 - $ 9,254
	Engineering	1.00	-	1.00	Engineering Aide	Addition	$ 6,758 - $ 8,216
	Engineering	(0.25)	-	(0.25)	Associate Engineer	Deletion	$ 10,052 - $ 12,217
	Engineering	(0.25)	-	(0.25)	Associate Engineer	Deletion	$ 10,052 - $ 12,217
	Engineering	(0.25)	-	(0.25)	Associate Engineer	Deletion	$ 10,052 - $ 12,217
	Engineering	(0.25)	-	(0.25)	Associate Engineer	Deletion	$ 10,052 - $ 12,217
	Engineering	0.25	-	0.25	Assistant Engineer	Addition	$ 9,136 - $ 11,104
	Engineering	0.25	-	0.25	Assistant Engineer	Addition	$ 9,136 - $ 11,104
	Engineering	0.25	-	0.25	Assistant Engineer	Addition	$ 9,136 - $ 11,104
	Engineering	0.25	-	0.25	Assistant Engineer	Addition	$ 9,136 - $ 11,104
		1.00	-	1.00			
Total Additions/(Deletions)		-	-	-			

City of Ontario
Recommended Personnel Changes
Fiscal Year 2024-25
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Agency	Department	Proposed Change			Position	Action	Salary Range
		General Fund	Other Fund	Total			
		Net Change By Fund			First Quarter Adjustments	Net FTE Change	
		1000 General Fund			$ (440,135)	-	
		2010 C.D.B.G.			$ 64,064	-	
		2020 HOME Grants			$ -	-	
		2310 Ontario Housing Authority			$ (16,447)	-	
		2400 Grants Fund			$ -	-	
		2521 Broadband / Fiber			$ -	-	
		2530 Gas Tax			$ 8,659	-	
		2600 Special Assessment Administration			$ 4,275	-	
		2610 Parkway Maintenance			$ -	-	
		2630 Street Light Maintenance			$ 679	-	
		2640 Storm Drain Maintenance			$ 8,759	-	
		5010 Water Operating			$ 26,734	-	
		5011 Water Capital			$ (80,220)	(0.30)	
		5110 Sewer Operating			$ 1,945	-	
		5111 Sewer Capital			$ 27,562	0.30	
		5210 Integrated Waste			$ -	-	
		6010 Equipment Services			$ -	-	
		6020 Information Technology			$ 35,433	-	
		6030 Facility Maintenance			$ 27,156	-	
		6110 Workers Compensation			$ 91,706	-	
		6111 General Liability			$ 66,468	-	
		Grand Total			**$ (173,362)**	**(0.00)**	

City of Ontario
Budget Adjustment Highlights
Fiscal Year 2024-25
First Quarter Budget Update

Agency	Description	Appropriation Adjustment	General Fund	Other Funds
Community Development				
	Appropriations for the City Share of Start Up Costs for the West End Animal Services Agency	1,000,000	1,000,000	-
	FY 2023-24 Gainshare Program	75,391	75,391	-
	Planning Deposit Revenues and Related Appropriations for the Environmental Impact Reports	40,250	40,250	-
	Recommended Personnel Changes	(169,037)	(169,037)	-
	Community Improvement Cat Spay Neuter Program	20,000	20,000	
	Community Improvement Office Reconfiguration Costs	40,000	40,000	
	Carryforward CIP Appropriations from FY 2023-24	1,523,283	-	1,523,283
		2,529,887	**1,006,604**	**1,523,283**
Community Life & Culture				
	FY 2023-24 Gainshare Program	117,863	111,411	6,452
	Library Copy Machine Deposit and Donation Funded Furniture Purchase	39,094	39,094	-
	Recommended Personnel Changes	(86,962)	(134,579)	47,617
	Carryforward Grant Appropriations from FY 2023-24	33,995,848	-	33,995,848
	Carryforward Grant Obligations from FY 2023-24	122,711	-	122,711
	Carryforward CIP Appropriations from FY 2023-24	14,166,252	-	14,166,252
	Carryforward CIP Obligations from FY 2023-24	40,598	-	40,598
	GR2424 USA Swimming Foundation Grant	5,000	-	5,000
	GR2506 OmniTrans Measure I Grant (CC Approved 3/5/2024)	968,666	-	968,666
	GR2510 California Library Literacy Services Grant	31,725	-	31,725
	Carryforward Obligations from FY 2023-24	31,404	-	31,404
		49,432,199	**15,926**	**49,416,273**
Economic Development				
	Toyota Arena Capital Reimbursement - Roof Repair	1,887,458	1,887,458	-
	Carryforward Obligations from FY 2023-24	464,387	464,387	-
	Recommended Personnel Changes	56,649	56,649	-
	FY 2023-24 Gainshare Program	10,073	10,073	-
	Carryforward CIP Appropriations from FY 2023-24	18,418,189	-	18,418,189
	Carryforward CIP Obligations from FY 2023-24	1,100,202	-	1,100,202
	OHA Consolidation PF2414 Continuum of Care Project to PF2423 West Mission Campus - Temporary Access Center Project	9,100,000	-	9,100,000
	OHA Consolidation PF2414 Continuum of Care Project to PF2423 West Mission Campus - Temporary Access Center Project	(9,100,000)	-	(9,100,000)
		21,936,958	**2,418,567**	**19,518,391**

City of Ontario
Budget Adjustment Highlights
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Agency	Description	Appropriation Adjustment	General Fund	Other Funds
Financial Services				
	FY 2023-24 Gainshare Program	43,621	39,466	4,155
	Recommended Personnel Changes	58,083	53,808	4,275
	Carryforward CIP Appropriations from FY 2023-24	5,420,606	-	5,420,606
	Budget Adjustment - WA2404 State St, Campus Ave, & Bon View Ave Water Main Improvements Project	563,324	-	563,324
	DIF Contribution to Fleet for Integrated Waste Vehicle Acquisition	385,435	-	385,435
	Carryforward CIP Obligations from FY 2023-24	50,711	-	50,711
		6,521,780	**93,274**	**6,428,506**
Human Resources/Risk Management				
	Recommended Personnel Changes	232,262	74,088	158,174
	FY 2023-24 Gainshare Program	28,587	25,971	2,616
		260,849	**25,971**	**2,616**
Information Technology				
	Carryforward CIP Appropriations from FY 2023-24	2,050,162	-	2,050,162
	Carryforward CIP Obligations from FY 2023-24	1,027,507	-	1,027,507
	PF2402 Citywide Camera Refresh Appropriation from PF2405 City Facilities Notification, Emergency & Paging Project	300,000	-	300,000
	PF2402 Citywide Camera Refresh Appropriation from PF2405 City Facilities Notification, Emergency & Paging Project	(300,000)	-	(300,000)
	Carryforward Obligations from FY 2023-24	132,762	-	132,762
	Recommended Personnel Changes	35,433	-	35,433
	FY 2023-24 Gainshare Program	41,662	-	41,662
		3,287,526	**-**	**3,287,526**
Management Services				
	FY 2023-24 Gainshare Program	40,506	30,437	10,069
	Recommended Personnel Changes	19,072	19,072	-
	Additional appropriations for MS2207 Broadband Fiber Network Expansion Project to the remaining loan balance	2,965,796	-	2,965,796
	Carryforward CIP Obligations from FY 2023-24	1,537,682	-	1,537,682
	Carryforward CIP Appropriations from FY 2023-24	902,344	-	902,344
	Carryforward Obligations from FY 2023-24	88,295	-	88,295
	Carryforward Grant Appropriations from FY 2023-24	14,773	-	14,773
	GR2502 Local Governmental Digital Equity Best Practices Check List Webinar Grant	1,000	-	1,000
		5,569,468	**49,509**	**5,519,959**

City of Ontario
Budget Adjustment Highlights
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Agency	Description	Appropriation Adjustment	General Fund	Other Funds
OMUC				
	Carryforward CIP Appropriations from FY 2023-24	14,297,306	-	14,297,306
	Carryforward CIP Obligations from FY 2023-24	5,188,222	-	5,188,222
	Carryforward Grant Appropriations from FY 2023-24	8,964,135	-	8,964,135
	WA2201 WM Transit/Emporia/Palm/Laurel Construction Cost for Emporia and Vault Project (CC approved 8/20/2024)	1,612,056	-	1,612,056
	Additional Appropriations for WA2203 Potable Well Number 53	1,500,000	-	1,500,000
	Additional Appropriations for WA1401 San Antonio Ave Phase 3	241,269	-	241,269
	Budget Adjustment - WA2301 Ontario Ranch Phase 2B WM Project	477,935	-	477,935
	Budget Adjustment - WA2302 Reservoir 925'-A Project	339,597	-	339,597
	Appropriations for the CIS/AUS Professional Services Agreement (CC Approved 3/19/24)	524,300	-	524,300
	Carryforward Obligations from FY 2023-24	246,777	-	246,777
	Carryforward Grant Obligations from FY 2023-24	170,000	-	170,000
	FY 2023-24 Gainshare Program	113,079	-	113,079
	Utility Customer Service Professional Services Agreement	105,000	-	105,000
	Recommended Personnel Changes	(15,853)	-	(539,601)
		33,763,823	**-**	**33,240,075**
Ontario Fire Department				
	Carryforward Obligations from FY 2023-24	3,130,594	487,570	2,643,024
	FY 2023-24 Gainshare Program	308,230	-	308,230
	Recommended Personnel Changes	14,777	-	14,777
	Carryforward Grant Obligations from FY 2023-24	248,736	-	248,736
	Carryforward Grant Appropriations from FY 2023-24	81,009	-	81,009
	GR2422 Homeland Security FY22 - FD Grant	27,249	-	27,249
		3,810,595	**487,570**	**3,323,025**
Ontario Police Department				
	Carryforward Obligations from FY 2023-24	1,905,629	277,287	1,628,342
	FY 2023-24 Gainshare Program	442,992	442,992	-
	Recommended Personnel Changes	(611,341)	(611,341)	-
	Carryforward Grant Appropriations from FY 2023-24	2,910,367	-	2,910,367
	Carryforward CIP Obligations from FY 2023-24	1,812,342	-	1,812,342
	Carryforward CIP Appropriations from FY 2023-24	1,701,776	-	1,701,776
	GR2423 FY2022 UASI Grant (CC Approved 11/07/2023)	600,000	-	600,000
	GR2505 CHP Cannabis Tax Fund Grant	99,200	-	99,200

City of Ontario
Budget Adjustment Highlights
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Agency	Description	Appropriation Adjustment	General Fund	Other Funds
Ontario Police Department (cont.)				
	GR2507 FY2023 Justice Assistance Grant	52,701	-	52,701
	GR2508 Alcohol Policing Partnership Grant	39,154	-	39,154
	Asset Seizure Equipment Purchase	39,455	-	39,455
	Carryforward Grant Obligations from FY 2023-24	15,016	-	15,016
		9,007,291	**108,938**	**8,898,353**
Public Works				
	Carryforward Obligations from FY 2023-24	479,374	459,374	20,000
	Recommended Personnel Changes	293,555	256,428	37,127
	FY 2023-24 Gainshare Program	209,955	80,970	128,985
	Additional appropriations for Streetlight Monitoring Maintenance Services Agreement	94,000	39,500	54,500
	Carryforward CIP Appropriations from FY 2023-24	167,380,685	-	167,380,685
	Carryforward CIP Obligations from FY 2023-24	34,438,228	-	34,438,228
	Carryforward Grant Appropriations from FY 2023-24	13,046,156	-	13,046,156
	Carryforward Grant Obligations from FY 2023-24	877,470	-	877,470
	Additional appropriations for FY 2024-25 Street Sweeping Services (prevailing wage) (CC Approved 6/4/24)	3,591,037	-	3,591,037
	Demolition and Fencing for PF2504 Jay Littleton Emergency Cleanup	1,119,077	-	1,119,077
	GR2504 CalRecycle's SB1383 Local Assistance Grant (CC Approved 9/3/2024)	476,003	-	476,003
	Purchase of Freightliner Grapple Truck for Integrated Waste	385,435	-	385,435
	Street sweeping sign fabrication and installation for FY 2024-25	214,821	-	214,821
	Additional Appropriations for ST2511 Chino and Grove Ave Pavement Restoration Project	125,248	-	125,248
	PF2101 Climatec Update	106,892	-	106,892
	Equipping of Pick Up Trucks Purchased for Fire Department	75,000	-	75,000
	GR2503 FY 2023-24 CalRecycle's Beverage Container Grant	45,479	-	45,479
	SM2101 San Antonio Storm Drain - Additional Reimbursement from City of Chino and Appropriations	41,291	-	41,291
	Additional Gas Tax Appropriations for the FY2024-25 CPS Project	50,000	-	50,000
	Additional Appropriations for Routeware Routing Optimization Service Contract	41,043	-	41,043
	New Braking System for 10 Integrated Waste Collection Vehicles	40,000	-	40,000
	Annual and investigative traffic counts and speed surveys	33,000	-	33,000
	GR2425 FY 2023-24 CalRecycle's Used Oil Grant	24,629	-	24,629
		223,188,378	**836,272**	**222,352,106**
	Total Expenditures	359,308,754	5,042,631	353,510,113
	Transfers-Out	1,451,706	-	1,451,706
	Grand Total	**$ 360,760,460**	**$ 5,042,631**	**$ 354,961,819**

City of Ontario
Detail of Recommended Budget Adjustments by Fund
Fiscal Year 2024-25
First Quarter Budget Update

Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfers-In	Operating Transfers-Out	Fund Balance Impact
GENERAL FUND					
Fund 1000 - General Fund					**78,322,165**
Carryforward Obligations from FY 2023-24	1,688,618	-	-	-	(1,688,618)
FY 2023-24 Gainshare Program	1,124,941	-	-	-	(1,124,941)
Library Copy Machine Deposit and Donation Funded Furniture Purchase	39,094	39,094	-	-	-
Reducing ARPA Revenues to Reflect Remaining Balance	-	(712,132)	-	-	(712,132)
Revenue for Sale of Police Helicopter	-	2,433,485	-	-	2,433,485
Additionanl appropriations and related revenues for Planning services funded by developer deposits	40,250	40,250	-	-	-
Facilities Maintenance Transfer to General Fund for Parks Maintenance FY 2023-24 Obligation Carryforwards	-	-	459,374	-	459,374
Appropriations for the City Share of Start Up Costs for the West End Animal Services Agency	1,000,000	-	-	-	(1,000,000)
Transfer from General Fund to Water Operating Fund for replenishment of loss on sale of property of 400 Block North Euclid	-	-	-	992,332	(992,332)
West End Animal Services Agency Revenue	-	100,000	-	-	100,000
Additional appropriations for Streetlight Monitoring Maintenance Services Agreement	39,500	-	-	-	(39,500)
Sale Proceeds for City Asset for 322 N. Lemon St / Library Parking	-	1,083,250	-	-	1,083,250
Toyota Arena Capital Reimbursement - Roof Repair and Offsetting Revenue	1,887,458	1,887,458	-	-	-
Recommended Personnel Changes	(440,135)	(634,012)	-	-	(193,877)
Community Improvement Cat Spay Neuter Program	20,000	-	-	-	(20,000)
Community Improvement Office Reconfiguration Costs	40,000	-	-	-	(40,000)
GENERAL FUND TOTAL	**5,439,726**	**4,237,393**	**459,374**	**992,332**	**(1,735,291)**
SPECIAL REVENUE FUNDS					
Fund 2010 - Community Development Block Grant					**-**
Carryforward Grant Obligations from FY 2023-24	121,826	121,826	-	-	-
Carryforward Grant Appropriations from FY 2023-24	1,754,854	1,754,854	-	-	-
Carryforward Grant Appropriations from FY 2023-24	-	75,391	-	-	75,391
Recommended Personnel Changes	64,064	-	-	-	(64,064)
	1,940,744	1,876,680	-	-	(64,064)
Fund 2020 - HOME Grants					**-**
Carryforward Grant Appropriations from FY 2023-24	2,733,053	2,733,053	-	-	-
	2,733,053	2,733,053	-	-	-
Fund 2021 - Housing Grants					**-**
Carryforward Grant Appropriations from FY 2023-24	10,525,657	10,525,657	-	-	-
	10,525,657	10,525,657	-	-	-
Fund 2210 - Measure I					**3,355,005**
Carryforward CIP Obligations from FY 2023-24	49,250	-	-	-	(49,250)
Carryforward CIP Appropriations from FY 2023-24	3,723,779	867,470	-	-	(2,856,309)
	3,773,029	867,470	-	-	(2,905,559)

City of Ontario
Detail of Recommended Budget Adjustments by Fund
Fiscal Year 2024-25
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Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfers-In	Operating Transfers-Out	Fund Balance Impact
Fund 2220 - Measure I Valley Major Project					**11,083,043**
Carryforward CIP Obligations from FY 2023-24	9,557	-	-	-	(9,557)
Carryforward CIP Appropriations from FY 2023-24	22,611,094	25,163,124	-	-	2,552,030
	22,620,651	25,163,124	-	-	2,542,473
Fund 2400 - General Fund Grants					**-**
GR2422 Homeland Security FY22 - FD Grant	27,249	27,249	-	-	-
GR2423 FY2022 UASI Grant (CC Approved 11/07/2023)	600,000	600,000	-	-	-
GR2424 USA Swimming Foundation Grant	5,000	5,000	-	-	-
GR2505 CHP Cannabis Tax Fund Grant	99,200	99,200	-	-	-
GR2507 FY2023 Justice Assistance Grant	52,701	52,701	-	-	-
GR2506 OmniTrans Measure I Grant (CC Approved 3/5/2024)	968,666	1,190,284	-	-	221,618
GR2508 Alcohol Policing Partnership Grant	39,154	39,154	-	-	-
GR2510 California Library Literacy Services Grant	31,725	31,725	-	-	-
Carryforward Grant Obligations from FY 2023-24	1,142,107	1,142,107	-	-	-
Carryforward Grant Appropriations from FY 2023-24	26,120,404	26,120,404	-	-	-
	29,086,206	29,307,824	-	-	221,618
Fund 2510 - DOJ Asset Seizure					**4,036,888**
Carryforward Obligations from FY 2023-24	1,628,342	-	-	-	(1,628,342)
Asset Seizure Equipment Purchase	39,455	-	-	-	(39,455)
	1,667,797	-	-	-	(1,667,797)
Fund 2520 - Cable Access Fund					**2,850,755**
Carryforward CIP Obligations from FY 2023-24	273,918	-	-	-	(273,918)
Carryforward CIP Appropriations from FY 2023-24	326,082	-	-	-	(326,082)
	600,000	-	-	-	(600,000)
Fund 2521 - Broadband / Fiber					**309,144**
Carryforward Obligations from FY 2023-24	88,295	-	-	-	(88,295)
FY 2023-24 Gainshare Program	10,069	-	-	-	(10,069)
GR2502 Local Governmental Digital Equity Best Practices Check List Webinar Grant	1,000	1,000	-	-	-
Carryforward Grant Appropriations from FY 2023-24	14,773	14,773	-	-	-
Increased Fiber loan appropriations for MS2207 Broadband Fiber Network Expansion Project to total loan amount	2,965,796	-	-	-	(2,965,796)
Carryforward CIP Obligations from FY 2023-24	1,537,682	-	-	-	(1,537,682)
Carryforward CIP Appropriations from FY 2023-24	902,344	-	-	-	(902,344)
	5,519,959	15,773	-	-	(5,504,186)

City of Ontario
Detail of Recommended Budget Adjustments by Fund
Fiscal Year 2024-25
First Quarter Budget Update

Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfers-In	Operating Transfers-Out	Fund Balance Impact
Fund 2530 - Gas Tax					**76,661**
FY 2023-24 Gainshare Program	8,720	-	-	-	(8,720)
Annual and investigative traffic counts and speed surveys.	33,000	-	-	-	(33,000)
Additional Gas Tax Appropriations for the FY2024-25 CPS Project	50,000	-	-	-	(50,000)
Recommended Personnel Changes	8,659	-	-	-	(8,658)
Carryforward CIP Appropriations from FY 2023-24	25,938	-	-	-	(25,938)
	126,317	-	-	-	(126,316)
Fund 2531 - Road Maint & Rehab Acct (SB1)					**6,977,866**
Carryforward Grant Appropriations from FY 2023-24	110,353	110,353	-	-	-
Additional Appropriations for ST2511 Chino and Grove Ave Pavement Restoration Project	125,248	-	-	-	(125,248)
Carryforward CIP Obligations from FY 2023-24	561,474	-	-	-	(561,474)
Carryforward CIP Appropriations from FY 2023-24	4,404,905	-	-	-	(4,404,905)
	5,201,980	110,353	-	-	(5,091,627)
Fund 2550 - Air Quality Management District					**1,396,720**
Carryforward CIP Appropriations from FY 2023-24	118,715	-	-	-	(118,715)
	118,715	-	-	-	(118,715)
Fund 2570 - Economic Development Activities Fund					**(11,788,912)**
Carryforward CIP Appropriations from FY 2023-24	2,101,063	-	-	-	(2,101,063)
	2,101,063	-	-	-	(2,101,063)
Fund 2600 - Special Assessment Administration					**297,217**
FY 2023-24 Gainshare Program	4,155	-	-	-	(4,155)
Recommended Personnel Changes	4,275	-	-	-	(4,275)
	8,430	-	-	-	(8,430)
Fund 2630 - Street Light Maintenance					**3,370,070**
Additional appropriations for Streetlight Monitoring Maintenance Services Agreement	54,500	-	-	-	(54,500)
Recommended Personnel Changes	679	-	-	-	(679)
	55,179	-	-	-	(55,179)
Fund 2640 - Storm Drain Maintenance					**118,360**
FY 2023-24 Gainshare Program	3,692	-	-	-	(3,692)
Recommended Personnel Changes	8,759	-	-	-	(8,759)
	12,451	-	-	-	(12,451)
Fund 2650 - Park Impact/Quimby					**(211,882)**
Carryforward CIP Obligations from FY 2023-24	109,304	-	-	-	(109,304)
Carryforward CIP Appropriations from FY 2023-24	1,052,915	-	-	-	(1,052,915)
	1,162,219	-	-	-	(1,162,219)
SPECIAL REVENUE FUNDS TOTAL	**87,253,450**	**70,599,934**	**-**	**-**	**(16,653,515)**

City of Ontario
Detail of Recommended Budget Adjustments by Fund
Fiscal Year 2024-25
First Quarter Budget Update

Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfers-In	Operating Transfers-Out	Fund Balance Impact
CAPITAL PROJECT FUNDS					
Fund 4010 - Capital Projects					**160,701,918**
Carryforward CIP Obligations from FY 2023-24	36,159,005	-	-	-	(36,159,005)
Carryforward CIP Appropriations from FY 2023-24	127,800,634	11,127,574	-	-	(116,673,060)
SM2101 San Antonio Storm Drain - Additional Reimbursement from City of Chino and Appropriations	41,291	41,291	-	-	-
	164,000,930	11,168,865	-	-	(152,832,065)
Fund 4020 - Ground Access					**9,294,861**
Carryforward Grant Appropriations from FY 2023-24	3,746,740	3,746,740	-	-	-
Carryforward CIP Appropriations from FY 2023-24	2,279,824	-	-	-	(2,279,824)
	6,026,564	3,746,740	-	-	(2,279,824)
Fund 4030 - Affordability In-Lieu					**43,091,914**
Carryforward CIP Appropriations from FY 2023-24	8,324,295	-	-	-	(8,324,295)
	8,324,295	-	-	-	(8,324,295)
Fund 4211 - General Facility Impact					**9,412,088**
Carryforward CIP Appropriations from FY 2023-24	1,668,152	-	-	-	(1,668,152)
	1,668,152	-	-	-	(1,668,152)
Fund 4212 - Integrated Waste Impact					**9,736,242**
DIF Contribution to Fleet for Integrated Waste Vehicle Acquisition	385,435	-	-	-	(385,435)
	385,435	-	-	-	(385,435)
Fund 4213 - Law Enforcement Impact					**3,856,574**
Carryforward CIP Obligations from FY 2023-24	166,477	-	-	-	(166,477)
Carryforward CIP Appropriations from FY 2023-24	823,761	-	-	-	(823,761)
	990,238	-	-	-	(990,238)
Fund 4310 - Old Model Colony - Fire Impact					**(1,601,923)**
Carryforward CIP Appropriations from FY 2023-24	304,132	-	-	-	(304,132)
	304,132	-	-	-	(304,132)
Fund 4311 - OMC - Local Adjacent Water					**(1,554,189)**
Carryforward CIP Appropriations from FY 2023-24	5,420,317	-	-	-	(5,420,317)
	5,420,317	-	-	-	(5,420,317)
Fund 4312 - OMC - Local Adjacent Streets					**3,378,027**
Carryforward CIP Obligations from FY 2023-24	7,632	-	-	-	(7,632)
Carryforward CIP Appropriations from FY 2023-24	4,967,420	-	-	-	(4,967,420)
	4,975,052	-	-	-	(4,975,052)

City of Ontario
Detail of Recommended Budget Adjustments by Fund
Fiscal Year 2024-25
First Quarter Budget Update

Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfers-In	Operating Transfers-Out	Fund Balance Impact
Fund 4313 - OMC - Local Adjacent Storm Drain					**20,024,200**
Carryforward CIP Obligations from FY 2023-24	27,853	-	-	-	(27,853)
Carryforward CIP Appropriations from FY 2023-24	2,562,755	-	-	-	(2,562,755)
	2,590,608	-	-	-	(2,590,608)
Fund 4314 - OMC - Local Adjacent Water					**4,468,344**
Carryforward CIP Appropriations from FY 2023-24	944,518	-	-	-	(944,518)
	944,518	-	-	-	(944,518)
Fund 4317 - OMC - Regional Streets					**10,493,196**
Carryforward CIP Appropriations from FY 2023-24	5,331,384	-	-	-	(5,331,384)
	5,331,384	-	-	-	(5,331,384)
Fund 4410 - Ontario Ranch - Fire Impact					**790,288**
Carryforward Obligations from FY 2023-24	2,643,024	-	-	-	(2,643,024)
	2,643,024	-	-	-	(2,643,024)
Fund 4415 - Ontario Ranch - Local Adjacent Storm Drain					**28,690,180**
Carryforward CIP Appropriations from FY 2023-24	792,487	-	-	-	(792,487)
	792,487	-	-	-	(792,487)
Fund 4419 - Ontario Ranch - Regional Streets					**14,863,211**
Carryforward CIP Appropriations from FY 2023-24	6,314,375	-	-	-	(6,314,375)
	6,314,375	-	-	-	(6,314,375)
Fund 4420 - Ontario Ranch - Regional Water					**3,242,565**
Carryforward CIP Appropriations from FY 2023-24	2,800,668	-	-	-	(2,800,668)
Carryforward CIP Appropriations from FY 2023-24	276,542	-	-	-	(276,542)
Carryforward CIP Appropriations from FY 2023-24	716,841	-	-	-	(716,841)
Carryforward CIP Appropriations from FY 2023-24	6,617	-	-	-	(6,617)
Carryforward CIP Appropriations from FY 2023-24	295,343	-	-	-	(295,343)
Carryforward CIP Appropriations from FY 2023-24	254,234	-	-	-	(254,234)
Carryforward CIP Appropriations from FY 2023-24	115,546	-	-	-	(115,546)
Carryforward CIP Appropriations from FY 2023-24	477,935	-	-	-	(477,935)
Carryforward CIP Appropriations from FY 2023-24	339,597	-	-	-	(339,597)
Carryforward CIP Appropriations from FY 2023-24	318,013	-	-	-	(318,013)
	2,800,668	-	-	-	(2,800,668)
					-
CAPITAL PROJECT FUNDS TOTAL	**213,512,179**	**14,915,605**	**-**	**-**	**(198,596,574)**

City of Ontario
Detail of Recommended Budget Adjustments by Fund
Fiscal Year 2024-25
First Quarter Budget Update

Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfers-In	Operating Transfers-Out	Fund Balance Impact
ENTERPRISE FUNDS					
Fund 5010 - Water Operating					**34,243,035**
Carryforward Obligations from FY 2023-24	153,908	-	-	-	(153,908)
FY 2023-24 Gainshare Program	78,991	-	-	-	(78,991)
Contra revenue adjustment for the Senior Discount Program	-	(114,000)	-	-	(114,000)
Utilities Customer Service Professional Services Agreement	47,250	-	-	-	(47,250)
Appropriations for the CIS/AUS Professional Services Agreement (CC Approved 3/19/2024)	235,935	-	-	-	(235,935)
Sale of City Property at 400 Block of North Euclid (CC Approved 10/01/2024)	-	2,200,000	-	-	2,200,000
Transfer from General Fund to Water Operating Fund to shore up the loss on the sale of 400 Block North Euclid	-	-	992,332	-	992,332
Recommended Personnel Changes	26,734	-	-	-	(26,734)
	542,818	2,086,000	992,332	-	2,535,514
Fund 5011 - Water Capital					**11,272,725**
Carryforward Obligations from FY 2023-24	34,408	-	-	-	(34,408)
FY 2023-24 Gainshare Program	14,525	-	-	-	(14,525)
Carryforward Grant Obligations from FY 2023-24	170,000	170,000	-	-	-
Carryforward Grant Appropriations from FY 2023-24	8,964,135	8,964,135	-	-	-
Recommended Personnel Changes	(80,220)	-	-	-	80,220
Carryforward CIP Obligations from FY 2023-24	487,991	-	-	-	(487,991)
Carryforward CIP Appropriations from FY 2023-24	6,821,750	-	-	-	(6,821,750)
WA2201 WM Transit/Emporia/Palm/Laurel Construction Cost for Emporia and Vault Project (CC approved 8/20/2024)	1,612,056	-	-	-	(1,612,056)
Additional Appropriations for WA2203 Potable Well Number 53	1,500,000	-	-	-	(1,500,000)
Additional Appropriations for WA1401 San Antonio Ave Phase 3	241,269	-	-	-	(241,269)
Budget Adjustment - WA2404 State St, Campus Ave, & Bon View Ave Water Main Improvements Project	563,324	563,324	-	-	-
Budget Adjustment - WA2301 Ontario Ranch Phase 2B WM Project	477,935	477,935	-	-	-
Budget Adjustment - WA2302 Reservoir 925'-A Project	339,597	339,597	-	-	-
	21,146,770	10,514,991	-	-	(10,631,779)
Fund 5110 - Sewer Operating					**49,081,555**
Carryforward Obligations from FY 2023-24	58,461	-	-	-	(58,461)
FY 2023-24 Gainshare Program	16,631	-	-	-	(16,631)
Contra revenue adjustment for the Senior Discount Program	-	(22,000)	-	-	(22,000)
Utilities Customer Service Professional Services Agreement	24,150	-	-	-	(24,150)
Appropriations for the CIS/AUS Professional Services Agreement (CC Approved 3/19/2024)	120,589	-	-	-	(120,589)
Recommended Personnel Changes	1,945	-	-	-	(1,945)
	221,776	(22,000)	-	-	(243,776)
Fund 5111 - Sewer Capital					**13,400,132**
FY 2023-24 Gainshare Program	2,932	-	-	-	(2,932)
Recommended Personnel Changes	27,562	-	-	-	(27,562)
Carryforward CIP Obligations from FY 2023-24	4,700,231	-	-	-	(4,700,231)
Carryforward CIP Appropriations from FY 2023-24	2,937,883	5,420,317	-	-	2,482,434
	7,668,608	5,420,317	-	-	(2,248,291)

City of Ontario
Detail of Recommended Budget Adjustments by Fund
Fiscal Year 2024-25
First Quarter Budget Update

Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfers-In	Operating Transfers-Out	Fund Balance Impact
Fund 5210 - Integrated Waste					**14,180,643**
FY 2023-24 Gainshare Program	74,629	-	-	-	(74,629)
Contra revenue adjustment for the Senior Discount Program	-	(64,000)	-	-	(64,000)
Utilities Customer Service Professional Services Agreement	33,600	-	-	-	(33,600)
Appropriations for the CIS/AUS Professional Services Agreement (CC Approved 3/19/2024)	167,776	-	-	-	(167,776)
Street sweeping sign fabrication and installation for FY 2024-25	214,821	-	-	-	(214,821)
Additional Appropriations for Routeware Routing Optimization Service Contract	41,043	-	-	-	(41,043)
Additional appropriations for FY 2024-25 Street Sweeping Services (prevailing wage) (CC Approved 6/4/2024)	3,591,037	-	-	-	(3,591,037)
New Braking System for 10 Integrated Waste Collection Vehicles	20,000	-	-	-	(20,000)
New Braking System for 10 Integrated Waste Collection Vehicles	20,000	-	-	-	(20,000)
GR2425 FY 2023-24 CalRecycle's Used Oil Grant	24,629	24,629	-	-	-
GR2503 FY 2023-24 CalRecycle's Beverage Container Grant	45,479	45,479	-	-	-
GR2504 CalRecycle's SB1383 Local Assistance Grant (CC Approved 9/3/2024)	476,003	476,003	-	-	-
Carryforward Grant Appropriations from FY 2023-24	44,901	44,901	-	-	-
Carryforward Grant Appropriations from FY 2023-24	12,000	-	-	-	(12,000)
Carryforward Grant Appropriations from FY 2023-24	6,000	-	-	-	(6,000)
Carryforward Grant Appropriations from FY 2023-24	11,901	-	-	-	(11,901)
Carryforward Grant Appropriations from FY 2023-24	15,000	-	-	-	(15,000)
Carryforward Grant Appropriations from FY 2023-24	-	44,901	-	-	44,901
Recommended Personnel Changes	-	-	-	-	-
Carryforward CIP Obligations from FY 2023-24	26,900	-	-	-	(26,900)
Carryforward CIP Appropriations from FY 2023-24	384,305	-	-	-	(384,305)
	5,165,123	527,012	-	-	(4,638,111)
ENTERPRISE FUNDS TOTAL	**34,745,095**	**18,526,320**	**992,332**	**-**	**(15,226,443)**
INTERNAL SERVICE FUNDS					
Fund 6010 - Equipment Services					**9,886,966**
FY 2023-24 Gainshare Program	24,330	-	-	-	(24,330)
Fleet Internal Service Fund Revenue Adjustment to Align with Expenditures	-	(865,983)	-	-	(865,983)
Equipping of Pick Up Trucks Purchased for Fire Department	75,000	-	-	-	(75,000)
Purchase of vehicle for Integrated Waste	385,435	-	-	-	(385,435)
DIF Contribution to Fleet for Integrated Waste Vehicle Acquisition	-	385,435	-	-	385,435
	484,765	(480,548)	-	-	(965,313)
Fund 6020 - Information Technology					**3,562,113**
Carryforward Obligations from FY 2023-24	132,762	-	-	-	(132,762)
FY 2023-24 Gainshare Program	41,662	-	-	-	(41,662)
Recommended Personnel Changes	35,433	-	-	-	(35,433)
PF2402 Citywide Camera Refresh Appropriation from PF2405 City Facilities Notification, Emergency & Paging Project	-	-	-	-	-
Carryforward CIP Obligations from FY 2023-24	1,078,218	-	-	-	(1,078,218)
Carryforward CIP Appropriations from FY 2023-24	2,050,451	-	-	-	(2,050,451)
	3,338,526	-	-	-	(3,338,526)

City of Ontario
Detail of Recommended Budget Adjustments by Fund
Fiscal Year 2024-25
First Quarter Budget Update

Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfers-In	Operating Transfers-Out	Fund Balance Impact
Fund 6030 - Facilities & Parks Maintenance					**4,456,239**
Carryforward Obligations from FY 2023-24	20,000	-	-	-	(20,000)
FY 2023-24 Gainshare Program	17,614	-	-	-	(17,614)
Facilities Maintenance Transfer to General Fund for Parks Maintenance FY 2023-24 Obligation Carryforwards	-	-	-	459,374	(459,374)
Recommended Personnel Changes	27,156	-	-	-	(27,156)
Additional appropriations for PF2101 Climatec remaining balance (energy efficiencies)	106,892	-	-	-	(106,892)
Carryforward CIP Appropriations from FY 2023-24	2,721,920	-	-	-	(2,721,920)
	2,893,582	-	-	459,374	(3,352,956)
Fund 6110 - Workers Compensation					**6,572,152**
Recommended Personnel Changes	66,468	-	-	-	(66,468)
	66,468	-	-	-	(66,468)
Fund 6111 - General Liability					**307,617**
FY 2023-24 Gainshare Program	2,616	-	-	-	(2,616)
General Liability Fund ISF Revenue Adjustment	-	116,916	-	-	116,916
Recommended Personnel Changes	91,706	-	-	-	(91,706)
Demolition and Fencing for PF2504 Jay Littleton Emergency Cleanup	1,119,077	-	-	-	(1,119,077)
	1,213,399	116,916	-	-	(1,096,483)
Fund 6210 - Pension Benefit Fund					**27,860,951**
Internal Service Fund Revenue Adjustments for PERS UAL	-	257,959	-	-	257,959
	-	257,959	-	-	257,959
					-
INTERNAL SERVICE FUNDS TOTAL	**7,996,740**	**(105,673)**	**-**	**459,374**	**(8,561,787)**
TOTAL CITY FUNDS BUDGET ADJUSTMENTS	**348,947,190**	**108,173,579**	**1,451,706**	**1,451,706**	**(240,773,610)**
Fund 2310 - Ontario Housing Authority					**2,915,293**
Carryforward Grant Appropriations from FY 2023-24	4,997,418	4,997,418	-	-	-
Carryforward Obligations from FY 2023-24	31,404	-	-	-	(31,404)
FY 2023-24 Gainshare Program	6,452	-	-	-	(6,452)
Recommended Personnel Changes	(16,447)	-	-	-	16,447
Carryforward CIP Appropriations from FY 2023-24	5,342,737	9,824,295	-	-	4,481,558
	10,361,564	14,821,713	-	-	4,460,149
AGENCY FUNDS TOTAL	**10,361,564**	**14,821,713**	**-**	**-**	**4,460,149**
					-
TOTAL ALL FUNDS BUDGET ADJUSTMENTS	**359,308,754**	**122,995,292**	**1,451,706**	**1,451,706**	**(236,313,461)**

CITY OF ONTARIO *Agenda Report* **November 5, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Information Technology Prepared By: Samantha Robles Staff Member Presenting: Colin Fernandes, Executive Director Information Technology Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 8

SUBJECT: **THE RENEWAL OF THE EXISTING WORK ORDER AND ASSET MANAGEMENT SYSTEM WITH AZTECA SYSTEMS, LLC FOR PUBLIC WORKS AND ONTARIO MUNICIPAL UTILITIES COMPANY**

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute the renewal of the CityWorks work order and asset management system used by Public Works and Ontario Municipal Utilities Company (OMUC) with Azteca Systems, LLC, of Sandy, Utah for three years with an optional renewal period for two years for a total contract amount not-to-exceed $662,917.

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 Information Technology Fund for software licenses with Azteca Systems, LLC. The proposed purchase of software licenses will be for 3 years with an optional renewal period of 2 years for a total contract amount not to exceed $662,917, which includes $119,231 for year one, $125,193 for year two, $131,453 for year three, $139,340 for year four and $147,700 for year five. The fixed billing rates specified in the current Agreement will determine the amount charged for services and reflect the actual services provided. If approved, appropriations will be included in future Fiscal Year Proposed Budgets consistent with the annual adoption process.

BACKGROUND & ANALYSIS: Ontario Municipal Utilities Company (OMUC) has been using CityWorks as a work order and asset management system for meters and valves since 2003 and allows OMUC Staff to track the inventory of meters and valves as they are installed and replaced throughout the City. The Public Works Agency has been using CityWorks to track service requests since 2020, and the CityWorks system connects to the MyOntario app to track the service requests through to completion or to allow Staff to notify and coordinate with other Agencies within the City to address the service requests. The City renewed the Agreement with CityWorks in 2021 for three years. As part of OMUC's Asset Management Implementation Plan, OMUC aims to expand the use of CityWorks as part of implementing asset management best practices through a more formalized asset management program. To support this effort, Staff requests City Council approval for a three-year renewal Agreement with an optional renewal period for two years for a total contract amount not-to-exceed $662,917.

ORDER FORM

Order Date:	Date of the last signature below
Trimble Entity Name ("Trimble") and Address:	Azteca Systems, LLC, a Trimble company 11075 South State, Suite 24, Sandy, Utah 84070
Customer Entity Name ("Customer") and Address:	Ontario (CA), City of 303 E. B Street Ontario, CA 91764
Billing Contact Name and E-Mail Address:	Choon Vu Lam clam@ontarioca.gov
Initial Term:	12/05/2024 - 12/04/2029
Validity:	This Order Form shall expire on 12/1/2024 (the "Validity Date"). If this Order Form is not executed by the Customer by the Validity Date, Trimble reserves the right to not offer the pricing found in the Order Form.
Miscellaneous:	*Purchase orders issued by Customer are issued for administrative purposes only; terms and conditions contained in any such purchase order shall be null and void.* The Purpose of this Order Form is to Add 4 Trimble Unity Mobile logins and Inspection API to Licensing with Five (5) Year Renewal Contract.

Licensed Software:

Description	Number of Authorized Users	Annual Term	Total
CITYWORKS Server AMS Standard Enterprise License Agreement (ELA), Includes Unlimited Quantities of the Identified Products: Office Respond Mobile Native Apps (for iOS/Android) --Includes the following Add-ons: Storeroom Equipment Checkout Contracts Cityworks for Excel Cityworks Analytics for AMS eURL (Enterprise URL) Workload Web Hooks Service Request API Work Order API - Basic Inspection API Local Government Templates (LGT) Use of Cityworks AMS Application Programming Interfaces (APIs) with commercially available Cityworks-centric applications that are licensed and maintained by authorized Cityworks partners TRIMBLE: Trimble Unity Mobile - 4 Logins	Unlimited 4 Logins	**Year 1: 12/05/2024 - 12/04/2025***	**$ 119,231.00**
		Year 2: 12/05/2025 - 12/04/2026**	**$ 125,192.55**
		Year 3: 12/05/2026 - 12/04/2027	**$ 131,452.18**
		Year 4: 12/05/2027 - 12/04/2028	**$ 139,339.31**
		Year 5: 12/05/2028 - 12/04/2029	**$ 147,699.66**

All Licensed Software is for the indicated term and not perpetual. Annual fee herein is based on 150,001 – 200,000 population range. Trimble reserves the right to adjust the annual fee accordingly to align with the Customer's actual population range.

**The Year 1 amount shown above is encompassing of the current renewal amount ($107,181.00) and the software ($12,050.00) being added as a part of this transaction at the time of renewal.*

***Renewal increase included to reflect client request for a new 5-year term*

Addendums:

1. Trimble General Transaction Terms (the "General Terms")
2. Supplemental Terms for Software and Subscriptions (the "Software Terms")
3. Supplemental Terms for Support and Maintenance (the "Support Terms")
4. Supplemental Terms for Services (the "Services Terms")
5. Supplemental Terms for Hardware (the "Hardware Terms")
6. Supplemental Terms for U.S. Public Entities
7. Availability Service Level Agreement; Data Security and Restoration

TERMS AND CONDITIONS

1. Terms and Conditions. All offerings are made available by Trimble subject to the terms and conditions set forth in this Order and the above referenced Addendums.

2. Annual Renewals; Additional Software Products and Licenses. This Order will automatically renew for subsequent 12 month term(s) at then-current pricing, unless either party provides the other with notice of cancellation at least 30 days prior to the expiration of the then-current term. Additional Software Products & Licenses may be added to this Agreement with either an acknowledgement of an official Cityworks quote signed by Licensee and additional fees, if necessary or applicable being paid, or receipt of Purchase Order from Licensee in response to an official Cityworks quote and additional fees, if applicable, being paid.

3. Payment Terms. All fees are due net 30 from the date of the Trimble invoice.

- **Annual Licensed Software:** Trimble will invoice:
- Year 1 in the amount of $119,231.00 upon execution of this Order Form
- Year 2 in the amount of $125,192.55 upon 11/05/2025, and
- Year 3 in the amount of $131,452.18 upon 11/05/2026, and
- Year 4 in the amount of $139,339.31 upon 11/05/2027, and
- Year 5 in the amount of $147,699.66 upon 11/05/2028.

4. Annual Price Increase. At each renewal (i.e. after Year 5), Trimble has a right to increase the annual fees by five percent (5%).

5. Electronic Invoices. Customer hereby consents to the receipt of invoices electronically at the indicated e-mail address(es) and accepts such invoices as if received by mail. Customer's e-mail address may be changed by written notice given by Customer to Trimble at: customer_master@trimble.com. Customer is responsible for maintaining a current e-mail address and shall under no circumstances be excused from payment of applicable charges by its failure to access its designated e-mail address.

6. Due Authority. By signing below, the signatory represents that he/she (i) is an authorized representative of Customer and (ii) has the authority to legally and functionally commit the Customer.

[Signature Page to Follow]

ACCEPTANCE

Accepted and agreed:

CUSTOMER:	**TRIMBLE:**
Signature: ____	Signature: ____
Print Name: ____	Print Name: George Mastakas
Title: ____	Title: Vice President
Date: ____	Date: ____

Addendum #1

Trimble General Transaction Terms

Version 1.1 (Last updated: October 7, 2023)

Trimble's provision of Offerings is governed exclusively by these Trimble General Transaction Terms (the "**General Terms**"). The Order, the SOW, these General Terms, any applicable Supplemental Terms, and all other terms referenced or incorporated therein, collectively constitute the "**Agreement**". Any conflict or inconsistency in the Agreement will be resolved in the following order of precedence: (1) the Order, (2) any applicable Supplemental Terms, (3) these General Terms, (4) the SOW, and (5) the Documentation.

1. **Definitions.** Capitalized terms have the meaning associated with them in this Section 1 (Definitions) or with the definition provided elsewhere in the Agreement.
   - **1.1.** "**Affiliate**" means an entity that, directly or indirectly, owns or controls, is owned or controlled by or is under common ownership or control with a party, where "ownership" means the direct or indirect ownership of more than fifty percent (50%) of an entity's outstanding voting rights or other equivalent voting interests.
   - **1.2.** "**Customer**"is the entity or person identified in the Order or SOW.
   - **1.3.** "**Dispute(s)**" means any dispute, claim, or controversy arising from or related to the Agreement.
   - **1.4.** "**Documentation**" means Trimble's then-current usage guidelines, standard technical documentation, acceptable use policies, support policies, service level commitments, or other policies referenced in the Agreement.
   - **1.5.** "**Hardware**" means hardware products specified in the Order.
   - **1.6.** "**High Risk Activities**" means any mission critical, hazardous, strict liability, or other activity(ies) where use or failure of the Offerings could lead to death, personal injury, or physical or environmental damage. Examples of High Risk Activities include, but are not limited to: aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, autonomous vehicles, air traffic control, emergency services, or weaponry systems. High Risk Activities do not include utilization of Offerings for administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or physical or environmental damage. These non-controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function.
   - **1.7. "Intellectual Property Rights"** means any and all right, title and interest in and to any and all trade secrets, patents, copyrights, service marks, trademarks, know-how, trade names, rights in trade dress and packaging, moral rights, rights of privacy, publicity, database rights and similar rights of any type, including any applications, continuations or other registrations with respect to any of the foregoing, under the laws or regulations of any foreign or domestic governmental, regulatory or judicial authority, and the right to sue for, settle and release past, present and future infringement of any of the foregoing.
   - **1.8.** "**Law(s)**" means all applicable local, state/provincial, federal and international laws, rules, regulations, directives, ordinances and conventions, including, but not limited to, those related to data privacy and data transfer, international communications and export of technical or personal data.
   - **1.9. "Licensed Software**" means the object code form of Trimble's proprietary installed software product for deployment on premises or on a device, as well as any Documentation, maintenance releases, and features and functionality enhancements, and application programming interfaces (APIs), in each case as as may be made available pursuant to the Order. For clarity, Licensed Software excludes firmware.
   - **1.10.** "**Offerings**" means Trimble's Hardware, Software, Services, Support, and other Trimble goods or services specified on an Order or SOW.
   - **1.11.** "**Order**" means the quotation, proposal, sales agreement or similar documents provided by Trimble and accepted by Customer.
   - **1.12.** "**Parties**" means Trimble and Customer.
   - **1.13.** "**Services**" means any services described in the Order or a Statement of Work, including, without limitation, training, enablement, implementation, configuration, hosting, or content provision.
   - **1.14.** "**Software**" means the Licensed Software and/or Software-as-a-Service specified on an Order.
   - **1.15.** "**Software-as-a-Service**" or "**SaaS**" means a Trimble proprietary cloud service, as well as any Documentation, features and functionality enhancements, and application programming interfaces, in each case as may be made available pursuant to the Order.
   - **1.16.** "**Statement of Work**" or "**SOW**" means a statement of work or similar agreement governing the provision of Services.
   - **1.17. "Supplemental Terms"** are any additional Trimble terms and conditions referenced in the Order as "Supplemental Terms."
   - **1.18.** "**Support**" means support and/or maintenance for Software, and as may be further described in the applicable Supplemental Terms, Documentation, or otherwise as specified by Trimble in writing.
   - **1.19.** "**Trimble**" means Trimble Inc. or its Affiliate identified on the Order or SOW, or if none is specified, as set forth in Exhibit A (Trimble Entities; Governing Law; Exclusive Venue/Jurisdiction) based on the applicable Customer location.
   - **1.20. "Trimble IP"** means the Offerings, Documentation, and any written and electronic materials, proprietary information, documentation, code, technology, systems, infrastructure, equipment, and trade secrets developed, provided or used by Trimble or its subcontractors to produce and provide the Offerings together with all Intellectual Property Rights therein, together with all modifications, improvements, changes thereto or derivative works thereof, including without limitation: (a) proprietary electronic architecture and other non-literal elements of the Offerings developed by Trimble, (b) functional and technical specifications and other technical, training, reference or service information, documentation and manuals and updates thereto, (c) APIs, customized applications and computer programs, (d) processes, methods, algorithms, ideas, and other "know how," (e) data and information provided or sourced by Trimble, (f) Offerings which Customer has the right to use via a subscription, and (g) network equipment and architecture.

2. **Orders; Validity.** An Order is valid for acceptance by Customer within the period indicated in the Order and if no such period is provided, for thirty (30) calendar days from the issue date. The Agreement is formed by Customer's execution of the Order. Changes to an Order or belated acceptance by Customer are not valid unless Trimble accepts them in writing, and Trimble's partial or complete delivery against an Order modified by Customer, or acceptance of payment, shall not be deemed to be an acceptance of the modification. Orders that Customer has accepted cannot be canceled for any reason without Trimble's prior written consent.

3. **Payment Terms; Invoicing**

3.1. Fees are as set forth in the Order or SOW. Fees do not include applicable sales taxes, value added taxes, goods and services taxes, export or import charges, transportation or insurance charges, customs and duty fees, personal property taxes, surcharges and fees, or similar charges, all of which are Customer's responsibility to pay. Unless Customer provides Trimble with direct payment authority or a valid exemption certificate for the appropriate jurisdiction, Customer will pay Trimble all such taxes, charges, and fees invoiced by Trimble in connection with the Offerings. Customer will pay any foreign exchange transaction fees and any foreign exchange profits or losses incurred on such transactions.

3.2. Trimble will issue invoices in accordance with the billing frequency stated in the Order or SOW. Customer consents to the receipt of invoices electronically at the email address(es) it provided to Trimble for billing purposes, and accepts such invoices as if received by mail. Customer is responsible for maintaining current email address(es) with Trimble. Trimble's transmission of an invoice to the provided billing email address(es) (regardless of whether actually received by Customer) shall be considered delivery of that invoice by Trimble. Trimble's failure to issue an invoice in accordance with this Section 3 (Payment Terms; Invoicing) shall not be deemed to be a waiver by Trimble of its right to receive payment pursuant to the Agreement, but Customer shall not be obligated to make such payment until an invoice for such payment is issued by Trimble to Customer.

3.3. Unless otherwise set forth in the Order or SOW, payments are due net 30 days from the date of invoice. Customer will make payment in the currency indicated on the Order or SOW. Trimble is entitled to offset payments against prior debt balances in Customer's account. Subject to any Laws to the contrary or as otherwise expressly stated in the Agreement, payments are not refundable. No credit, carryover, or refund will be given for any unused Offerings (e.g., services hours, data usage) allocated or available for use during an indicated period of time.

3.4. Delinquent payments not subject to a bona fide dispute will bear interest at the lesser of 1.5% per month or the maximum rate permitted by applicable Law. If Customer does not object in writing to an invoiced amount by the invoice due date, Customer will be deemed to have acknowledged the correctness of that invoice and to have waived its right to dispute that invoice. A dispute as to a portion of any invoice or amount owed will give Customer the right to withhold or delay payment of the disputed portion only. Customer will be liable for all costs of collection of past due amounts (including attorneys' fees).

3.5. Trimble may suspend Customer's access to or Trimble's provision of Offerings, as applicable, on five (5) business days prior notice if Customer fails to timely pay any invoice not subject to a bona fide payment dispute or fails to use diligent good faith efforts to resolve a bona fide payment dispute (unless cured during the notice period).

3.6. For any breach of Customer's payment obligations under any Order(s), Trimble may, without limiting Trimble's other rights and remedies, declare Customer's unbilled future fees under any and all Orders immediately due and payable.

3.7. Trimble has the continuing right to review Customer's credit and, if reasonably determined necessary by Trimble, change Customer's payment terms, and may at any time demand advance payment, satisfactory security (such as, but not limited to, a confirmed, irrevocable letter of credit acceptable to Trimble), or a guarantee of prompt payment prior to shipment or service activation.

3.8. Offerings purchased or licensed under Trimble's United States General Services Administration (**"GSA"**) Schedules are subject to all of the pricing and other terms and conditions described in the applicable GSA Schedule.

4.Term and Termination

4.1.Term. The term and any renewals thereof applicable for an Offering (collectively, the "**Term(s)**") shall be as set forth in the Order, SOW, or Supplemental Terms. Different Offerings may have different Terms.

4.2.Termination. Either party may terminate the Agreement if the other party (a) fails to cure a material breach of the Agreement (including a failure to pay fees), or fails to provide a written plan of cure reasonably acceptable to the non-breaching party, within thirty (30) days after the non-breaching party's receipt of written notice specifying such breach or failure, (b) becomes designated by an applicable governmental entity as a business with which a party is prohibited from doing business with (e.g., via governmental sanctions program), or (c) seeks protection under insolvency or comparable proceeding, or if such proceedings are instituted against that party and not dismissed within sixty (60) days.

4.3.Survival. These Sections survive expiration or termination of the Agreement: 1 (Definitions), 3 (Payment Terms; Invoicing), 4.3 (Survival), 6 (Warranty Disclaimers), 7 (Limitations of Liability), 8 (Indemnification), 9 (Confidentiality), 11 (Personal Information; Data Protection), 12 (Miscellaneous), any other provisions identified in any applicable Supplemental Terms referencing this provision, and any other term or provision in the Agreement that applies to events occurring following termination or expiration. Except where an exclusive remedy is provided, exercising a remedy under the Agreement, including termination, does not limit other remedies a party may have.

5.Customer Obligations

5.1.High Risk Activities. Customer will not use the Offerings for High Risk Activities. Customer acknowledges that the Offerings are not intended to meet any legal obligations for High Risk Activities. Trimble and its suppliers specifically disclaim any responsibility for, and will not be liable in any manner arising from, any use of the Offerings in connection with High Risk Activities.

5.2.Compliance with Laws. Customer shall comply with all Laws in connection with its use or receipt of the Offerings.

5.3.Dependencies and Compatibilities.

(a) Offerings may (i) require certain dependencies, including, without limitation, internet connection, electronic communications, hardware, data connections, operating systems, third-party products and services, other Trimble products and services, satellite signals, etc. (collectively, "**Dependencies**"), and (ii) allow compatibility and/or interoperability with other products or services made available by Trimble, Customer, or a third party (collectively, "**Compatibilities**").

(b) Dependencies and Compatibilities may require payment of a separate fee and are governed by their respective terms of service, end user license agreement, or other agreement, and not by the Agreement. Unless otherwise expressly agreed upon by the parties in writing, Customer is responsible for all Dependencies and Compatibilities. Trimble may modify the Offerings from time to time, and Trimble does not guarantee that the Offerings will continue to operate or be compatible with any Dependencies or Compatibilities. Trimble makes no warranty or guarantee, and will have no liability or obligations under the Agreement, with respect to any Dependencies, Compatibilities, or other factors outside of Trimble's control.

(c) Customer represents and warrants that it shall, and shall use best efforts to require any provider of any Dependencies and Compatibilities to: (i) establish and maintain industry standard technical, organizational, physical, and administrative safeguards designed to ensure the security and integrity of the Offerings; and (ii) comply with the security controls, configuration requirements, and access limitations imposed by Trimble, as may be modified by Trimble from time to time.

6.**WARRANTY DISCLAIMERS.**

THE LIMITED WARRANTY TERMS, IF ANY, EXPRESSLY SET FORTH IN ANY APPLICABLE SUPPLEMENTAL TERMS ARE IN LIEU OF ALL OBLIGATIONS OR LIABILITIES ON TRIMBLE'S PART ARISING OUT OF, OR IN CONNECTION WITH, THE OFFERINGS, AT ANY TIME EITHER DURING OR AFTER EXPIRATION OF THE APPLICABLE WARRANTY, AND STATE TRIMBLE'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES RELATING TO THEM. EXCEPT FOR ANY LIMITED WARRANTY TERMS EXPRESSLY PROVIDED IN ANY APPLICABLE SUPPLEMENTAL TERMS, THE OFFERINGS ARE PROVIDED "AS-IS" AND WITHOUT EXPRESS OR IMPLIED WARRANTY OR CONDITION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, AND NONINFRINGEMENT. SUPPLEMENTAL TERMS MAY HAVE ADDITIONAL DISCLAIMERS. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON DURATION OR THE EXCLUSION OF AN IMPLIED WARRANTY, SO THE ABOVE LIMITATION(S) MAY NOT APPLY OR FULLY APPLY TO CUSTOMER.

7.Limitations of Liability.

7.1.Waiver; Liability Cap.

(a) EXCEPT FOR EXCLUDED CLAIMS, (i) NEITHER PARTY (OR ITS SUPPLIERS) SHALL BE LIABLE FOR DAMAGES FOR LOSS OF PROFIT OR REVENUE, DATA THAT IS LOST OR CORRUPTED, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, LOSS OF GOODWILL, OR ANY SPECIAL, INCIDENTAL, RELIANCE, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND; AND (ii) EACH PARTY'S (AND EACH OF ITS SUPPLIER'S) ENTIRE LIABILITY FOR ANY AND ALL DAMAGES ARISING OUT OF OR RELATED TO THE AGREEMENT WILL NOT EXCEED IN AGGREGATE THE AMOUNTS PAID OR PAYABLE BY CUSTOMER TO TRIMBLE DURING THE PRIOR 12 MONTHS UNDER THE AGREEMENT FOR THE APPLICABLE OFFERING(S) GIVING RISE TO THE LIABILITY.

(b) "EXCLUDED CLAIMS" MEANS (i) CUSTOMER'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT, (ii) DAMAGES PAYABLE TO A THIRD PARTY (I.E., NOT AN INDEMNIFIED PARTY) EITHER AWARDED BY A COURT OF COMPETENT JURISDICTION OR INCLUDED IN A SETTLEMENT AGREED TO BY THE INDEMNIFYING PARTY, WHICH DAMAGES ARE SUBJECT TO A PARTY'S INDEMNIFICATION OBLIGATIONS IN SECTION 8 (INDEMNIFICATION), AND (iii) ANY ADDITIONAL "EXCLUDED CLAIMS" EXPRESSLY IDENTIFIED IN ANY APPLICABLE SUPPLEMENTAL TERMS.

(C) THE ABOVE LIMITATIONS OF LIABILITY WILL APPLY TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF SUCH DAMAGES COULD HAVE BEEN FORESEEN OR IF A PARTY HAS BEEN APPRAISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER SUCH DAMAGES ARE ARISING IN BREACH OF ANY ONE OR MORE WARRANTIES, NON-CONFORMITY, IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, BREACH OF ANY STATUTORY DUTY, OR OTHERWISE.

(D) SOME JURISDICTIONS DO NOT ALLOW A LIMITATION OF LIABILITY FOR DEATH, PERSONAL INJURY, FRAUDULENT MISREPRESENTATIONS, CERTAIN INTENTIONAL OR NEGLIGENT ACTS, VIOLATION OF SPECIFIC STATUTES, OR THE LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES. IN SUCH AN EVENT, THE FOREGOING LIMITATION(S) WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

7.2.Nature of Claims and Failure of Essential Purpose. The waivers and limitations in this Section 7 (Limitations of Liability) are agreed-upon allocations of risk constituting in part the consideration for Trimble's performance under the Agreement, and will survive and apply even if any limited remedy in the Agreement fails of its essential purpose.

8.Indemnification. Reserved.

9.**Insurance.** Trimble shall obtain the following insurance: (1) Cyber Liability, in an amount no less than $1,000,000 per claim / $2,000,000 aggregate, and (2) Workers Compensation insurance at the statutory limit along with Employers Liability coverage with a limit of not less than $1,000,000 per accident for bodily injury and disease. The insurance obtained by Trimble shall be primary and noncontributory. *Waiver of Subrogation*: Trimble shall require the insurer issuing the Cyber Liability and Workers' Compensation / Employer's Liability

insurance to waive all rights of subrogation against the Customer for losses paid under the policy that arise from services performed under this Agreement. This waiver applies regardless of whether or not Trimble received a waiver of subrogation from the insurer.

10.Confidentiality.

10.1.Definition. "**Confidential Information**" means information disclosed to the receiving party under the Agreement that is designated by the disclosing party as proprietary or confidential or that should be reasonably understood to be proprietary or confidential due to its nature and the circumstances of its disclosure. Trimble's Confidential Information includes, without limitation, the terms and conditions of the Agreement, and any technical or performance information about the Offerings, including the Documentation.

10.2.Obligations. As a receiving party, each party (a) will protect the confidentiality of the disclosing party's Confidential Information using the same degree of care it uses for its own information of like importance (but not less than reasonable care), (b) will not share the disclosing party's Confidential Information with third parties except as permitted in the Agreement or with the disclosing party's prior written or electronic consent, and (c) will only use Confidential Information to fulfill its obligations and exercise its rights in the Agreement. The receiving party may disclose Confidential Information to its employees, agents, Affiliates, contractors, and other representatives (collectively, "**Representatives**") having a legitimate need to know (including, for Trimble, its subcontractors), provided (i) the Representatives are subject to confidentiality obligations no less protective than those in this Section 9 (Confidentiality), and (ii) the receiving party is responsible for any breach of this Section 9 (Confidentiality) by the acts or omissions of its Representatives.

10.3.Exclusions. These confidentiality obligations do not apply to information that the receiving party can document (a) is or becomes public knowledge through no fault of the receiving party or its Representatives, (b) it rightfully knew or possessed on a non-confidential basis prior to receipt under the Agreement, (c) it rightfully received from a third party without obligation of confidentiality, or (d) it independently developed without using the disclosing party's Confidential Information. Supplemental Terms may have additional exclusions.

10.4.Remedies. Unauthorized use or disclosure of Confidential Information may cause substantial harm for which remedies at law (e.g., monetary damages) alone are an insufficient remedy. In the event of such actual or threatened breach by a party, the other party may seek injunctive relief, in addition to other available rights and remedies, for breach or threatened breach of this Section 9 (Confidentiality), without proof of actual damages or the requirement of posting a bond or other security.

10.5.Required Disclosures. Nothing in the Agreement prohibits either party from making disclosures if required by Law or government or court order, provided (if permitted by Law) it notifies the other party in advance and reasonably cooperates in any effort by the other party to obtain confidential treatment.

11.**Intellectual Property Rights.**

11.1.Trimble IP. As between the parties, except for any limited usage rights set forth in any Supplemental Terms, Trimble and its suppliers have and will retain all Intellectual Property Rights in and to Trimble IP and all copies, modifications, and derivative works thereof. No Intellectual Property Rights are granted by Trimble to Customer except as expressly provided under the Agreement.

11.2.Feedback. Customer may from time to time provide suggestions, comments, or other feedback (collective, "**Feedback**") to Trimble with respect to the Offerings. Both parties agree that all Feedback is and will be given entirely voluntarily, and shall not be considered Confidential Information of Customer. Customer shall not provide any Feedback that is subject to license terms that seek to require any of Customer's products, technology, service, or documentation incorporating or derived from such Feedback, or any of Customer's intellectual property to be licensed or otherwise shared with any third party. Customer hereby grants to Trimble and its Affiliates a nonexclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid up license to use and otherwise exploit the Feedback.

12.Personal Information; Data Protection.

12.1. This Section 11 (Personal Information; Data Protection) applies if Customer is a legal person (i.e., a business or legal entity). All Laws relating to the protection of privacy and data protection are referred to as "**Data Protection Legislation**". "**Personal Information**" is defined as in the Applicable Data Protection Legislation, or if no definition is provided, any personally identifiable information which is either (a) provided by Customer or on its behalf, or (b) automatically collected through the Offering on Customer's behalf. "**Applicable**", in this context, means the Data Protection Legislation applicable to Customer at Customer's principal place of business or to Trimble at Trimble's principal place of business, and such Laws that the parties mutually agree apply.

12.2. Each party will comply with all Applicable requirements of the Data Protection Legislation. This Section 11 (Personal Information; Data Protection) is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the applicable Data Protection Legislation.

12.3. The parties acknowledge that: (a) when performing its obligations under the Agreement, Trimble processes Personal Information on Customer's behalf, except for user registration and software licensing and usage data, for which Trimble acts as responsible party, and (b) the Personal Information may be transferred or stored, and/or accessed from outside of the country where Customer's principal place of business is located in order to provide the Software and Trimble's other obligations under the Agreement.

12.4. Customer will ensure that it has all necessary appropriate consents and notices in place to enable (a) lawful transfer of the Personal Information to Trimble for the duration and purposes of the Agreement and (b) Trimble to lawfully use, process and transfer the Personal Information in accordance with the Agreement, including on Customer's behalf.

12.5. If the processing of Personal Information by Trimble is subject to the General Data Protection Regulation ((EU) 2016/679) or the Data Protection Act 2018 of the United Kingdom, then, in addition, at the written request of Customer, the parties will execute an applicable data processing addendum, available at https://www.trimble.com/privacy/DPA-TI-EuroSubs (or any successor url).

Transfers of Personal Information from Trimble entities located in Europe, acting as data exporter, to Trimble entities in the USA, acting as data importer, are governed, for the benefit of Customer, by the Standard Contractual Clauses available at the same url or upon written request to Trimble.

12.6. If the processing of Personal Information by Trimble is subject to US data protection laws, rules or regulations, then the US Data Processing Addendum for Customer Personal Information (available at https://dl.trimble.com/www/us_dpa_customer.pdf or any successor url) is herein incorporated by reference.

13.Miscellaneous.

13.1.Assignment. Trimble may assign the Agreement upon notice to Customer. Customer may not assign or transfer the Agreement (by operation of law or otherwise) without the prior written consent of Trimble. Any non-permitted assignment is void. The Agreement will bind and inure to the benefit of each party's permitted successors and assigns.

13.2.Amendments. Trimble may amend the Agreement from time to time with written notice to Customer. Such amendments shall take effect upon the next renewal, if any, of the Agreement, unless Trimble indicates an earlier effective date. If Trimble requires amendments with an earlier effective date and Customer objects in writing, then Trimble may permit such amendments to take effect upon the next renewal; provided, however, if Trimble declines to permit such later effective date, Customer's exclusive remedy is to terminate the Agreement with notice to Trimble, in which case Trimble will provide Customer a refund of any applicable pre-paid fees for the terminated portion of the current Term. To exercise this termination right, Customer must notify Trimble of its objections within thirty (30) days after Trimble's notice of the amended Agreement. Once the amended Agreement takes effect, Customer's continued use of the Offerings constitutes its acceptance of the modifications. Notwithstanding the foregoing, Trimble may modify Documentation upon written notice to Customer to reflect new features or changing practices, provided that the modifications will not materially decrease Trimble's overall obligations with respect to such Offering(s).

13.3.Waiver and Severability. No waiver of any provision or breach of the Agreement (a) will be effective unless made in writing, or (b) will operate as or be construed to be a continuing waiver of such provision or breach. In the event any portion of the Agreement is held to be invalid or unenforceable, such portion will be construed as nearly as possible to reflect the original intent of the parties, or if such construction cannot be made, such provision or portion thereof will be severable from the Agreement, provided that the invalidity, illegality, or unenforceability in whole or in part of any provision does not affect the validity of other provisions.

13.4.Force Majeure. Neither party will be liable for any default, delay, or non-performance of its obligations under the Agreement (except for payment obligations) due to causes beyond its reasonable control, including, without limitation, strikes, blockades, war, terrorism, riot, internet or utility failures, governmental orders or actions, national or regional emergency, pandemics, or natural disasters, provided that such party promptly notifies the other in writing of such occurrence and uses commercially reasonable efforts to resume performance of its affected obligations as soon as feasible. Delays or failures that are excused as provided in this Section 12.4 (Force Majeure) will result in automatic extensions of dates for performance for a period of time equal to the duration of the events excusing such delay or failure.

13.5.Notices. Any notice or other communication given by either party to the other regarding the Agreement will be deemed given and served when personally delivered or delivered by reputable international courier requiring signature for receipt addressed to the party at its notice address. Notice will be deemed effective upon delivery or refused delivery attempt. Either party may change its notice address by written notice to the other. Customer's notice address will be the address appearing on the Order or SOW. Trimble's notice address will be the applicable address on Exhibit A (Trimble Entities; Governing Law; Exclusive Venue/Jurisdiction), or if the Trimble entity is not listed there, then on the Order. In addition, any valid notice to Trimble shall include a required copy to: Trimble Inc., Attn: General Counsel - Important Legal Notice, 510 De Guigne Drive, Sunnyvale, CA 94085, USA. Trimble may send operational notices to Customer by email or through the Offering, including, without limitation, modifications of the Agreement or Documentation, suspension, collection, and termination notices related to overdue fees.

13.6.Export Control. Customer acknowledges that the Offerings are subject to export restrictions by the United States government and import restrictions by certain foreign governments. Customer will not, and will not allow any third party to, remove or export from the United States or allow the export or re-export of any part of the Offerings or any direct product thereof: (a) into (or to a national or resident of) any embargoed or terrorist-supporting country; (b) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (c) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (d) otherwise in violation of any export or import restrictions, Laws of any United States or foreign agency or authority. Customer warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Offerings are further restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology, or for terrorist activity, without the prior permission of the United States government. Customer will defend, indemnify, and hold Trimble harmless against any liability (including attorneys' fees) arising out of Customer's failure to comply with the terms of this Section. Customer's obligations under this Section 12.6 (Export Control) will survive the termination of the Agreement for any reason whatsoever.

13.7.Anti-Corruption Compliance. Each party, and any third party acting on its behalf, will comply with all applicable United States and international anti-corruption and anti-bribery laws and regulations, including, without limitation, the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and others (collectively, "**Anti-Corruption Laws**"). Each party, and any third party acting on its behalf, will not directly or indirectly offer, promise, or give any payment or anything of value to a government official, or any other individual or entity, where the intent is to improperly influence any act or decision of the government official, or other individual or entity, to obtain or retain business or some other benefit or commercial advantage for either party. Each party, and any third party acting on its behalf, also will not solicit or accept any sort of payment or anything of value from anyone, where the intent is to improperly influence any acts of a party or any third party acting on its behalf.

13.8.GSA. Offerings purchased or licensed under Trimble's United States General Services Administration (**"GSA"**) Schedules are subject to all of the pricing and other terms and conditions described in the applicable GSA Schedule.

13.9.Governing Law and Venue. The sole and exclusive governing Law, jurisdiction, and venue for the Agreement and all Disputes shall be: (1) as set forth in the Order, if any, or (2) otherwise, as set forth on Exhibit A (Trimble Entities; Governing Law; Exclusive Venue/Jurisdiction), in each case to the exclusion of all others; provided that Trimble may elect to bring action in courts with jurisdiction for Customer's location. The United Nations Convention on Contracts for the International Sale of Goods and any conflicts of laws provisions giving rise to a different result do not apply. No Dispute may be brought by either party more than one (1) year after such Dispute accrued, except that an action for nonpayment may be brought within two (2) years after the due date. Each party hereby waives, to the maximum extent permitted by law, any objection, including any objection based on *forum non conveniens*, to the bringing of any such proceeding in such jurisdiction.

13.10.WAIVER OF JURY TRIAL – UNITED STATES CLAIMS. FOR ANY CLAIM BROUGHT IN A STATE, FEDERAL, OR OTHER COURT IN ANY JURISDICTION WITHIN THE UNITED STATES, EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY; *PROVIDED, HOWEVER*, THAT THIS PROVISION SHALL NOT BE ENFORCED OR ENFORCEABLE TO THE EXTENT A WAIVER OF THE RIGHT TO A TRIAL BY JURY IS PROHIBITED BY, OR CONTRARY TO, THE PUBLIC POLICY OF THE STATE IN WHICH SUCH LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM IS FILED.

13.11.Region-Specific Terms. Additional terms and conditions for specified regions are as set forth in Exhibit B (Region-Specific Terms).

13.12.Publicity. Customer agrees that (a) Trimble may issue a press release in the form approved by the parties regarding the parties' entry into the Agreement, and (b) Trimble may identify Customer (including through use of its name and logo) as Trimble's customer, including on Trimble's website, and may include Customer in its customer list and marketing materials, but will cease this use upon Customer's written request.

13.13.Headings; Language. The headings in the Agreement have been inserted for convenience only and shall have no substantive effect. The language of all parts of the Agreement shall in all cases be considered as a whole, according to its fair meaning, and not strictly for or against any of the parties. The parties hereby acknowledge and agree that the language of the Agreement shall be considered jointly drafted.

13.14.Subcontractors. Trimble may use subcontractors in the performance of its obligations under the Agreement, and will be responsible for the acts and omissions of its subcontractors in their performance of Trimble's obligations in the Agreement.

13.15.No Third-Party Beneficiaries. Except as may be expressly stated in any Supplemental Terms, there are no third-party beneficiaries under the Agreement.

13.16.Independent Contractors. Each party is an independent contractor of, and is not an employee, agent, fiduciary, or authorized representative of, the other party.

13.17.Entire Agreement. The Agreement sets forth the entire understanding between the parties in connection with its subject matter, and supersedes all prior or contemporaneous proposals, communications, agreements, negotiations, and representations, whether written or oral, regarding the subject matter thereof. Any additional, contrary, and/or pre-printed terms or conditions appearing on Customer's acceptance, orders, or associated purchase documentation are hereby rejected and will be of no effect.

13.18.Counterparts. The Agreement, or portions thereof, may be executed in several counterparts and, if applicable, by each party on a separate counterpart, each of which, when so executed and delivered will be an original, but all of which together will constitute but one and the same instrument. A signature, digital signature, or electronic signature delivered through other means (e.g., email) shall have the same force and effect as an original ink signature.

Exhibit A

Trimble Entities; Governing Law; Exclusive Venue/Jurisdiction

Customer Location*	**Trimble Entity and Notice Address****	**Governing Law**	**Exclusive Venue/Jurisdiction**
United States	Trimble Inc. 10368 Westmoor Drive Westminster, CO 80021 USA	State of Delaware	State and Federal Courts located in Wilmington, Delaware, USA
Belgium	Trimble Belgium BV, Geldenaaksebaan 329 3001 Leuven, Belgium	Belgium	Courts in Brussels, Belgium
Canada	Trimble Canada Corporation 600-1741 Lower Water Street Halifax, Nova Scotia B3J 0J2, Canada	Province of Ontario, and the federal laws of Canada applicable therein	Provincial and federal courts located in Toronto, Ontario
France	Trimble France S.A.S. 1 quai Gabriel Péri 94340 Joinville-le-Pont, France	France	Courts in Paris, France
Any other country or geography not specified above	Trimble Europe B.V. Industrieweg 187a, 5683 CC Best, The Netherlands	The Netherlands	Courts of Amsterdam, the Netherlands

** Customer location is Customer's billing address specified on the Order, or if none, then the address provided by Customer to Trimble when registering its online account.*

*** Addresses for Trimble entities not listed shall be as set forth on the Order or SOW. See additional required notice address for Trimble in Section 12.5 (Notices).*

Exhibit B

Region-Specific Terms

Table of Contents

- Australia
- France
- The Netherlands

Australia

For Customer who purchase Offerings in Australia, the following provisions apply:

(a) For the purposes of this section, "**Australian Consumer Law**" means the Australian Consumer Law set out at Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as amended from time to time, and "**Non-excludable Condition**" means the consumer guarantees, warranties, rights, or remedies under the Australian Consumer Law that cannot be limited, excluded, restricted, or modified, and to which Customer may be entitled.

(b) To the extent permitted by Law, Trimble's liability in relation to breach of any such Non-excludable Condition shall be limited, at its option, as follows: (i) in the case of the goods, to repairing or replacing the goods, supplying equivalent goods, or paying the costs of repairing or replacing the goods or acquiring equivalent goods; and (ii) in the case of the services, to re-supplying the services or paying the cost of re-supplying the services.

(c) Nothing in the Agreement excludes, restricts or modifies any Non-excludable Condition.

Nothing in the Agreement is intended to derogate from Trimble's obligations under the *Privacy Act 1988* (Cth) as amended from time to time.

(e) Where Order(s) are a "Small Business Contract" within the meaning of the Australian Consumer Law:

(i) Trimble shall not accelerate Customer's unbilled future fees under any Order(s);

(ii) Customer's indemnification obligations under the Agreement are reduced to the extent Trimble's acts or omissions contributed to or caused the claims, costs, damages, losses, liabilities, and expenses suffered by Customer;

(iii) Trimble's liability in relation to breach of any Non-excludable Condition will be an Excluded Claim; and

(iv) No dispute or legal action arising under the Agreement may be brought by either party more than three years after such cause of action accrued.

France

Section 3.4 is hereby amended and restated to read as follows:

Section 3.4 Late payments will bear interest at the rate of 1.5% per month or the minimum rate allowed by Law (currently three (3) times the legal interest rate), whichever is higher, measured from the date on which the sums concerned became due until the date on which full payment is received. Collection fees of a minimum amount of 40 € will be added in accordance with Article L. 441-10.II of the Commercial Code. Customer will be liable for all other costs of collection of past due amounts (including court costs and attorney's fees incurred by Trimble). If the Customer does not dispute an invoice amount in writing by the due date of the invoice, the Customer shall be deemed to have acknowledged the accuracy of such invoice and waived its right to dispute it. A dispute over part of an invoice or amount due shall entitle the Customer to withhold or delay payment of the disputed part only.

The following is hereby added as Section 7.1 (e):

(e) EACH PARTY HEREBY HAS AN OBLIGATION TO LIMIT THE DAMAGES IT MAY SUFFER IN THE EVENT OF A BREACH OF ITS OBLIGATIONS BY THE OTHER PARTY.

The Netherlands

The provisions of Section 4.2 (Termination) are the sole grounds for the termination of the Agreement, and to the extent permitted by Law, the right of Customer to rescind the Agreement and claim damages on the basis of statutory Law (including but not limited to sec. 6:265 Dutch Civil Code) is excluded.

THE LIMITATION OF LIABILITY IN SECTION 7 FOR A PERIOD OF 12 MONTHS EXPRESSLY INCLUDES ANY OBLIGATION TO PAY COMPENSATION UNDER A WARRANTY MENTIONED IN THESE TERMS OR RELATED CONTRACTS OR DOCUMENTS AND THE RESTITUTION OBLIGATIONS (*ONDEDAANMAKINGSVERPLICHTINGEN*) AND INDEMNIFY FOR DAMAGES. LIABILITY FOR DEATH OR PERSONAL INJURY SHALL NOT EXCEED EUR 1.250.000.

The applicability of section 6:227b subsection 1 and section 6:227c subsection 1 of the Dutch Civil Code are excluded in any Agreement between Trimble and any person who is not a consumer.

Addendum #2

Supplemental Terms for Software and Subscriptions

Version 1.1 (Last Updated: October 7, 2023)

1. Definitions. Capitalized terms not defined herein have the meanings given in the General Terms.

1.1. "**Active Project**" means any Project on which the Software may be used by Customer during any Annual Subscription Term.

1.2. "**Annual Subscription Term**" means each 12-month period of a Subscription Term.

1.3. "**Anonymized Data**" means any data collected in connection with the Offerings (including Customer Data) that has been aggregated and/or de-identified in such a manner that neither Customer nor any of its Authorized Users or any other individual can be identified from the data when it is shared outside of Trimble or its Affiliates.

1.4. "**Authorized User**" means any employee of Customer or third-party user authorized by Customer to access and use the Offerings on Customer's behalf in accordance with the Agreement, including, without limitation, Section 6.6 (Third-Party Access).

1.5. "**Correction Services**" means subscription-based services that provide GNSS position correction data.

1.6. "**Concurrent User**" means any type of User authorized by Customer to access and use the Offerings on Customer's behalf simultaneously at a given point in time.

1.7. "**Customer Data**" means any information, documents, materials, or other data of any type that is input by or on behalf of Customer into the Offerings or that is created or generated by Customer through Customer's use of the Offerings, including without limitation information or data that is submitted manually by Authorized Users or through a Third-Party Platform. For clarity, Customer Data expressly excludes Usage Data.

1.8. "**Customer Group**" means Customer's business units, Affiliates, or Joint Ventures, if any, listed in the Order that may authorize Authorized Users to use the Offerings on behalf of those business units, Affiliates, or Joint Ventures.

1.9. "**Gross Annual Revenue**" or "**GAR**" means Customer's (and Customer Group's, if applicable) income and revenue from all sources, before expenses or taxes, calculated on an annual basis according to generally accepted accounting principles and as reported in company financial statements. The various equivalent definitions may be used interchangeably.

1.10. "**Joint Venture**" means a business arrangement in which Customer and one or more other third parties agree to pool their resources to accomplish a Project or other commercial enterprise.

1.11. "**License Keys**" means electronic passwords, authorization codes, or other enabling mechanisms provided for use with the Offerings.

1.12. "**Named User**" means any type of Authorized User designated by Customer by name or other identifier to access and use the Offerings on Customer's behalf.

1.13. "**Prohibited Data**" means any (a) patient, medical, or other protected health information regulated by the Health Insurance Portability and Accountability Act (as amended and supplemented) ("**HIPAA**"); (b) credit, debit, or other payment card data subject to the Payment Card Industry Data Security Standards (PCI DSS); (c) information subject to regulation or protection under the Children's Online Privacy Protection Act or Gramm-Leach Bliley Act, or (d) any other information which is regulated under Laws and is not required for use of the Software for its intended purpose.

1.14. "**Project**" means the initiation, delivery, operations, and maintenance of a construction project.

1.15. "**Provision Date**" means the date on which Trimble first provides access to the Offerings. For an Offering bundle comprised of multiple Software, the Provision Date will be the date on which the entire Offering bundle becomes fully provisioned.

1.16. "**Subscription**" means access to any Software, Support, Correction Services, content, data, or other information, in each case made available for the applicable Subscription Term(s).

1.17. "**Support Terms**" means the then-current Supplemental Terms for Support and Maintenance available at https://www.trimble.com/en/legal/customer-terms or any successor url.

1.18. "**Third-Party Materials**" means any third-party data, content, or proprietary software. Third-Party Materials is not part of Software.

1.19. "**Project Budget**" means the total projected cost allocated to carry out, manage, and complete one or more Active Project(s) over the entire Subscription Term. The various defined terms are equivalent and may be used interchangeably, including in other defined terms.

1.20. "**Total Project Value**" or "**Project Value**" means Project Budget divided by the number of Annual Subscription Terms in the Subscription Term (and not any renewal). The various defined terms are equivalent and may be used interchangeably, including in other defined terms.

1.21. "**Usage Limitations**" means Customer's authorized scope of use for the Offerings as specified in the applicable Order, Supplemental Terms, or Documentation, which may include any user (e.g., Named User, Concurrent User, etc.), seat, copy, instance, data storage, CPU, computer, field of use, location, project, or other restrictions.

1.22. "**Usage Data**" means Trimble's technical logs, data, and learnings about Customer's use of the Offerings, excluding Customer Data.

2. Generally

2.1 Offerings.

(a) Subscriptions (other than Licensed Software). Customer may access and use the Subscriptions during the Subscription Term only for its internal business purposes in accordance with the Documentation, Usage Limitations, and the Agreement. Unless otherwise specified by Trimble, any Licensed Software provided with a Subscription is subject to the terms applicable to Licensed Software under the Agreement.

(b) Licensed Software. Trimble hereby grants Customer a non-transferable, non-sublicensable, non-exclusive license, during Term, to install, copy, and use the Licensed Software on systems or devices under Customer's control only for its internal business purposes in accordance with the Documentation, Usage Limitations, and the Agreement. Licensed Software is licensed, not sold. Any Licensed Software deployed through hosting services delivered by Trimble are subject to the terms and conditions applicable to Licensed Software.

2.2 Authorized Users. Only Authorized Users may access or use the Offerings. User IDs are granted to individual, named persons, and each Authorized User will keep login credentials confidential and not share them with anyone else. Customer is responsible for its Authorized Users' compliance with the Agreement and actions taken through their accounts. In the event an Authorized User is no longer authorized to use an Offering on Customer's behalf, Customer will promptly de-activate such Authorized User's access. Unless expressly permitted in the Order, Supplemental Terms, or Documentation, Customer may not transfer Authorized User status from one individual to another. Customer will promptly notify Trimble if it becomes aware that any of its Authorized User login credentials have been compromised.

2.3. Restrictions. Customer will not (and will not permit, encourage, or assist anyone else to) do any of the following: (a) provide access to, distribute, sell, or sublicense the Offerings to a third party; (b) use the Offerings on behalf of, or to provide any product or service to, third parties; (c) use the Offerings to develop a similar or competing product or service; (d) reverse engineer, decompile, disassemble, or seek to access the source code or non-public APIs to any element of the Offerings, except to the extent expressly permitted by Law (and then only after providing prior written notice to Trimble); (e) modify or create derivative works of the Offerings or copy any element of the Offerings (other than in connection with making copies of Licensed Software authorized under the Agreement); (f) remove or obscure any proprietary notices in the Offerings; (g) publish benchmarks or performance information about the Offerings, except to the extent expressly permitted by Law; (h) interfere with the Offerings' operation or its use by others, circumvent its access restrictions or, without the prior written permission of Trimble, conduct any security or vulnerability test of the Offerings; (i) transmit any viruses or other harmful materials to the Offerings; (j) submit to the Offerings any information that is inappropriate, defamatory, obscene, salacious, or unlawful, or use the Offerings to defame, harass, stalk, threaten, or otherwise violate the rights of others; (k) use the Offerings to advertise, offer to sell or buy goods, or otherwise for business promotional purposes; (l) for Licensed Software, unless expressly permitted in the Order, Supplemental Terms, or the Documentation, use or host any Licensed Software in a virtual server environment, or (m) for Corrections Services, re-broadcast the Corrections Services without the prior written consent of Trimble.

2.4 Free Versions; Trials and Betas. "**Free Versions**" means any Offerings made available to Customer for use without a fee. "**Trials and Betas**" means any Offerings or any features thereof made available on a evaluation or trial basis or as an alpha, beta, or early access offering, in any case free or otherwise. Unless otherwise set forth in the Documentation or the Agreement, Customer may only use Free Versions in a non-production environment and for non-commercial purposes, and Trials and Betas may only be used solely for Customer's internal evaluation to determine whether to purchase a license or subscription to the Offerings. The evaluation term for Trials and Betas shall be 30 days unless otherwise designated by Trimble in writing. Free Versions and Trials and Betas are optional, and Trimble may cease making available such Offerings at any time for any reason. Trials and Betas may be inoperable, incomplete, or include features that Trimble may never release, and their features and performance information are Trimble's Confidential Information. In the event Customer has purchased Services related to any Free Version or Trial and Beta, any unused Services upon any termination or expiration of the applicable term for the Free Version or Trial and Beta shall be forfeit. **Notwithstanding anything else in the Agreement: (a) Trimble has no obligation to retain Customer Data used with Free Versions and Trials and Betas; (b) Trimble provides the Free Versions and Trial and Betas "AS-IS" with no warranty, indemnity, service levels, or support; (c) Trimble's liability for Free Versions and Trials and Betas will not exceed US$50, and (d) either party may terminate access to a Free Version or Trial and Beta, for any reason or no reason, immediately upon written notice to the other party.**

2.5 Educational Versions. For any version of the Offerings designated as "educational," or a similar term, Customer may use the Offerings solely for educational purposes - e.g., by an instructor or a student at an educational institution and while engaged in educational work. Such educational versions may not be used (a) by any other person; (b) by any educational institution for any non-educational purposes; or (c) for any for-profit purpose, including professional work or training offered for a fee, or by commercial entities.

2.6 Delivery. Offerings and License Keys, if any, will be delivered by electronic means unless otherwise specified on the applicable Order. Delivery is deemed to occur on the date on which the Offering and License Key, if any, are first made available to Customer.

2.7 Software Activation and Metering; Audits.

(a) Offerings may gather and transmit to Trimble license usage, compliance, and activation data. Customer will not disable, modify, or interfere with the operation of any such functionality of the Offerings. Trimble may use the foregoing information to validate the authenticity of Authorized Users, to confirm Customer's compliance with the Agreement, to register the Offerings, to monitor and validate compliance with Usage Limitations, for license metering, and to protect Trimble against unlicensed or illegal use of the Offerings.

(b) Upon Trimble's written request, Customer shall certify in writing that its use of the Offerings is in full compliance with the Agreement (including any Usage Limitations). In addition to the other license compliance monitoring rights in the Agreement, Trimble, or its authorized representative, may, upon prior reasonable notice of at least ten (10) days, inspect and audit Customer's records and use of the Offerings to confirm Customer's compliance with the Agreement. All such inspections and audits will be conducted during regular business hours and in a manner that does not unreasonably interfere with Customer's business activities. Customer is responsible for such audit costs only in the event the audit reveals that the use is not in accordance with the Usage Limitations or other licensed scope of use and for unpaid fees. Customer shall promptly pay all unpaid fees.

3. Data Usage and Ownership.

3.1 Ownership. Except for Trimble's limited rights set forth in the Agreement, as between the parties, Customer retains all Intellectual Property Rights in Customer Data. Trimble owns all Intellectual Property Rights in Anonymized Data and Usage Data.

3.2. Limited Usage Rights. Customer hereby grants to Trimble and its Affiliates the non-exclusive, worldwide, irrevocable, royalty-free right: (i) to use Customer Data during the Term to provide the Offerings, Support, and Services to Customer; (ii) to use and disclose Customer Data as otherwise permitted pursuant to the Agreement or any written consent or instructions of Customer; and, (iii) subject to Trimble's confidentiality obligations in Section 9 (Confidentiality) of the General Terms and all applicable Data Protection Legislation, to use Customer Data in perpetuity to develop, maintain, and improve the products, software, and services of Trimble or its Affiliates, including, without limitation, analytics, model training, and machine learning.

3.3 Access. Customer will not have access to Customer Data after termination or expiration of the Term, unless otherwise indicated in the Order, Supplemental Terms, or the Documentation, or the parties agree otherwise in writing.

3.4 Confidentiality. In the event of any conflict between the terms of Section 9 (Confidentiality) of the General Terms and this Section 3 (Data Usage and Ownership), the terms of this Section 3 (Data Usage and Ownership) will control.

4. Customer Obligations.

4.1 Dependencies and Compatibilities. If Customer enables Dependencies or Compatibilities with an Offering, Trimble may access and exchange Customer Data with the Dependencies or Compatibilities on Customer's behalf. Trimble will have no liability or obligations under the Agreement with respect to how any Dependencies or Compatibilities uses or processes Customer Data. If Trimble hosts any Dependency or Compatibilities at Customer's request, Customer represents and warrants to Trimble that Customer has all rights necessary. Trimble may charge additional fees for such hosting services.

4.2 No Prohibited Data. Customer will not use the Offerings with Prohibited Data. Customer acknowledges that the Offerings are not intended to meet any legal obligations for these uses, including HIPAA requirements, and that Trimble is not a Business Associate as defined under HIPAA.
4.3 Customer Data. Customer is responsible for its Customer Data, including its content, accuracy, and compliance with Laws. Customer represents and warrants that it has made all disclosures and has all rights, consents, and permissions necessary to use its Customer Data with the Offerings and grant Trimble the rights in Section 3 (Data Use and Ownership), all without violating or infringing Laws, third-party rights (including intellectual property, publicity, or privacy rights), or any terms or privacy policies that apply to its Customer Data. If Customer utilizes data fields available in the Offerings to store data not required for the normal use and operation of the Offerings for their intended purpose, Customer agrees that Trimble is not responsible for, and will not be liable in any manner for such data, and Customer assumes all risks associated with, and agrees to hold Trimble harmless from and against any and all claims, losses, damages, liabilities, and expenses (including reasonable attorneys' fees) related to or arising from, Customer's use of data fields to store such data.
4.4 Excluded Claims. In addition to the Excluded Claims stated Section 7 (Limitation of Liability) in the General Terms, the following shall also be Excluded Claims for purposes of the Agreement: Section 10 (Indemnification) of these Software Terms and any breaches of Sections 2.3 (Restrictions) or Section 4 (Customer Obligations) of these Software Terms.
4.5 License Compliance. Customer shall promptly notify Trimble if Customer become aware of (i) any breach of confidentiality obligations regarding the Offerings, or (ii) any infringement (whether actual or alleged) of Trimble's intellectual property rights in the Offerings, or (iii) any unauthorized use of the Offerings by any person, and provide reasonable assistance to Trimble in connection with any suit or proceeding relating to such events.
4.6. Usage Limitations. Customer will comply with all Usage Limitations. If Customer exceeds the Usage Limitations during the Term, Trimble may invoice Customer for the use that exceeded the applicable Usage Limitations at Trimble's then-current list price, and Customer shall pay in accordance with the Agreement. The parties may also agree on a Usage Limitation adjustment, in which case Customer must sign a new Order and pay the applicable fees.
4.7 Fee Criteria. If the Order states Software is made available based on GAR, Project Budget, Total Project Value, population, specific-department usage, Affiliate-limitations, or similar criteria (any such criteria, the "**Fee Criteria**"), the fees for that Software are calculated based on that Fee Criteria as of the date of Order issuance by Trimble. Unless otherwise provided the Order, if the Fee Criteria increases by more than 10% during the Subscription Term, (i) Customer shall promptly notify Trimble in writing, (ii) Trimble has the right to adjust such fees based on changes in the Fee Criteria and its then-current list price for that Software (including on a prorated basis for the current term), and (iii) Customer shall pay any applicable additional fees upon receipt of the invoice in accordance with the Agreement. At the request of Trimble, Customer will promptly provide documentation satisfactory to Trimble evidencing Customer's then-applicable Fee Criteria.

5. Suspension of Access. Trimble may suspend Customer's access to an Offering, without liability, and in whole or in part, if (a) Customer breaches any Usage Limitations, Sections 2.2 (Authorized Users), 2.3 (Restrictions), 4 (Customer Obligations) or 6.2 (Offering Content); (b) Customer's account is five (5) business days or more overdue; or (c) immediately if Customer or any of its Authorized Users' acts or omissions threaten the integrity, availability, or security of the Offerings or Trimble's systems, products, or infrastructure (provided Trimble will use commercially reasonable efforts to provide Customer with advance notice of such suspension where Trimble determines exigent circumstances do not exist). Trimble will lift such suspension once the related issue or failure is cured to Trimble's reasonable satisfaction. Fees will continue to apply during the suspension period. Customer may be prohibited from entering new Customer Data or processing or accessing existing Customer Data and data reports during the suspension period. If Customer attempts to access or manipulate Customer Data utilizing third-party software during suspension, Trimble disclaims and Customer holds Trimble harmless from any responsibility or liability relating to lost or altered Customer Data or related damages.

6. Certain Features. The following provisions apply to the extent applicable to the Offerings.
6.1 Third-Party Materials. The Offerings may provide Customer with access to Third-Party Materials. Third-Party Materials are not part of the Offerings. To the extent specified by Trimble (including in any Supplemental Terms or Documentation), use of the Third-Party Materials may be subject to additional terms or restrictions ("**Third-Party Terms**"). Customer is solely responsible for its compliance with any Third-Party Terms, and failure to comply with such terms may result in termination of Customer's right to access any features of the Offerings that utilize such Third-Party Materials. If no Third-Party Terms are specified, Customer may use Third-Party Materials solely in support of Customer's authorized use of the Offerings in accordance with the Agreement.
6.2 Offering Content. "**Offering Content**" shall be any Trimble IP or Third-Party Materials made available as data or information through the Offering, whether included as part of the Offering or as a separate subscription. Any Offering Content that is Trimble IP will be deemed part of the Offering. Any Offering Content that is Third-Party Materials shall be subject to any applicable Third-Party Terms. If no Third-Party Terms apply, then unless otherwise authorized by Trimble in writing or the applicable Documentation, such Third-Party Materials, and any derivative thereof, may only be used or accessed by an Authorized User. Third-Party Materials will be used solely for Customer's internal purposes during the Term and must be accessed pursuant to a manual Authorized User request. Customer will not: (i) access, extract, or download any Third-Party Materials, or portions thereof, in batch or en masse by any means; (ii) use any device, software, or routine to bypass any hardware or software that prohibits volume requests for information; (iii) sell, offer to sell, rent, sublicense, or transfer any copies of theThird-Party Materials, or portions thereof, to a third party or allow a third party to use the Third-Party Materials; (iv) use the Third-Party Materials to develop services or products for sale or include any portion of the Third-Party Materials in any product or service; (v) use any portion of the Third-Party Materials to create a competitive service, product, or technology; (vi) recreate the Third-Party Materials or create otherwise a separate database or other repository of Third-Party Materials; (vii) use Third-Party Materials to train, augment, or correct another database or information repository; (viii) unless other specified in the Documentation, permit any individual other than an Authorized User to access or use the Offering Content and any derivative thereof, or (ix) make any portion of the Third-Party Materials available to the public in any manner. Upon notice from Trimble and/or any termination or expiration of the Term, Customer will immediately cease using and delete/destroy all electronic and physical copies of Third-Party Materials.
6.3 Open Source. The Offerings may incorporate third-party open source software ("**Open Source**"), as listed in the Documentation or otherwise made available by Trimble. To the extent the terms of the Open Source license prohibit the terms of the Agreement from applying to the Open Source, the terms of the Open Source license will apply to the Open Source on a stand-alone basis instead of the Agreement.
6.4 Third-Party Application Stores.

(a) Purchase from Application Store. If Customer obtains the Offering (or portions thereof) through a third-party application store, marketplace, or other site or service (each, an "**Application Store**"), such Application Store is considered a reseller. All fees are non-refundable once paid. Customer's download of the Offering may be subject to other terms as specified by the operator of the Application Store from which Customer downloaded the Offering.
(b) Apple-Specific Terms. If Customer downloaded the Offering from Apple Inc.'s ("**Apple**") Application Store, the following terms are part of the Agreement. The Agreement is between Customer and Trimble, and not with Apple. However, as required by Apple, Apple and its subsidiaries will be third-party beneficiaries of the Agreement and will have the right (and will be deemed to have accepted the right) to enforce the Agreement against Customer as a third-party beneficiary. To the maximum extent permitted by Law, Apple will have no warranty obligation with respect to the Offering, and, as between Apple and Trimble, any other claims, losses, liabilities, damages, costs, or expenses attributable to a failure to conform to a warranty will be Trimble's responsibility. Apple has no obligation whatsoever to furnish any maintenance or support services with respect to the Offering. As between Trimble and Apple, Trimble is solely responsible for the Offering and for addressing any claims Customer or any third parties have about the Offering or Customer's possession or use of the Offering, including without limitation (i) product liability claims; (ii) any claim that the Offering fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. In the event of any third-party claim that the Offering or Customer's possession or use of the Offering infringes that third party's intellectual property rights, Apple will not be responsible for the investigation, defense, settlement, or discharge of such claim.
6.5 Security for SaaS or Hosting Services for Licensed Software. This Section 6.5 (Security for SaaS or Hosting Services for Licensed Software) applies to Offerings that are SaaS or hosting services for Licensed Software. During the Term, Trimble or its third party hosting provider(s) will use commercially reasonable efforts to establish and maintain reasonable administrative, physical, and technical safeguards designed to protect (a) the security, confidentiality, and integrity of Customer Data; (b) against anticipated threats or hazards to the security, confidentiality, and integrity of Customer Data; (c) against unauthorized access to or use of Customer Data; and (d) against unlawful processing, accidental destruction, or loss of Customer Data. In the event Trimble is not in breach of the foregoing obligations and an unauthorized third party nonetheless gains access to the Customer Data, such disclosure of Customer Data in such circumstances shall not be a breach of Section 9 (Confidentiality) of the General Terms. In the event of any conflict between the terms of Section 9 (Confidentiality) of the General Terms and this Section 6.5 (Security for SaaS or Hosting Services for Licensed Software), the terms of this Section 6.5 (Security for SaaS or Hosting Services for Licensed Software) will control.
6.6 Third-Party Access.
(a) Contractors and Affiliates. Unless prohibited by Trimble in the Order, Documentation, any Supplemental Terms, or otherwise by Trimble in writing, Authorized Users may include individuals who are contractors or consultants of Customer or employees, contractors, or consultants of its Affiliates; provided, however, any such access and usage may require additional fees as described in Section 4.7 (Fee Criteria), if applicable.
(b) Other Third-Parties. If expressly authorized by Trimble in the Order, Documentation, any Supplemental Terms, or otherwise by Trimble in writing, the Offerings may allow Customer to invite other third parties to become Authorized Users and/or access Customer Data.
(c) Generally. Customer authorizes Trimble to share Customer Data with any third-party Authorized Users or as otherwise instructed by Customer. Customer is solely responsible for such third-parties' compliance with the Agreement and for any and all acts or omissions of any such third parties. Such third parties are not intended third-party beneficiaries under the Agreement. Trimble shall have no liability for any act or omission of any such third party, including by way of access or use of Customer Data. Such third-party access or use of the Offerings must be solely and exclusively for the benefit of Customer, and any other purpose is prohibited. For clarity, as between Customer and any such third parties, any data or other information uploaded by such third party to the Offerings on Customer's behalf will be deemed Customer Data of Customer.
(d) Customer as a Third-Party. In the event that Customer is invited to access an Offering as a third party, any data or other information uploaded by Customer on behalf of such third party shall be deemed "Customer Data" of such third party.

7. Support. If Customer is eligible for Support and pays any applicable fees, Trimble will make such Support available in accordance with the Support Terms or as Trimble may otherwise expressly provide in writing. Unless otherwise set forth in writing by Trimble, Support is not available for Free Versions or Trials and Betas.

8. Term and Termination.
8.1 Perpetual License. If Customer purchases a perpetual license to Licensed Software, Customer's license to the Licensed Software will continue in perpetuity subject to the terms and conditions of the Agreement. Support for Licensed Software is purchased separately unless otherwise indicated by Trimble in writing or on an Order.
8.2 Subscriptions.
(a) Subscription Term. If Customer purchases access to a SaaS or a license to Licensed Software for a limited period of time, the duration of the initial term and any renewals are as set forth in the Order (collectively, the "**Subscription Term(s)**"). Notwithstanding anything to the contrary in the Order, the start date for each Subscription Term for each Offering will begin on the Provision Date for that Offering. For clarity, each Offering may have a different Provision Date.
(b) Additional Subscriptions. If Customer previously purchased one or more Subscriptions for a particular Offering ("**Existing Subscription**(s)") and subsequently purchases one or more additional Subscriptions (for any Offering) while the Existing Subscription(s) is in effect (the "**Additional Subscription**(s)"), the duration of the Subscription Term for the Additional Subscription will be as set forth in the Order. Unless otherwise set forth by Trimble in writing, all Customer's Subscriptions shall have the same end date and Trimble may invoice all fees for all such Subscriptions on a single invoice.
8.3 Effect of Termination. Upon expiration or termination of the Agreement or the Order, Customer's right to use the Offerings will cease and Customer will immediately cease any and all use of and access to the Offerings and will delete (or, upon request, return) all copies of any Offerings. At the disclosing party's request upon expiration or termination of the Agreement, the receiving party will delete all of the disclosing party's Confidential Information (excluding Customer Data, which is addressed in Section 3 (Date Usage and Ownership)). Customer Data and other Confidential Information may be retained in the receiving party's standard backups after deletion but will remain subject to the Agreement's confidentiality restrictions.
8.4 Survival. In reference to Section 4.3 of the General Terms (Survival), the following Sections of these Software Terms survive any expiration or termination of the Agreement: 1 (Definitions), 2.3 (Restrictions), 3.1 (Data Usage and Ownership), 4 (Customer Obligations), 8.3 (Effect of

Termination), 8.4 (Survival), 9.3 (Additional Disclaimers), and 10 (Indemnification). Except where an exclusive remedy is provided, exercising a remedy under the Agreement, including termination, does not limit other remedies a party may have.

9. Warranties and Additional Disclaimers.

9.1 Limited Warranty. Subject to the Agreement and any mandatory Laws to the contrary, Trimble warrants to Customer that during the Warranty Period, the Offerings will perform materially as described in the Documentation. The "**Warranty Period**" is (a) 90 days for Licensed Software licensed on a perpetual basis, and (b) for the duration of the applicable Subscription Term, for any Subscriptions. Notwithstanding the foregoing, Trimble makes no warranties with respect to Correction Services, which are provided as-is and as-available.

9.2 Warranty Remedy.

(a) If the Offering fails to conform to Section 9.1 (Limited Warranty) during the Warranty Period, Customer may make a reasonably detailed warranty claim within 30 days of discovering the issue. For any such claims reported by Customer within such period that Trimble determines are valid, Trimble will correct such non-conformity by issuing corrected instructions, a restriction, or a bypass, or by replacing the Offerings, at Trimble's option. Subject to any mandatory Laws to the contrary, these procedures are Customer's exclusive remedy, and Trimble's entire liability, for the failure of the Offerings to conform to the warranty in Section 9.1 (Limited Warranty).

(b) The foregoing limited warranty only applies if and to the extent that (i) any Offering associated with the warranty is properly and correctly installed, configured, interfaced, maintained, stored, and operated in accordance with the Documentation, and (ii) any Offerings associated with the warranty is not modified or misused. The foregoing limited warranty does not apply to (1) issues caused by unauthorized use or modifications; (2) unsupported or unauthorized versions of any Offerings; (3) operating the Offerings under any specification other than, or in addition to, the Documentation; (4) issues in or resulting from Dependencies, Compatibilities, or third-party systems, products, or services; or (5) Free Versions, Trials and Betas or other similar versions.

9.3 Additional Disclaimers. Trimble makes the following disclaimers in addition to Section 6 (Warranty Disclaimer) in the General Terms.

(a) **General**. **TRIMBLE MAKES NO EXPRESS WARRANTY THAT CUSTOMER'S USE OF THE OFFERINGS WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF VIRUSES OR OTHER MALWARE OR PROGRAM LIMITATIONS; THAT TRIMBLE WILL REVIEW CUSTOMER DATA FOR ACCURACY; OR THAT TRIMBLE WILL MAINTAIN CUSTOMER DATA OR OTHER DATA WITHOUT LOSS. TRIMBLE IS NOT LIABLE FOR DELAYS, FAILURES, OR PROBLEMS INHERENT IN USE OF THE INTERNET, SATELLITES, ELECTRONIC COMMUNICATIONS, OR OTHER SYSTEMS OUTSIDE TRIMBLE'S CONTROL. TRIMBLE WILL NOT BE LIABLE IN ANY MANNER FOR THE OUTPUT OBTAINED THROUGH USE OF THE OFFERINGS OR CUSTOMER'S RELIANCE ON SUCH OUTPUT. CUSTOMER IS RESPONSIBLE FOR THE SUPERVISION, MANAGEMENT, AND CONTROL OF CUSTOMER'S USE OF THE OFFERINGS. THIS RESPONSIBILITY INCLUDES THE DETERMINATION OF APPROPRIATE USES FOR THE OFFERINGS AND THE SELECTION OF THE OFFERINGS TO ACHIEVE INTENDED RESULTS. ANY FORMS, POLICIES, OR OTHER MATERIALS PROVIDED BY TRIMBLE THROUGH THE OFFERINGS OR DOCUMENTATION ARE NOT INTENDED AND SHOULD NOT BE RELIED UPON AS LEGAL ADVICE OR LEGAL OPINION. CUSTOMER SHOULD CONSULT ITS OWN LEGAL COUNSEL REGARDING THE USE OF ANY SUCH MATERIALS. CUSTOMER IS ALSO RESPONSIBLE FOR ESTABLISHING THE ADEQUACY OF INDEPENDENT PROCEDURES FOR TESTING THE RELIABILITY AND ACCURACY OF ANY OUTPUT OF THE OFFERINGS. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT ANY STATUTORILY REQUIRED WARRANTIES WILL BE LIMITED TO THE SHORTEST LEGALLY PERMITTED PERIOD.**

(b) Correction Services Disclaimers. Customer acknowledges that the Correction Services and related network access are subject to transmission limitations caused by a variety of factors such as atmospheric conditions, topographical obstructions, limitations or lack of coverage of the underlying carrier service and other natural or manmade conditions. Additionally, motor and ignition noise, metal shielding, and interference by users of the same or adjacent radio channels may limit or interfere with Correction Services. Trimble is not responsible for the operation or failure of operation of GNSS satellites or the availability of GNSS satellite signals.

(c) Third-Party Materials. Third-Party Materials are provided "AS IS" and Customer assumes all risk and liability regarding any use of (or results obtained through) Third-Party Materials. Trimble and its suppliers make no warranty or guarantee with respect to any Third-Party Materials, including regarding their accuracy or continued availability or compatibility.

(d) Dependencies and Compatibilities. Trimble makes no warranty or guarantee with respect to any Dependencies, Compatibilities, or other factors outside of Trimble's control, including their continued availability or compatibility.

(e) Prohibited Data. Trimble and its suppliers specifically disclaim any responsibility for, and will not be liable in any manner arising from, any use of the Offerings in connection with Prohibited Data.

10. Indemnification. Customer will defend, indemnify, and hold harmless Trimble from and against any and all third-party claims, costs, damages, losses, liabilities, and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with (a) any Customer Data, Dependencies, or Compatibilities, or (b) Customer's breach of Sections 2.3 (Restrictions), 4 (Customer Obligations), 6.1 (Third-Party Materials), 6.2 (Offering Content), or 6.4 (Third-Party Application Stores) (each, a "**Claim**"). Trimble will give Customer prompt written notice of any Claim and will cooperate in relation to the Claim at Customer's expense. Customer will have the exclusive right to control and settle any Claim, except that Customer may not settle a Claim without Trimble's prior written consent (not to be unreasonably withheld) if the settlement requires Trimble to admit any liability, pay any amounts or take any action or refrain from taking any action (other than ceasing use of infringing materials). Trimble may participate in the defense of any Claim at its expense.

11. Government End-Users. Elements of the Offerings are commercial computer software. If the user or licensee of the Offerings is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Offerings or any related documentation of any kind, including technical data and manuals, is restricted by the terms of the Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Offerings were developed fully at private expense. All other use is prohibited.

12. Region-Specific Terms - France. Solely for purposes of Customers who's billing address is in France, the following shall apply: Prohibited Data included any patient, medical or other protected health information regulated by the French Public Health Code and the GDPR; and Customer's grant of rights in Section 3.1 (Generally) shall be for so long as the Customer Data is protected by intellectual property law.

Addendum #3

Supplemental Terms for Support and Maintenance
Version 1.0 (Last Updated: April 3, 2023)

Capitalized terms not defined herein have the meanings given in the General Terms and the Software Terms.

1. Scope. Provided that Customer has paid the applicable fees, Trimble shall provide the Support described in these Support Terms during the Maintenance Term (as defined below). The "**Maintenance Term**" shall be: (a) for Support for SaaS or Licensed Software licensed for a limited term, the applicable Subscription Term, and (b) for Support for Licensed Software licensed on a perpetual basis, the term specified in the Order, or if not specified, for a period of one (1) year.

2. Support.
2.1 During the applicable Maintenance Term, Trimble shall use reasonable efforts to correct or provide a workaround for any reproducible programming error in the Software attributable to Trimble with a level of effort commensurate with the severity of the error, as reasonably determined by Trimble. Upon identification of any programming error, Customer shall promptly notify Trimble of such error and shall provide Trimble with enough information to reproduce the error, including a listing of output and any other data that Trimble may reasonably request in order to reproduce the error and operating conditions under which the error occurred or was discovered. Trimble shall not be responsible for correcting any errors not attributable to Trimble.
2.2 For certain Software, Trimble may provide additional or different support services or procedures as set forth in the applicable Documentation, support handbook, or other written documentation provided by Trimble, if any (collectively, the "**Additional Support Documentation**"). If there is any conflict between these Support Terms and such Additional Support Documentation with respect to the description of support services, requirements or procedures, the provisions of such Additional Support Documentation will prevail. Customer agrees and acknowledges that Trimble may use third parties to provide Support on its behalf. Customer expressly consents to Trimble permitting such third parties to access Customer's information and data to perform the Support for Customer.

3. Licensed Software Updates and Upgrades. During the applicable Maintenance Term, Customer shall be entitled to receive all upgrades and updates to the Software that are publicly released by Trimble. The contents and timing of all upgrades and updates will be decided by Trimble in its sole discretion. Any such updates and upgrades will be deemed to be "Software" and licensed under the terms and conditions of the Agreement, including any applicable software end user terms or license agreement. Updates and upgrades exclude (a) new versions of the Software (e.g., a change to the left of the decimal in the version number [e.g., 1.x to 2.x] or otherwise designated by Trimble), and (b) any separate modules and other functionality for which Trimble charges a separate fee.

4. Limitations and Exceptions. The following matters are not covered (and Trimble will not have any obligations with respect to such matters) pursuant to these Support Terms:
4.1. Any Software for which applicable fees have not been paid;
4.2. Any problem resulting from the misuse, improper use, alteration, or damage of the Software;
4.2. Any problem resulting from improper or inadequate installation, maintenance, or storage of the Software;
4.3. Any problem caused by modifications of the Software not made or authorized by Trimble;
4.4. Any problem resulting from any hardware or software in either case not developed or supported by by Trimble, including, without limitation: any computers, tablets, disk drives, operating systems, network hardware or software, database, or any other hardware or third-party software;
4.5. Any problem resulting from the combination of the Software with other programming or equipment to the extent that such combination has not been approved by Trimble; and
4.6. Errors in any version of the Software other than the most recent release, provided that Trimble will continue to provide Support for superseded releases for a reasonable period (not to exceed ninety (90) days).

Support excludes on-site visits, installation and training, file conversion, optional products and services, directories, consulting services, shipping charges, or any recommended hardware.

5. Termination or Expiration. Support will automatically terminate with respect to any Software that is no longer licensed for use as a result of expiration or termination of the Agreement, or replacement of the applicable Software with new releases.

Additional Support Documentation

Version 1.1

1. Generally.
   1.1. Trimble shall use the applicable level of effort to correct or provide a workaround for any reproducible error in the Offering attributable to Trimble commensurate with the severity of the error, as reasonably determined by Trimble in accordance with Section 3 (Severity Priority Levels) below.
   1.2. For certain Offerings as set forth in Section 2 below, Trimble may provide a customer support portal (the "**Support Portal**"), which may allow Customer to submit support requests, report issues, view case histories, search the general knowledge database, and other features, as applicable. In the event of any conflicts between the terms set forth herein and any set forth in the applicable Supportal Portal, the terms herein shall govern.
   1.3. For certain Offerings as set forth in Section 2 below, Trimble will provide support to Customer only by communication with the contacts designated by Customer in the Support Portal or otherwise as instructed by Trimble (each, a "**Authorized Support Contact**"). Customer may update Authorized Support Contact(s) from time to time as instructed by Trimble. Trimble may require the Authorized Support Contact(s) to have the relevant technical knowledge regarding the Offerings necessary to assist Trimble as needed.
   1.4. Upon identification of any error that cannot be resolved by Customer as first line of support (e.g., via the Support Portal, its internal staff, etc.), then Customer (through its Authorized Support Contact(s)) shall promptly notify Trimble of such error and shall provide Trimble with enough information, assistance, and cooperation to reproduce the error, including a listing of output and any other data that Trimble may reasonably request in order to reproduce the error and operating conditions under which the error occurred or was discovered. Trimble shall not be responsible for correcting any errors not attributable to Trimble.

2. Support Portals. Support portals with information about reporting and general availability are described below.

Offering	Support Portal*	Authorized Support Contacts Only?**
AgileAssets	https://agileassets.com/techsupport	Yes
Cityworks	https:mycityworks.force.com	Yes
e-Builder (non-Fed Ramp)	https://www.e-builder.net/customer-center	No
e-Builder (Fed Ramp)	None.***	Yes
Trimble Water	https://mytrimblewater.force.com/s/login	No

** Additional phone numbers and hours of availability for contacting Trimble with support requests may be listed in the Support Portal.*

*** For any Products that do not require an Authorized Support Contact, any Authorized User of Customer may contact support.*

**** Authorized Users of e-Builder Enterprise Government Edition may submit support requests by phone (866-254-1531) or email (ebuilder-gov-support@trimble.com). Hours of operation are Monday through Friday 8:00 AM to 6:00 PM Eastern Time. Non-urgent and after-hours support requests should be submitted via email. All support requests submitted via email must include the following information: 1) Authorized User name and email address, 2) Phone number, 3) Account Name, and 4) Brief description of the issue. e-Builder Community and Salesforce are not currently available for the Government Edition.*

3. Severity Priority Levels. As soon as reasonably practicable after Customer submits the relevant case information, Trimble will collect additional information and categorize the issue into one of four classifications as set forth below in good faith. Upon Customer submission of the case information, Trimble will use commercially reasonable efforts to issue a Response (as defined below) by the indicated target response goal set forth below. Once the priority level is determined, Trimble will use the level of effort for resolution described below.

Priority Level*	Priority Criteria	Target Response Goal**	Level of Effort for Resolution
P1	most urgent and impactful	½ hour	Trimble and Customer will prioritize any reasonably available resources to resolve the situation or identify a work around.

P2	urgent and impactful, but usually has an acceptable temporary workaround	½ hour	Trimble and Customer will prioritize any reasonably available resources during standard business hours to resolve the situation or identify a work around.
P3	important, but not urgent and impactful	4 hrs	Trimble and Customer will use generally available resources during standard business hours to resolve the situation or identify a work around.
P4	a low priority, informational, or an enhancement request	24 hrs	Trimble and Customer are willing to use generally available resources during standard business hours to provide information or assistance.

** See Priority Matrix and definitions below. The main factors in determining priority level are urgency and impact. Trimble will also consider in good faith any additional relevant facts and circumstances in consultation with Customer that may result in a mutually agreed upon change in priority level.*

******* The use of the term "hour(s)" refers to business hours based on Trimble's regular business schedule, and excludes nights, weekends and locally-observed holidays (e.g., 24 hrs equals 3 business days at 8 hrs a day). "Response" means acknowledgment of the issue via the creation of a case number. Determination of priority level will occur as soon as practicable thereafter.*

Priority matrix					
		Impact			
		Widespread	**Large**	**Localized**	**Individualized**
Urgency	**Critical**	P1	P1	P2	P2
	High	P1	P2	P2	P3
	Medium	P2	P3	P3	P3
	Low	P4	P4	P4	P4

Definitions		
Impact	Impact is a measure of the number of users, sites, or devices affected.	**Widespread**. More than three quarters of users or devices are affected.
		Large. (1) Multiple sites are affected or (2) between one-half and three-quarters of users or devices are affected.
		Localized. (1) A single site is affected or (2) less than one half of users or devices are affected.
		Individualized. A single or a small number of users or devices are affected.
Urgency	Urgency is a measure of the severity of the issue on the Customer's operations.	**Critical**. Use of Offering as a whole or core functionality is stopped with no work around and with severe immediate impact to the Customer's operations (e.g., outage).

Definitions		
		High. Use of Offering as a whole or core functionality is severely degraded or a work around is available, and with immediate impact to the Customer's operations.
		Medium. Use of Offering or any functionality is not working as expected, and can be addressed through education, training, work around, work order, or a future enhancement.
		Low. All other requests that are not the above.

4. Additional Limitations and Conditions.

(a) Unless otherwise expressly provided by Trimble in writing, Trimble does not support: (i) use of the Offering in a manner other than as authorized in the Agreement; (ii) conversions of Customer's databases to accommodate new hardware or software, (iii) Customer Data debugging or manipulation, (iv) recurring support issues where Customer failed to initiate corrective actions previously recommended by Trimble or to provide information requested by Trimble, (v) implementation, report creation, onsite support, customizations (e.g., scripting or integration), or assistance with server migrations are not included as part of Support, but such services but may be purchased separately, (vi) any Offering where Customer has failed to meet its obligations with respect to the Agreement, including, without limitation, as set forth below.

(b) Customer must (i) require its personnel to obtain adequate training to operate the Offering, (ii) if required by Trimble for the particular Offering, designate Authorized Support Contacts who will submit all support cases to Trimble, (iii) provide internet and/or network access for Trimble when requesting support; and (iv) provide all information and assistance reasonably requested by Trimble related to the support request.

(c) For Licensed Software not hosted by Trimble, Customer is responsible for (i) securing the server environment, local network, and system security and protocols, including having staff qualified to assume responsibility for management administration and support for Customer's hardware, database, and any Third-Party Materials, Dependencies, or Compatibilities, (ii) maintaining regular and frequent data backups, and recovering such data if necessary from backups maintained by Customer, (iii) establishing a secure method of access to Customer's network as well as maintaining security protocols for Customer's network; and (iv) incorporating Releases and any associated data migration.

(d) If any Customer support request is subject to any of the foregoing, then Trimble reserves the right to impose support fees at its then standard commercial time and materials rates for all such services, including pre-approved travel and per diem expenses to be reimbursed consistent with Customer's policies. Trimble will notify Customer in advance of incurring any such fees.

Addendum #4

Supplemental Terms for Services

(Training, e-learning content, implementation, configuration, and other services)

Version 1.0 (Last Updated: April 3, 2023)

Capitalized terms not defined herein have the meanings given in the General Terms.

1. **Generally**. Trimble or its authorized service providers will use commercially reasonable efforts to provide Services to Customer as described in an Order or SOW. Any changes in scope must be made in writing and approved by authorized representatives of Customer and Trimble.
2. **Training and E-Learning.** For any Services consisting of delivery of training or e-learning (e.g., videos, manuals, etc.), any content made available by Trimble shall not be deemed a Deliverable (as defined below), notwithstanding anything in an Order or SOW to the contrary, and no Intellectual Property Rights therein are assigned or transferred to the Customer. Unless an Order or Documentation states otherwise, prepaid training and e-learning content will expire if not completed within six months from the effective date of the Order or SOW. Trimble reserves the right to reschedule training if it determines in good faith that attendance is not sufficient or the originally scheduled time or location are no longer feasible. If the Order states a date that Services must be completed by, such date is presented for illustrative purposes. The actual completion date for such Services will be provided on the invoice.
3. **Customer Materials**. Customer shall provide Trimble with reasonable access to Customer's technical data, computer programs, files, documentation, and/or other materials (collectively, "**Customer Materials**") and to Customer's resources, personnel, equipment, and facilities to the extent necessary for the performance of Services. Client will be responsible for, and assumes the risk of any problems resulting from the content, accuracy, completeness, competence, or consistency of Customer Materials or its personnel. To the extent that Customer does not timely provide the foregoing access required for Trimble to perform the Services, Trimble shall be excused from performance until such items or access are provided. Customer hereby grants Trimble a limited and revocable right to use the Customer Materials for the purpose of performing the Services. Customer owns and will retain ownership (including all intellectual property rights) in the Customer Materials.
4. **Customer Premises**. Customer shall provide Trimble with safe access to Customer's premises as reasonably required for Trimble to perform the Services, if onsite performance of Services is needed and agreed to by Customer. Trimble personnel shall comply with the reasonable written rules and regulations of Customer related to use of its premises, provided that such written rules and regulations are provided to Trimble prior to commencement of the Services.
5. **Customer Dependencies**. Customer is responsible for taking all actions identified or described in the Agreement which are a condition for Trimble to provide Services. Should Customer's failure to take such actions result in a delay of Trimble against a delivery schedule, or result in additional provable costs incurred by Trimble, Trimble shall not be considered to be delayed in its obligations, and Trimble shall be entitled to payment of such additional costs.
6. **Deliverables**. "**Deliverable(s)**" shall mean any Trimble deliverables as expressly set forth on a SOW or Order. Trimble hereby grants Customer a worldwide, royalty-free, non-exclusive license to use the Deliverables for its internal business purposes in connection with the Offerings associated with such Deliverables and only for the period of time that Customer has ownership or authorized use of such Offerings. Unless expressly stated otherwise in the applicable Order or SOW, Trimble owns and will retain ownership (including all intellectual property rights) in and to the Deliverables (excluding any Customer Materials) and any modifications, improvements, and derivative works thereof (including to the extent incorporating any Feedback). If the parties have agreed that Trimble will assign ownership of Deliverables to Customer, the relevant SOW must set forth the terms and conditions regarding such assignment.
7. **Limited Warranty**. Trimble will perform Services in a professional and workmanlike manner. If notified of a non-conformity within ten (10) days of delivery of the applicable Services, and if Customer provides a sufficiently detailed justification to Trimble to allow Trimble to identify the non-conforming Services, Trimble will, as its sole liability and obligation for failure to provide Services meeting this warranty, either (a) re-perform the non-conforming Services at no additional cost to Customer, or (b) issue a credit for any Services which Trimble identifies as non-conforming.
8. **Travel Expenses**. Trimble will invoice Customer for reasonable and pre-approved out-of-pocket travel expenses incurred in connection with performing Services. Expenses may be invoiced separately from fees and may include, but are not limited to, airfare and other transportation, lodging, and incidentals. Expenses may also include meals reimbursable per a flat per diem rate, available upon request.

9. **Other Offerings.** These Services Terms only apply to Services, and not to any other Offerings, even if such other Offerings are referenced in an Order or SOW. For clarity, all such other Offerings shall not be considered a Deliverable hereunder, and the provision thereof shall be governed by one or more separate agreements between Trimble and Customer.
10. **Non-Solicitation**. During the Term and for a period of 12 months thereafter, Customer, shall not, directly or indirectly, solicit, hire, engage, or attempt to do any of the foregoing, any person who was an employee or independent contractor of Trimble who provided Services to Customer, without Trimble's express prior written consent.

Addendum #5

Supplemental Terms for Hardware

Version 1.0 (Last Updated: April 3, 2023)

Capitalized terms not defined herein have the meanings given in the General Terms.

1. **Delivery**. Delivery times for Hardware are established when an Order is received and accepted by Trimble. Trimble will use commercially reasonable efforts to meet Customer's requested delivery dates, unless Customer is in default under the Agreement or Trimble's performance is otherwise excused (e.g., force majeure, etc.). Late delivery is not a basis for Customer's cancellation of any Order.

   Title and risk of loss or damage to the Hardware will pass to Customer upon delivery to Trimble's shipping carrier.. Trimble will deliver any shipment FCA (Incoterms 2020) from its warehouse. Customer will pay or reimburse Trimble for all costs of carriage, freight, insurance (if applicable), taxes, duty and other related shipping charges. Trimble may fulfill its delivery obligations for Hardware through an Affiliate and/or authorized reseller. Trimble reserves the right to make partial deliveries.

2. **Acceptance, Inspection, Notice of Nonconformance.** All Hardware will be deemed accepted by Customer upon delivery to Trimble's shipping carrier, subject to Customer's right to inspect and reject damaged Hardware or Hardware that do not conform to the Order within 10 days of delivery. It is Customer's responsibility to give Trimble prompt written notice of identified damage or non-conformance to the Order. If Customer retains the Hardware without giving notice within the designated period, it will be deemed to waive its right of rejection. The foregoing will not, however, prejudice Customer's warranty remedies as described in the applicable Hardware Terms.

3. **Limited Warranty.** Unless the Hardware comes with a limited warranty that provides otherwise, Trimble warrants to Customer, and only to Customer, that the Hardware is designed and manufactured to conform in all material respects to Trimble's specifications and all parts are and will be free from defects in material and workmanship for a period of twelve (12) months from date of shipment. During the warranty period, Trimble's obligations in Section 7 (Sole Remedy; Warranty Procedure) are Customer's only and exclusive remedy for Hardware that Trimble reasonably determines does not meet the limited warranty, and is made subject to these Hardware Terms.

4. **Firmware.** Trimble hereby grants Customer a personal, non-exclusive, revocable, non-assignable right to access and use firmware solely as necessary to use the Hardware in accordance with the Documentation. During the limited warranty period, Customer will be entitled to receive such Fixes (as defined below) to the firmware that Trimble releases and makes commercially available and for which it does not charge separately, subject to the procedures for delivery to purchasers of Trimble products generally. Minor Updates (as defined below), Major Upgrades (as defined below), new products, or substantially new software releases, as identified by Trimble, are expressly excluded from this fix process and limited warranty. Receipt of software fixes will not serve to extend the limited warranty period. **"Fix(es)"** means an error correction or other update created to fix a previous software version that does not substantially conform to its Trimble specifications; **"Minor Update"** occurs when enhancements are made to current features in software; and **"Major Upgrade"** occurs when significant new features are added to software, or when a new product containing new features replaces the further development of a current product line. Trimble reserves the right to determine, in its sole discretion, what constitutes a Fix, Minor Update, Major Upgrade, new products, or substantially new software releases.

5. **Non-Trimble Manufactured Products.** Trimble will extend to Customer the manufacturer's warranty, if any, for all equipment and/or software products manufactured by another manufacturer and furnished by Trimble to Customer under such other manufacturer's brands. Customer acknowledges and agrees that Trimble shall not be responsible for separately warranting or supporting the equipment or software products of such other manufacturers.

6. **Warranty Exclusions.** The foregoing Hardware limited warranty will only apply in the event and to the extent that (a) the Hardware is properly and correctly installed, configured, interfaced, maintained, stored, and operated in accordance with the Documentation, and (b) the Hardware is not modified or misused. This limited warranty does not apply to, and Trimble shall not be responsible for defects or performance problems resulting from (i) the combination or use of the Hardware with hardware or software products, information, data, systems, interfaces or devices not made, supplied or specified by Trimble; (ii) the operation of the Hardware under any specification other than, or in addition to, the Documentation; (iii) the unauthorized installation, modification, repair or use of the Hardware; (iv) damage caused by accident, lightning or other electrical discharge, fresh or salt water immersion or spray (outside Hardware specifications), or exposure to environmental

conditions for which the Hardware is not intended; (v) normal wear and tear on consumable parts (e.g., batteries) or (vi) cosmetic damage. Trimble does not warrant or guarantee the results obtained through the use of the Hardware. **TRIMBLE MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO SERVICES, WHICH IF PROVIDED HEREUNDER ARE PROVIDED "AS-IS."**

7. **Sole Remedy; Warranty Procedure**. If the Hardware fails during the warranty period for reasons covered by this limited warranty and Customer notifies Trimble of such failure during the warranty period, Trimble will at its option repair or replace the nonconforming Hardware with new, equivalent to new, or reconditioned parts or Hardware or, if either of the foregoing is commercially impractical in Trimble's determination, refund the Hardware purchase price paid by Customer (excluding separate costs of installation, if any) upon Customer's return of the Hardware in accordance with Trimble's product return procedures then in effect. Any repaired or replaced Hardware will be warranted for a period of thirty (30) days or the remainder of the original warranty period, whichever is longer. Warranty service will be provided at a designated Trimble service center or by an authorized Trimble service provider. Except as otherwise agreed by the parties, Customer shall be responsible for all shipping charges to the designated Trimble service center or authorized Trimble service provider.

8. **Determination of Warranty Applicability:** Trimble reserves the right to refuse warranty services if the Hardware date of purchase cannot be proven, if a claim is made outside the warranty period or if a claim is excluded from the warranty pursuant to the Terms. Following Trimble's examination of Customer's claim, Trimble will notify Customer of warranty status and the repair cost of any out-of-warranty Hardware. At such time Customer must issue a valid purchase order to cover the cost of the non-warranted Hardware repair and return freight, or authorize return shipment of the Hardware at Customer's expense as-is.

9. **Non-responsibility for Lost Data.** Trimble shall not be responsible for any modification or damage to, or loss of any programs, data, or other information stored on any media or any part of any Hardware serviced by it or an authorized Trimble service provider, or for the consequence of such damage or loss, e.g., business loss in the event of system, program or data failure. It is Customer's responsibility, prior to servicing, to backup data and remove all features, parts, alterations, and attachments not covered by warranty prior to releasing the Hardware to Trimble. The Hardware will be returned to Customer configured as originally purchased.

10. **Return of Hardware:** All Hardware returns are subject to Trimble's prior written consent and must comply with its product return (RMA) procedures then in effect. Before returning or exchanging Hardware, Customer must contact Trimble directly to obtain an authorization number to include with the return. Customer must return Hardware to Trimble in their original or equivalent packaging, and Customer is responsible for risk of loss, as well as shipping fees back to Trimble. Hardware received but not eligible for return will be sent back to Customer freight collect. For approved returns, Customer will receive credit equal to the lesser of the Hardware invoice price or its current replacement value, less any applicable charges or fees.

Addendum #6

Supplemental Terms for U.S. Public Entities

Version 1.0 (Last Updated: October 7, 2023)

Capitalized terms not defined herein have the meanings given in the General Terms and the Software Terms.

1. **Scope.** To the extent Customer is a public or governmental entity, these Supplemental Terms provisions apply to the extent Customer is a public or governmental entity in the United States.
2. **Intellectual Property Indemnification by Trimble.** Trimble shall defend Customer from and against any claim of infringement of a U.S. patent, U.S. copyright, or U.S. trademark asserted against Customer by a third party based upon Customer's use of the Offerings in accordance with the terms of this Agreement, and pay any resulting settlement or final judgment. If Customer's use of any of the Offerings are, or in Trimble's opinion are likely to be, enjoined due to the type of infringement specified above, or if required by settlement, Trimble may, in its sole discretion: (a) substitute for the Offerings substantially functionally similar programs and documentation; (b) procure for Customer the right to continue using the Offerings; or if (a) and (b) are commercially impracticable, (c) terminate the Agreement and refund to Customer the fee paid by Customer as reduced to reflect a five year straight-line depreciation from the applicable purchase date. The foregoing indemnification obligation of Trimble will not apply: (1) if the Offerings are modified by any party other than Trimble; (2) if the Offerings are combined with other non-Trimble products, but solely to the extent that the alleged infringement is caused by such combination; (3) to any unauthorized use of the Offerings; (4) to any unsupported release of the Offerings; or (5) to any third-party code, content, and/or data contained in and/or delivered with the Offerings.
3. **Tax Exemption.** If Customer is a tax-exempt entity and provides evidence of a tax-exempt certificate prior to executing this Agreement, then Section 3.1 of the General Terms regarding Customer's responsibility to pay taxes shall be inapplicable.
4. **No Indemnification by Customer.** Section 8 (Indemnification) and the second to last sentence of Section 12.6 (Export Control) of the General Terms shall be inapplicable.
5. **Public Records Law.** Customer's confidentiality obligations in Section 9 (Confidentiality) of the General Terms may be subject to applicable public records law.
6. **Limited Publicity.** Provision (b) in Section 12.11 (Publicity) of the General Terms shall be inapplicable.
7. **Termination for Convenience.** Customer may terminate this Agreement for convenience on not less than sixty (60) days' written notice to Trimble. If Customer terminates this Agreement under this paragraph, all fees for the Term shall immediately become due and payable. All previously paid fees (both used and unused) shall be non-refundable and forfeited. Furthermore, all earned, but unpaid, fees for professional services, if any, must be paid in full before the termination becomes effective.
8. **Non-Appropriation of Funds.** The Customer's funds for future and ongoing purchases are contingent on the availability of future appropriations of funds. If funds are not appropriated for any payments due under this Agreement, the Customer will promptly notify Trimble in writing and the applicable Order will terminate as of the date of the notice in accordance with Section 7 (Termination for Convenience) above and the Customer will have no further obligation to make any payments with respect to the affected Order, provided however that the Customer shall pay for any goods or services ordered prior to the date of the Customer's notice.
9. **Piggyback.** Trimble does business with many government entities whose applicable laws permit them to join an existing contract between another governmental agency and vendor to acquire goods and services thereunder. In such circumstances and if allowable by applicable law and contract, Customer expressly agrees to allow the other governmental agencies to acquire goods and services using this Agreement ("**Piggyback**"), subject to applicable pricing of the Trimble offerings at the time of the piggyback purchase.
10. **Governing Law.** Notwithstanding Section 12.9 (Governing Law and Venue) of the General Terms, the Laws of the jurisdiction required by applicable law shall exclusively govern this Agreement.

Addendum #7
Service Level Agreement; Data Security and Restoration
Version 1.0

1. Availability Service Level Agreement

For any Offering that is either (i) Software-as-a-Service or (ii) Licensed Software hosted by Trimble, the following will apply.

1.1. Target Availability. Trimble will use commercially reasonable efforts to make the Offering available with an uptime availability (time periods during which Customer has general connectivity to the Offering) (the "**Target Availability**") as follows:

Offering	**Target Availability***
Cityworks	99.9%*
AgileAssets / Pavement Express	99%
e-Builder	99.95%
Trimble Water - Trimble Unity Work Management/ Trimble Unity Remote Monitoring	99.5%

**Target Availability is generally for a calendar month; provided that Cityworks target availability will be calculated on a quarterly basis.*

1.2. Exclusions. The calculation of uptime will not include unavailability to the extent due to: (a) Customer's use of the Offering in a manner not authorized in the Agreement or Documentation, (b) general Internet problems, force majeure events or other factors outside of Trimble's reasonable control, including without limitation interruption or failure of telecommunications or digital transmission links, hostile network attacks, network congestion, denial of service attack, (c) Customer's equipment, software, network connections or other infrastructure, (d) any acts or omissions of Customer or any third-party that is not a service provider of Trimble, (e) failure by Customer to pay any applicable fees under the Agreement, or (f) Scheduled Maintenance or emergency maintenance.

1.3. Scheduled Maintenance. "**Scheduled Maintenance**" means Trimble's scheduled, routine, or other maintenance which (1) occurs at such times as may be listed on Trimble's websites or Support Portal, or (2) Trimble notifies Customer with at least two (2) days advance notice, which can be via the Support Portal, e-mail, or in the Offering. Trimble reserves the right to schedule other maintenance periods on an as needed basis and will notify Customer in advance. Trimble will use commercially reasonable efforts to perform Scheduled Maintenance during low usage times.

1.4. Service Credits. If there is a verified failure of the Offering to meet Target Availability in a particular month and Customer makes a request for service credit within thirty (30) days after the end of such month, Customer will be entitled to a credit based on the monthly fees due for the affected Offering in such month ("**Service Credit**"). The Service Credit will be calculated as follows:

*Service Credit = Pro Rata Fee * percentage of time that the Offering did not meet the Target Availability*

The "**Pro Rata Fee**" means (1) for Target Availability measured monthly, one-twelfth of the total annual fee for the Offering (excluding taxes, etc.), and (2) for Target Availability measured quarterly, one-fourth of the total annual fee for the Offering (excluding taxes, etc). The Service Credit will be calculated to the nearest 30-minute interval. The total Service Credits in a month may not exceed 20% of the Monthly Fee.

Trimble will apply each Service Credit to Customer's next invoice, provided that Customer's account is fully

paid up, without any outstanding payment issues or disputes. Customer will not receive any refunds for any unused Service Credits.

1.5. Sole Remedy. Service Credits constitute liquidated damages and are not a penalty. The Service Credits set forth in this Section are Customer's sole and exclusive remedy for any failure to meet the Target Availability.

2. Data Security and Restoration

2.1. Software-as-a-Service and Hosted License Software.

a) Trimble or its third-party hosting provider(s) shall use commercially reasonable efforts to establish and maintain reasonable administrative, physical, and technical safeguards designed to (a) protect the security, confidentiality, and integrity of Customer Data, (b) protect against anticipated threats or hazards to the security, confidentiality, and integrity of Customer Data; (c) protect against unauthorized access to or use of Customer Data; and (d) protect against unlawful processing, accidental destruction, or loss of Customer Data.

b) Trimble will use reasonable efforts to restore lost or damaged Customer Data for Offerings deployed through Trimble hosting services or as Software-as-a-Service, as described in this paragraph, if the loss or damage was caused by Trimble. Trimble will consult with Customer and provide information to Customer regarding the availability of backups and the potential limitations of data restoration. Customer understands that some data loss may result upon restoration based on the frequency and availability of backups. If Customer Data loss or damage is not caused by Trimble, Trimble will provide support and technical assistance for data restoration subject to Trimble's availability and payment of applicable fees at Trimble's then-current hourly rates.

2.2. On Premises Licensed Software. Trimble does not provide regular support or technical assistance for the repair or restoration of lost or damaged Customer Data as part of support for Licensed Software not hosted by Trimble, regardless of the cause. Assistance for restoration may be available subject to Trimble's availability and payment of applicable fees at Trimble's then-current hourly rates.

CITY OF ONTARIO *Agenda Report* **November 5, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Police Department Prepared By: Nicole Alvarez Staff Member Presenting: Mike Lorenz, Chief of Police Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 9

SUBJECT: **ACCEPT AND APPROVE LAW ENFORCEMENT EQUIPMENT GRANT FROM CITIZEN'S OPTION FOR PUBLIC SAFETY (COPS)/ENHANCING LAW ENFORCEMENT ACTIVITIES SUBACCOUNT (ELEAS) ADDITIONAL AWARD FOR FISCAL YEAR 2023-24**

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute all documents necessary to accept and approve the Citizen' s Option for Public Safety (COPS)/Enhancing Law Enforcement Activities Subaccount (ELEAS) Grant for Fiscal Year 2023-24 in the amount of $266,069.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Maintain the Current High Level of Public Safety
Pursue City's Goals and Objectives by Working with Other Governmental Agencies

FISCAL IMPACT: On November 21, 2023, the City Council approved the acceptance of the Citizen's Option for Public Safety (COPS) / Enhancing Law Enforcement Activities Subaccount (ELEAS) grant program for Fiscal Year 2023-24 in the amount of $280,981. The program has since awarded the City an additional $266,069 reallocated from actuals received from the State' s Vehicle License Fee (VLF) revenues for Fiscal Year 2023-24. If approved, the associated revenue and expenditure adjustments in the Grants Fund will be presented in the next quarterly budget update.

BACKGROUND & ANALYSIS: Beginning in Fiscal Year 2002-03, the State of California allocated grant monies Citizen' s Option for Public Safety (COPS) / Enhancing Law Enforcement Activities Subaccount (ELEAS), formerly known as Supplemental Law Enforcement Services Fund to counties. The County granted those monies to cities for the purpose of supporting front-line law enforcement needs. The California State Department of Finance later announced the actual funding allocation amounts to be awarded to each participating agency under the COPS/ ELEAS grant program. The City of Ontario is receiving an additional award of $266,069. If approved, the associated revenue and expenditure adjustments will be presented in the next quarterly budget adjustment.

San Bernardino County
Auditor-Controller\Treasurer\Tax Collector
Management Services Section

INV #: 2024-COPS-GROWTH
INV Date: 09/27/2024

CITIZENS' OPTION FOR PUBLIC SAFETY (COPS)
ENHANCING LAW ENFORCEMENT ACTIVITIES SUBACCOUNT (ELEAS)
FISCAL YEAR 2023-2024
GROWTH STATE PAYMENT DISTRIBUTION AMOUNTS - SEPTEMBER 2024

	Beginning Unpaid COPS Allocation	Current COPS Allocation	Interest Payment	Total Current Distribution	Ending Unpaid COPS Allocation
San Bernardino County District Attorney	$ 582,236.63	$ 582,236.63	$ 180.30	$ 582,416.93	$ -
San Bernardino County Jail Operation (Sheriff)	582,236.63	582,236.63	180.30	582,416.93	-
Frontline Law Enforcement (Including Unincorporated)	3,819,263.70	3,819,263.70	1,182.66	3,820,446.36	-
San Bernardino County Auditor-Controller/Treasurer/Tax Collector	8,040.85	8,040.85	2.49	8,043.34	-
TOTAL DISTRIBUTED	**$ 4,991,777.81**	**$ 4,991,777.81**	**$ 1,545.75**	**$ 4,993,323.56**	**$ -**
Frontline Law Enforcement Allocation:					
San Bernardino County - Unincorporated	$ 435,656.23	$ 435,656.23	$ 134.94	$ 435,791.17	$ -
Cities & Towns:					
Adelanto*	94,663.46	94,663.46	29.31	94,692.77	-
Apple Valley*	110,382.00	110,382.00	34.18	110,416.18	-
Barstow*	94,663.46	94,663.46	29.31	94,692.77	-
Big Bear Lake*	94,663.46	94,663.46	29.31	94,692.77	-
Chino*	137,082.61	137,082.61	42.45	137,125.06	-
Chino Hills*	113,416.93	113,416.93	35.12	113,452.05	-
Colton*	94,663.46	94,663.46	29.31	94,692.77	-
Fontana*	314,754.12	314,754.12	97.46	314,851.58	-
Grand Terrace*	94,663.46	94,663.46	29.31	94,692.77	-
Hesperia*	147,244.19	147,244.19	45.60	147,289.79	-
Highland*	94,663.46	94,663.46	29.31	94,692.77	-
Loma Linda*	94,663.46	94,663.46	29.31	94,692.77	-
Montclair*	94,663.46	94,663.46	29.31	94,692.77	-
Needles**	94,663.46	94,663.46	29.31	94,692.77	-
Ontario*	265,986.23	265,986.23	82.36	266,068.59	-
Rancho Cucamonga*	255,430.20	255,430.20	79.10	255,509.30	-
Redlands*	105,931.16	105,931.16	32.80	105,963.96	-
Rialto*	151,577.28	151,577.28	46.94	151,624.22	-
San Bernardino City*	328,558.49	328,558.49	101.74	328,660.23	-
Twentynine Palms*	94,663.46	94,663.46	29.31	94,692.77	-
Upland**	115,356.81	115,356.81	35.72	115,392.53	-
Victorville*	201,925.93	201,925.93	62.53	201,988.46	-
Yucaipa*	94,663.46	94,663.46	29.31	94,692.77	-
Yucca Valley*	94,663.46	94,663.46	29.31	94,692.77	-
Total San Bernardino County Unincorporated/Cities/Towns	$ 3,819,263.70	$ 3,819,263.70	$ 1,182.66	$ 3,820,446.36	$ -
Less: San Bernardino County - Unincorporated	(435,656.23)			(435,791.17)	-
Total Cities & Towns	**$ 3,383,607.47**			**$ 3,384,655.19**	**$ -**

Distribution of Current County Share:	
San Bernardino County District Attorney	$ 582,416.93
San Bernardino County Jail Operation (Sheriff)	582,416.93
Frontline Law Enforcement - Unincorporated	435,791.17
San Bernardino County Auditor-Controller/Treasurer/Tax Collector	8,043.34
Total County Share	**$ 1,608,668.37**
Grand Total Distribution - County/Cities/Towns	**$ 4,993,323.56**

Method of Payment
* Electronic Fund Transfer ** Manual Warrant

For further questions regarding COPS ELEAS allocations, please contact the Office of Auditor-Controller/Treasurer/Tax Collector's Julie Ma, Accountant Trainee at (909) 382-7069 or Julie.Ma@sbcountyatc.gov.

Sincerely,

Shay Younger
Management Services Manager

CITY OF ONTARIO *Agenda Report* **November 5, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Police Department Prepared By: Nicole Alvarez Staff Member Presenting: Mike Lorenz, Chief of Police Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 10

SUBJECT: **ACCEPT AND APPROVE LAW ENFORCEMENT GRANT FROM CITIZEN'S OPTION FOR PUBLIC SAFETY (COPS)/ENHANCING LAW ENFORCEMENT ACTIVITIES SUBACCOUNT (ELEAS) FOR FISCAL YEAR 2024-25**

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute all documents necessary to accept and approve the Citizen's Option for Public Safety (COPS)/Enhancing Law Enforcement Activities Subaccount (ELEAS) Grant for Fiscal Year 2024-25 in the amount of $279,859.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Maintain the Current High Level of Public Safety
Pursue City's Goals and Objectives by Working with Other Governmental Agencies

FISCAL IMPACT: As part of the COPS/ ELEAS grant program, the City of Ontario is eligible to receive a maximum grant award of $279,859. This amount is based on an estimation of the State's Vehicle License Fee (VLF) revenues for Fiscal Year 2024-25. The allocation may only be re-calculated and adjusted by the State Controller's Office. Additionally, the grant funds will be distributed to the City in monthly installments and no matching funds by the City are required. If approved, the associated revenue and appropriations in the Grants Fund will be presented to Council in the next quarterly budget adjustment.

BACKGROUND & ANALYSIS: Beginning in Fiscal Year 2002-03, the State of California allocated grant monies Citizen' s Option for Public Safety (COPS) / Enhancing Law Enforcement Activities Subaccount (ELEAS), formerly known as Supplemental Law Enforcement Services Fund to counties. The County granted those monies to cities for the purpose of supporting front-line law enforcement needs including but not limited to equipment and training.

On September 24, 2024, the California State Department of Finance announced the estimated funding allocation amounts to be awarded to each participating agency under the COPS/ ELEAS grant program. The City of Ontario is eligible to receive a maximum grant award of $279,859. If approved, the associated revenue and expenditure adjustments will be presented to Council in the next quarterly budget adjustment

DEPARTMENT OF FINANCE

Gavin Newsom ▪ Governor

915 L Street ▪ Sacramento CA ▪ 95814-3706 ▪ www.dof.ca.gov

September 12, 2024

Honorable Malia M. Cohen
State Controller
3301 C Street
Sacramento, CA 95816

Attention: Evelyn Calderon-Yee, Chief
Bureau of Payments, Local Government Programs and Services Division,
State Controller's Office

Dear Controller Cohen:

Pursuant to Government Code section 30029.05, subdivision (e), paragraph (2), the Department of Finance respectfully submits the attached (Attachments I and II) percentages for the 2024-25 allocation of $214,200,000 in Citizens' Option for Public Safety (COPS) and Juvenile Justice Crime Prevention Act (JJCPA) funds deposited in the Enhancing Law Enforcement Activities Subaccount (ELEAS) in the Law Enforcement Services Account within the Local Revenue Fund 2011.

Pursuant to Government Code section 30061, subdivisions (b) and (g), subsequent to the allocation described in Section 29552, subdivision (d), 47.08727192 percent of the remaining funds deposited in the ELEAS for the COPS (23.54363596 percent) and JJCPA (23.54363596 percent) programs are to be allocated, according to the relative population for each county and city, as follows:

(1) 5.15 percent to county sheriffs for county jail construction and operation ($11,031,300).

(2) 5.15 percent to district attorneys for criminal prosecution ($11,031,300).

(3) 50 percent to counties to implement a comprehensive multi-agency juvenile justice plan ($107,100,000).

(4) 39.7 percent to counties and cities for front-line law enforcement ($85,037,400).

Please note that the by-county percentages for the first three allocations above: (1) county jail construction and operation, (2) district attorney criminal prosecution, and (3) multi-agency juvenile justice plans, are specified on Attachment I and the by-county/city percentages for the fourth allocation, front-line law enforcement, are identified on Attachment II.

Pursuant to Government Code section 30061, subdivision (b), paragraph (3), each law enforcement jurisdiction receiving front-line law enforcement funding is to receive a

minimum grant of $100,000. The percentages included in Attachment II are calculated in a manner that provides for a minimum grant allocation of $100,000 to each law enforcement jurisdiction listed in Attachment II.

Also note that the allocations shown on Attachments I and II may be slightly different from the final allocations made by the State Controller's Office due to rounding.

If you have any questions, or need additional information, please call Patrick Plant, Staff Finance Budget Analyst, at (916) 445-8913.

Sincerely,

Amy Jarvis

AMY JARVIS
Program Budget Manager

Attachment

cc: Natalie Sidarous, Chief, Local Government Programs and Services Division, State Controller's Office
Anne Kato, Assistant Chief, Local Government Programs and Services Division, State Controller's Office
Melma Dizon, Manager, Local Apportionments Section, Local Government Programs and Services Division, State Controller's Office
Mr. Ou Saelee, Supervisor, Local Apportionments Section, Local Government Programs and Services Division, State Controller's Office
Kathleen Howard, Executive Director, Board of State and Community Corrections

Attachment I

JT

9/25/24

2024-25 Enhancing Law Enforcement Activities Subaccount
Citizens' Option for Public Safety and Juvenile Justice Crime Prevention Act Allocations
Based on Jan. 1, 2024 Population Estimates

					COPS (Excluding Front-line Enforcement)*				JJCPA		Total		Net Total (Including Front-line Enforcemnet)		
					5.15%		5.15%		50.00%		60.30%		100.00%		
					11,031,300		11,031,300		107,100,000		129,162,600		214,200,000		
COUNTY	1/1/2024 Population by County	Percent of 1/1/2024 Population by County	rounded	Percent of 1/1/2024 Population by County	Co. Jail Operation Allocation by County	Percent of Co. Jail Operation Allocation by County	District Attorney Allocation by County	Percent of District Attorney Allocation by County	Juvenile Justice Allocation by County	Percent of Juvenile Justice Allocation by County	Total Allocation by County	Percent of Total Allocation by County	Net Total Allocation by County	Front-line Law Enforcement	Percent of Net Total Allocation by County
Alameda	1,641,869	4.196131165%	4.196131170%	4.19613117%	$462,888	4.19613117%	$462,888	4.19613117%	$4,494,056	4.19613117%	$5,419,832	4.19613117%	$8,214,706	$2,794,874	3.28664119%
Alpine	1,179	0.003013175%	0.003013180%	0.00301318%	$332	0.00301318%	$332	0.00301318%	$3,227	0.00301318%	$3,892	0.00301318%	$103,892	$100,000	0.11759532%
Amador	39,611	0.101233991%	0.101233990%	0.10123399%	$11,167	0.10123399%	$11,167	0.10123399%	$108,422	0.10123399%	$130,756	0.10123399%	$730,756	$600,000	0.70557190%
Butte	205,928	0.526291013%	0.526291010%	0.52629101%	$58,057	0.52629101%	$58,057	0.52629101%	$563,658	0.52629101%	$679,771	0.52629101%	$1,349,006	$669,235	0.78698904%
Calaveras	44,842	0.114602879%	0.114602880%	0.11460288%	$12,642	0.11460288%	$12,642	0.11460288%	$122,740	0.11460288%	$148,024	0.11460288%	$348,024	$200,000	0.23519063%
Colusa	21,743	0.055568672%	0.055568670%	0.05556867%	$6,130	0.05556867%	$6,130	0.05556867%	$59,514	0.05556867%	$71,774	0.05556867%	$371,774	$300,000	0.35278595%
Contra Costa	1,146,626	2.930436651%	2.930436650%	2.93043665%	$323,265	2.93043665%	$323,265	2.93043665%	$3,138,498	2.93043665%	$3,785,028	2.93043665%	$6,345,188	$2,560,160	3.01062822%
Del Norte	26,345	0.067330022%	0.067330020%	0.06733002%	$7,427	0.06733002%	$7,427	0.06733002%	$72,110	0.06733002%	$86,965	0.06733002%	$286,965	$200,000	0.23519063%
El Dorado	188,583	0.481962327%	0.481962330%	0.48196233%	$53,167	0.48196233%	$53,167	0.48196233%	$516,182	0.48196233%	$622,515	0.48196233%	$1,065,356	$442,841	0.52076041%
Fresno	1,017,431	2.600252473%	2.600252470%	2.60025247%	$286,842	2.60025247%	$286,842	2.60025247%	$2,784,870	2.60025247%	$3,358,554	2.60025247%	$5,942,590	$2,584,036	3.03870523%
Glenn	28,736	0.073440710%	0.073440710%	0.07344071%	$8,101	0.07344071%	$8,101	0.07344071%	$78,655	0.07344071%	$94,858	0.07344071%	$394,858	$300,000	0.35278595%
Humboldt	133,100	0.340164202%	0.340164200%	0.34016420%	$37,525	0.34016420%	$37,525	0.34016420%	$364,316	0.34016420%	$439,365	0.34016420%	$1,247,875	$808,510	0.95076953%
Imperial	182,881	0.467389703%	0.467389700%	0.46738970%	$51,559	0.46738970%	$51,559	0.46738970%	$500,574	0.46738970%	$603,693	0.46738970%	$1,403,693	$800,000	0.94076254%
Inyo	18,856	0.048190355%	0.048190350%	0.04819035%	$5,316	0.04819035%	$5,316	0.04819035%	$51,612	0.04819035%	$62,244	0.04819035%	$262,244	$200,000	0.23519063%
Kern	910,300	2.326457348%	2.326457350%	2.32645735%	$256,638	2.32645735%	$256,638	2.32645735%	$2,491,636	2.32645735%	$3,004,913	2.32645735%	$5,308,878	$2,303,965	2.70935465%
Kings	152,627	0.390069434%	0.390069430%	0.39006943%	$43,030	0.39006943%	$43,030	0.39006943%	$417,764	0.39006943%	$503,824	0.39006943%	$1,003,824	$500,000	0.58797658%
Lake	67,001	0.171234723%	0.171234720%	0.17123472%	$18,889	0.17123472%	$18,889	0.17123472%	$183,392	0.17123472%	$221,171	0.17123472%	$521,171	$300,000	0.35278595%
Lassen	28,197	0.072063186%	0.072063190%	0.07206319%	$7,950	0.07206319%	$7,950	0.07206319%	$77,180	0.07206319%	$93,079	0.07206319%	$293,079	$200,000	0.23519063%
Los Angeles	9,824,091	25.107468631%	25.107468630%	25.10746864%	$2,769,680	25.10746864%	$2,769,680	25.10746864%	$26,890,099	25.10746864%	$32,429,459	25.10746864%	$51,030,128	$18,600,669	21.87351585%
Madera	159,328	0.407195206%	0.407195210%	0.40719521%	$44,919	0.40719521%	$44,919	0.40719521%	$436,106	0.40719521%	$525,944	0.40719521%	$842,756	$316,812	0.37255659%
Marin	252,844	0.646194421%	0.646194420%	0.64619442%	$71,284	0.64619442%	$71,284	0.64619442%	$692,074	0.64619442%	$834,642	0.64619442%	$2,036,826	$1,202,184	1.41371250%
Mariposa	16,966	0.043360074%	0.043360070%	0.04336007%	$4,783	0.04336007%	$4,783	0.04336007%	$46,439	0.04336007%	$56,005	0.04336007%	$156,005	$100,000	0.11759532%
Mendocino	89,476	0.228674171%	0.228674170%	0.22867417%	$25,226	0.22867417%	$25,226	0.22867417%	$244,910	0.22867417%	$295,362	0.22867417%	$795,362	$500,000	0.58797658%
Merced	287,303	0.734261425%	0.734261430%	0.73426143%	$80,999	0.73426143%	$80,999	0.73426143%	$786,394	0.73426143%	$948,391	0.73426143%	$1,730,424	$782,033	0.91963436%
Modoc	8,484	0.021682593%	0.021682590%	0.02168259%	$2,392	0.02168259%	$2,392	0.02168259%	$23,222	0.02168259%	$28,006	0.02168259%	$228,006	$200,000	0.23519063%
Mono	12,861	0.032868909%	0.032868910%	0.03286891%	$3,626	0.03286891%	$3,626	0.03286891%	$35,203	0.03286891%	$42,454	0.03286891%	$242,454	$200,000	0.23519063%
Monterey	437,614	1.118411849%	1.118411850%	1.11841185%	$123,375	1.11841185%	$123,375	1.11841185%	$1,197,819	1.11841185%	$1,444,570	1.11841185%	$2,957,463	$1,512,893	1.77909138%
Napa	135,029	0.345094155%	0.345094150%	0.34509415%	$38,068	0.34509415%	$38,068	0.34509415%	$369,596	0.34509415%	$445,733	0.34509415%	$1,064,910	$619,178	0.72812375%
Nevada	100,177	0.256022759%	0.256022760%	0.25602276%	$28,243	0.25602276%	$28,243	0.25602276%	$274,200	0.25602276%	$330,686	0.25602276%	$733,614	$402,929	0.47382527%
Orange	3,150,835	8.052601602%	8.052601600%	8.05260160%	$888,307	8.05260160%	$888,307	8.05260160%	$8,624,336	8.05260160%	$10,400,950	8.05260160%	$16,048,081	$5,647,131	6.64076202%
Placer	412,844	1.055107061%	1.055107060%	1.05510706%	$116,392	1.05510706%	$116,392	1.05510706%	$1,130,020	1.05510706%	$1,362,804	1.05510706%	$2,284,467	$921,664	1.08383337%
Plumas	18,841	0.048152019%	0.048152020%	0.04815202%	$5,312	0.04815202%	$5,312	0.04815202%	$51,571	0.04815202%	$62,194	0.04815202%	$262,194	$200,000	0.23519063%
Riverside	2,442,378	6.241995216%	6.241995220%	6.24199522%	$688,573	6.24199522%	$688,573	6.24199522%	$6,685,177	6.24199522%	$8,062,323	6.24199522%	$12,624,484	$4,562,160	5.36488688%
Sacramento	1,578,938	4.035298157%	4.035298160%	4.03529816%	$445,146	4.03529816%	$445,146	4.03529816%	$4,321,804	4.03529816%	$5,212,096	4.03529816%	$7,809,399	$2,597,303	3.05430711%
San Benito	65,853	0.168300775%	0.168300780%	0.16830078%	$18,566	0.16830078%	$18,566	0.16830078%	$180,250	0.16830078%	$217,382	0.16830078%	$517,382	$300,000	0.35278595%
San Bernardino	2,181,433	5.575097036%	5.575097040%	5.57509704%	$615,006	5.57509704%	$615,006	5.57509704%	$5,970,929	5.57509704%	$7,200,940	5.57509704%	$11,221,944	$4,021,003	4.72851147%
San Diego	3,291,101	8.411079979%	8.411079980%	8.41107998%	$927,851	8.41107998%	$927,851	8.41107998%	$9,008,267	8.41107998%	$10,863,970	8.41107998%	$16,358,369	$5,494,399	6.46115597%
San Francisco	843,071	2.154639924%	2.154639920%	2.15463992%	$237,685	2.15463992%	$237,685	2.15463992%	$2,307,619	2.15463992%	$2,782,989	2.15463992%	$4,084,918	$1,301,929	1.53100798%
San Joaquin	791,408	2.022604588%	2.022604590%	2.02260459%	$223,120	2.02260459%	$223,120	2.02260459%	$2,166,210	2.02260459%	$2,612,449	2.02260459%	$4,098,568	$1,486,119	1.74760654%
San Luis Obispo	278,469	0.711684336%	0.711684340%	0.71168434%	$78,508	0.71168434%	$78,508	0.71168434%	$762,214	0.71168434%	$919,230	0.71168434%	$1,804,651	$885,421	1.04121306%
San Mateo	741,565	1.895220634%	1.895220630%	1.89522063%	$209,067	1.89522063%	$209,067	1.89522063%	$2,029,781	1.89522063%	$2,447,916	1.89522063%	$4,790,617	$2,342,701	2.75490614%
Santa Barbara	443,623	1.133769074%	1.133769070%	1.13376907%	$125,069	1.13376907%	$125,069	1.13376907%	$1,214,267	1.13376907%	$1,464,406	1.13376907%	$2,582,423	$1,118,018	1.31473646%
Santa Clara	1,903,198	4.864010735%	4.864010730%	4.86401073%	$536,564	4.86401073%	$536,564	4.86401073%	$5,209,355	4.86401073%	$6,282,483	4.86401073%	$9,631,468	$3,348,985	3.93825005%
Santa Cruz	262,572	0.671056310%	0.671056310%	0.67105631%	$74,026	0.67105631%	$74,026	0.67105631%	$718,701	0.67105631%	$866,754	0.67105631%	$1,463,573	$596,819	0.70183093%
Shasta	179,195	0.457969378%	0.457969380%	0.45796938%	$50,520	0.45796938%	$50,520	0.45796938%	$490,485	0.45796938%	$591,525	0.45796938%	$1,035,707	$444,182	0.52233669%
Sierra	3,171	0.008104137%	0.008104140%	0.00810414%	$894	0.00810414%	$894	0.00810414%	$8,680	0.00810414%	$10,468	0.00810414%	$210,468	$200,000	0.23519063%
Siskiyou	43,409	0.110940555%	0.110940550%	0.11094055%	$12,238	0.11094055%	$12,238	0.11094055%	$118,817	0.11094055%	$143,294	0.11094055%	$1,243,294	$1,100,000	1.29354849%
Solano	446,426	1.140932712%	1.140932710%	1.14093271%	$125,860	1.14093271%	$125,860	1.14093271%	$1,221,939	1.14093271%	$1,473,658	1.14093271%	$2,504,995	$1,031,337	1.21280405%
Sonoma	478,152	1.222014977%	1.222014980%	1.22201498%	$134,804	1.22201498%	$134,804	1.22201498%	$1,308,778	1.22201498%	$1,578,386	1.22201498%	$2,850,419	$1,272,032	1.49585056%
Stanislaus	548,744	1.402427234%	1.402427230%	1.40242723%	$154,706	1.40242723%	$154,706	1.40242723%	$1,502,000	1.40242723%	$1,811,411	1.40242723%	$3,125,535	$1,314,124	1.54534806%
Sutter	100,110	0.255851527%	0.255851530%	0.25585153%	$28,224	0.25585153%	$28,224	0.25585153%	$274,017	0.25585153%	$330,464	0.25585153%	$638,959	$308,494	0.36277478%
Tehama	64,308	0.164352213%	0.164352210%	0.16435221%	$18,130	0.16435221%	$18,130	0.16435221%	$176,021	0.16435221%	$212,282	0.16435221%	$612,282	$400,000	0.47038127%
Trinity	15,915	0.040674029%	0.040674030%	0.04067403%	$4,487	0.04067403%	$4,487	0.04067403%	$43,562	0.04067403%	$52,536	0.04067403%	$152,536	$100,000	0.11759532%
Tulare	478,918	1.223972647%	1.223972650%	1.22397265%	$135,020	1.22397265%	$135,020	1.22397265%	$1,310,875	1.22397265%	$1,580,915	1.22397265%	$2,720,789	$1,139,874	1.34043815%
Tuolumne	54,407	0.139048187%	0.139048190%	0.13904819%	$15,339	0.13904819%	$15,339	0.13904819%	$148,921	0.13904819%	$179,598	0.13904819%	$379,598	$200,000	0.23519063%
Ventura	823,863	2.105549962%	2.105549960%	2.10554996%	$232,270	2.10554996%	$232,270	2.10554996%	$2,255,044	2.10554996%	$2,719,583	2.10554996%	$4,318,924	$1,599,341	1.88075036%
Yolo	221,666	0.566512682%	0.566512680%	0.56651268%	$62,494	0.56651268%	$62,494	0.56651268%	$606,735	0.56651268%	$731,723	0.56651268%	$1,232,183	$500,461	0.58851864%
Yuba	83,721	0.213966094%	0.213966090%	0.21396609%	$23,603	0.21396609%	$23,603	0.21396609%	$229,158	0.21396609%	$276,364	0.21396609%	$579,948	$303,583	0.35699994%
Total	39,128,162	100.000000000%	99.999999999%	100.00000000%	$11,031,300	100.00000000%	$11,031,300	100.00000000%	$107,100,000	100.00000000%	$129,162,600	100.00000000%	$214,200,000	$85,037,400	100.00000000%

*Note that the COPS Front-line Law Enforcement breakdown by county and city for SCO distribution is provided in Attachment II.

2024-25 Enhancing Law Enforcement Activities Subaccount
Citizens' Option for Public Safety
Front-line Law Enforcement Allocation for 2024-25

ATTACHMENT II

GP 9/25/24

City/County	City/County Population Estimates 1/1/2024	Projected Allocations by City/County	Percent of Allocation by City/County
San Juan Bautista	2,032	$100,000	0.11759532%
Unincorporated	20,949	$100,000	0.11759532%
San Bernardino	**2,181,433**	**$4,021,003**	**4.72851150%**
Adelanto	36,131	$100,000	0.11759532%
Apple Valley	74,322	$114,773	0.13496796%
Barstow	24,669	$100,000	0.11759532%
Big Bear Lake	4,958	$100,000	0.11759532%
Chino	92,585	$142,976	0.16813338%
Chino Hills	76,414	$118,004	0.13876701%
Colton	52,778	$100,000	0.11759532%
Fontana	214,223	$330,818	0.38902669%
Grand Terrace	12,771	$100,000	0.11759532%
Hesperia	100,087	$154,561	0.18175693%
Highland	55,676	$100,000	0.11759532%
Loma Linda	24,965	$100,000	0.11759532%
Montclair	37,211	$100,000	0.11759532%
Needles	4,769	$100,000	0.11759532%
Ontario	181,224	$279,859	0.32910086%
Rancho Cucamonga	173,316	$267,647	0.31474001%
Redlands	72,696	$112,262	0.13201516%
Rialto	103,097	$159,210	0.18722306%
San Bernardino	226,541	$349,841	0.41139605%
Twentynine Palms	25,346	$100,000	0.11759532%
Upland	78,285	$120,893	0.14216473%
Victorville	138,202	$213,421	0.25097336%
Yucaipa	53,810	$100,000	0.11759532%
Yucca Valley	21,594	$100,000	0.11759532%
Unincorporated	295,763	$456,738	0.53710246%
San Diego	**3,291,101**	**$5,494,399**	**6.46115601%**
Carlsbad	114,319	$176,539	0.20760209%
Chula Vista	278,247	$429,689	0.50529359%
Coronado	21,589	$100,000	0.11759532%
Del Mar	3,919	$100,000	0.11759532%
El Cajon	104,180	$160,882	0.18918977%
Encinitas	61,028	$100,000	0.11759532%
Escondido	150,002	$231,644	0.27240204%
Imperial Beach	26,096	$100,000	0.11759532%
La Mesa	60,620	$100,000	0.11759532%
Lemon Grove	27,568	$100,000	0.11759532%
National City	58,555	$100,000	0.11759532%
Oceanside	171,483	$264,816	0.31141131%
Poway	49,273	$100,000	0.11759532%
San Diego	1,385,379	$2,139,399	2.51583354%
San Marcos	95,998	$148,247	0.17433135%
Santee	59,195	$100,000	0.11759532%
Solana Beach	12,887	$100,000	0.11759532%
Vista	99,723	$153,999	0.18109591%
Unincorporated	511,040	$789,184	0.92804321%
San Francisco	**843,071**	**$1,301,929**	**1.53100798%**
San Joaquin	**791,408**	**$1,486,119**	**1.74760657%**
Escalon	7,249	$100,000	0.11759532%
Lathrop	37,033	$100,000	0.11759532%
Lodi	66,492	$102,682	0.12074877%
Manteca	90,917	$140,400	0.16510431%
Ripon	15,741	$100,000	0.11759532%

(1) 100,000. + (2) 114,773. + (3) 100,000. + (4) 100,000. + (5) 142,976. + (6) 118,004. + (7) 100,000. + (8) 330,818. + (9) 100,000. + (10) 154,561. + (11) 100,000. + (12) 100,000. + (13) 100,000. + (14) 100,000. + (15) 279,859. + (16) 267,647. + (17) 112,262. + (18) 159,210. + (19) 349,841. + (20) 100,000. + (21) 120,893. + (22) 213,421. + (23) 100,000. + (24) 100,000. + (25) 456,738. + (A) 4,021,003.G+

CITY OF ONTARIO *Agenda Report* **November 5, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Niles Boyer Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Gina Gomez, Bonnie Tam Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 11

SUBJECT: A CHANGE ORDER TO THE CONSTRUCTION CONTRACT WITH GRBCON, INC. FOR THE EASEMENT AND STORM DRAINPIPE REPLACEMENT PROJECT

RECOMMENDATION: That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to approve Change Order No. 2 to the Construction Contract with GRBCON, Inc., of Baldwin Park, California, for the Easement and Storm Drainpipe Replacement Project in the amount of $467,191 for a total not-to-exceed contract amount of $1,245,101; and
B. Authorize the City Manager, or his designee, to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, easements, reduction of retention accounts, and filing a notice of completion at the conclusion of construction related activities.

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

FISCAL IMPACT: The proposed Change Order No. 2 to the Construction Contract with GRBCON, Inc., of Baldwin Park, California, is in the amount of $467,191 for a total not-to-exceed contract amount of $1,245,101. The Fiscal Year 2024-25 Adopted Budget includes appropriations in the Capital Projects-Measure Q Fund for the Easement and Storm Drainpipe Replacement Project.

BACKGROUND & ANALYSIS: On June 4, 2024, the City Council authorized a Construction Contract with GRBCON, Inc. to perform video inspections and replace damaged storm drainpipes at various locations citywide. Change Order No. 1 was approved for additional pipelining work at several locations citywide.

After performing a video inspection, GRBCON, Inc. observed collapsed pipes at the intersections of Mission Boulevard and Bon View Avenue and Emporia Avenue and Plum Street which require the pipes to be completely replaced. Staff is recommending the approval of Change Order No. 2 to the Construction Contract with GRBCON, Inc. to replace the collapsed pipes, install additional catch basins and dry wells in the area, and replace the surrounding pavement due to the construction.

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
CHANGE ORDER

Project: City Wide Storm Drain Repair Project Change Order Number: 2

Contract Date: June 24, 2024 Change Order Date: _____

To: GRBCON, Inc.
Attn: Kristion Grbavac
5114 Elton Street
Baldwin Park, CA 91706

THIS CHANGE ORDER FORM SHALL BE USED FOR ALL CHANGE ORDERS ASSOCIATED WITH THE WORK. NO ADDITIONS OR DELETIONS TO THIS FORM SHALL BE ALLOWED, EXCEPT WITH PERMISSION OF THE CITY OF ONTARIO.

The Contract is changed as follows:

Additional scope to Bid Item No. 8 for the Mission Boulevard and Bon View Boulevard storm drain repairs and the addition of a dry well drainage system to alleviate flooding at the intersection of Emporia and Plum Streets.

Contractor agrees to furnish all labor, materials, equipment, and services to perform the Work, modified as described herein, in accordance with the Contract Documents as revised by this Change Order.

NOT VALID UNTIL SIGNED BY OWNER

In consideration of the change(s) described above, the Contract Price is adjusted as follows:

The original Contract Price was	$ 707,191.00
Net change by previously authorized Change Orders	$ 53,040.00
The Contract Price prior to this Change Order was	$ 760,231.00
The Contract Price will be changed by this Change Order in the amount of	$ 484,870.00
The new Contract Price including this Change Order will be	$1,245,101.00

In consideration of the change(s) described above, the Contract Time is adjusted as follows:

The Contract Time will be increased ☐ decreased ☐ unchanged ☒ by	0 Days
The Contract Time prior to this Change Order was	160 Days
The new Contract Time including this Change Order will be	160 Days

(BB&K 2020)
46700.00100\33457526.1

Attachments: Additional Work - Mission and Bon View/Localized Flooding Deep Shaft Emporia and Plum

Additional Lining quote from GRBCON, Inc.

Contractor accepts the terms and conditions stated herein as full and final settlement of any and all claims arising from this Change Order. The adjustments to the Contract Price and Contract Time in this Change Order constitutes the entire compensation and/or adjustment thereto due to Contractor, including direct, indirect, consequential, and overhead (field and home office) costs, due to Contractor arising out of or related to the change in the Work covered by this Change Order. By signing this Change Order, Contractor agrees to accept the amount of the adjustment to the Contract Price, and the adjustment of the Contract Time, as payment in full for all costs, including direct, indirect, consequential, and overhead (field and home office) costs, related to the change in the Work covered by this Change Order.

Accepted:

(Signature) Kristion Grbavac, President	Date

Approved:

(Signature) Tito Haes, Executive Director of Public Works	Date

Approved:

(Signature) Scott Ochoa, City Manager	Date

GRBCON
INCORPORATED

Attn: Niles Boyer/Casey Cameron
Re: ***Additional Work – Mission and Bon View/Localized Flooding Deep Shaft Emporia and Plum***
Dated: 9/23/2024
Agency: City of Ontario

Proposed Change Order

Gentlemen:

We have prepared a proposal for (2) extra work areas per the City of Ontario's request. One work area will address flooding issues and deteriorated CMP on Bon View and Mission and one work area will address flooding at Emporia and Plum by way of a deep shaft dry well.

Please see the attached proposal for work on Bid Item #8 –Mission and Bon View. As you are aware, the plans show the incorrect reach to be replaced. The reach on the west side of the street is in a state of disrepair and can be reviewed in the videos provided on 9/12/24. We have provided a proposal for the additional work which is required to construct the new pipeline in the alignment of the existing CMP drain line. This cost is in addition to the bid item total of **$157,850.00.**

The scope/proposal for Mission and Bon View is outlined below:

Bid Item #	*Description of Extra Work*	*Quantity*	*Unit of Measure*	*Unit Price*	*Extended Price*
A8.	Add 14' Catch Basin to assist with capacity and NW Corner of Mission and BonView (SSPWC 300-3)	1	EA	$25,925.00	$25,925.00
B8.	Construct Residential Driveway Approach at NW Corner of Mission and BonView	1	EA	$15,565.00	$15,565.00
C8.	Additional Pipe Difference from Base Bid	320	LF	$535.00	$171,200.00
D8.	Remove (4) 6" Outlet Pipes and Abandon existing parkway culvert (pour new curb and slot patch)	1	LS	$4,000.00	$4,000.00
E8.	Pavement Restoration	1	LS	$22,000.00	$22,000.00
F8.	Additional Traffic Control and Pedestrian Management for Sidewalk Pipe Installation	1	LS	$6,000.00	$6,000.00
G8.	Remove and Replace Sidewalk Including CMB Subbase	1635	SF	$31.00	$50,685.00
H8.	Remove and Replace WheelChair Ramp SW Corner of Mission and Bon View	1	EA	$18,000.00	$18,000.00
I8.	Construct New Parkway Drain (Maitland)	1	LS	$20,800.00	$20,800.00
PROPOSED CHANGE ORDER REQUEST AMOUNT - $334,175.00					

Please see the attached proposal for extra work on Emporia and Plum. GRBCON proposes sinking an 80' deep dry well as a relief line prior to doing the work under the railroad. GRBCON, in conjunction with Torrent, believes that this will act as a great relief in the area that is prone to heavy flooding. When we complete the work under the railroad we will add an outlet pipe to this drywell structure to get flows back under the railroad crossing.

The scope/proposal for Emporia and Plum is outlined below:

Bid Item #	***Description of Extra Work***	***Quantity***	***Unit of Measure***	***Unit Price***	***Extended Price***
A.	MaxWell Type IV – up to 80' deep.	1	EA	$112,895.00	$112,895.00
B.	Traffic Control and Safety	1	EA	$5,000.00	$5,000.00
C.	Connect Existing U/SDrainage Pipes to the Newly Constructed DryWell	2	EA	$5,000.00	$10,000.00
D.	REHAB U/S Existing 18" CMP with HDPE Solid Wall Seamless Pipe	95	LF	$240.00	$22,800.00
PROPOSED CHANGE ORDER REQUEST AMOUNT - $150,695.00					

Please issue a change order to the contract in the amount of $484,870.00 at your earliest convenience.

If you have any questions, please don't hesitate to reach out.

Kristion Grbavac

CITY OF ONTARIO *Agenda Report* **November 5, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Philip Marino Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Andrea Ampig, Bonnie Tam Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 12

SUBJECT: A CONSTRUCTION CONTRACT WITH MARINA LANDSCAPE, INC. FOR THE MISSION BOULEVARD MEDIAN IMPROVEMENT PROJECT

RECOMMENDATION: That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to execute Construction Contract No. PM 2425-19 with Marina Landscape, Inc., of Orange, California, for the Mission Landscape and Irrigation Project for a total contract amount of $1,849,000 and authorize a 10% contingency of $184,900 for a total not-to-exceed contract amount of $2,033,900; and

B. Authorize the City Manager, or his designee, to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, reductions of retention accounts, and filing a notice of completion at the conclusion of all construction-related activities.

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

FISCAL IMPACT: The recommended Construction Contract with Marina Landscape, Inc. is in the amount of $1,849,000 plus a 10% contingency of $184,900 for a total not-to-exceed contract amount of $2,033,900. The Fiscal Year 2024-25 Adopted Budget includes $2,000,000 in appropriations in the Grant Fund awarded by the California Department of Transportation (Caltrans) for the Mission Boulevard Median Improvements Project and the remaining balance of the contract will be covered by the Public Works Agency Fiscal Year 2024-25 Adopted Operating Budget. As needed, additional appropriations will be requested in the future Budget Update Report to the City Council.

BACKGROUND & ANALYSIS: On June 7, 2022, the City Council approved a Construction Contract to plant drought tolerant landscaping and install a high-efficiency drip irrigation system on the Mission Boulevard median between Benson Avenue and Mountain Avenue. The Mission Boulevard median between Mountain Avenue and Grove Avenue includes landscape consisting of ornamental turf,

shrubs, groundcover, and trees. In 2015, the City implemented Stage 2 water restrictions which prohibited watering ornamental turf on street medians with potable water. To comply with the Stage 2 water restrictions, Staff turned the water off at all the ornamental turf areas on the median, which subsequently led to the turf dying. Shrubs, groundcover, and trees continued to be irrigated using potable water.

Now that the City has moved from Stage 2 water restrictions to a Voluntary Conservation Stage, it is encouraged to use water saving strategies to reduce the amount of potable water being used for various activities. Staff is proposing to plant drought tolerant landscaping and install a high-efficiency drip irrigation system on the Mission Boulevard median between Mountain Avenue and Grove Avenue to conserve potable water. The landscaping will continue the same design from the strip of median running from Benson Avenue to Mountain Avenue. These features will also be compliant with the State Model Water Efficient Landscape Ordinance requirements, which mandates cities adopt ordinances to reduce water usage for landscaping purposes.

On September 4, 2024, the City solicited bids for Bid No. 1843, PM 2425-19 Mission Landscape and Irrigation Renovation Project. Five (5) bids were received, and all of them met the minimum bid criteria and standards necessary to perform the scope of work. A summary of the bid results are as follows:

Vendor	**Location**	**Bid Amount**
Marina Landscape, Inc.	Orange, CA	$1,849,000
Conserve Landcare	Thousand Palms, CA	$1,930,000
Southern California Landscape, Inc.	Rancho Cucamonga, CA	$2,548,900
SGD Enterprises	Van Nuys, CA	$3,128,000
Superb Engineering, Inc.	Banning, CA	$3,165,671

Marina Landscape, Inc., of Orange, California, submitted the lowest responsive bid that met all requirements with a total cost of $1,849,000. Based on their credentials, pricing, and favorable reference checks, Staff recommends awarding the Construction Contract to Marina Landscape, Inc., for the Mission Landscape and Irrigation Renovation Project.

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

PAUL S. LEON
MAYOR

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 FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. _____ is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Marina Landscape, Inc**., sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Mission Landscape Renovation PM 2425-19

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within **120 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **One Million Eight Hundred Forty-Nine Thousand Dollars with Zero Cents ($1,849,000)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of **$250** for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Information Required of Bidders
Non-Collusion Declaration Form
Iran Contracting Act Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
Special Conditions
Specifications
Addenda
Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict, the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Work.

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

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

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

MARINA LANDSCAPE INC.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

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

END OF CONTRACT

SECTION 00700 – GENERAL CONDITIONS

ARTICLE 1 -TERMS; DEFINITIONS

1.1 Defined Terms

A. Whenever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined below, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. Act of God – An earthquake of magnitude of 3.5 or higher on the Richter scale or a tidal wave.

2. Addenda -- Written or graphic instruments issued prior to the submission of Bids which clarify, correct, or change the Contract Documents.

3. Additional Work -- New or unforeseen work will be classified as "Additional Work" when the Engineer determines that it is not covered by the Contract.

4. Applicable Laws -- The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities or private authorities with jurisdiction (including utilities), to the extent they apply to the Work.

5. Bid -- The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices and other terms for the Work to be performed.

6. Bid Guarantee -- The Bid Bond, cashier's check, or certified check to be made by the Bidder, which is to accompany the Bid as a guaranty of good faith to enter into a written contract.

7. Bidder -- The individual or entity who submits a Bid directly to the City.

8. Change Order ("CO") -- A document that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Contract, in accordance with the Contract Documents and in the form contained in the Contract Documents.

9. Change Order Request ("COR") -- A request made by the Contractor for an adjustment in the Contract Price and/or Contract Times as the result of a Contractor-claimed change to the Work.

10. City's Representative – The City of Ontario, and acting through properly authorized agents, such as the Engineer or such other agents acting within the scope of the particular duties entrusted to them. Also sometimes referred to as the "City's Representative" or "Representative" in the Contract Documents. The terms the City and Owner may be used interchangeably

11. Claim -- A demand or assertion by the City or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

12. Contract -- The entire integrated written agreement between the City and Contractor concerning the Work. "Contract" may be used interchangeably with "Agreement" in the Contract Documents. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral, and includes all Contract Documents.

13. Contract Documents -- The documents listed in Section 00 52 13, Article 5 of the Contract for Construction. Some documents provided by the City to the Bidders and Contractor, including but not limited to reports and drawings of subsurface and physical conditions are not Contract Documents.

14. Contract Price -- Amount to be paid by the City to the Contractor as full compensation for the performance of the Contract and completion of the Work, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs.

15. Contract Time -- The number of days or the dates stated in the Contract Documents to: achieve defined milestones, if any; and to complete the Work so that it is ready for final payment.

16. Contractor -- The individual or entity with which the City has contracted for performance of the Work.

1. Contractor's Designated On-Site Representative -- The Contractor's Designated On-Site Representative will be identified by the Contractor and shall not be changed without prior written consent of the City.

2. Critical Supply Shortage -- An unusual shortage in materials that is (a) supported by documented proof that Contractor made every effort to obtain such materials from all available sources; (b) such shortage is due to the fact that such materials are not physically available from single or multiple sources or could have been obtained only at exorbitant prices entirely inconsistent with current and standard rates taking into account the quantities involved and the usual industry practices in obtaining such quantities; and (c) such shortages and the difficulties in obtaining alternate sources of materials could not have been known or anticipated by Contractor at the time it submitted its bid or entered the Contract. Market fluctuations in prices of materials, whether or not resulting from a Force Majeure Event, does not constitute a Critical Supply Shortage.

3. Day -- A calendar day of 24 hours measured from midnight to the next midnight.

4. Defective Work -- Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.

5. Demobilization -- The complete dismantling and removal by the Contractor of all of the Contractor's temporary facilities, equipment, and personnel at the Site.

6. Drawings -- That part of the Contract Documents prepared by of the Engineer of Record which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor Submittals are not Drawings as so defined.

7. Effective Date of the Contract -- The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.

8. Engineer -- Whenever not qualified, shall mean the City Engineer or the Engineer authorized to act for and in behalf of the City, acting either directly or through properly authorized agents, such agents acting severally within the scope of the particular duties entrusted to them.

9. Force Majeure Event -- An event that materially affects a party's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the Site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the Work); (4) pandemics, epidemics or quarantine restrictions; (5) strikes and other organized labor action occurring at the Site and the effects thereof on the Work, only to the extent such strikes and other organized labor action are beyond the control of Contractor and its Subcontractors, of every Tier, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (6) a Critical Supply Shortage. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of the City in its capacity as a municipal authority.

10. Hazardous Waste -- The term "Hazardous Waste" shall have the meaning provided in Section 104 of the Solid Waste Disposal Act (42 U.S.C. § 6903) as amended from time to time, or any substance or material identified as hazardous under any state or federal statute governing handling, disposal and/or cleanup of any such substance or material, whichever is more restrictive.

11. Holiday – Holidays occur on:

    New Year's Day - January 1
    President's Day – Third Monday in February
    Memorial Day - Last Monday in May
    Independence Day - July 4
    Labor Day - First Monday in September
    Veteran's Day - November 11
    Thanksgiving Day - Fourth Thursday in November
    Friday after Thanksgiving
    Christmas Eve – December 24
    Christmas Day - December 25
    Day After Christmas – December 26

New Year's Eve – December 31

If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both Holidays. If the Holiday should fall on a Sunday, Sunday and the following Monday are both Holidays.

12. Notice of Award -- The written notice by the City to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, the City will sign and deliver the Contract.

13. Notice of Completion -- The form which may be executed by the City constituting final acceptance of the Project.

14. Notice to Proceed -- A written notice given by the City to Contractor fixing the date on which the Contractor may proceed with the Work and when Contract Times will commence to run.

15. Project -- The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

16. Record Drawings – The record set of as-builts prepared by the Contractor during the Work in accordance with the requirements of the General Conditions.

17. Recyclable Waste Materials -- Materials removed from the Site which are required to be diverted to a recycling center rather than an area landfill. Recyclable Waste Materials include, but are not limited to, asphalt, concrete, brick, concrete block, and rock.

18. Sample -- A physical example furnished by the Contractor to illustrate materials, equipment or workmanship; to establish standards by which the Work will be judged.

19. Schedule of Submittals -- A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to facilitate scheduled performance of related construction activities.

20. Shop Drawings -- All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

21. Site -- Lands or areas indicated in the Contract Documents as being furnished by the City upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by the City which are designated for the use of Contractor.

22. Specifications -- That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

23. Stop Payment Notice -- A written notice as defined in Civil Code section 8044.

24. Subcontractor -- An individual or entity other than a Contractor having a contract with any other entity than the City for performance of any portion of the Work at the Site.

25. Submittal -- Written and graphic information and physical samples prepared and supplied by the Contractor demonstrating various portions of the Work.

26. Successful Bidder -- The responsible Bidder submitting a responsive Bid to whom the City makes an award.

27. Supplier -- A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment used in the performance of the Work or to be incorporated in the Work.

28. Underground Facilities -- All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

29. Unit Price Work -- Work to be paid for on the basis of unit prices as provided by the Contractor in its Bid or as adjusted in accordance with the Contract Documents.

30. Warranty -- A guarantee provided to the City by the Contractor that the Work will remain free of defects and suitable for its intended use for the period required by the Contract Documents or the longest period permitted by the law of this state, whichever is longer.

31. Work -- The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

1.2 Terminology.

A. The words and terms below are not defined but, when used in the Contract Documents, have the indicated meaning.

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. Regardless of whether “furnish,” “install,” “perform,” or “provide” is used in connection with services, materials, or equipment, an obligation of Contractor is implied.

B. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 -PRELIMINARY MATTERS

2.1 Delivery of Contract Documents

A. Within ten (10) Days after receipt of the Notice of Award and before the City will execute the Contract, the Contractor shall furnish and file with the City a signed Contract and the necessary Performance Bond, Payment Bond, and Certificates of Insurance and Endorsements, as well as any other documents specified in the Contract Documents.

2.2 Bonds

A. Contractor shall submit the bonds on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to the City conditioned upon the faithful performance by the Contractor of all requirements of the Contract Documents. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Contract Price. Bonds shall be delivered to the City within ten (10) Days after receipt of the Notice of Award and before execution of the Contract by the City.

2.3 Evidence of Insurance

A. Prior to commencing any Work but no later than ten (10) Days after receipt of the Notice of Award, the Contractor shall submit or cause to be submitted any and all Certificates of Insurance and Endorsements, showing that the Contractor has the required insurance, to the attention of the City. Such insurance is to be provided at the sole cost and expense of the Contractor. No Work shall be performed until all of the required insurance has been received and approved.

2.4 Execution of the Contract

A. Upon receipt of the required Contract Documents, the City will execute the Contract, establishing the Effective Date of the Contract.

2.5 Contractor's Failure to Perform

A. Should Contractor fail to comply with timelines provided above, the City shall retain the right to enforce and collect on the Contractor's Bid Guarantee, rescind award to the Contractor and award the Contract to the next lowest responsive, responsible bidder as determined by the City. If the City elects to accept bonds and insurance submitted late, the Contract Times will begin to run as of the date stated in the Notice to Proceed. However, the number of days beyond the original ten (10) Days it took to receive the properly executed Contract and related items may be deducted from the Contract Times.

2.6 Commencement of Contract Times; Notice to Proceed

A. The City will not issue a Notice to Proceed until after the Effective Date of the Contract. Work shall commence within ten (10) Days of the date stated in the Notice to Proceed. The Contract Times begin to run on the date specified in the Notice to Proceed. No Work shall be done at the Site prior to the issuance of the Notice to Proceed.

2.7 Copies of Documents

A. Contractor will be furnished, free of charge, five (5) copies of the Contract Documents. Additional copies may be obtained at cost of reproduction. Contractor shall maintain a clean, undamaged set of Contract Documents, including Submittals, at the Project site.

2.8 Substitution Requests, Schedule of Submittals, and Schedule

A. Substitution Requests. Within thirty-five (35) days of Contract award (unless otherwise specified in the Contract Documents), Contractor shall provide all substitution requests as further described in the General Conditions.

B. Schedule of Submittals. Within five (5) Days after the issuance of the Notice of Proceed (unless otherwise specified in the Contract Documents), Contractor shall submit to the City a Schedule of Submittals that conforms with the requirements of Section 00 72 00, Article 5.21.

C. Schedule. Within ten (10) days after the issuance of the Notice of Proceed (unless otherwise specified in the Contract Documents), the Contractor shall submit a construction schedule that conforms with the requirements of Section 00 72 00, Article 8.2.

2.9 Preconstruction Conference; Designation of Authorized Representatives.

A. Before any Work at the Site is started, a conference attended by the City, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to herein, procedures for handling Submittals and Shop Drawings, processing applications for payment, and maintaining required records.

B. At this conference the City and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and

responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.10 Subcontractor Mobilization Meeting.

A. Prior to the start of each major Subcontractor's Site Work, the Contractor, the involved Subcontractor, and Engineer shall attend a pre-start meeting to discuss the schedule, coordination, procedures, and other administrative issues.

2.11 Authority of Council; Engineer

A. The City Council has the final authority in all matters affecting the Work. Within the scope of the Contract, the Engineer has the authority to enforce compliance with the Contract Documents. The Contractor shall promptly comply with instructions from the Engineer.

B. The decision of the Engineer is final and binding on all questions relating to:

1. quantities;

2. acceptability of material, equipment, or work;

3. execution, progress or sequence of work;

4. interpretation of the Plans, Specifications, or other Contract Documents; and

5. Any other areas specifically identified in the Contract Documents or under the law.

C. Compliance with instructions from the Engineer shall be a condition precedent to any payment under the Contract, unless otherwise ordered by the City Council.

2.12 Mobilization

A. When a Bid item is included in the Bid Schedule for mobilization, the costs of Work in advance of construction operations and not directly attributable to any specific bid item will be included in the progress estimate. When no bid item is provided for mobilization payment for such costs will be deemed to be included in the other items of the Work.

B. Payment for mobilization based on the lump sum provided in the Bid Schedule, shall constitute full compensation for all such Work. No payment for mobilization will be made until all of the listed items have been completed to the satisfaction of the Engineer. The scope of the Work included under mobilization shall include, but shall not be limited to, the following principal items:

1. Obtaining and paying for all bonds, insurance, and permits.

2. Moving on to the Project Site of all Contractor's plant and equipment required for the first month's operations.

3. Installing temporary construction power, wiring, and lighting facilities, as applicable.

4. Establishing fire protection system, as applicable.

5. Developing and installing a construction water supply, as applicable.

6. Providing and maintaining the field office trailers for the Contractor, if necessary, and the Engineer (if specified), complete, with all specified furnishings and utility services.

7. Providing on-site sanitary facilities and potable water facilities as specified per Cal-OSHA and these Contract Documents.

8. Furnishing, installing, and maintaining all storage buildings or sheds required for temporary storage of products, equipment, or materials that have not yet been installed in the Work. All such storage shall meet manufacturer's specified storage requirements, and the specific provisions of the specifications, including temperature and humidity control, if recommended by the manufacturer, and for all security.

9. Arranging for and erection of Contractor's work and storage yard.

10. Posting all OSHA required notices and establishment of safety programs per Cal-OSHA.

11. Full-time presence of Contractor's superintendent at the job Site as required herein.

12. Submittal of construction schedule as required by the Contract Documents.

ARTICLE 3 -CONTRACT DOCUMENTS; INTENT

3.1 Examination of Drawings, Specifications, and Site of Work

A. Examination of Contract Documents; Site. Before commencing any portion of the Work, Contractor shall again carefully examine all applicable Contract Documents, the Project Site, and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify the Engineer of any potential error, inconsistency, ambiguity, conflict, or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall the Contractor or any Subcontractor proceed with Work if uncertain as to the applicable requirements.

B. Additional Instructions. After notification of any error, inconsistency, ambiguity, conflict, or lack of detail or explanation, the Engineer will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.

C. Quality of Parts, Construction and Finish. All parts of the Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish.

D. Contractor's Variation from Contract Document Requirements. If it is found that the Contractor has varied from the requirements of the Contract Documents including the requirement to comply with all Applicable Laws, the Engineer may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by the Contractor at the Contractor's expense.

3.2 Intent of Contract Documents

A. The Contract Documents are complementary; what is required by any one will be binding as if required by all. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to the City.

B. The Contractor shall furnish, unless otherwise provided in the Contract Documents, all materials, implements, machinery, equipment, tools, supplies and labor necessary to the prosecution and completion of the Project.

C. Clarifications and interpretations of the Contract Documents shall be issued by the Engineer as provided in these General Conditions.

D. If utilities to equipment/fixtures are not shown but are necessary to operate the equipment/fixtures, the utilities service installation is considered to be part of the Work. The implied Work will conform to the appropriate sections of the Contract Documents.

E. Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Contractor in dividing Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

3.3 Reference Standards.

A. Standards, Specifications, Codes, Laws, and Regulations.

1. Reference to federal specifications, federal standards, other standards, specifications, manuals, or codes of any technical society, organization, or association, or to Applicable Laws, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Applicable Laws in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of the City, Contractor, or any of their Subcontractors, consultants, agents, or

employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to the City, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.4 Reporting and Resolving Discrepancies; Order of Precedence.

A. Reporting Discrepancies.

1. The Contract Documents are intended to be fully cooperative and complementary. Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to the City any conflict, error, ambiguity, or discrepancy which Contractor discovers, should have discovered, or has actual knowledge of, and shall obtain a written interpretation or clarification from the City before proceeding with any Work affected thereby. If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (i) any Applicable Law, (ii) any standard, specification, manual, or code, or (iii) any instruction of any Supplier, then Contractor shall promptly submit a written Request for Information (RFI) to the City. Contractor shall not proceed with the Work affected thereby (except in an emergency) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in the Contract Documents, and any Work performed by Contractor before receipt of an amendment or supplement shall be at Contractor's own risk.

B. Order of Precedence.

1. In case of conflicts between the Contract Documents, the order of precedence shall be as follows:

   a. Permits from other agencies as may be required by law

   b. Change Orders, most recent first

   c. Contract

   d. Addenda, most recent first

   e. Special Conditions

   f. Specifications

   g. Construction Plans and Drawings(Contract Drawings)

   h. General Conditions

   i. Instructions to Bidders

   j. Notice Inviting Bids

k. Contractor's Bid (Bid Forms)

l. Standard Specifications for Public Works Construction "Greenbook" latest edition (Sections 1-9 Excluded)

m. Applicable Local Agency Standards and Specifications

n. Standard Drawings

o. Reference Documents

2. With reference to the Drawings the order of precedence shall be as follows:

a. Figures govern over scaled dimensions

b. Detail drawings govern over general drawings

c. Addenda/Change Order drawings govern over Drawings

d. Contract Drawings govern over Standard Drawings

e. Contract Drawings govern over Shop Drawings

3. Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality and most expensive shall always apply.

3.5 Amending and Supplementing Contract Documents.

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof only by Change Order or written amendment to the Contract duly executed by the parties.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized at no cost to the City, by one or more of the following ways:

1. The City's review of a Submittal, Shop Drawing, Sample or substitution request without exception (subject to the provisions of the Contract Documents); or

2. The City's issuance of a response to an RFI.

C. However, no review or RFI response will reduce or modify the Contractor's obligation to fully satisfy and comply with the requirements of the Contract Documents.

3.6 Reuse of Documents.

A. Contractor and any Subcontractor or Supplier shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer of Record or its consultants, including electronic media editions; or

2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of the City and Engineer of Record and specific written verification or adaptation by Engineer of Record.

B. The prohibitions of this Article will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 -INDEMNIFICATION; INSURANCE

4.1 Indemnification

A. To the fullest extent permitted by law, Contractor shall immediately defend (with counsel of the City's choosing), indemnify and hold harmless the City, its officials, officers, agents, employees, and representatives, and each of them from and against:

1. Any and all claims, demands, causes of action, costs, expenses, injuries, losses or liabilities, in law or in equity, of every kind or nature whatsoever, but not limited to, injury to or death, including wrongful death, of any person, and damages to or destruction of property of any person, arising out of, related to, or in any manner directly or indirectly connected with the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses, however caused, regardless of whether the allegations are false, fraudulent, or groundless, and regardless of any negligence of the City or its officers, employees, or authorized volunteers (including passive negligence), except the sole negligence or willful misconduct or active negligence of the City or its officials, officers, employees, or authorized volunteers.

2. Contractor's defense and indemnity obligation herein includes, but is not limited to damages, fines, penalties, attorney's fees and costs arising from claims under the Americans with Disabilities Act (ADA) or other federal or state disability access or discrimination laws arising from Contractor's Work during the course of construction of the improvements or after the Work is complete, as the result of defects or negligence in Contractor's construction of the improvements.

3. Any and all actions, proceedings, damages, costs, expenses, fines, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Contractor;

4. Any and all losses, expenses, damages (including damages to the Work itself), attorney's fees, and other costs, including all costs of defense which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the Work and all of Contractor's obligations under Contract. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

B. Contractor shall immediately defend, at Contractor's own cost, expense and risk, with the counsel of the City choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its officials, officers, agents, employees and representatives. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the City, its officials, officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse the City, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782.

C. The provisions of this Article shall survive the termination of this Contract howsoever caused, and no payment, partial payment, or acceptance of occupancy in whole or part of the Work shall waive or release any of the provisions of this Article.

4.2 Insurance

The Contractor shall obtain, and at all times during performance of the Work of Contract, maintain all of the insurance described in this Article. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required hereunder. Contractor shall not allow any Subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this Article. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause. Contractor shall furnish the City with original certificates of insurance and endorsements effective coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms acceptable to the City. All certificates and endorsements must be received and approved by the City before Work commences.

A. **Additional Insureds; Waiver of Subrogation**. The City, its officials, officers, employees, agents and authorized volunteers shall be named as Additional Insureds on Contractor's All Risk policy and on Contractor's and its subcontractors' policies of Commercial General Liability and Automobile Liability insurance using, for Contractor's policy/ies of Commercial General Liability insurance, ISO CG forms 20 10 and 20 37 (or endorsements providing the exact same coverage, including completed operations), and, for subcontractors' policies of Commercial General Liability insurance, ISO CG form 20 38 (or endorsements providing the exact same coverage). Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, all available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as Additional Insureds hereunder. All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against the City, its officers, officials**,** agents, employees or volunteers or shall specifically allow Contractor - or others providing insurance evidence in compliance with these specifications - to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against the City, and shall require similar written express waivers and insurance clauses from each of its subcontractors. Copies of these waivers shall be submitted to the City prior to commencement of work.

B. **Workers' Compensation Insurance**. The Contractor shall provide workers' compensation insurance for all of the employees engaged in Work under this Contract, on or at the Site, and, in case of any sublet Work, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the Site, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor is required to secure payment of compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. The Contractor shall file with the City certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to the City, if in the form and coverage as set forth in the Contract Documents.

C. **Employer's Liability Insurance**. Contractor shall provide Employer's Liability Insurance, including Occupational Disease, in the amount of at least one million dollars ($1,000,000.00) per person per accident. Contractor shall provide the City with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of the City.

D. **Commercial General Liability Insurance**. Contractor shall provide "occurrence" form Commercial General Liability insurance coverage at least as broad as the most current ISO CGL Form 00 01, including but not limited to, premises liability, contractual liability, products/completed operations, personal and advertising injury which may arise from or out of Contractor's operations, use, and management of the Site, or the performance of its obligations hereunder. The policy shall not contain any exclusion contrary to this Contract including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 39); or (2) cross-liability for claims or suits against one insured against another. Policy limits shall not be less than $2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be paid in addition to the limits.

1. Such policy shall comply with all the requirements of this Article. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to the City, and shall not preclude the City from taking such other actions available to the City under other provisions of the Contract Documents or law.

2. All general liability policies provided pursuant to the provisions of this Article shall comply with the provisions of the Contract Documents.

3. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in these General Conditions relating to liability for injury to or death of persons and damage to property.

4. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, the City may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Contract Documents.

5. All policies of general liability insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

E. **Automobile Liability Insurance**. Contractor shall provide Automobile Liability Insurance at least as broad as ISO CA 00 01 (Any Auto) in the amount of, at least, one million dollars ($1,000,000) per accident for bodily injury and property damage. Such insurance shall provide coverage with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible, in a form and with insurance companies acceptable to the City. All policies of automobile insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

F. **Builder's Risk ["All Risk"]**

1. It is the Contractor's responsibility to maintain or cause to be maintained Builder's Risk ["All Risk"] extended coverage insurance on all work, material, equipment, appliances, tools, and structures that are or will become part of the Work and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. The City accepts no responsibility for the Work until the Work is formally accepted by the City. The Contractor shall provide a certificate evidencing this coverage before commencing performance of the Work.

2. The named insureds shall be Contractor, all Subcontractors of any tier (excluding those solely responsible for design work), suppliers, and the City, its elected officials, officers, employees, agents and authorized volunteers, as their interests may appear. Contractor shall not be required to maintain property insurance for any portion of the Work following acceptance by the City.

3. Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to the City to ensure adequacy and sublimit.

4. In addition, the policy shall meet the following requirements:

a. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.

b. Coverage shall include all materials stored on site and in transit.

c. Coverage shall include Contractor's tools and equipment.

d. Insurance shall include boiler, machinery and material hoist coverage.

G. **Contractor's Pollution Liability Coverage**. Contractor shall provide pollution liability insurance in an amount not less than $1,000,000 per occurrence and $2,000,000 aggregate.

H. Contractor shall require all tiers of Subcontractors working under this Contract to provide the insurance required under this Article unless otherwise agreed to in writing by the City. Contractor shall make certain that any and all Subcontractors hired by Contractor are insured in accordance with this Contract. If any Subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold the City harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by the City as a result thereof.

I. Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, if Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

J. **Form and Proof of Carriage of Insurance**

1. Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by the City's Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VII. Insurance deductibles or self-insured retentions must be declared by the Contractor. At the election of the City the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related

investigations, claims administration, and defense costs and expenses. If umbrella or excess liability coverage is used to meet any required limit(s) specified herein, the Contractor shall provide a "follow form" endorsement satisfactory to the City indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.

2. Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or cancelled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, officers, agents, employees, and volunteers.

3. The Certificates(s) and policies of insurance shall contain or shall be endorsed to contain the covenant of the insurance carrier(s) that it shall provide no less than thirty (30) days written notice be given to the City prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, the City may terminate the Contract or stop the Work in accordance with the Contract Documents, unless the City receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. Contractor shall not take possession, or use the Site, or commence operations under this Contract until the City has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Article. The original endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.

4. The Certificate(s) of Insurance, policies and endorsements shall so covenant and shall be construed as primary, and the City's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

5. The City reserves the right to adjust the monetary limits and types of insurance coverages during the term of this Contract including any extension thereof if, in the City's reasonable judgment, the amount or type of insurance carried by the Contractor becomes inadequate.

6. Contractor shall report to the City, in addition to the Contractor's insurer, any and all insurance claims submitted by the Contractor in connection with the Work under this Contract.

7. Products/completed operations coverage shall extend a minimum of three years after the project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the policy must include work performed "by or on behalf" of the insured. Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on

the part of the insurer. The City, its officers, officials, agents employees, and volunteers shall be included as insureds under the policy.

ARTICLE 5 -CONTRACTOR RESPONSIBILITIES; REGULATORY REQUIREMENTS

5.1 Applicable Laws

A. Contractor shall give all notices required by and shall comply with all Applicable Laws applicable to the performance of the Work. Except where otherwise expressly required by Applicable Laws, neither the City nor the City's Representative shall be responsible for monitoring Contractor's compliance with any Applicable Laws. If Contractor performs any Work knowing or having reason to know that it is contrary to Applicable Laws, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

5.2 Permits and Licenses

A. Permits and licenses necessary for prosecution of the Work shall be secured and paid for by Contractor, including, but not limited to, excavation permit, for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under jurisdiction of public agencies other than the City, unless otherwise specified in the Contract Documents.

B. The Contractor shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the specifications, drawings, or by governing authorities, except for such off-site inspections delineated as the City's responsibility pursuant to the Contract Documents.

C. Before acceptance of the Work, the Contractor shall submit all licenses, permits, certificates of inspection and required approvals to the City.

5.3 Taxes

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid in accordance with the Applicable Laws of the place of the Project which are applicable during the performance of the Work. In accordance with Revenue and Taxation Code section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Contractor will be responsible.

5.4 Traffic Control

A. Traffic control plans, if required, shall be prepared at Contractor's expense. Traffic control shall be performed at Contractor's expense in accordance with the requirements of the City and/or the local agency with jurisdiction. Costs for traffic control plans, implementation of traffic control, or traffic signal services required by the City shall be included in the Contractor's Bid.

B. All warning signs and safety devices used by the Contractor to perform the Work shall conform to the requirements contained in the State of California, Department of Transportation's current edition of "Manual of Traffic Controls for Construction and Maintenance Work Zones" or to the requirements of the local agency. The Contractor shall also be responsible for all traffic control required by the agency having jurisdiction over the Project on the intersecting streets. Contractor must submit a traffic control plan to the agency having jurisdiction over the Project for approval prior to starting Work.

C. The Contractor's representative on the site responsible for traffic control shall produce evidence that he/she has completed training acceptable to the California Department of Transportation for safety through construction zones. All of the streets in which the Work will occur shall remain open to traffic and one lane of traffic maintained at all times unless otherwise directed by the agency of jurisdiction. Businesses and residences adjacent to the Work shall be notified forty-eight (48) hours in advance of closing of driveways. The Contractor shall make every effort to minimize the amount of public parking temporarily eliminated due to construction in areas fronting businesses. No stockpiles of pipe or other material will be allowed in traveled right-of-ways after working hours unless otherwise approved by the Engineer.

5.5 Safety

A. Contractor shall be solely responsible for all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety laws. Contractor shall comply with all Applicable Laws relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

B. The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 *et seq*.), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4. The Contractor shall ensure the availability of emergency medical services for its employees in accordance with California Code of Regulations, Title 8, Section 1512. The Contractor shall submit an Illness and Injury Prevention Program and a Project Site specific safety program to the City prior to beginning Work. Contractor shall maintain a confined space program that meets or exceeds the City's standards. Contractor needs to make themselves aware of the City's safety policies and procedures, and shall meet or exceed all City standards in areas where the City must enter to perform inspections.

C. Hazard Communication Programs. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Applicable Laws.

5.6 Hazardous Materials

A. The City shall not be responsible for any Hazardous Waste brought to the site by the Contractor. If the Contractor: (i) introduces and/or discharges a Hazardous Waste onto the site in a manner not specified by the Contract Documents; and/or (ii) disturbs a Hazardous Material identified in the Contract Documents, the Contractor shall hire a qualified remediation contractor at Contractor's sole cost to eliminate the condition as soon as possible. Under no circumstance shall the Contractor perform Work for which it is not qualified. The City, in its sole discretion, may require the Contractor to retain at Contractor's cost an independent testing laboratory.

B. If the Contractor encounters a Hazardous Waste which may cause foreseeable injury or damage, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such material or substance (except in an emergency situation); and (iii) notify the City (and promptly thereafter confirm such notice in writing).

C. Subject to Contractor's compliance with this Article 5.6(B), the City shall verify the presence or absence of the Hazardous Waste reported by the Contractor, except as qualified under Article 5.6(A) and Article 5.6(B) in the event such material or substance is found to be present, verify that the levels of the hazardous material are below OSHA Permissible Exposure Levels and below levels which would classify the material as a state of California or federal hazardous waste. When the material falls below such levels, Work in the affected area shall resume upon direction by the City.

D. Contractor shall indemnify and hold harmless the City from and against claims, damages, losses and expenses, arising from a Hazardous Waste on the Project Site, if such Hazardous Waste exceeded OSHA Permissible Exposure Levels or levels which would classify the material as a state of California or federal hazardous waste, and was either i) shown on the Contract Documents or information available to bidders; or (ii) brought to the site by Contractor. Nothing in this paragraph shall obligate the Contractor to indemnify the City in the event of the sole or active negligence or willful misconduct of the City, its officers, agents, or employees.

5.7 Sanitary Facilities.

A. Contractor shall provide sanitary temporary toilet buildings and hand washing facilities for the use of all workers. All toilets and hand washing facilities shall comply with local codes and ordinances. Toilets shall be placed inside sealed secondary containment devices installed on a flat, level surface. Accumulated liquids in the secondary containment devices shall be properly removed and legally disposed without spillage onto the ground. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets and hand washing facilities shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by Cal/OSHA regulations. The toilets and hand washing facilities shall be maintained in a sanitary condition at all times. Use of toilet and hand washing facilities in the Work under construction shall not be permitted. Any other sanitary facilities required by Cal/OSHA shall be the responsibility of the Contractor.

5.8 Dust Control

A. Contractor, at its expense, shall maintain all excavations, embankments, haul roads, permanent access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry accepted methods of dust control suitable for the area involved, such as sprinkling, chemical treatment, light bituminous treatment or similar methods, will be permitted.

5.9 Air Pollution Control

A. Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.

B. Without limiting the foregoing, Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the Air Quality Management District with jurisdiction over the Project and/or California Air Resources Board (CARB). Contractor shall specifically be aware of the application of these limits and requirements to "portable equipment", which definition includes any item of equipment with a fuel-powered engine. Contractor shall indemnify the City against any fines or penalties imposed by the air quality management district, CARB, or any other governmental or regulatory agency for its violations of Applicable Laws as well as those of its subcontractors or others for whom Contractor is responsible under its indemnity obligations provided for in the Contract Documents.

5.10 Water Quality Management and Compliance

A. Storm, surface, ground, nuisance, or other waters may be encountered at various times during construction of the Work. The Contractor hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.

B. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions regulating discharges of storm water; the Federal Water Pollution Control Act (33 U.S.C. § 13000 et seq.); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. These include, but are not limited to California State Water Resources Control Board (“State Water Board”) Order Number 2009-0009-DWQ (NPDES Permit No. CAS000002), as amended by Order Numbers 2010-0014-DWQ, 2012-0006-DWQ, 2022-0057-DWQ, and any subsequent amendment to or renewal thereof, State Water Resources Control Board Order No. 2013-0001-DWQ (NPDES Order No. CAS000004), Santa Ana Regional Water Quality Control Board No. R8-2010-0036 (NPDES No. CAS618036), and any amendment or renewal thereof.

C. Contractor shall comply with all conditions of the State Water Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity ("Construction General Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. Contractor shall comply with the lawful requirements of the City, and any other applicable municipality, drainage district, or other local agency with jurisdiction over the location where the Work is to be conducted, regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

D. Unless otherwise specified in the Special Conditions or other portion of the Contract Documents, the City has not prepared a Storm Water Pollution Prevention Plan ("SWPPP") or other storm water compliance plan for the Project Site. A SWPPP must be prepared and Best Management Practices (BMP) must be implemented for the Project Site. A qualified SWPP Developer ("QSD") and a Qualified SWPPP Practitioner ("QSP") for the project is required to prepare and implement the SWPPP for the Project Site, including condition and documenting weekly inspections of the project, pre- and post-storm event inspections and inspections every 24 hours, for annual reporting and proper site management. The Contractor shall retain personnel serving as QSD(s) that shall have an active and current certification. Engineering and/or geology work performed for the site shall be conducted by a California licensed professional.

   Contractor shall be responsible for filing the Notice of Intent ("NOI") and for obtaining coverage under the Construction General Permit. This includes filing all necessary documentation including the Permit Registration Documents ("PRDs") through the Stormwater Multiple Applications and Report Tracking System ("SMARTS"); preparing and implementing a SWPPP for the Work site; implementing all other provisions, and monitoring and reporting requirements required by the Construction General Permit; and providing a Qualified SWPPP Developer ("QSD") and Qualified SWPPP Practitioner ("QSP"), as necessary for all Work site activities, including but not limited to preparation and submittal of all reports, plans, inspections, and monitoring information in compliance with the Construction General Permit. All submittals shall be coordinated with the City's Legally Responsible Person and Authorized Signatory as those terms are defined in the Construction General Permit. Before any NOI, PRD, SWPPP, or other Construction General Permit-related document may be submitted to the State Water Board or implemented on the Project site, it must first be reviewed and approved by the City and/or City's designee. Contractor shall include all costs of compliance with specified requirements in the Contract Price.

E. The City retains the right to develop its own documentation for the Project site, including but not limited to the SWPPP, and in the alternative may require Contractor to adopt and implement portions of the City developed SWPPP. The City expressly reserves the right to procure coverage under the Construction General Permit for the Work site if Contractor fails to draft satisfactory PRDs or SWPPP or otherwise fails to proceed in a manner that complies with the requirements of the Construction General Permit. The City additionally reserves the right to hire additional contractors to maintain compliance at the Work site. Whether Contractor has adequately

maintained compliance with the Construction General Permit shall be the City's sole determination. Any costs incurred by the City in procuring coverage under the Construction General Permit, or drafting and/or implementing a SWPPP for the Work site shall be paid by Contractor.

F. Notwithstanding the above, for those Work sites where construction activity results in the disturbance of less than one acre of total land area and/or do not need coverage under the Construction General Permit, the Contractor shall be responsible for preparing and implementing an Erosion and Sediment Control Plan in accordance with State Water Resources Control Board Order No. 2013-0001-DWQ (NPDES Order No. CAS000004) and any amendment to or renewal thereof.

G. Failure to comply with the Construction General Permit, laws, regulations, and ordinances listed in this Article is a violation of federal and state law. Notwithstanding any other indemnity contained in these Contract Documents, Contractor agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, fees, costs, expenses, or losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit, laws, regulations, and ordinances listed above, arising out of or in connection with the Work, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

H. The City reserves the right to defend any enforcement action or civil action brought against the City for Contractor's failure to comply with any applicable water quality law, regulation, or policy. Contractor hereby agrees to be bound by, and to reimburse the City for the costs associated with, any settlement reached between the City and any relevant enforcement entity.

5.11 Environmental Quality Protection

A. The Contractor shall comply with all requirements of applicable federal, state, and local environmental rules and regulations. Any infractions of said rules and regulations by the Contractor during the term of the Contract, which result in penalties, will be the responsibility of the Contractor. The City operates under a number of environmental permits issued by various agencies. If due to an action, inaction, or negligence by the Contractor, the City becomes subject to non-compliance penalties, the cost of such penalties shall be borne by the Contractor.

B. The Contractor shall exercise care to preserve the natural landscape and vegetation, and shall conduct operations so as to prevent unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the Work. Movement of crews and equipment within the rights-of-way and over routes provided for access to the Work shall be performed in a manner to prevent damage to property. When no longer required, construction roads shall be restored to original contours. Upon completion of the Work, and following removal of construction facilities and required cleanup, land used for construction purposes and not required for the completed installation shall be scarified and regraded, as required, so that all surfaces are left in a condition that will facilitate natural revegetation, provide for proper drainage, and prevent erosion.

C. If, in the performance of the Work, evidence of the possible occurrence of any Federally listed threatened or endangered plant or animal is discovered, the Contractor shall notify the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to City within two (2) Days. The Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the endangered plant or animal. If directed by the City Representative, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Any City directed changes to the Work as a result of a siting will be pursuant to the Contract Documents. Any costs or delays incurred by City or the Contractor due to unreasonable or false notification of an endangered plant or animal will be borne by the Contractor.

D. If, in the performance of the Work, Contractor should unearth cultural resources (for example, human remains, animal bones, stone tools, artifacts and/or midden deposits) through excavation, grading, watering or other means, the Contractor shall notify the construction/archeological monitor and/or the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to the construction/archeological monitor and/or City within two (2) Days. The Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the cultural resource. If directed by the City Representative, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or re-sequence and/or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Should the presence of cultural resources be confirmed, the Contractor will assist the City Representative and the construction/archeological monitor in the preparation and implementation of a data recovery plan. The Contractor shall provide such cooperation and assistance as may be necessary to preserve the cultural resources for removal or other disposition. Any City directed changes to the Work as a result of the cultural resource will be pursuant to the Contract Documents. Should Contractor, without permission, injure, destroy, excavate, appropriate, or remove any cultural resource on or adjacent to the Site, it will be subject to disciplinary action, arrest and penalty under applicable law. The Contractor shall be principally responsible for all costs of mitigation and/or restoration of cultural resources related to the unauthorized actions identified above. Contractor shall be required to pay for unauthorized damage and mitigation costs to cultural resources (historical and archeological resources) as a result of unauthorized activities that damage cultural resources and shall indemnify City pursuant to the Contract Documents.

5.12 Excessive Noise

A. Contractor shall use only such equipment on the Work and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by Cal/OSHA. Contractor shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements.

B. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the Contractor.

5.13 Diversion of Recyclable Waste Material

A. In compliance with the applicable City's waste reduction and recycling efforts, Contractor shall divert all Recyclable Waste Materials to appropriate recycling centers as required for compliance with the local jurisdiction's waste diversion ordinances. Contractor will be required to submit weight tickets and written proof of diversion with its monthly progress payment requests. Contractor shall complete and execute any certification forms required by the City or other applicable agencies to document Contractor's compliance with these diversion requirements. All costs incurred for these waste diversion efforts shall be the responsibility of the Contractor.

5.14 Inspector's Field Office.

A. If required by the City, the Contractor shall be responsible for providing the inspector's field office. The office shall be a substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Door shall have a key type lock or padlock clasp. The office shall have heating and air conditioning and shall be equipped with a telephone, a telephone answering machine, an ability to connect to the internet, and a fax machine at Contractor's expense. The field office shall be provided within 20 Days of the Notice to Proceed.

B. A table satisfactory for the study of plans and two chairs shall be provided by Contractor. Contractor shall provide and pay for adequate electric lights, local telephone service, and adequate heat and air conditioning for the field office until authorized removal.

5.15 Contractor's Supervision.

A. Contractor shall continuously keep at the Project site, a competent and experienced full-time Project superintendent acceptable to the City. Superintendent must be able to proficiently speak, read and write in English and shall have the authority to make decisions on behalf of the Contractor. Contractor shall continuously provide efficient supervision of the Project.

5.16 Workers.

A. Contractor shall at all times enforce strict discipline and good order among its employees. Contractor shall not employ on the Project any unfit person or any one not skilled in the Work assigned to him or her.

B. Any person in the employ of the Contractor whom the City may deem incompetent or unfit shall be dismissed from the Work and shall not be employed on this Project.

5.17 Independent Contractors.

A. Contractor shall be an independent contractor for the City and not an employee. Contractor understands and agrees that it and all of its employees shall not be considered officers, employees, or agents of the City and are not entitled to benefits of any kind normally provided employees of the City, including but not limited to, state unemployment compensation or workers' compensation. Contractor assumes full responsibility for the acts and omissions of its employees or agents related to the Work.

5.18 Verification of Employment Eligibility.

A. By executing the Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subcontractors, sub-subcontractors and consultants to comply with the same. Each person executing this Contract on behalf of Contractor verifies that he or she is a duly authorized officer of Contractor and that any of the following shall be grounds for the City to terminate the Contract for cause: (1) failure of the Contractor or its Subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in this Article; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Work any person found not to be in compliance with such requirements.

5.19 Labor.

A. Hours of Work

1. As provided in Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Contractor stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract is limited and restricted to eight (8) hours during any one calendar day and 40 hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and 40 hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

2. The Contractor and every Subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the City and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

3. The Contractor shall pay to the City a penalty of twenty-five dollars ($25.00) for each worker employed in the execution of this Contract by the Contractor or by

any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and 40 hours in any one calendar week in violation of the provisions of Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code.

4. Any work necessary to be performed after regular working hours, or on Saturdays and Sundays or other holidays, shall be performed without additional expense to the City.

5. If Contractor gives notice of an inspection pursuant to the Contract Documents, the City will provide inspection during normal working hours from 7:00 a.m. to 3:30 p.m. Monday through Friday. Requested inspections before or after this time will be charged to the Contractor as reimbursable inspection time. Inspections on weekends requires two (2) Days' notice for review and approval. Upon written request and approval the 8.5 hour working day may be changed to other limits subject to city/county ordinance.

6. It shall be unlawful for any person to operate, permit, use, or cause to operate any of the following at the Project Site, other than between the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, with no Work allowed on City-observed Holidays, unless otherwise approved by the City:

a. Powered Vehicles

b. Construction Equipment

c. Loading and Unloading Vehicles

d. Domestic Power Tools

B. Payroll Records; Labor Compliance

1. Pursuant to Labor Code section 1776, Contractor and all subcontractors shall maintain weekly certified payroll records, showing the names, addresses, Social Security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by them in connection with the Work under this Contract. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require Subcontractor(s) to certify weekly payroll records under penalty of perjury.

2. In accordance with Labor Code section 1771.4, the Contractor and each Subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on the specified interval and format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3. Any stop orders issued by the DIR against Contractor or any Subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Contractor or any Subcontractor.

4. The payroll records described herein shall be certified and submitted by the Contractor at a time designated by the City. The Contractor shall also provide the following:

a. A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.

b. A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.

5. Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.

6. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, the City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or performing the Contract shall not be marked or obliterated.

7. In the event of noncompliance with the requirements of this Article, the Contractor shall have ten (10) Days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Article. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of one hundred dollars ($100.00) to the City for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.

8. The responsibility for compliance with this Article shall rest upon the Contractor.

C. Prevailing Rates of Wages

1. The Contractor is aware of the requirements of Labor Code sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total

compensation is $1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov. In the alternative, the Contractor may view a copy of the prevailing rate of per diem wages which are on file at the City's Administration Office and shall be made available to interested parties upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws.

2. The Contractor shall forfeit as a penalty to the City not more than Two Hundred Dollars ($200.00), pursuant to Labor Code section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the Director of the DIR for such work or craft in which such worker is employed for any public work done under the Contract by it or by any Subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

3. Contractor shall post, at appropriate conspicuous points on the Project Site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

D. Public Works Contractor Registration

1. Pursuant to Labor Code sections 1725.5 and 1771.1, the Contractor and its Subcontractors must be registered with the DIR prior to the execution of a contract to perform public works. By entering into this Contract, Contractor represents that it is aware of the registration requirement and is currently registered with the DIR. Contractor shall maintain a current registration for the duration of the Project. Contractor shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any subcontract and ensure that all Subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Project. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

E. Employment of Apprentices

1. Contractor and all Subcontractors shall comply with the requirements of Labor Code sections 1777.5 and 1777.6 in the employment of apprentices.

2. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio

the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

3. Knowing violations of Labor Code section 1777.5 will result in forfeiture not to exceed one hundred dollars ($100.00) for each calendar day of non-compliance pursuant to Labor Code section 1777.7.

F. Nondiscrimination/Equal Employment Opportunity

1. Pursuant to Labor Code section 1735 and other applicable provisions of law, the Contractor and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law on this Project. The Contractor will take affirmative action to insure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law.

G. Debarment of Contractors and Subcontractors

1. Contractors or Subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the City. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

5.20 Subcontracts.

A. Contractor agrees to bind every Subcontractor to the terms of the Contract Documents as far as such terms are applicable to Subcontractor's portion of the Work. Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in these Contract Documents shall create any contractual relationship between any subcontractor and the City.

B. The City reserves the right to accept all subcontractors. The City's acceptance of any Subcontractor under this Contract shall not in any way relieve Contractor of its obligations in the Contract Documents.

C. Prior to substituting any Subcontractor listed in the Bid Forms, Contractor must comply with the requirements of the Subletting and Subcontracting Fair Practices Act pursuant to California Public Contract Code section 4100 et seq.

5.21 Progress Meetings

A. The Contractor shall schedule and hold regular progress meetings at least weekly and at other times as requested by Engineer or as required by progress of the Work. The Contractor, City, and all Subcontractors active on the Site shall attend each meeting. Contractor may at its discretion request attendance by representatives of its Suppliers, manufacturers, and other Subcontractors. The City will preside at the progress meetings and will arrange for keeping and distributing the minutes. The purpose of the meetings is to review the progress of the Work, maintain coordination of efforts, discuss changes in scheduling, and resolve other problems which may develop. During each meeting, the Contractor shall present any issues which may impact its progress with a view to resolve these issues expeditiously.

5.22 Submittals

A. Schedule of Submittals. Within five (5) Days after the Notice to Proceed (unless otherwise specified in the Contract Documents), Contractor will prepare and deliver a Schedule of Submittals to the City that has been fully integrated with the progress schedule and identifies each Submittal required by the Contract Documents as well as the date on which Contractor will deliver each Submittal to the City. Each Submittal must be delivered to the City at least thirty (30) Days prior to the date the material or equipment is scheduled to be incorporated into the Work. The Contractor is responsible for any schedule delays resulting from the Submittal process.

B. Submittal Procedures.

1. Contractor will follow the following procedures for each Submittal, Shop Drawing and Sample required by the Contract Documents:

   a. Submittals must be transmitted electronically.

   b. Transmittals will be sequentially numbered. Contractor to mark revised Submittals with original number and sequential alphabetic suffix.

   c. Each Submittal will identify the Project, Contractor, Subcontractor and Supplier, pertinent Drawing and detail number, and Specification Section number appropriate to Submittal.

   d. By transmitting a Submittal, Contractor certifies it has reviewed and approved each Submittal, verified products required, field dimensions, adjacent construction Work, and that coordination of information is according to requirements of the Work and Contract Documents.

   e. Identify variations in Contract Documents and product or system limitations that may differ and/or be detrimental to successful performance of completed Work.

   f. When Submittal is revised for resubmission, Contractor shall promptly address the City's comments and resubmit. Contractor shall identify changes made since previous submission.

g. The City's review of Shop Drawings shall not relieve Contractor from responsibility for deviations from the Contract Documents unless Contractor has, in writing, called the City's attention to such deviations at time of submission and the City has taken no exception to the deviation. The City's review of Shop Drawings shall not relieve Contractor from responsibility for errors in Shop Drawings.

h. Submittals not required by the Contract Documents or requested by the City will not be acknowledged or processed.

i. Incomplete Submittals will not be reviewed by the City. Delays resulting from incomplete Submittals are not the responsibility of the City.

j. Contractor shall not be entitled to any extension of the Contract Times as a result of the Submittal process.

k. Contractor shall allow a minimum of 20 working days for review of Submittals unless otherwise specified in the Contract Documents.

2. Where a Submittal, Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to the City review and approval of the pertinent submittal will be performed at the sole risk and expense and responsibility of Contractor.

C. Schedule Milestone for Submittals. Contractor must submit all Submittals required by the Contract Documents in accordance with the Schedule of Submittals. If Contractor fails to submit the Submittals in accordance with the Schedule of Submittals, Contractor will be solely liable for any delays or impacts caused by the delayed Submittal, whether direct or indirect. Contractor will be liable for the time calculated from the date the Submittal is due until the date a compliant Submittal is made. A compliant Submittal will be one that is complete and satisfies the requirements of the Contract Documents.

5.23 Shop Drawings and Sample Submittal Procedures.

A. Before submitting each Shop Drawing or Sample, Contractor shall have:

1. Reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

2. Determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

3. Determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

4. Determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

B. With each Submittal, Contractor shall give the City specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample Submittal and, in addition, a specific notation made on each Shop Drawing or Sample submitted to the City for review and approval of each such variation.

C. Shop Drawings.

1. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show the City the services, materials, and equipment Contractor proposes to provide and to enable the City to review the information for assessing conformance with information given and design concept expressed in Contract Documents.

2. When required by individual Specification sections, provide Shop Drawings signed and sealed by a professional engineer responsible for designing components shown on Shop Drawings. Shop Drawings must include signed and sealed calculations to support design in a form suitable for submission to and approval by authorities having jurisdiction.

3. Shop Drawings for steel structures shall consist of shop details, erection and other working Drawings showing details, dimensions, sizes of members and other information necessary for the complete fabrication and erection of the metal work.

4. Shop Drawings of concrete structures shall consist of such detailed drawings as may reasonably be required for the successful prosecution of the Work and which are not included in the Drawings furnished by the Engineer. These may include drawings for false work, bracing, centering and form work, masonry layout diagrams, and diagrams for bent reinforcement.

5. Contractor shall make revisions and provide additional information when required by authorities having jurisdiction.

D. Samples. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as required to enable the City to review the submittal for assessing conformance with information given and design concept expressed in Contract Documents. Samples should be of appropriate size and detail to assess functional, aesthetic, color, texture, patterns and finish selection.

E. City's Review.

1. The City will review Shop Drawings and Samples in accordance with the Schedule of Submittals. The City's review and acceptance will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible

with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. The City review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. The City's review and acceptance shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless the City has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample.

F. Resubmittal Procedures. Contractor shall make corrections required by the City and shall return corrected Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by the City on previous Submittals.

5.24 Record ("As-Built") Drawings.

A. The Contractor shall maintain one record set of Contract Documents at the Site or digitally in an acceptable format. On these, it shall mark all Project conditions, locations, configurations, and any other changes or deviations which may vary from the information represented in the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Special attention shall be given to recording the horizontal and vertical location of all buried utilities that differ from the locations indicated, or which were not indicated on the Drawings. For all Projects involving the installation of any pipeline, Contractor shall survey and record the top of the pipe at a minimum of every 100 linear feet, and at each bend, recording both the horizontal and vertical locations. Said Drawings shall be supplemented by any detailed sketches as necessary or directed to fully indicate the Work as actually constructed. Any required as-built drawings of civil engineering elements of the Work shall be prepared by a registered civil engineer.

B. These master Record Drawings of the as-built conditions, including all revisions made necessary by Addenda and Change Orders, shall be maintained up-to-date during the progress of the Project. Red ink shall be used for alterations and notes. Notes shall identify relevant Change Orders by number and date. Record Drawings shall be accessible to the Engineer at all times during the construction period. Failure on the Contractor's part to keep Record Drawings current could result in withholding partial payment.

C. Upon completion of the Project and as a condition of final acceptance, the Contractor shall finalize and deliver a complete set of Record Drawings to the Engineers. The information submitted by the Contractor will be assumed to be correct, and the Contractor shall be responsible for, and liable to the City, for the accuracy of such information, and for any errors or omissions which may or may not appear on the Record Drawings.

D. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete the Record Drawings shall be included in Contractor's bid and distributed in the Bid Schedule. No additional compensation shall be made to the Contractor for this Work.

5.25 Layout and Field Engineering.

A. The Contractor shall utilize a properly licensed surveyor to perform all layout surveys required for the control and completion of the Work, and all necessary surveys to compute quantities of Work performed.

5.26 Separate Contracts and Cooperation.

A. Separate Contracts. The City reserves the right to let other contracts in connection with this Work or on the Project site. Contractor shall permit other contractors reasonable access and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs. To ensure proper execution of its subsequent Work, Contractor shall immediately inspect work already in place and shall at once report to the Engineer any problems with the Work in place or discrepancies with the Contract Documents.

B. Cooperation. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by the City in prosecution of the Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, the Engineer shall decide which Contractor shall cease Work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. The City shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Project Site.

5.27 Work Site.

A. Limitation of Use of Site and Other Areas. Rights-of-way, easements, or rights-of-entry for the Work will be provided by the City. Unless otherwise specified in the Special Provisions, the Contractor shall make arrangements, pay for, and assume all responsibility for acquiring, using, and disposing of additional work areas and facilities temporarily required. The Contractor shall indemnify and hold the City harmless from all claims for damages caused by such actions. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Applicable Laws, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to City or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

B. Site Maintenance. During the progress of the Work, Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to Applicable Laws. The Contractor shall furnish trash bins for all debris from construction. All debris shall be placed in trash bins daily. Forms and false-work that are to be re-used shall be stacked neatly concurrently with their removal. Forms and false-work that are not to be re-used shall be disposed of concurrently with their removal.

C. Cleaning. Prior to Completion of the Work, Contractor shall clean the Site and make it ready for utilization by the City. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

5.28 Utility Usage.

A. All temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by Contractor. Contractor shall provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on the Work where the utility is needed. Upon completion of the Work, Contractor shall remove all temporary distribution systems. Contractor shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Work, including but not limited to startup and testing required in the Contract Documents. All permanent meters installed shall be listed in the Contractor's name until the Work is accepted. For Work to be performed in existing City facilities, Contractor may use the City's existing utilities, provided such use is reasonable under the circumstances. If Contractor uses the City utilities, it will not need to compensate the City for reasonably consumption of utilities, but Contractor will be responsible for any excessive, unreasonable or wasteful utility usage. Amounts due the City under this section may be deducted from progress payments.

5.29 Protection of Work and Property.

A. The Contractor shall digitally record video and take photographs of the Project site and adjacent improvements in a manner and quality that clearly depicts the existing condition of the Project Site and adjacent improvements immediately prior to the start of Work (minimum 1080p video and 4MP photo). All videos and photographs shall be date and time stamped. The Contractor shall submit the video and photos in digital format on a memory stick before the commencement of Work, along with a map outlining the route and locations of the videos and/or photographs. The Contractor shall be responsible for all damages to persons or property that occur as a result of the Work. Contractor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final acceptance by the City. All Work shall be solely at the Contractor's risk.

B. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Contractor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Project site where Work is being performed. Contractor shall erect and

properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction.

C. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.

D. Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures, and to avoid damage thereto, and Contractor shall repair any damage thereto caused by the Work operations. Contractor shall:

1. Enclose the working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to the public.

2. Provide substantial barricades around any shrubs or trees indicated to be preserved.

3. Deliver materials to the Site over a route designated by the City.

4. Provide any and all dust control required and follow the applicable air quality regulations as appropriate. If the Contractor does not comply immediately with a notice from the City or a public agency responsible for air quality, the City shall have the authority to provide dust control and deduct the cost from payments to the Contractor.

5. Confine Contractor's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or directions of the City. Contractor shall not unreasonably encumber the Site with its materials.

6. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by a civil engineer or land surveyor acceptable to the City, at no cost to the City.

7. Ensure that existing facilities, fences and other structures are all adequately protected and that, upon completion of all Work, all facilities that may have been damaged are restored to a condition acceptable to the City.

8. Preserve and protect from injury all buildings, pole lines and all directional, warning and mileage signs that have been placed within the right-of-way.

9. At the completion of work each day, leave the Work and the Site in a clean, safe condition.

10. Comply with any stage construction and/or traffic handling plans. Access to residences and businesses shall be maintained at all times, except with the City's written approval. Any request for approval to reduce or restrict access to

residences and business must be submitted to the City at least seven (7) Days in advance, and the City may issue or withhold approval in its sole discretion.

E. These precautionary measures will apply continuously and not be limited to normal working hours. Full compensation for the work involved in the protection and preservation of life, safety and property as above specified shall be considered as included in the prices paid for the various contract items of Work, and no additional allowance will be made therefor.

F. Should damage to persons or property occur as a result of the Work, Contractor shall promptly notify the City, in writing. Contractor shall be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. The City shall be entitled to inspect and copy any such documentation, video, or photographs.

G. Contractor shall maintain all investigation documentation including video and/or photographs for a minimum of four (4) years following completion of the Project.

5.30 Emergencies.

A. In emergencies affecting the safety or protection of persons or the Work or Property at the Site or adjacent thereto, the Contractor, without special instruction or authorization from the City or the Engineer, is obligated to act to prevent threatened damage, injury or loss. The Contractor shall give the Engineer prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby.

ARTICLE 6 -MATERIALS; INSPECTION

6.1 Access to Work.

A. The City, Engineer, their consultants and other representatives and personnel, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs.

6.2 Materials.

A. Except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities whatsoever necessary to execute and complete this Contract within the Contract Time. Unless otherwise specified, all materials, parts, and equipment furnished by the Contractor in the Work shall be new, the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality.

B. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other

agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all work to deliver the Project, to the City free from any claims, liens, or charges.

C. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work. Materials shall be stored on the Project Site in such manner so as not to interfere with any operations of the City or any independent contractor.

D. Contractor shall verify all measurements, dimensions, elevations, and quantities before ordering any materials or performing any Work, and the City shall not be liable for Contractor's failure to so. Except for an adjustment to Unit Price Work for item overruns and underruns in accordance with the Contract Documents, no additional compensation, over and above payment for the actual quantities at the prices set out in the Bid Schedule, will be allowed because of differences between actual measurements, dimension, elevations and quantities and those indicated on the Plans and in the Specifications. Any difference therein shall be submitted to the Engineer for consideration before proceeding with the Work.

6.3 Test and Inspections.

A. Inspection and Testing of Work and Materials

1. If the Contract Documents, the Engineer, or any instructions, laws, ordinances, or public authority requires any part of the Work to be tested or approved, Contractor shall provide the Engineer at least two (2) working days' notice of its readiness for observation or inspection. If inspection is by a public authority other than the City, Contractor shall promptly inform the City of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Contractor. Costs for City testing and inspection shall be paid by the City. Costs of tests for Work found not to be in compliance shall be paid by the Contractor.

2. The Contractor shall pay for the cost of any minimum "show up" costs of a materials testing technician that was called for by the Contractor but ultimately the Contractor work was not ready for the inspection. Any such costs shall be deducted from any amounts due to the Contractor.

3. If any Work is done or covered up without the required testing or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor's cost in compliance with the Contract Documents.

4. Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by the City, and not by Contractor. Unless otherwise stated and as provided by the Contract Documents, the City shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents. All tests

or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.

5. Reexamination of Work may be ordered by the City. If so ordered, Work must be uncovered or deconstructed by Contractor. If Work is found to be in accordance with the Contract Documents, the City shall pay the costs of reexamination and reconstruction. If such work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.

B. Testing of Materials

1. In advance of manufacture of materials to be supplied by Contractor which must be tested or inspected, Contractor shall notify the City so that the City may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into the Work.

2. If the manufacture of materials to be inspected or tested will occur in a plant or location greater than sixty (60) miles from the City, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.

3. Unless otherwise specified in the Special Provisions, all initial testing and a reasonable amount of retesting will be performed under the direction of the Engineer, and at no expense to the Contractor. The Contractor shall notify the Engineer in writing, at least 15 days in advance, of its intention to use materials for which tests are specified, to allow sufficient time to perform the tests. The notice shall name the proposed supplier and source of material. If the notice of intent to use is sent before the materials are available for testing or inspection, or is sent so far in advance that the materials on hand at the time will not last but will be replaced by a new lot prior to use on the Work, it will be the Contractor's responsibility to re-notify the Engineer when samples which are representative may be obtained.

4. A Certificate of Compliance shall be furnished to the Engineer prior to the use of any material or assembled material for which these Specifications so require or if so required by the Engineer. The Engineer may waive the materials testing requirements and accept a Certificate of Compliance. Material test data may be required by the Engineer to be included with the submittal. Materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The submission of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material into the Work which conforms to the requirements of the Contract Documents, and any material not conforming to the requirements will be subject to rejection by the Engineer whether in place or not.

5. Copies of mill certificates of composition and quality of all component materials (reinforcing steel, structural steel, lumber, etc.) incorporated in the construction of the Work shall be provided to the City at the time of delivery. City shall retain the right to reject any raw material not provided with a mill certificate at the time of delivery.

6. If, after incorporating such materials into the Work, it is found that sources of supply that have been approved do not furnish a uniform product, or if the product from

any source proves unacceptable at any time, the Contractor shall furnish approved material from other approved sources. If any product proves unacceptable after improper storage, handling or for any other reason it shall be rejected, not incorporated into the Work, and shall be removed from the Project Site all at the Contractor's expense.

6.4 Requests for Substitutions.

A. For the purposes of this provision, the term "substitution" shall mean the substitution of any material, method or service substantially equal to or better in every respect to that indicated in the Standard Specifications or otherwise referenced herein.

B. Pursuant to Public Contract Code section 3400(b), the City may make a finding that is described in the Notice Inviting Bids that designates certain products, things, or services by specific brand or trade name.

C. Unless specifically designated in the Special Conditions, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer for substitution any material, process, or article which may be substantially equal to or better in every respect to that so indicated or specified in the Contract Documents. However, the City has adopted uniform standards for certain materials, processes, and articles.

D. The Contractor shall submit substitution requests, together with substantiating data, for substitution of any "or equal" material, process, or article no later than thirty-five (35) calendar days after award of Contract. Provisions regarding submission of substitution requests shall not in any way authorize an extension of time for the performance of this Contract. If a substitution request is rejected by the City, the Contractor shall provide the material, method or service specified herein. The City shall not be responsible for any costs incurred by the Contractor associated with substitution requests. The burden of proof as to the equality of any material, process, or article shall rest with the Contractor. The Engineer has the complete and sole discretion to determine if a material, process, or article is substantially equal to or better than that specified and to approve or reject all substitution requests.

E. Substantiating data as described above shall include, at a minimum, the following information:

1. A signed affidavit from the Contractor stating that the material, process, or article proposed as a substitution is substantially equal to or better than that specified in every way except as may be listed on the affidavit.

2. Illustrations, specifications, catalog cut sheets, and any other relevant data required to prove that the material, process, or article is substantially equal to or better than that specified.

3. A statement of the cost implications of the substitution being requested, indicating whether and why the proposed substitution will reduce or increase the amount of the contract.

4. Information detailing the durability and lifecycle costs of the proposed substitution.

F. Failure to submit all the required substantiating data detailed above in a timely manner so that the substitution request can be adequately reviewed may result in rejection of the substitution request. The Engineer is not obligated to review multiple submittals related the same substitution request resulting from the Contractor's failure to initially submit a complete package.

G. Time limitations within this Article shall be strictly complied with and in no case will an extension of time for completion of the contract be granted because of Contractor's failure to provide substitution requests at the time and in the manner described herein.

H. The Contractor shall bear the costs of all the City work associated with the review of substitution requests.

I. If substitution requests approved by the Engineer require that Contractor furnish materials, methods or services more expensive than that specified, the increased costs shall be borne by Contractor.

ARTICLE 7 -SUBSURFACE AND PHYSICAL CONDITIONS; UTILITIES

7.1 Soils Investigations.

A. When a soils investigation report for the Site is available, such report is provided for informational purposes only. Any information obtained from such report as to subsurface soil condition, or to elevations of existing grades or elevations of underlying rock, is approximate only and is not guaranteed. Contractor acknowledges that any soils investigation report (including any borings) was prepared for purposes of design only and Contractor is required to examine the Site before submitting its Bid and must make whatever tests it deems appropriate to determine the condition of the so

7.2 Ownership of Site Materials Found.

A. The title to water, soil, rock, gravel, sand, minerals, timber and any other materials developed or obtained in the excavation or other operations of Contractor or any of its Subcontractors in the performance of the Contract, and the right to use said items in carrying out the Contract, or to dispose of same, is hereby expressly reserved by the City. Neither Contractor nor any of its Subcontractors nor any of their representatives or employees shall have any right, title, or interest in said materials, nor shall they assert or make any claim thereto. Contractor will, as determined by the City's Representative, be permitted to use in the Work without charge, any such materials which meet the requirements of the Contract Documents, provided the City shall have the right to use or consume these materials without payment to a third party.

7.3 Existence of Utilities at the Work Site.

A. Existing Utilities

1. The location of known existing utilities and pipelines are shown on the Plans in their approximate locations. However, nothing herein shall be deemed to require the City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the project can be inferred from the presence of other visible facilities, such as buildings, cleanouts, meter and junction boxes, on or adjacent to the Site of the Project.

2. The City will assume the responsibility for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Project site if such utilities are not identified by the City in the Contract Documents or which cannot reasonably be inferred from the presence of other visible facilities.

B. Utility Location

1. It shall be the Contractor's responsibility to determine the exact location and depth of all utilities, including service connections, which have been marked by the respective utility owners and which the Contractor believes may affect or be affected by the Contractor's operations. The Contractor shall not be entitled to additional compensation nor time extensions for work necessary to avoid interferences nor for repair to damaged utilities if the Contractor does not expose all such existing utilities as required by this Article.

2. The locating of utilities shall be in conformance with Government Code Section 4216 et seq. except for the City's utilities located on the City's property and not on public right-of-way.

3. A "High Priority Subsurface Installation" is defined in Government Code Section 4216 (j) as "high-pressure natural gas pipelines with normal operating pressures greater than 415kPA gauge (60psig) or greater than six inches nominal pipe diameter, petroleum pipelines, pressurized sewage pipelines, high-voltage electric supply lines, conductors, or cables that have a potential to ground of greater than or equal to 60kv, or hazardous materials pipelines that are potentially hazardous to workers or the public if damaged."

4. A "Subsurface Installation" is defined in Government Code Section 4216 (s) as "any underground pipeline, conduit, duct, wire, or other structure, except nonpressurized sewer lines, nonpressurized storm drains, or other nonpressurized drain lines."

5. Pursuant to Government Code Section 4216.2 the Contractor shall contact the appropriate regional notification center at least two (2) working days but not more than 14 Days before performing any excavation. The date of the notification shall not count as part of the two-working-day notice. Before notifying the appropriate regional notification center, the Contractor shall delineate the area to be excavated. The Contractor shall request that the utility owners conduct a utility survey and mark or otherwise indicate the location of their service. The Contractor

shall furnish to the Engineer written documentation of its contact(s) with the regional notification center prior to commencing excavation at such locations.

6. After the utility survey is completed, the Contractor shall commence "potholing" or hand digging to determine the actual location of the pipe, duct, or conduit and in accordance with Government Code Section 4216.4 if the excavation within the "tolerance zone" of a subsurface installation. The Engineer shall be given notice prior to commencing potholing operations. The Contractor shall uncover all piping and conduits, to a point one (1) foot below the pipe, where crossings, interferences, or connections are shown on the Drawings, prior to trenching or excavating for any pipe or structures, to determine actual elevations. New pipelines shall be laid to such grade as to clear all existing facilities, which are to remain in service for any period subsequent to the construction of the run of pipe involved.

7. The Contractor's attention is directed to the requirements of Government Code Section 4216.2 (c) which provides: "When the excavation is proposed within 10 feet of a high priority subsurface installation, the operator of the high priority subsurface installation shall notify the excavator of the existence of the high priority subsurface installation to set up an onsite meeting prior to the legal excavation start date and time or at a mutually agreed upon time to determine actions or activities required to verify the location and prevent damage to the high priority subsurface installation. As part of the meeting, the excavator shall discuss with the operator the method and tools that will be used during the excavation and the information the operator will provide to assist in verifying the location of the subsurface installation. The excavator shall not begin excavating until after the completion of the onsite meeting." The Contractor shall notify the Engineer in advance of this meeting.

C. Utility Relocation and Repair

1. If interferences occur at locations other than those indicated in the Contract Documents with reasonable accuracy, the Contractor shall notify the Engineer in writing. The Engineer will supply a method for correcting said interferences in accordance with the responsibilities of this section and Government Code Section 4215. To the extent any delay is caused thereby, Contractor shall submit a notice of delay within five (5) Days of discovery of the circumstances giving rise to the delay in accordance with Article 9.1 Change Orders and Time Extensions.

2. Care shall be exercised by the Contractor to prevent damage to adjacent existing facilities and public or private works; where equipment will pass over these obstructions, suitable planking shall be placed. If high priority subsurface installations are damaged and the operator cannot be contacted, the Contractor shall call 911 emergency services.

3. The City will compensate the Contractor for the costs of locating and repairing damage not due to the failure of the Contractor to exercise reasonable care, and for removing or relocating such main or trunk line utility facilities not indicated in the Contract Documents with reasonable accuracy, and for the cost of equipment on the Project necessarily idled during such work. The payment for such costs will be made as provided in Article 9.1 Change Orders and Time Extensions. The Contractor shall not be assessed liquidated damages for delay in completion of the

Project, when such delay is caused by the failure of the City or utility company to provide for removal or relocation of such utility facilities. Requests for extensions of time arising out of utility relocation or repair delays shall be filed in accordance with Article 9.1 Change Orders and Time Extensions and Article 9.3 Time for Completion and Liquidated Damages.

4. The public utility, where it is the owner of the affected utility, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The right is reserved to the City and the owners of utilities or their authorized agents to enter upon the Work area for the purpose of making such changes as are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. The Contractor shall cooperate with forces engaged in such work and shall conduct its operations in such a manner as to avoid any unnecessary delay or hindrance to the work being performed by such forces and shall allow the respective utilities time to relocate their facility.

5. When the Contract Documents indicate that a utility is to be relocated, altered or constructed by others, the City will conduct all negotiations with the utility company and the work will be done at no cost to the Contractor, unless otherwise stipulated in the Contract Documents.

6. Temporary or permanent relocation or alteration of utilities desired by the Contractor for its own convenience shall be the Contractor's responsibility and it shall make arrangements and bear all costs for such work.

D. Construction at Existing Utilities

1. Where the Work to be performed crosses or otherwise interferes with water, sewer, gas, or oil pipelines; buried cable; or other public or private utilities, the Contractor shall perform construction in such a manner so that no damage will result to either public or private utilities. It shall be the responsibility of the Contractor to determine the actual locations of, and make accommodates to maintain, all utilities.

2. Before any utility is taken out of service, permission shall be obtained by the Contractor from the owner. The owner, any impacted resident or business owner and the City Representative will be advised of the nature and duration of the utility outage as well as the Contractor's plan for providing temporary utilities if required by the owner. The Contractor shall be liable for all damage which may result from its failure to maintain utilities during the progress of the Work, and the Contractor shall indemnify City as required by the Contract Documents from all claims arising out of or connected with damage to utilities encountered during construction; damages resulting from disruption of service; and injury to persons or damage to property resulting from the negligent, accidental, or intentional breaching of utilities.

3. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this work, shall be included in Contractor's bid and distributed in the schedule of pay Items. No additional compensation shall be made to the Contractor for this work.

7.4 Trenches

A. Trenches Five Feet or More in Depth.

1. Contractor shall submit to the Engineer at the preconstruction meeting, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from hazards of caving ground during the excavation of any trench or trenches five feet or more in depth. If such plan varies from shoring system standards established by the Construction Safety Orders of the California Code of Regulations, Department of Industrial Relations, the plan shall be prepared by a California registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations. The Contractor shall designate in writing the "competent person" as defined in Title 8, California Code of Regulations, who shall be present at the Work Site each day that trenching/excavation is in progress. The "competent person" shall prepare and provide daily trenching/excavation inspection reports to the Engineer. Contractor shall also submit a copy of its annual California Occupational Safety and Health Administration (Cal/OSHA) trench/excavation permit.

B. Excavations Deeper than Four Feet.

1. If the Work involves excavating trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly within three (3) Days, and before the excavation is further disturbed, notify the City in writing of any of the following conditions:

a. Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

b. Subsurface or latent physical conditions at the site differing from those indicated.

c. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract

2. The City shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described in Article 9.1 Change Orders and Time Extensions.

3. In the event that a dispute arises between the City and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

ARTICLE 8 -PROSECUTION OF THE WORK

8.1 Contractor's Means and Methods.

A. Contractor is solely responsible for the means and methods utilized to perform the Work. In no case shall the Contractor's means and methods deviate from commonly used industry standards.

8.2 Construction Schedule.

A. General Requirements. The schedule shall be prepared in a Critical Path Method ("CPM") format and in an electronic scheduling program acceptable to the City and as specified in the Contract Documents. Contractor shall deliver the schedule and all updates to the City in both paper and electronic form. The electronic versions shall be in the format and include all data used to prepare the schedule. Copies are not acceptable.

B. Schedule. The receipt or approval of any schedules by the City shall not in any way relieve the Contractor of its obligations under the Contract Documents. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project. Contractor's failure to incorporate all elements of Work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all Work required for a completed Project within the specified Contract Time. If the required schedule is not received by the time the first payment under the Contract is due, Contractor shall not be paid until the schedule is received, reviewed and accepted by the City.

C. Schedule Contents. The schedule shall allow enough time for inclement weather. The schedule shall indicate the beginning and completion dates of all phases of construction; critical path for all critical, sequential time related activities; and "float time" for all "slack" or "gaps" in the non-critical activities. The schedule shall include appropriate time allowances and constraints for submittals, items of interface with Work performed by others, and specified construction, start-up and performance tests. All float shall be owned by the Project. Schedules indicating early or late completion shall not modify or have any effect on the Contract Time, regardless of whether the schedules are reviewed and/or accepted by the City. For purposes of determining Liquidated Damages, the Contract Time shall control and may only be altered by a duly authorized Change Order.

D. Schedule Updates. Contractor shall continuously update its construction schedule. Contractor shall submit an updated and accurate construction schedule to the City: (1) prior to the start of construction, if there are any changes to the initial schedule; (2) with each progress payment request; and (3) whenever requested to do so by the City. The City may withhold progress payments or other amounts due under the Contract Documents if Contractor fails to submit an updated and accurate construction schedule. Upon the City's request, Contractor shall submit any schedules or updates to the City in the native electronic format of the software used to create the schedule. Contractor shall also submit schedules showing a two-week detailed look-ahead at weekly meetings conducted with the City. The two-week look-ahead schedule shall clearly identify all staffing and other resources which in the

Contractor's judgment are needed to complete the Work within the Contract Time, and it shall clearly state the number of staff to be used on each daily segment of the Work.

E. Acceptance. Acceptance of the schedules by the City will not impose on responsibility for accuracy, for sequencing, scheduling, or progress of the Work, or compliance with the Contract Documents. Acceptance will not interfere with or relieve Contractor from Contractor's full responsibility therefor.

F. Recovery Schedule.

1. Should any of the following conditions exist, City may require Contractor to prepare, at no extra cost to City, a plan of action and a recovery schedule for completing the Work and achieving all contractual milestones within the allotted Contract Time:

a. The Contractor's monthly progress report indicates delays that are, in the opinion of City, of sufficient magnitude that City questions the Contractor's ability to complete the Work;

b. The schedule shows the Contractor to be thirty (30) or more days behind the critical path at any time during construction;

c. The Contractor desires to make changes in the logic or the planned duration of future activities of the schedule which, in the opinion of City, are major in nature.

2. The recovery schedule shall include proposed revisions to the Construction Schedule, demonstrating how Contractor intends to achieve all contractual milestones including Contract completion within the allotted Contract Time. The submittal shall include a narrative describing the actions planned by the Contractor to recover the schedule.

3. Contractor shall submit the Recovery Schedule within seven (7) Days of City's request. If Contractor asserts that City is responsible for the delay, failure to submit the recovery schedule within seven (7) Days of City's request, will be considered a concurrent delay event attributable to Contractor, and Contractor shall only be entitled to non-compensable adjustments to Contract Times. If Contractor is responsible for the delay, this provision will not limit or affect Contractor's liability and failure to submit the recovery schedule with seven (7) Days of City's request may result in City withholding progress payments or other amounts due under the Contract Documents.

4. Contractor is responsible for all costs associated with the preparation and execution of the recovery schedule, including any necessary recovery actions, which may include, but are not limited to, assignment of additional labor, and/or equipment, shift or overtime work, expediting of submittals or deliveries, overlapping of activities or sequencing changes to increase activity concurrence. Regardless of whether City directs Contractor to prepare a recovery schedule pursuant to this Section, Contractor shall promptly undertake appropriate action at no additional cost to City to recover the schedule whenever the current construction schedule shows that the Contractor will not achieve a milestone and/or complete the Work within the allotted Contract Time.

8.3 Time for Completion and Liquidated Damages

A. Time for Completion. The time for completion set forth in Article 2 of the Contract for Construction shall commence: (1) on the date stated in the Notice to Proceed, or (2) if the Notice to Proceed does not specify a commencement date, then on the date of the Notice to Proceed and shall be completed by Contractor in the time specified in the Contract Documents. The City is under no obligation to consider early completion of the Project; and the Contract completion date shall not be amended by the City's receipt or acceptance of the Contractor's proposed earlier completion date. Any difference in time between the Contractor's early completion and the Contract Time shall be considered a part of the Project float. Contractor shall not be entitled to compensation, and the City will not compensate Contractor, for delays which impact early completion. Contractor shall not, under any circumstances, receive additional compensation from the City (including but not limited to indirect, general, administrative or other forms of overhead costs) for the period between the time of earlier completion proposed by the Contractor and the Contract completion date.

B. Liquidated Damages. If the Work is not completed within the Contract Time(s), it is understood that the City will suffer damage. In accordance with Government Code section 53069.85 and Public Contract Code section 7102, being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract for each calendar day of delay until the Work is fully completed. Contractor and its surety shall be liable for any liquidated damages. Any money due or to become due the Contractor may be retained to cover liquidated damages.

C. Inclement Weather. Contractor shall abide by the City's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the critical path of the Project schedule. Contractor shall not be entitled to reverse liquidated damages for time extensions resulting from inclement weather.

D. Extension of Time. Contractor's entitlement to an extension of the Contract Time is limited to a City-caused extension of the critical path, reduced by the Contractor's concurrent delays, and established by a proper time impact analysis. Contractor shall not be charged liquidated damages because of any delays in completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor (or its Subcontractors or Suppliers). The City shall ascertain the facts and extent of delay and grant extension of time for completing the Work when, in its judgment, the facts justify such an extension. Contractor shall not be entitled to an adjustment in the Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

E. Reverse Liquidated Damages. Consistent with Public Contract Code Section 7102, Contractor will be compensated for damages incurred due to unreasonable delays to the critical path for which the City is responsible. The parties agree that determining Contractor's exact delay damages are and will continue to be impracticable and extremely difficult. As such, for each calendar day in excess of

the time for completion set forth in Article 2 of the Contract for Construction, the City shall pay to the Contractor the sum stipulated in the Contract per day. Such amount shall constitute the only payment allowed for any City-caused delays and shall necessarily include all overhead, all profits, all administrative costs, all bond costs, all labor, materials, equipment and rental costs and any other costs, expenses and fees incurred or sustained as a result of such delays. Contractor shall not be entitled to reverse liquidated damages for any change in the Work in which Contractor is compensated for overhead and profit through a change in Unit Price Work or a Change Order resulting in a lump sum or allowed mark-up for the additional Work. The amount of reverse liquidated damages shall be reduced by Contractor's concurrent delays.

F. Force Majeure. In accordance with subparagraphs "D" and "E" above, the Contractor shall not be charged liquidated damages, and the City shall not be responsible, for any delays resulting from a Force Majeure Event. If a delay to the critical path results from a Force Majeure Event, the Contractor will be entitled to a time extension but will not receive an adjustment to the Contract Price or any other compensation. Such a non-compensable adjustment shall be Contractor's sole and exclusive remedy for such delays.

G. No Damages for Reasonable Delay. The City's liability to Contractor for delays for which the City is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall the City be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable City delay shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.

H. Procedure for Time Extensions and Delay Damages. Contractor shall not be entitled to any extension of time or any reverse liquidated damages unless Contractor properly notices the delay and adjustment to compensation and requests a Change Order in accordance with Article 9.1 Change Orders and Time Extensions. Contractor's failure to timely and fully comply with the Change Order procedures in the Contract Documents shall constitute a waiver of Contractor's right to a time extension or reverse liquidated damages.

8.4 Contractor's Responsibility for Work.

A. Until the acceptance of the Work by the Engineer as evidenced in writing, it shall be under the charge and care of the Contractor. The Contractor shall take every necessary precaution against injury or damage to any part thereof by the action of the elements or from any cause whether arising from the execution or non-execution of the Work. The Contractor shall rebuild, repair, restore and make good at its own expense all injuries or damages to any portion of the Work before its completion and acceptance. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the City will pay for repair or restoration to damaged Work in excess of 5% of the total Bid.

8.5 Occupancy.

A. The City reserves the right to occupy or utilize any portion of the Work at any time before completion, and such occupancy or use shall not constitute acceptance of any part of Work covered by this Contract. This use shall not relieve the Contractor of its responsibilities under the Contract.

8.6 Securities for Money Withheld

A. Pursuant to section 22300 of the Public Contract Code of the State of California, Contractor may request the City to make retention payments directly to an escrow agent or may substitute securities for any money withheld by the City to ensure performance under the contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City or with a state or federally chartered bank as the escrow agent who shall return such securities to Contractor upon satisfactory completion of the contract. Deposit of securities with an escrow agent shall be subject to a written agreement substantially in the form provided in section 22300 of the Public Contract Code.

8.7 The City's Right to Suspend/Terminate the Contract

A. Suspension of Work by the City

1. The City may, at its sole option, decide to suspend at any time the performance of all or any portion of the Work by notice in writing to Contractor. Such notice of suspension of Work will designate the amount and type of plant, labor, and equipment to be committed to the Project during the period of suspension. Contractor shall use its best efforts to utilize its plant, labor, and equipment in such a manner as to minimize costs associated with suspension.

2. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise:

a. Immediately discontinue Work on the date and to the extent specified in the notice;

b. Place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice;

c. Promptly make every reasonable effort to obtain suspension upon terms satisfactory to the City's Representative of all orders, subcontracts, and rental agreements to the extent they relate to performance of Work suspended; and

d. Continue to protect and maintain the Work including those portions on which Work has been suspended.

3. Except as provided by this Article, as full and complete compensation for such suspension, Contractor shall be granted an adjustment in the Contract Price based on a negotiated daily rate that reflects the Contractor's actual costs associated with the demobilized condition of the Site and an extension of the Contract Times equal to the number of days performance of Work is suspended; provided, however, that no adjustment of Contract Price or extension of Contract Times shall be granted if

the suspension results from Contractor's non-compliance with the requirements of the Contract.

B. Termination for Cause by the City:

1. In the sole estimation of the City, if the Contractor refuses or fails to prosecute the Work or any separable part thereof with such diligence as will insure its completion within the time specified by the Contract Documents, or any extension thereof, or fails to complete such Work within such time, or if the Contractor should be adjudged a bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its subcontractors should violate any of the provisions of this Contract, the City may serve written notice upon the Contractor and its surety of the City's intention to terminate this Contract. This notice of intent to terminate shall contain the reasons for such intention to terminate this Contract, and a statement to the effect that the Contractor's right to perform this Contract shall cease and terminate upon the expiration of ten (10) Days unless such violations have ceased and arrangements satisfactory to the City have been made for correction of said violations.

2. After expiration of the ten (10) Day period, the City may terminate the Contract by providing a Notice of Termination to the Contractor. The City may take over and complete the Work by any method it may deem appropriate, including enforcement of the Project performance bond. Contractor and its surety shall be liable to the City for any excess costs or other damages incurred by the City to complete the Work. If the City takes over the Work, the City may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to the Contractor as may be on the Site.

3. Upon termination, Contractor shall not be entitled to receive any further payment from the City, except for Work which was duly performed prior to the effective date of the Notice of Termination. Contractor shall submit an invoice for final payment within thirty (30) Days of the effective date of the Notice of Termination. The City may withhold from final payment up to 150% of any disputed amounts, including any amounts which may be necessary to repair defective Work, complete unfinished Work, or are otherwise occasioned by Contractor’s failure to perform its duties under the Contract.

C. Termination for Convenience by the City:

1. The City may terminate performance of the Work called for by the Contract Documents in whole or, from time to time, in part, upon ten (10) Days written notice if the City determines that a termination is in the City's interest.

2. The Contractor shall terminate all or any part of the Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience of the City, the extent of termination, and the effective date of such termination.

3. After receipt of Notice of Termination, and except as directed by the City's Representative, the Contractor shall, regardless of any delay in determining or

adjusting any amounts due under this termination for convenience clause, immediately proceed with the following obligations:

a. Stop Work as specified in the Notice.

b. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.

c. Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Document is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.

d. Terminate all subcontracts to the extent that they relate to the portions of the Work terminated.

e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Contract.

f. Submit to the City's Representative, within ten (10) Days from the effective date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the effective date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the City's exercise of its right to terminate this Contract pursuant to this clause, which costs the contractor is authorized under the Contract documents to incur, shall: (1) be submitted to and received by the Engineer no later than 30 Days after the effective date of the Notice of Termination; (2) describe the costs incurred with particularity; and (3) be conspicuously identified as "Termination Costs occasioned by the City's Termination for Convenience." If the City rejects any costs, Contractor shall be deemed to waive the rejected costs unless Contractor files a Claim within thirty (30) Days of the rejection pursuant to Article 9.2.

g. Contractor shall be entitled to receive only the amounts payable under this Article, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits. The provisions in this Article are in addition to and not in limitation of any other rights or remedies available to the City.

4. Termination of the Contract shall not relieve surety of its obligation for any just claims arising out of or relating to the Work performed.

5. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, the City may immediately order Contractor to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of the City or the Contract is terminated.

6. If the City terminates Contractor for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Contractor shall be entitled to receive only the amounts payable under this section,

and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

8.8 Completion and Acceptance of Work

A. Final Inspection. Upon written notice from Contractor that the entire Work is complete, the Engineer will promptly make a final inspection with the City and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

B. Final Acceptance. The acceptance of the Work on behalf of the City will be made by the Engineer. Such acceptance by the City shall not constitute a waiver of defects. After Contractor has, in the opinion of the Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, Record Documents, and other documents required by the Contract Documents, the City shall execute a Notice of Completion, constituting final acceptance and completion of the Project, except as may be expressly noted.

8.9 Warranty and Guaranty of Work.

A. Contractor hereby warrants that materials and Work shall be completed in conformance with the Contract Documents and that the materials and Work provided will fulfill the requirements of this Warranty. Contractor hereby agrees to repair or replace, at the discretion of the City, any or all Work that may prove to be defective in its workmanship, materials furnished, methods of installation or fail to conform to the Contract Document requirements together with any other Work which may be damaged or displaced by such defect(s) within a period of one (1) year (or as otherwise indicated in the Contract Documents or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) from the date of the Notice of Completion of the Project without any expense whatever to the City, ordinary wear and tear and unusual abuse and neglect excepted. Contractor shall be required to promptly repair or replace defective equipment or materials, at Contractor's option. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor.

B. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one (1) year period, commencing with the date of acceptance of such corrected Work. The reinstatement of the one (1) year warranty shall apply only to that portion of work that was corrected. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. In the event of Contractor's failure to comply with the above-mentioned conditions within ten (10) Days after being notified in writing of required repairs, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work

damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder immediately upon demand.

C. In addition to the warranty set forth in this Article, Contractor shall obtain for the City all warranties that would be given in normal commercial practice and assign to the City any and all manufacturer's or installer's warranties for equipment or materials not manufactured by Contractor and provided as part of the Work, to the extent that such third-party warranties are assignable and extend beyond the warranty period set forth in this Article. Contractor shall furnish the City with all warranty and guarantee documents prior to final acceptance of the Project by the City as required.

D. When specifically indicated in the Contract Documents or when directed by the Engineer, the City may furnish materials or products to the Contractor for installation. In the event any act or failure to act by Contractor shall cause a warranty applicable to any materials or products purchased by the City for installation by the Contractor to be voided or reduced, Contractor shall indemnify the City from and against any cost, expense, or other liability arising therefrom, and shall be responsible to the City for the cost of any repairs, replacement or other costs that would have been covered by the warranty but for such act or failure to act by Contractor.

E. The Contractor shall remedy at its expense any damage to City-owned or controlled real or personal property.

F. The City shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor shall within ten (10) Days after being notified commence and perform with due diligence all necessary Work. If the Contractor fails to promptly remedy any defect or damage, the City shall have the right to replace, repair or otherwise remedy the defect, or damage at the Contractor's expense.

G. In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of the Contractor not in accordance with the Contract requirements, the City may undertake at Contractor's expense, and without prior notice, all Work necessary to correct such condition.

H. Acceptance of Defective Work.

1. If, instead of requiring correction or removal and replacement of defective Work, the City prefers to accept it, the City may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to the City's evaluation of and determination to accept such defective Work and for the diminished value of the Work. If any acceptance of Defective Work occurs prior to release of the Project retention, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and the City shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work and all costs incurred by the City. If the acceptance of defective occurs after release of the Project retention, an appropriate amount will be paid by Contractor to the City.

I. The City May Correct Defective Work

1. If Contractor fails within a reasonable time after written notice from the City to correct Defective Work, or to remove and replace rejected Work as required by the City, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, the City may, after seven (7) Days written notice to Contractor, correct, or remedy any such deficiency.

2. In connection with such corrective or remedial action, the City may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which the City has paid Contractor but which are stored elsewhere. Contractor shall allow the City, and the agents, employees, other contractors, and consultants of each of them, access to the Site to enable the City to exercise the rights and remedies to correct the Defective Work.

3. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by the City correcting the Defective Work will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the City shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of defective Work.

4. If the Change Order is executed after all payments under the Contract have been paid by the City and the Project Retention is held in an escrow account as permitted by the Contract Documents, Contractor will promptly alert the escrow holder, in writing, of the amount of Retention to be paid to the City. If the Change Order is executed after release of the Project retention, an appropriate amount will be paid by Contractor to the City. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the City correcting Defective Work.

J. Nothing in the warranty or in the Contract Documents shall be construed to limit the rights and remedies available to the City at law or in equity, including, but not limited to, Code of Civil Procedure section 337.15.

ARTICLE 9 -CHANGE ORDERS; DISPUTE RESOLUTION

9.1 Change Orders and Time Extensions

All changes to the Contract, including compensation increases and time extensions, shall be through a written Change Order in accordance with this Article. The City, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, and Contractor's compensation and the time for completion shall be adjusted accordingly. Whenever

any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions, and provisions of the original Contract. Contractor shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. No dispute, disagreement, or failure of the parties to reach agreement on the terms of the Change Order shall relieve the Contractor from the obligation to proceed with performance of the Work, including Additional Work, promptly and expeditiously. Any alterations, extensions of time, Additional Work, or any other changes may be made without securing consent of the Contractor's surety or sureties.

A. Change in Contract Procedures

1. City Directive. The City may direct changes in the Work by delivering a written directive. To the extent the work directive results in a change to compensation or time, Contractor must timely request a Change Order and comply with all Change Order procedures in accordance with this Article. Notwithstanding issuance of a work directive, Contractor's failure to timely request a Change Order shall constitute a waiver by Contractor of any adjustment to compensation or time extension for Work performed under the directive. The City shall not be liable to Contractor for Work performed or omitted by Contractor in reliance on verbal orders.

2. Contractor's Notice of Change/Delay. If Contractor intends to initiate a Change Order Request, then Contractor shall provide the City with written notice of the underlying facts and circumstances that gave rise to the proposed change within the following times:

a. If due to unknown subsurface or latent physical conditions, within three (3) Days from the discovery date or prior to the alterations of the conditions, whichever is earlier.

b. If due to a Force Majeure Event, as soon as reasonably practicable under the conditions, which shall be no longer than three (3) Days from the date the Contractor discovers that the Force Majeure Event gives rise to a change, unless that the conditions are such that notice within three (3) Days is not possible or practicable.

c. If due to any other matter that may involve an adjustment to the Contract Time or the Contract Price, within seven (7) days from the discovery date.

To be considered valid and complete, the notice of change/delay shall include a general statement of the circumstances giving rise to the notice of change/delay and a reasonable order of magnitude estimate of the additional costs and/or time. If the circumstances give rise to both a cost adjustment and time extension, Contractor shall submit the notice of change and notice of delay concurrently.

3. Request for Change in Compensation and/or Extension of Time. Contractor shall submit a Change Order Request for any adjustment to Contractor's compensation and/or any extension of time. The Change Order Request shall be made prior to incurring any expense and within fourteen (14) Days from either Contractor's notice of change/delay or the City's directive ordering the change. The Change Order Request shall include all of the following information (unless inapplicable to the change):

a. A detailed description of the circumstances giving rise to the request;

b. A complete itemized cost proposal, including itemized pricing for first tier Subcontractors;

c. Supporting documentation for all costs;

d. A time impact analysis showing the impact of the delay to the critical path to completion;

e. If any added costs or information cannot be determined at the time of the Change Order Request, the reason the costs or information cannot be determined at the time; and

f. Certification to the accuracy of the Change Order Request under penalty of perjury.

The time impact analysis shall be in the critical path method format and shall show the sequencing of all critical and non-critical new activities and/or activity revisions affected by the delay, with logic ties to all affected existing activities noted on the schedule.

The City may demand, and Contractor shall provide, any additional information supporting the Change Order Request, including but not limited to native electronic format version of schedules and time impact analyses. Contractor shall provide the requested additional information within five (5) Days of the request.

For any costs or information that cannot be determined at the time Contractor submits the Change Order Request, Contractor shall submit to the City notice of the costs or information and all supporting documentation within five (5) Days of when the costs or other information become subject to determination.

4. City's Final Decision on Change Order; Ordered Changes. If the City denies the Change Order Request or disagrees with the proposal submitted by Contractor, it will notify the Contractor, and the City will provide its opinion of the appropriate price and/or time extension. If no agreement can be reached, the City shall have the right to order the Work performed on a time and materials basis or to issue a unilateral Change Order setting forth the City's determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. The City shall also have the right to order changes in the Work to be performed promptly by the Contractor on a time and materials basis or to issue a unilateral Change Order setting forth the City's determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. The City's determination shall become final and binding if the Contractor fails to submit a Claim in writing to the City within fourteen (14) Days of the issuance of the unilateral Change Order, disputing the terms of the unilateral Change Order and providing such supporting documentation for its position as the City may reasonably require.

5. Contractor's Waiver of Further Relief. **CONTRACTOR'S FAILURE TO PROVIDE A COMPLETE AND TIMELY NOTICE OF CHANGE/DELAY AND/OR CHANGE ORDER REQUEST, OR TO COMPLY WITH ANY OTHER REQUIREMENT OF THIS ARTICLE, SHALL CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO A CONTRACT ADJUSTMENT ON ACCOUNT OF SUCH**

CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE BY MEANS OF THE CLAIMS DISPUTE RESOLUTION PROCESS OR BY ANY OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.

Contractor recognizes and acknowledges that timely submission of a formal written notice of change/delay and Change Order Request, whether or not the circumstances of the change may be known to the City or available to the City through other means, is not a mere formality but is of crucial importance to the ability of the City to promptly identify, prioritize, evaluate and mitigate the potential effects of changes. Any form of informal notice, whether verbal or written (including, without limitation, statements in requests for information, statements in Submittals, statements at any job meeting or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of this Article, shall accordingly be insufficient.

6. Change Order Format

a. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in compensation or extension of time, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.

b. The City may designate the forms to be used for notices, requests, and Change Orders. If so designated, Contractor may only use such forms. Contractor shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the Change Order. No Claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The Contractor may not change or modify the City's Change Order form in an attempt to reserve additional rights.

B. Determining Adjustments to Compensation.

1. Limitation on Costs. Contractor shall not be entitled to any compensation for Work subject to a Change Order except as expressly set forth in this Article. The mark-up added in instances of Additional Work shall constitute the entire amount of profit, any mark-ups, any field or home office overhead costs, including personnel, equipment or office space, any materials, or any costs of equipment idle time for such Work.

2. Unit Price Change Orders. When the actual quantity of a Unit Price Work item varies from the Bid Schedule, compensation for the change in quantity will be calculated by multiplying the actual quantity by the unit price. This calculation may result in either an additive or deductive Change Order. Bid items included on the Bid Schedule may be deducted from the Work in their entirety without any negotiated extra costs. Because Unit Price Work includes overhead and profit as determined by Contractor at the time of its Bid submission, no mark up or deduction for overhead and profit will be allowed.

3. Lump Sum Change Orders. Whenever possible, any changes affecting compensation shall be in a lump sum mutually agreed by the Contractor and the City.

4. Time and Materials Change Orders. The City may direct the Contractor to proceed with the Additional Work with payment to be made on the basis of actual cost of the labor and materials required to complete the Additional Work. If the Project is federally funded, a time and materials Change Order shall only be issued after a determination that no other Change Order is suitable and the Change Order shall include a ceiling price that the Contractor exceeds at its own risk.

5. Federally Funded Projects. For any change in price to the Contract, general and administrative expenses shall be negotiated and must conform to the cost principles set forth under at 2 C.F.R. Part 200, subpart E, and profit shall be negotiated as a separate element of the cost. To establish a fair and reasonable profit, consideration must be given to the complexity of the Additional Work to be performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

6. Allowed Costs. Estimates for lump sum quotations and accounting for time-and-material work shall be limited to direct expenditures necessitated specifically by the change and shall be segregated as follows:

a. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the Additional Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the Additional Work cost will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

b. Materials. The cost of materials reported shall be at the lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery. Materials costs shall be based upon supplier or manufacturer’s invoice.

c. Tool and Equipment Use. Regardless of ownership, the rates to be used in determining equipment use shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the work is performed. The Contractor shall furnish cost data supporting the establishment of the rental rate. The rental rate to be applied for use of each items of equipment shall be the rate resulting in the least total cost to the City for the total period of use. The City shall the make the final determination as to an equitable rental rate for the equipment. No payment will be made for the use of small tools, which have a replacement value of $1,000 or less.

(i) The rental time to be paid for equipment shall be the time the equipment is in productive operation on the Additional Work being performed. Rental time will not be allowed while equipment is inoperative due to breakdowns.

(ii) All equipment shall, in the opinion of the City, be in good working condition and suitable for the purpose for which the equipment is to be used. Equipment with no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

(iii) Before construction equipment is used on any Additional Work, the Contractor shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the City, in duplicate, a description of the equipment and its identifying number.

(iv) When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be considered to be 1/2-hour of operation, and any part of an hour greater than 30 minutes will be considered one hour of operation. When daily rates are listed, any part of a day less than 4 hours operation shall be considered to be 1/2-day of operation.

d. Allowed Mark-up. The allowed mark-up for any and all overhead (including supervision and home and field office costs) and profit on work added to the Contract shall be determined in accordance with the following provisions:

(i) "Net Cost" is defined as the actual costs of labor, materials and tools and equipment only, excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the Contractor and Subcontractors at cost only, without mark-up. Contractor shall provide the City with documentation of the costs, including but not limited to payroll records, invoices, and such other information as the City may reasonably request.

(ii) For Work performed by the Contractor's forces the allowed mark-up shall not exceed fifteen (15%) percent of labor costs, ten percent (10%) of material costs, and ten percent (10%) of the cost of tools and equipment use.

(iii) For Work performed by a Subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the Subcontractor's Net Cost of the Work to which the Contractor may add up to five percent (5%) of the Subcontractor's Net Cost.

(iv) For Work performed by a sub-subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the sub-subcontractor's Net Cost for Work to which the Subcontractor and Contractor may each add up to an additional five percent (5%) of the Net Cost of the lower tier subcontractor.

(v) No additional mark-up will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by the City exceed twenty-five percent (25%) of the Net Cost as defined herein, of the party that performs the Work.

(vi) Calculation of the mark-up will be subject to the limitations above and to calculation as further detailed in (b)(B)(5) above.

e. Documentation of Time-and-Material Costs.

(i) T&M Daily Sheets. Contractor must submit timesheets, materials invoices, records of equipment hours, and records of rental equipment hours to the City's for an approval signature each day that Work is performed on a time-and-material basis. The Engineer's signature on time sheets only serves as verification that the Work was performed and is not indicative of the City's agreement to Contractor's entitlement to the cost.

(ii) T&M Summary Sheet. Contractor shall submit a T&M Summary Sheet, which shall include total actual costs, within five (5) Days following completion of Additional Work on a time-and-material basis. Contractor's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and any other costs, along with documentation supporting the costs. Contractor's failure to submit the T&M Summary Sheet within five (5) Days of completion of the Additional Work will result in Contractor's waiver for any reimbursement of any costs associated with the Additional Work.

f. Excluded Costs. The following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by the Contractor's mark-up, shall not be allowed costs and shall not be included in any lump sum proposals or time-and-materials invoices:

(i) Overhead Cost. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks, and other personnel employed by Contractor whether at the Site or in Contractor's principal office or any branch office, material yard, or shop for general administration of the Work;

(ii) Office Expenses. Expenses of Contractor's principal and branch offices;

(iii) Capital Expenses. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Additional Work and charges against Contractor for delinquent payments;

(iv) Negligence. Costs due to the negligence of Contractor or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;

(v) Small Tools. Cost of small tools valued at less than $1,000 and that remain the property of Contractor;

(vi) Administrative Costs. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;

(vii) Anticipated Lost Profits. Expenses of Contractor associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings, or unpaid retention;

(viii) Home Office Overhead. Costs derived from the computation of a "home office overhead" rate by application of the *Eichleay, Allegheny*, burden fluctuation, or other similar methods;

(ix) Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of Contractor, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work.

(x) Other. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in the Contract Documents; including but not limited to: submittals, drawings, field drawings, shop drawings, including submissions of drawings; field inspection; general superintendence; computer services; reproduction services; salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; janitorial services; small tools, incidentals and consumables; temporary on-site facilities (offices, telephones, high speed internet access, plumbing, electrical power, lighting; platforms, fencing, water); surveying; estimating; protection of work; handling and disposal fees; final cleanup; other incidental work; related warranties; insurance and bond premiums.

(xi) Compliance with Federal Cost Principles. If the Project is federally funded, any costs that are not allowable, reasonable and allocable to the Project, under generally accepted accounting principles and the applicable federal requirements.

9.2 Procedure for Resolving Claims.

Contractor shall timely comply with any and all requirement of the Contract Documents pertaining to notices and requests for changes to the Contract Time or Contract Price, including but not limited to all requirements of Article 9.1, as a prerequisite to filing any claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the time for completion or Contractor's compensation, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.

A. Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of $375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with all applicable law, including but not limited to these statutes.

B. Claims. For purposes of this Article, "Claim" means a separate demand by the Contractor for:

1. An adjustment to the time for completion including, without limitation, for relief from damages or penalties for delay assessed by the City;

2. Payment by the City of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled; or

3. An amount the payment of which is disputed by the City.

A "Claim" does not include any demand for payment for which the Contractor has failed to provide notice, request a Change Order, or otherwise failed to follow any procedures contained in the Contract Documents.

C. Filing Claims. Claims governed by this Article may not be filed unless and until the Contractor completes any and all requirements of the Contract Documents pertaining to notices and requests for changes to the Contract Time or Contract Price, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Article must be filed no later than thirty (30) Days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the City and shall include on its first page the following words in 16 point capital font: "THIS IS A CLAIM." The Claim shall include the all information and documents necessary to substantiate the Claim, including but not limited to those identified below. Nothing in this Article is intended to extend the time limit or supersede notice requirements otherwise provided by Contract Documents. Failure to follow such contractual requirements shall bar any Claims or subsequent proceedings for compensation or payment thereon.

D. **Documentation.** The Contractor shall submit all Claims in the following format:

1. Summary description of Claim including basis of entitlement, merit and amount of time or money requested, with specific reference to the Contract Document provisions pursuant to which the Claim is made

2. List of documents relating to Claim:

a. Specifications

b. Drawings

c. Clarifications (Requests for Information)

d. Schedules

e. Other

3. Chronology of events and correspondence

4. Narrative analysis of Claim merit

5. Analysis of Claim cost, including calculations and supporting documents

6. Time impact analysis in the form required by the Contract Documents or, if the Contract Documents do not require a particular format, CPM format, if an adjustment of the Contract Time is requested

E. City's Response. Upon receipt of a Claim pursuant to this Article, the City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 Days, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within 60 Days after the City issues its written statement.

1. If the City needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the City's governing body does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three (3) Days following the next duly publicly noticed meeting of the City's governing body after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

2. Within 30 Days of receipt of a Claim, the City may request in writing additional documentation supporting the Claim or relating to defenses or Claims the City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the Contractor. The City's written response to the Claim, as further documented, shall be submitted to the Contractor within 30 Days (if the Claim is less than $50,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

F. Meet and Confer. If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 Days of receipt of the City's response or within 15 Days of the City's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the City shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

G. Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 Days after the City issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The public entity and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing, unless the parties agree to select a mediator at a later time.

1. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

2. For purposes of this Article, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Article.

3. Unless otherwise agreed to by the City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

4. The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.

H. Procedures After Mediation. If following the mediation, the Claim or any portion remains in dispute, the Contractor must file a Claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a Claim must be filed shall be tolled from the time the Contractor submits his or her written Claim pursuant to subdivision (a) until the time the Claim is denied, including any period of time utilized by the meet and confer conference.

I. Civil Actions. The following procedures are established for all civil actions filed to resolve Claims of $375,000 or less:

1. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be

experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

J. Government Code Claim Procedures.

1. This Article does not apply to tort claims and nothing in this Article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commending with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.5 of Title 1 of the Government Code.

2. In addition to any and all requirements of the Contract Documents pertaining to notices of and requests for adjustment to the Contract Time, Contract Price, or compensation or payment for Additional Work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Section 900, et seq. prior to filing any lawsuit against the City.

3. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to adjustment of the Contract Time or Contract Price for Additional Work, disputed Work, construction claims, and/or changed conditions have been followed by Contractor. If Contractor does not comply with the Government Code claim procedure or the prerequisite contractual requirements, Contractor may not file any action against the City.

4. **A Government Code claim must be filed no earlier than the date the Work is completed or the date the Contractor last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved Claims known to Contractor or that should reasonably by known to Contractor excepting only new unrelated Claims that arise after the Government Code claim is submitted.**

K. Non-Waiver. The City's failure to respond to a Claim from the Contractor within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the Claim being deemed rejected in its entirety, and shall not constitute a waiver of any rights under this Article.

ARTICLE 10 - MEASUREMENT; PAYMENT

10.1 Cost Breakdown.

A. Lump Sum Work.

1. Contractor shall furnish on forms approved by the City within ten (10) Days of the Notice to Proceed, a schedule of values allocating the entire Contract Price to the various portions of the Work and prepared in such a form and supported by such data to substantiate its accuracy as the Engineer may require. This schedule of values, unless objected to by the Engineer, shall be used as a basis for reviewing

the Contractor's applications for payment. Contractor shall submit the schedule of values prior to submitting its first application for payment, and the City will not issue any payment until it receives and approves the schedule of values.

B. Unit Price Work.

1. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work multiplied by the estimated quantity of each item as indicated in the Contract. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and or profit for each separately identified item.

2. Unless otherwise specified, payment will be based on the actual quantities of Work as verified and approved by the Engineer, based on the price per unit as set forth in the Bid.

3. The City or Contractor may initiate a Change Order or Change Order Request to adjust the Contract Price in accordance with Contractor Documents based on actual quantities of Unit Price Work. The City or Contractor may make a claim for an adjustment in the Unit Price in accordance with the Contract Documents if:

a. the quantity of any item of Unit Price Work performed by Contractor differs by twenty-five percent (25%) or more from the estimated quantity of such item indicated in the Contract; and

b. there is no corresponding adjustment with respect to any other item of Work; and

c. Contractor believes that Contractor is entitled to an increase in unit price as a result of having incurred additional expense or the City believes that the City is entitled to a decrease in unit price and the parties are unable to agree as to the amount of any such increase or decrease.

10.2 Progress Estimates and Payment.

A. By the tenth (10th) Day of the following calendar month, Contractor shall submit to Engineer a payment request which shall set forth in detail the value of the Work done for the period beginning with the date Work was first commenced and ending on the end of the calendar month for which the payment request is prepared. Contractor shall include an adjusted list of actual quantities, verified by the Engineer, for unit price items listed, if any, in the Bid. Contractor shall include any amount earned for authorized Additional Work. Contractor shall certify under penalty of perjury, that all cost breakdowns and periodic estimates accurately reflect the Work on the Project.

B. From the total thus computed, a deduction shall be made in the amount of five percent (5%) for retention, except where the City has adopted a finding that the Work done under the Contract is substantially complex, and then the amount withheld as retention shall be the percentage specified in the Notice Inviting Bids. From the

remainder a further deduction may be made in accordance with Section C below. The amount computed, less the amount withheld for retention and any amounts withheld as set forth below, shall be the amount of the Contractor's payment request.

C. The City may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in its judgment may be necessary to cover:

1. Payments which may be past due and payable for just claims against Contractor or any Subcontractors for labor or materials furnished in and about the performance of work on the Project under this Contract.

2. Defective work not remedied.

3. Failure of Contractor to make proper payments to his Subcontractor or for material or labor.

4. Completion of the Contract if there is a reasonable doubt that the Work can be completed for balance then unpaid.

5. Damage to another contractor or a third party.

6. Amounts which may be due the Count for claims against Contractor.

7. Failure of Contractor to keep the Record Drawings up to date.

8. Failure to provide update on construction schedule as required herein.

9. Site cleanup.

10. Failure to comply with Contract Documents.

11. Liquidated damages.

12. Legally permitted penalties.

D. The City may apply such withheld amount or amounts to payment of such claims or obligations at its discretion with the exception of subsections (C)(1), (3), and (5) of this Article, which must be retained or applied in accordance with applicable law. In so doing, the City shall be deemed the agent of Contractor and any payment so made by the City shall be considered as a payment made under contract by the City to Contractor and the City shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. The City will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.

E. Upon receipt, the Engineer shall review the payment request to determine whether it is undisputed and suitable for payment. If the payment request is determined to be unsuitable for payment, it shall be returned to Contractor as soon as practicable but not later than seven (7) Days after receipt, accompanied by a document setting forth in writing the reasons why the payment request is not proper. The City shall make the progress payment within 30 Days after the receipt of an undisputed and

properly submitted payment request from Contractor, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code section 8132. The number of days available to the City to make a payment without incurring interest pursuant to this paragraph shall be reduced by the number of Days by which the Engineer exceeds the seven (7) Day requirement.

F. A payment request shall be considered properly executed if funds are available for payment of the payment request and payment is not delayed due to an audit inquiry by the financial officer of the City.

G. The City shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

10.3 Final Acceptance and Payment

A. Following the City's acceptance of the Work, the Contractor shall submit to the City a written statement of the final quantities of unit price items for inclusion in the final payment request. The City shall have the right to adjust any estimate of quantity and to correct any error made in any estimate for payment.

B. When the Work has been accepted there shall be paid to Contractor a sum equal to the Contract Price less any amounts previously paid Contractor and less any amounts withheld by the City from Contractor under the terms of the Contract. The final five percent (5%), or the percentage specified in the Notice Inviting Bids where the City has adopted a finding of substantially complete, shall not become due and payable until as required by Public Contract Code section 7107. If the Contractor has placed securities with the City as described herein, the Contractor shall be paid a sum equal to one hundred percent (100%) of the Contract Price less any amounts due the City under the terms of the Contract.

C. Unless Contractor advises the City in writing prior to acceptance of the final five percent (5%) or the percentage specified in the Notice Inviting Bids where the City has adopted a finding of completion, or the return of securities held as described herein, said acceptance shall operate as a release to the City of all claims and all liability to Contractor for all things done or furnished in connection with this Work and for every act of negligence of the City and for all other claims relating to or arising out of this Work. If Contractor advises the City in writing prior to acceptance of final payment or return of the securities that there is a dispute regarding the amount due the Contractor, the City may pay the undisputed amount contingent upon the Contractor furnishing a release of all undisputed claims against the City with the disputed claims in stated amounts being specifically excluded by Contractor from the operation of the release. No payments, however, final or otherwise, shall operate to release Contractor or its sureties from the Faithful Performance Bond, Labor and Material Payment Bond, or from any other obligation under this Contract.

D. In case of suspension of the Contract any unpaid balance shall be and become the sole and absolute property of the City to the extent necessary to repay the City any excess in the cost of the Work above the Contract Price.

E. Final payment shall be made no later than 60 Days after the date of acceptance of the Work by the City or the date of occupation, beneficial use and enjoyment of the

Work by the City including any operation only for testing, start-up or commissioning accompanied by cessation of labor on the Work, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code section 8136. In the event of a dispute between the City and the Contractor, the City may withhold from the final payment an amount not to exceed 150% of the disputed amount.

F. Within ten (10) Days from the time that all or any portion of the retention proceeds are received by Contractor, Contractor shall pay each of its Subcontractors from whom retention has been withheld each Subcontractor's share of the retention received. However, if a retention payment received by Contractor is specifically designated for a particular Subcontractor, payment of the retention shall be made to the designated Subcontractor if the payment is consistent with the terms of the subcontract.

ARTICLE 11 -MISCELLANEOUS

11.1 Patents.

A. Contractor shall hold and save the City, officials, officers, employees, and authorized volunteers harmless from liability of any nature or kind of claim therefrom including costs and expenses for or on account of any patented or unpatented invention, article or appliance manufactured, furnished or used by Contractor in the performance of this Contract.

11.2 Document Retention & Examination

A. In accordance with Government Code section 8546.7, records of both the City and the Contractor shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.

B. Contractor shall make available to the City any of the Contractor's other documents related to the Project immediately upon request of the City.

C. In addition to the State Auditor rights above, the City shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to the City, for a period of four (4) years after final payment.

11.3 Notice.

A. All notices shall be in writing and either served by personal delivery or mailed to the other party. Written notice to the Contractor shall be addressed to Contractor's principal place of business unless Contractor designates another address in writing for service of notice. Notice to the City shall be addressed to the City as designated in the Notice Inviting Bids unless the City designates another address in writing for service of notice. Notice shall be effective upon receipt or five (5) Days after being sent by first class mail, whichever is earlier. Notice given by facsimile shall not be effective unless acknowledged in writing by the receiving party.

11.4 Notice of Third Party Claims

A. Pursuant to Public Contract Code section 9201, the City shall provide the Contractor with timely notification of the receipt of any third-party claims relating to the Contract. The City is entitled to recover reasonable costs incurred in providing such notification.

11.5 State License Board Notice

A. Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

11.6 Assignment of Contract

A. Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the rights or title of interest of any or all of this contract without the prior written consent of the City. Any assignment or change of Contractor's name of legal entity without the written consent of the City shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

11.7 Change In Name And Nature Of Contractor's Legal Entity.

A. Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the City in order that proper steps may be taken to have the change reflected on the Contract and all related documents. No change of Contractor's name or nature will affect the City's rights under the Contract, including but not limited to the bonds.

11.8 Prohibited Interests

A. No City official or representative who is authorized in such capacity and on behalf of City to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the project, shall be or become directly or indirectly interested financially in the Contract.

11.9 Controlling Law

A. Notwithstanding any subcontract or other contract with any subcontractor, supplier, or other person or organization performing any part of the Work, this Contract shall

be governed by the law of the State of California excluding any choice of law provisions.

11.10 Jurisdiction; Venue

A. Contractor and any subcontractor, supplier, or other person or organization performing any part of the Work agrees that any action or suits at law or in equity arising out of or related to the bidding, award, or performance of the Work shall be maintained in the Superior Court of San Bernardino County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

11.11 Cumulative Remedies.

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Applicable Laws, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Article will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

11.12 Survival of Obligations.

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

11.13 Headings.

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

11.14 Assignment of Antitrust Actions

A. In accordance with §7103.5(b) of the California Public Contract Code, Contractor and Subcontractors must conform to the following requirements:

1. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or Subcontractor offer and agree to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under §4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract.

2. This assignment must be made and become effective at the time the awarding body tenders to Contractor, without further acknowledgment by the parties.

11.15 All Legal Provisions Included

A. Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified by their terms. References to specific laws, rules or regulations in this Contract are for reference purposes only, and shall not limit or affect the applicability of provisions not specifically mentioned. If Contractor observes that drawings and specifications are at variance therewith, he shall promptly notify City in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in Work. If Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to City, he shall bear all costs arising therefrom.

B. Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA laws, rules and regulations. Contractor shall comply with the Historic Building Code, including, but not limited to, as it relates to the ADA, whenever applicable.

C. Contractor acknowledges and understands that, pursuant to Public Contract Code section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code section 2717(b) in order to supply mined material for this Contract.

D. No City official or representative who is authorized in such capacity and on behalf of City to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Work, shall be or become directly or indirectly interested financially in the Contract.

E. Contractor shall comply, and shall ensure all subcontractors comply, with all applicable requirements of the most current version of the regulations imposed by California Air Resources Board ("CARB") including, without limitation, all applicable terms of Title 13, California Code of Regulations Division 3, Chapter 9 and all pending amendments ("Regulation").

   Throughout the Project, and for three (3) years thereafter, Contractor shall make available for inspection and copying any and all documents or information associated with Contractor's and its subcontractors' fleets including, without limitation, the Certificates of Reported Compliance ("CRCs"), fuel/refueling records, maintenance records, emissions records, and any other information the Contractor is required to produce, keep or maintain pursuant to the Regulation upon two (2) calendar days' notice from the City.

   Contractor shall be solely liable for any and all costs associated with compliance with the Regulation as well as for any and all penalties, fines, damages, or costs associated with any and all violations, or failures to comply with the Regulation. Contractor shall defend, indemnify and hold harmless the City, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Regulation

F. All provisions of law required to be inserted in the Contract or Contract Documents pursuant to any Applicable Laws shall be and are inserted herein. If through mistake, neglect, oversight, or otherwise, any such provision is not herein inserted or inserted in improper form, upon the application of either party, the Contract or Contract Documents shall be changed by City, at no increase in Contract Price or extension in Contract Times, so as to strictly comply with the Applicable Laws and without prejudice to the rights of either party hereunder

CITY OF ONTARIO *Agenda Report* **November 5, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Police Department Prepared By: Mary Salem Staff Member Presenting: Mike Lorenz, Chief of Police Reviewed By: Lizceth Zazueta Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 13

SUBJECT: AN AMENDMENT TO THE GOODS AND SERVICES AGREEMENT WITH SAFARILAND LLC FOR LAW ENFORCEMENT SAFETY EQUIPMENT

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute Amendment No. 2 to the Goods and Services Agreement with Safariland LLC, with its principal place of business in Jacksonville, Florida, increasing the authorized contract amount for specialized law enforcement safety equipment by $450,000, for a total not-to-exceed amount of $1,250,000.

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

FISCAL IMPACT: Amendment No. 2 to the Goods and Services Agreement with Safariland, LLC increases the authorized contract by $450,000 for a total not-to-exceed contract amount of $1,250,000. If approved by the City Council, appropriations in the General Fund will be requested in the next quarterly budget for Fiscal Year 2024-25 as needed. Appropriations for future fiscal years will be included in the respective fiscal years budgets for the City Council consideration and approval.

BACKGROUND & ANALYSIS: On December 1, 2023, the City of Ontario entered into Amendment No. 1 with Safariland, LLC adding additional compensation and terms. Amendment No. 2 will add additional compensation to provide and replace specialized law enforcement safety equipment and supplies. Safariland, LLC is a major producer and supplier of law enforcement equipment and protective gear, including body armor, less lethal weapons, leather gear, and forensic supplies. Certain items, such as protective vests and body armor, expire every five years after their manufacturing date. Hard armor is commonly made of ceramic, steel and/or composite materials. Just a small chip or hairline crack can affect the plate's integrity and its ability to stop incoming projectiles. Every piece of armor will eventually have to be replaced as it is not a one-time purchase. Using a worn-down plate carrier or ballistic helmet, or one that is past its expiration date, may result in serious physical injuries. It is best practice to adhere to the manufacturer's guidelines regarding replacing equipment.

The City Council approval of Amendment No. 2 with Safariland, LLC ensures that the Police Department personnel have the equipment and supplies necessary to perform their job duties safely and efficiently. Based on the satisfactory services and quality equipment provided to maintain the current high level of Public Safety, City Staff recommends entering into Amendment No. 2 with Safariland, LLC.

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. 2 TO THE GOODS AND SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND SAFARILAND, LLC

1. Parties and Date.

This **Amendment No. 2** to the Agreement (as defined herein) is made and entered as of _____, by and between the City of Ontario ("City") and **Safariland, LLC**, **a Limited Liability Corporation (LLC)**. City and **Safariland, LLC** ("Vendor") are sometimes individually referred to as "Party" and collectively as "Parties."

2. Recitals.

2.1 Agreement. The City and Safariland, LLC have entered into an agreement entitled **Goods and Services Agreement for Law Enforcement Safety Equipment** dated **June 16th, 2020** ("Agreement").

2.2 Amendment Purpose. The City and Vendor desire to amend the Agreement to include **additional compensation**.

2.3 Amendment Authority. This **Amendment No. 2** is authorized pursuant to Section 12.9 of the Agreement.

3. Terms.

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

> **3.1 Compensation.** Vendor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached in the original agreement and incorporated herein by reference. The total compensation shall not exceed **One Million Two Hundred Fifty Thousand Dollars and Zero Cents ($1,250,000.00)** 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 Continuing Effect of Agreement. Except as amended by this **Amendment No. 2**, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 2. From and after the date of this Amendment No. 2, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 2.

3.3 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this **Amendment No. 2**.

3.4 Severability. If any portion of this **Amendment No. 2** is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

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

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR AMENDMENT NO. 2 TO THE GOODS AND SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND SAFARILAND, LLC

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 2 as of the day and year first above written.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

SAFARILAND, LLC

If Corporation, Two Signatures, President Or Vice President
And Secretary Or Treasurer Required

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

CITY OF ONTARIO

Agenda Report
November 5, 2024

SECTION:
PUBLIC HEARINGS

Department: Financial Services
Prepared By: Stephanie Castro
Department:
Prepared By: Stephanie Castro
Staff Member Presenting: Armen Harkalyan, Executive Director of Finance
Reviewed By: Claudia Hernandez, Matthew Hernandez
Approved By:

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 14

SUBJECT: **A PUBLIC HEARING TO CONSIDER A RESOLUTION REGARDING THE FORMATION OF THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 72 (LOMA CREEK LOGISTICS CENTER 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. 72 (Loma Creek Logistics Center 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. 72 (Loma Creek Logistics Center 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. 72 (Loma Creek Logistics Center 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 Loma Creek Logistics Center development is projected to generate approximately $133,848 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 September 17, 2024, the City Council approved Resolution No. 2024-162, a Resolution of Intention to establish City of Ontario Community Facilities District No. 72 (Loma Creek Logistics Center 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 November 5, 2024, to consider formation matters. The Loma Creek Logistics Center project addresses the development of 23.87 gross acres located south of Chino Avenue, north of Ontario Ranch Road, west of Mill Creek Avenue, and east of Haven Avenue. At build out, the project is expected to include 535,168 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 Loma Creek Logistics Center 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 November 5, 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. 72 (LOMA CREEK LOGISTICS CENTER 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 September 17, 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. 72 (Loma Creek Logistics Center 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. 72 (Loma Creek Logistics Center 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 September 24, 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. 72 (Loma Creek Logistics Center 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: City of Ontario, Financial Services Agency, 303 East B Street, Ontario, California 91764, (909) 395-2015 or email CFD@ontarioca.gov.

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 91 of Maps of Assessments and Community Facilities Districts in the San Bernardino County Recorder's Office (Document No. 2024-0224532).

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 $6,800,000.

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 September 24, 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 5th day of November, 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 November 5, 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 November 5, 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. 72
(LOMA CREEK LOGISTICS CENTER 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. 72 (Loma Creek Logistics Center Services) ("CFD No. 72") and collected each Fiscal Year commencing in Fiscal Year 2025-26, 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. 72, 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. 72: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or CFD No. 72 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. 72 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. 72; and amounts estimated or advanced by the City or CFD No. 72 for any other administrative purposes of CFD No. 72, 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. 72" means City of Ontario Community Facilities District No. 72 (Loma Creek Logistics Center 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. 72.

"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. 72 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, 2023, 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. 72 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. 72 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, 2023, 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. 72, 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; 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.

"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. 72 to be levied within the boundaries of CFD No. 72.

"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. 72, 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. 72 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 2025-26, all Taxable Property within CFD No. 72 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 2025-26
Residential Property:	
Single Family Detached Dwelling Unit	$1,426.38 per Unit
Multiple Family Dwelling Unit	$1,236.46 per Unit
Gated Community Attached Dwelling Unit	$1,036.38 per Unit
Non-Residential Property	$0.260110 per Sq. Ft.

On January 1 of each Fiscal Year, commencing January 1, 2026, 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 2025-26, 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. 72 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. 72.

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. 72 (LOMA CREEK LOGISTICS CENTER 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. 72 (Loma Creek Logistics Center 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. 72 (Loma Creek Logistics Center 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 $6,800,000; 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 September 24, 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 November 5, 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 November 5, 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 September 24, 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 November 5, 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 November 5, 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 $6,800,000, which election shall be held at 303 East B Street, Ontario, California, on November 5, 2024. 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 November 5, 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 November 5, 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 5th day of November, 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 November 5, 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 November 5, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

OFFICIAL BALLOT

CITY OF ONTARIO
November 5, 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. 72
(LOMA CREEK LOGISTICS CENTER SERVICES)

MEASURE: Shall the measure to authorize City of Ontario Community Facilities District No. 72 (Loma Creek Logistics Center 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 $6,800,000, as specified in the resolution adopted by the City Council of the City of Ontario on November 5, 2024 entitled "A Resolution of the City Council of the City of Ontario, California, of Formation of City of Ontario Community Facilities District No. 72 (Loma Creek Logistics Center 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 November 5, 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. 72 (Loma Creek Logistics Center Services)" (the "Resolution Calling Election"), calling a special election to submit to the qualified electors of City of Ontario Community Facilities District No. 72 (Loma Creek Logistics Center 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 November 5, 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 5th day of November, 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 November 5, 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 November 5, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

[See attached]

CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 72
(LOMA CREEK LOGISTICS CENTER SERVICES)

CANVASS AND STATEMENT OF RESULTS OF ELECTION

I hereby certify that on November 5, 2024, I canvassed the returns of the special election for City of Ontario Community Facilities District No. 72 (Loma Creek Logistics Center Services) held on November 5, 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. 72 (Loma Creek Logistics Center Services) Special Election, November 5, 2024	24	___	___	___

MEASURE: Shall the measure to authorize City of Ontario Community Facilities District No. 72 (Loma Creek Logistics Center 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 $6,800,000, as specified in the resolution adopted by the City Council of the City of Ontario on November 5, 2024 entitled "A Resolution of the City Council of the City of Ontario, California, of Formation of City of Ontario Community Facilities District No. 72 (Loma Creek Logistics Center 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 5th day of November, 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. 72 (LOMA CREEK LOGISTICS CENTER SERVICES)

WHEREAS, on September 17, 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. 72 (Loma Creek Logistics Center Services) and to Authorize the Levy of a Special Tax Therein" stating its intention to establish City of Ontario Community Facilities District No. 72 (Loma Creek Logistics Center 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 November 5, 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. 72 (Loma Creek Logistics Center 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. 72 (Loma Creek Logistics Center 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 November 5, 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 2025-26 and in each fiscal year thereafter until the last fiscal year in which the Special Tax is authorized to be levied pursuant to the Rate and Method.

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

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

SECTION 4. The proceeds of the Special Tax shall only be used to pay, in whole or in part, the cost of providing the 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 _____ 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* **November 5, 2024**	**SECTION:** **PUBLIC HEARINGS**
Department: Financial Services Prepared By: Jennifer Schaefer Staff Member Presenting: Armen Harkalyan, Executive Director of Finance Reviewed By: Doreen Nunes Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 15

SUBJECT: **A PUBLIC HEARING REGARDING AN ECONOMIC DEVELOPMENT SUBSIDY REPORT AND LOAN AGREEMENT BETWEEN THE CITY OF ONTARIO AND CORE HOTEL VENTURE, LLC AND CONSIDERATION OF RESOLUTION**

RECOMMENDATION: That the City Council take the following actions:

A. Consider and adopt a Resolution authorizing the execution of a Loan Agreement and other related documents in connection with providing a loan to CORE Hotel Venture, LLC and accepting the Economic Development Subsidy Report prepared pursuant to Government Code Section 53083.
B. Direct City Staff to file a Notice of Exemption based upon the City Council's finding that there is no possibility that the approval of this Loan Agreement will have a significant effect on the environment and therefore, no environmental analysis is required.

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 City will issue a loan to CORE Hotel Venture, LLC in an amount not-to-exceed $20,000,000 with an annual interest rate of 5.02% on the first $15,000,000 borrowed and an annual interest rate of 7.02% on additional amounts borrowed up to $5,000,000. The loan will be funded from the available fund balance of the City's Leave Liability Fund and will be repaid within three years from the initial draw. The budget will be included in the next quarterly budget update for Fiscal Year 2024-25.

BACKGROUND & ANALYSIS: The City of Ontario (the "City") operates a convention center and airport adjacent to the Ontario Airport Hotel and Conference Center property, located at 700 N. Haven Avenue, Ontario, CA 91764 (the "Property"). The prior owner and operator of the Property filed a voluntary petition in Bankruptcy under Chapter 11. CORE Hotel Venture, LLC ("CORE") has purchased the Property from the debtor under the bankruptcy and is planning the rehabilitation and reopening of the Property. CORE has requested a short-term loan from the City to provide

temporary funding for the rehabilitation and reopening of the property. The City has established criteria for the City to provide such loans (the "Program"). The criteria includes that the loan must be reasonably related to a legitimate governmental purpose and expenditures must be for a public purpose. An analysis of financial feasibility and community necessity to proceed must be prepared. The City must receive consideration in the transaction and interest shall be payable on the loan. The loan shall not cause an undue burden on the operations and finances of the City. CORE has met all required Program qualifications to enter into a Loan Agreement with the City.

The City finds and determines that the allocation of funds to CORE pursuant to the Loan Agreement is reasonably related to a legitimate governmental purpose in that CORE's ownership and rehabilitation of the Property will provide numerous public benefits to the City. The benefits include the retention of jobs, the creation of new employment opportunities, increased ad valorem taxes, increased transient occupancy taxes and contributions to the tourism marketing district. In accordance with Government Code Section 53083, the City has prepared an Economic Development Subsidy Report in regard to the Loan Agreement. The report will remain available to the public and posted on the City's website until the end of the economic development subsidy.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND CORE HOTEL VENTURE LLC AND ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 53083.

WHEREAS, the City of Ontario ("City") operates a convention center and airport adjacent to the Ontario Airport Hotel and Conference Center property, located at 700 N. Haven Avenue, Ontario, California 91764 (the “Property”); and

WHEREAS, the prior owner and operator of the Property filed a voluntary petition in Bankruptcy under Chapter 11 thereof; and

WHEREAS, CORE Hotel Venture, LLC, a California limited liability company (“CORE”) has purchased the Property from the debtor at auction conducted under bankruptcy court and is planning the rehabilitation and reopening of business at the Property (“Project”); and

WHEREAS, the City wishes to provide a short-term loan (“Loan Agreement”) to CORE for the rehabilitation and reopening of the Property, and has established criteria for the City to provide such loans (“Program”) which include:

- Such loan shall be reasonably related to a legitimate governmental purpose;
- Such loan shall have a reasonable tendency to promote public health, morals, safety or general welfare;
- Expenditure must be for a public purpose;
- The City must receive consideration in the transaction;
- Provisions of Section 53083 through 53085 of the California Government Code shall be complied with;
- There shall have been an analysis of financial feasibility and community necessity to proceed prepared;
- Interest shall be payable on the loan;
- Such other usual, customary and reasonable requirements of the City shall be met; and

WHEREAS, based on information provided by City staff, and other such written and oral evidence, as presented to the City, the City finds and determines that the allocation of funds to CORE pursuant to the Loan Agreement is reasonably related to a

legitimate governmental purpose in that CORE's ownership and rehabilitation of the Property will provide numerous public benefits to the City including:

- Provide employment for the continued operations of the Property;
- Creation of employment opportunities for skilled workers during the renovation of the Property;
- Expanded employment at stabilization of the operations of the Property;
- Increased Transient Occupancy Taxes and contributions to the Tourism Marketing District;
- Increased ad valorem taxes on the Property;
- Will not cause an undue burden on the operations and finances of the City;
- Enhancement of the Ontario International Airport's profile and support of the Airport, Sports Arena and Convention Center; and

WHEREAS, CORE has met all qualifications for the Program as determined in the City's discretion and has reviewed and is willing to enter into a Loan Agreement with the City to borrow up to Twenty Million Dollars ($20,000,000) ("Loan"); and

WHEREAS, in accordance with Government Code Section 53083, the City provided certain information in written form to the public and on its website, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, and held a noticed public hearing on November 5, 2024, to consider all written and oral comments on the Economic Development Subsidy Report; and

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

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

SECTION 1. Incorporation of Recitals. The foregoing recitals are true and correct and are incorporated herein and made an operative part of this Resolution.

SECTION 2. Findings. The City Council additionally finds and determines that (a) there are identifiable public purposes fulfilled by the Project, as set forth in the Recitals, that outweigh the benefit to private persons; and (b) the findings set forth in this Resolution are based upon substantial written and oral evidence presented to the City Council.

SECTION 3. Approval of Financing Documents. The City Council hereby approves the Loan Agreement and Promissory Note, secured by a Deed of Trust, attached thereto in the respective forms on file with the City Clerk, together with such additions thereto and changes therein as Special Counsel shall deem necessary, desirable, or

appropriate, the execution by which the Mayor, City Manager or Executive Director of Finance shall be conclusive evidence of the approval of any such additions or changes. The Mayor, City Manager or Executive Director of Finance are hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest to the final form of each of the foregoing documents and agreements for and in the name and on behalf of the City. The City Council hereby authorizes the delivery and performance of the documents and agreements.

SECTION 4. Financing Terms: The City shall advance to CORE a total amount not to exceed Twenty Million Dollars ($20,000,000). The initial disbursement of the Loan shall be in the amount not to exceed Five Million Dollars ($5,000,000). Additional disbursements of the Loan shall be in minimum amounts of One Million Dollars ($1,000,000) and maximum amounts of Five Million Dollars ($5,000,000), and each draw request shall be at least 90 days after the previous draw request. The interest rate on the first Fifteen Million Dollars ($15,000,000) shall be equal to the California Asset Management Program (“CAMP”) rate on the date of approval by the City Council. Interest on the remaining authorized amount of the Loan, up to Five Million Dollars ($5,000,000), shall be equal to the CAMP rate on the date of such draw plus 200 basis points. CORE shall make semi-annual payments; provided however CORE may defer the payment of interest on the Loan for a period of twelve (12) months from the date of the initial draw. The entire principal amount of the Loan plus accrued but unpaid and capitalized interest shall be payable in full within three (3) years from the date of the initial draw.

SECTION 5. Acceptance of Economic Development Subsidy Report. The City Council finds and determines that this Economic Development Subsidy Report is in compliance with applicable law and specifically Government Code Section 53083.

SECTION 6. CEQA. The City Council hereby finds that pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14 § 15000 et seq.), approval of the Loan Agreement and acceptance of the Economic Development Subsidy Report is not a "project" for purposes of CEQA and therefore is not subject to CEQA review. The Loan Agreement and acceptance of the Economic Development Subsidy Report is not a project pursuant to State CEQA Guidelines section 15378(b)(4), which states that government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant environmental impact are not subject to CEQA. Further, the Loan Agreement and acceptance of the Economic Development Subsidy Report is not a project under State CEQA Guidelines section 15061(b)(3), which states that CEQA does not apply 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.

In addition, the City Council will direct staff to file a categorical exemption with the County of San Bernardino for this location upon adoption of this Resolution.

SECTION 7. Severability. If any provision of this Resolution is held invalid, the remainder of this Resolution shall not be affected by such invalidity, and the provisions of this Resolution are severable.

Effective Date. This Resolution shall become effective immediately upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 5th day of November, 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 November 5, 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 November 5, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A
ECONOMIC DEVELOPMENT SUBSIDY REPORT
[Attached behind this cover page]

LOAN AGREEMENT

This LOAN AGREEMENT ("Agreement") is made effective as of November ___, 2024, by and between CORE HOTEL VENTURE, LLC, a California limited liability company ("Borrower"), and the CITY OF ONTARIO, a California municipal corporation ("Lender" or "City").

RECITALS

A. City operates a convention center and airport adjacent to the Ontario Airport Hotel and Conference Center property, located at 700 N. Haven Avenue, Ontario California, 91764 (the "Property").

B. The prior owner and operator of the Property filed a voluntary petition in Bankruptcy under Chapter 11 thereof.

C. Borrower has purchased the Property from the debtor at auction conducted under the bankruptcy court and is planning the rehabilitation and reopening of business at the Property (the "Business").

D. City wishes to provide a short-term loan for the rehabilitation and reopening of the Property (the "Program"), and has established criteria for the City to provide such loans which include:

1. Such loan shall be reasonably related to a legitimate purpose; and

2. Such loan shall have a reasonable tendency to promote public heath, morals, safety or general welfare.

To that end:

a) the expenditure must be for a public purpose;

b) the City must receive consideration in the transaction;

c) the provisions of Section 53083 through 53085 of the California Government Code shall be complied with;

d) there shall have been prepared an analysis of financial feasibility and community necessity to proceed;

e) interest shall be payable on the loan; and

f) such other usual, customary and reasonable requirements of the City shall be met.

E. It is anticipated that Borrower's ownership and rehabilitation of the Property will provide the following public benefits to the City:

1. Provide employment for the continued operations of the Property;

2. Creation of employment opportunities for skilled workers during the renovation of the Property;

3. Expanded employment at stabilization of the operations of the Property;

4. Increased Transient Occupancy Taxes and contributions to the Tourism Marketing District;

5. Increased ad valorem taxes on the Property; and

6. Enhancement of the Ontario International Airport's profile and support of the Airport, Sports Arena and Convention Center.

F. Borrower has met all qualifications for the Program as determined in Lender's reasonable discretion and has reviewed and is willing to enter this Agreement with Lender.

G. Lender desires to provide, and Borrower desires to borrow up to $20,000,000 with draws in a minimum amount of $1,000,000, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and promises set forth herein, the parties hereto agree as follows:

1. TERMS

1.1 Terms of Loan.

(a) Loan Amount. Subject to the fulfillment of Lender's funding contingencies as set forth in Section 1.3, Lender shall advance to Borrower a total amount not to exceed Twenty Million Dollars ($20,000,000) (the "Loan") in draw amounts as set forth in (b) below, as evidenced by a promissory note, secured by a deed of trust, the forms of which are attached hereto as Exhibit A (the "Note") and Exhibit B (the "Deed of Trust") and incorporated herein by reference.

(b) Disbursement. The initial disbursement of the Loan shall be in the amount of not to exceed $5,000,000, and shall be utilized by Borrower as set forth in Section 1.2.4 hereof. Additional disbursement of the Loan funds may be in such periodic disbursements upon a written request of Borrower to Lender and shall be in minimum amounts of $1,000,000 and maximum amounts of $5,000,000, and each draw request shall be at least 90 days after the previous draw request, and Lender shall fund such additional disbursement to Borrower within five (5) business days after receipt of such draw request. The final draw amount shall be no later than sixty (60) days before the Maturity Date, and all amounts drawn shall be due on the Maturity Date described in paragraph (d) below.

(c) Payments and Rates. (i) Interest. Interest on the outstanding principal of the Loan shall be calculated on the basis of a 360-day year of twelve (12) 30-day months. Interest on the first $15,000,000, shall be initially equal to the California Asset Management Program ("CAMP") rate on the date of approval by the City Council of the City (being ____% per

annum) to the Maturity Date, defined below, or prepayment date. Interest on the remaining authorized amount of the Loan of up to $5,000,000 shall be equal to the CAMP rate on the date of such draw plus 200 basis points (being ____% per annum) to the Maturity Date or prepayment date. So long as no Event of Default occurs and is continuing, Borrower shall pay periodic payments of interest on the outstanding principal amount of the Note semi-annually on _____ 1 and _____ 1, commencing _____, 1, 20__ (an "Interest Payment Date"); provided however, that Borrower may defer the payment of interest on the Loan for a period of not more than twelve (12) months from the date of the initial draw. Deferred interest shall compound annually from the date of delivery thereof to the first payment thereof increasing in equal daily amounts on the basis of a 360-day year consisting of twelve 30-day months on the basis of a constant interest rate compounded semi-annually (with straight line interpolations between Interest Payment Dates). The first payment of interest on all deferred amounts shall be on the date which is twelve (12) months from the date of the original deferral.

(ii) Principal. Upon each disbursement of Loan proceeds under Section 1.1(b) hereof, Lender shall provide Borrower with a schedule of principal payments. Such schedule of principal payments shall be adjusted upon the deferral of accrued and compounded interest pursuant to 1.1(c) above and increased according to the terms thereof. Principal shall be paid on each Interest Payment Date until the Maturity Date, at which time all amounts drawn hereunder shall become due and payable.

(d) Maturity. The entire principal amount of the Loan, plus accrued but unpaid and capitalized interest thereon, shall be payable in full on ____, 2027 (the "Maturity Date") which is three (3) years from the date of the initial draw.

(e) Prepayment. All or any portion of the Notes and this Loan may be prepaid on any business day prior to the Maturity Date without penalty in minimum multiples of not less than $1,000,000 together with interest accrued thereon to the date of such prepayment. Borrower shall provide notice of such prepayment to Lender at least five (5) days prior to the payment thereof.

(f) Interest on Event of Default. Upon an event described in Section 1.4 hereof, (an "Event of Default") Lender may, at Lender's option, declare the Note and the entire remaining indebtedness thereby evidenced to be immediately due and payable, regardless of the Maturity Date. Upon the occurrence of an Event of Default and subject to Section 1.7, the entire remaining indebtedness shall accrue interest at a rate of ten percent (10.00%) per annum.

1.2 Covenants of Borrower.

1.2.1 Borrower shall, at Borrower's own cost and expense, execute and deliver such further documents and instruments in the possession of or readily obtainable by Borrower and take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement, including, without limitation, cooperating in good faith and to the extent permitted by applicable law and executing any documents to which Borrower is a party to transfer any property interests, licenses, or any other items to any third party that Lender approves of to succeed to Borrower's interest upon the occurrence of an Event of Default.

1.2.2 The Loan and the lien on the Property secured by the Deed of Trust represents a first lien and pledge of the revenues and assets of Borrower relating to the Property. In addition to the Deed of Trust, Lender shall file a UCC-1 Financing Statement to further secure repayment of the Loan.

1.2.3 As a condition to funding of the Loan, and during the Term, Borrower shall obtain and keep in force policies of insurance for casualty loss from fire or other damage to the Property in the amount equal to the full replacement value of the Property, together with a commercial general liability policy of insurance reasonably acceptable to Lender and protecting Borrower and Lender, as an additional insured, against claims for bodily injury, personal injury and property damage based upon or arising out of the operation of the Business. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $1,000,000 per occurrence with an annual aggregate of not less than $2,000,000. Borrower acknowledges and agrees that the failure to obtain and keep such insurance coverage shall be an Event of Default under the Note.

1.2.4 Borrower shall provide an officer's certificate or certificates showing the eligible expenditures for which Borrower is making to rehabilitate/improve the Property prior to each draw request. Additionally, up to $5,000,000 may be used from the initial draw to consolidate Borrower's acquisition position from the Chapter 11 Bankruptcy proceeding of the prior owner/operator. Eligible expenditures are real estate acquisition for commercial, retail and industrial land and buildings, site demolition, asbestos removal, site preparation and site improvements, including grading, foundation work, and utility installation, new construction, including building construction, trenching and site work for new construction, creating parking areas, installing hardscape, installing landscaping, lighting and signage, "green" energy efficient improvements, machinery/tools used for industrial manufacturing subject to City approval, external and internal improvements to existing buildings, substantial rehabilitation of existing buildings, including roof replacement, fire construction upgrades, electrical upgrades, fixtures, furniture and equipment, commercial kitchen rehabilitation and ADA compliance, deferred maintenance items set forth in Exhibit C (the "List of Pre-approved Deferred Maintenance Items") attached hereto and made a part of this Loan Agreement, or any other expenditures related to or in connection with the foregoing.

1.2.5 Borrower agrees that no portion of the Loan shall be used for the following ineligible expenditures: improvements commenced prior the City's approval of the Loan, the cost of any and all City of Ontario permits and fees, overhead costs by the Borrower, debt repayment and payment of personal obligations (such as credit cards), working capital, inventory and supplies, real estate mortgage or lease payments, self-performed work, financial assistance to automobile dealerships on land not previously developed for urban use, development on a parcel of land of five or more acres which has not previously been developed for urban use that will generate sales or use tax, unless the principal permitted use is office, hotel, manufacturing or industrial, developments or businesses used for gambling or gaming, a big box retailer or vehicle dealer, or a business that sells or leases land to big box retailers or vehicle dealers, relocating from another community within the same market area ("Big box retailer" means a store of greater than 75,000 square feet of gross buildable area that will generate sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)

of Division 2 of the Revenue and Taxation Code)), and other items as deemed inappropriate by the City.

1.2.6 Borrower shall provide such periodic expenditure reports as the City may reasonably request but in no event more frequently than semi-annually (except as may be required in connection with any draw request), which detail the sources and uses of funds to rehabilitate the Property.

1.2.7 Borrower shall comply in all material respects with all applicable building code, land use and planning laws, design guidelines and rules and regulations of the City. Additionally, Borrower will carry out construction of the Project in conformity in all material respects with all local, state and federal laws, rules and regulations, including but not limited to all applicable California labor standards. Borrower assumes any and all responsibility and shall be solely responsible for determining whether or not laborers employed relative to the eligible project must be paid the prevailing per diem wage rate as determined by the state, pursuant to Labor Code Sections 1720, *et seq*.

1.2.8 The Property shall be maintained in good repair and in a neat and orderly condition in accordance with generally accepted industry standards, subject to normal wear and tear and damage by casualty. Any damage to the Property is to be promptly repaired by Borrower so that the Property remains in good condition. This includes the removal of graffiti, as defined in California Government Code Section 38772, that has been applied to any exterior surface of a structure or improvement on the Property that is visible from any public right-of-way adjacent or contiguous to the Property, shall be removed by Borrower by either painting over the evidence of such vandalism with a paint that has been color-matched to the surface on which the paint is applied, or graffiti may be removed with solvents, detergents or water, as appropriate. If any such graffiti is not removed within ten (10) business days following the time of the discovery of the graffiti, the City shall have the right to enter the Property and remove the graffiti, without notice.

1.2.9 The City or its designated representative may inspect the Property on an annual basis or, during the continuance of an Event of Default, more frequently as reasonably necessary to ensure compliance with the Loan. If the Property is found to be inadequately maintained, Borrower shall exercise commercially reasonable efforts to commence repair of the Property and diligently proceed to complete the repair of the Property within thirty (30) days of receipt of written notice from the City.

1.3 Funding Contingencies. Lender's obligation to fund the Loan shall be contingent upon the fulfillment of the following contingencies, all to Lender's sole and absolute satisfaction:

(a) Borrower shall have delivered to Lender an original executed copy of the Note and Deed of Trust; and

(b) Borrower shall have delivered to Lender a copy of the vesting deed or other documents demonstrating ownership of the Property on which Borrower operates its Business;

(c) Borrower shall deliver an appraisal of the Property which illustrates that the loan to value ratio of the Note to the Property shall not be in excess of seventy-five percent (75%); and

(d) Borrower shall have delivered to Lender evidence of insurance coverage, as described under Section 1.2.2 hereof.

1.4 Default.

1.4.1 Events of Default. The following shall be deemed an Event of Default:

(a) Borrower fails to pay any amounts due under this Loan Agreement, the Note and the Deed of Trust;

(b) Borrower materially breaches any of the covenants of the Note, the Deed of Trust, or this Loan Agreement, including the breach of any covenant contained in Section 1.2 of this Loan Agreement; and such breach continues uncured for more than thirty (30) days after Borrower's receipt of written notice thereof from Lender, provided, however, if the nature of such material breach is such that it cannot be reasonably cured within such 30-day period, then Borrower shall have up to one hundred twenty (120) days to cure such breach so long as Borrower commenced such cure within the initial 30-day period and continues to diligently pursue such cure to completion; or

(c) Borrower (i) becomes insolvent or unable to pay Borrower's debts generally as they mature, (ii) makes a general assignment for the benefit of creditors, (iii) admits in writing Borrower's inability to pay Borrower's debts generally as they mature, (iv) files or has filed against it a petition in bankruptcy or a petition or answer seeking a reorganization, arrangement with creditors or other similar relief under the Federal bankruptcy laws or under any other applicable law of the United States of America or any state thereof and such petition is not dismissed within ninety (90) days after the date of filing, or (v) consents to the appointment of a trustee or receiver for it or for a substantial part of Borrower's property; or

(d) Any order, judgment or decree is entered appointing, without Borrower's consent, a trustee or receiver for it or for a substantial part of Borrower's property that is not removed within ninety (90) days from such entry; or

(e) Borrower voluntarily or involuntarily transfers, in any way, the Property or any portion thereof without the Lender's prior written consent.

1.4.2 Remedies. Upon the occurrence of an Event of Default, Lender may, at Lender's option, exercise one or more of the following remedies, in addition to any other remedies provided herein, in the Note, or by law:

(a) Declare the Note and the entire remaining indebtedness thereby evidenced to be immediately due and payable, regardless of the Maturity Date;

(b) Exercise any collection procedures allowed by State law or by the City of Ontario Municipal Code; and/or

(c) Pursue any legal remedy available to secure payment of any and all monies owed by Borrower.

1.4.3 The remedies provided by this Section 1.4.2 are cumulative and in addition to and independent of any other remedies available to Lender by law. Any and all costs of collection shall be added to the balance owed, including but not limited to collection agency charges and reasonable attorneys' fees.

1.5 Compliance with Laws; Prevailing Wage Requirement.

1.5.1 Borrower shall obtain and comply with all necessary land use entitlements and conditions therein for the operation of the Business.

1.5.2 Borrower shall cause any work performed in connection with any improvements to the Property made by Borrower in connection with the opening or operating of the Business completed after the effective date of this Agreement ("Improvements") to be performed in compliance in all material respects with (i) all applicable federal, state and local laws, ordinances, rules and regulations; (ii) applicable state prevailing wage requirements pursuant to Labor Code Sections 1720 et seq. and 1770 et seq., and the regulations pursuant thereto, as further set forth below ("Prevailing Wage Laws"); and (iii) all applicable directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of any governmental agency with jurisdiction over the Business.

1.5.3 Borrower has been alerted to the requirements of Prevailing Wage Laws. If applicable, Borrower shall pay (and shall cause any contractor and subcontractors to pay) prevailing wages and shall comply (and shall cause any contractor and subcontractors to comply) with all applicable Prevailing Wage Laws in connection with the construction of any Improvements, including the obligation to keep and retain such records as are necessary to determine if prevailing wages have been paid. Borrower shall provide copies of such records to Lender upon Lender's request therefor.

1.5.4 Borrower shall operate the Business, at all times, in compliance in all material respects with all applicable federal, state and local laws, ordinances, rules and regulations.

1.6 Indemnification. To the extent permitted by applicable law, Borrower agrees to defend, indemnify and hold Lender and its officials, officers, employees and agents, free and harmless from and against any and all claims, liabilities, penalties, damages, judgments, costs, expenses, fees and interest arising from or related to any act or omission of Borrower in performing its obligations hereunder and under the Prevailing Wage Laws, or in operating its Business. Borrower assumes all risk of liability arising from any decision not to comply with Prevailing Wage Laws.

1.7 Assignment. Borrower may assign all of its rights, interests, and obligations in and under this Agreement and the Note after obtaining the prior written approval of Lender. Any

assignment of this Agreement or the Note without Lender's prior written approval shall be null and void. Upon assignment of this Agreement and the Note, any interest accruing on the remaining indebtedness as a result of an Event of Default shall cease to accrue.

1.8 Severability. The unenforceability or invalidity of any provision or provisions of this Agreement as to any persons or circumstances shall not render that provision or those provisions unenforceable or invalid as to any other persons or circumstances, and all provisions hereof, in all other respects, shall remain valid and enforceable.

1.9 Binding Effect; Inurement. This Agreement shall bind Borrower and its successors and assigns and the benefits hereof shall inure to Lender and Lender's successors and assigns.

1.10 Governing Law; Jurisdiction. This Agreement shall be governed by and construed exclusively in accordance with the internal substantive laws of the State of California. The parties hereto consent to the exclusive jurisdiction of the state courts sitting in the County of San Bernardino, California, for any action or proceeding arising under this Agreement or the Loan.

1.11 Attorneys' Fees. Borrower agrees to pay the following costs, expenses, and attorneys' fees paid or incurred by Lender or adjudged by a Court: (i) reasonable costs of collection, costs, expenses, and attorneys' fees paid or incurred in connection with the collection or enforcement of the Loan, whether or not suit is filed; and (ii) costs of such sum as the Court may adjudge as attorneys' fees in an action to enforce payment of this Agreement or any part of it. In the event either party brings an action under this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

[***Signatures on Following Page***]

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

BORROWER:

CORE HOTEL VENTURE, LLC, a California limited liability company

By: _____
Robert Diaz
Manager

LENDER:

CITY OF ONTARIO, a California municipal corporation

By: _____
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO LEGAL FORM:
BEST BEST & KRIEGER LLP

_____
City Attorney

EXHIBIT A

Promissory Note

EXHIBIT B

Deed of Trust

EXHIBIT C

List of Pre-Approved Deferred Maintenance Items

Description	
1.	Fire Pump
2.	Boiler Replacement at Cabana Wing
3.	Elevators (qty 3)

LOAN AGREEMENT
PROMISSORY NOTE SECURED BY A DEED OF TRUST

Ontario, California

Principal Amount:_____ Date of Loan:_____

FOR VALUE RECEIVED, the undersigned CORE HOTEL VENTURE, LLC, a California limited liability company ("Maker") promises to pay to the City of Ontario, a California municipal corporation ("City ") at 303 East "B" Street, Ontario, California 91764, or at such place as the City may, from time to time, designate by written notice to the Maker, the principal sum of **[TWENTY MILLION DOLLARS ($20,000,000)]** that is due and payable upon the Maturity Date (defined below) or upon an Event of Default (defined below).

1. Purpose of Loan. This Promissory Note is made and given pursuant to the Loan Agreement by and between the City of Ontario and CORE HOTEL VENTURE, LLC, a California limited liability company dated _____, 2024, which is incorporated herein by reference ("Loan Agreement"). All initially capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreement.

2. Secured Obligation. This Promissory Note is made to evidence the Maker's obligation to repay a loan made by City to Maker for economic assistance under the Loan Agreement for the purpose of facilitating Maker's commercial development of the property ("Project") located at 700 N. Haven Avenue, Ontario California, 91764, City of Ontario, County of San Bernardino, State of California (Assessor Parcel No. 0210-211-33-0-000) (the "Property"), which is encumbered by that deed of trust dated **[***INSERT DATE FROM DEED OF TRUST***]**, with Maker as Trustor, **[***INSERT TITLE COMPANY***]** as Trustee and the City as Beneficiary (the "Deed of Trust") to secure the principal amount of this Promissory Note upon an Event of Default.

3. Term of Loan, Payment of Principal and Interest and Right of Agreement, Prepayment.

3.1. Maturity Date. Unless due at an earlier time by virtue of the acceleration of the balance hereof in accordance with Section 6 hereof, the entire principal amount of the Loan, plus accrued but unpaid and capitalized interest thereon, shall be payable in full on _____, 2027 ("the Maturity Date") which is three years from the date of the initial draw.

3.2. (a) Interest Prior to Event of Default or Maturity Date. So long as no Event of Default occurs prior to the Maturity Date, Maker shall pay periodic payments of interest on the original principal amount of this Promissory Note semi-annually on each _____ 1 and _____1, commencing ____, 1, 20__, prior to the Maturity Date, provided however, that Maker may defer the payment of interest on the Note for a period of not more than twelve (12) months from the date of the initial draw. Deferred interest shall compound annually from the date of delivery thereof to the first payment thereof increasing in equal daily amounts on the basis of a 360-day year consisting of twelve 30-day months on the basis of a constant interest rate compounded semi-annually (with straight line interpolations between Interest Payment Dates). The first payment of interest on all deferred amounts shall be on the date which is twelve (12) months from the date of the original deferral..

(b) Principal. Upon each disbursement of proceeds under Section 1.1(b) of the Loan Agreement, City shall provide Maker with a schedule of principal payments. Such schedule of principal payments shall be adjusted upon the deferral of accrued and compounded interest pursuant to 1.1(c) of the Loan Agreement and increased according to the terms thereof. Principal shall be paid on each Interest

Payment Date until the Maturity Date, at which time all amounts drawn hereunder shall become due and payable.

3.3. Prepayment. All or any portion of this Promissory Note and the Loan Agreement may be prepaid on any business day prior to the Maturity Date without penalty in minimum multiples of not less than $1,000,000 together with interest accrued thereon to the date of such prepayment. Maker shall provide notice of such prepayment to City at least five (5) days' prior to the payment thereof.

4. Repayment of Note. Principal and interest shall be payable in lawful money of the United States of America.

5. Payment of Interest. Upon an Event of Default, Maker shall be obligated to pay interest, computed using the exact interest method, on the principal amount of this Promissory Note that has accrued from the date hereunder until the Event of Default.

5.1. Amount of Interest. Interest on the first $15,000,000, shall be initially equal to the California Asset Management Program ("CAMP") rate on the date of approval by the City Council of the City (being ____% per annum) to the Maturity Date, defined above, or prepayment date. Interest on the remaining authorized amount of this Promissory Note of up to $5,000,000 shall be equal to the CAMP rate on the date of such draw plus 200 basis points (being ____% per annum) to the Maturity Date or prepayment date. Upon an event described in Section 1.4 of the Loan Agreement (an "Event of Default"), City may, at City's option, declare the Note and the entire remaining indebtedness thereby evidenced to be immediately due and payable, regardless of the Maturity Date.

5.2. Calculation of Interest. Interest on the outstanding principal of this Promissory Note shall be calculated on the basis of a 360-day year of twelve (12) 30-day months.

6. Acceleration Upon Event of Default.

6.1. The entire unpaid principal balance and accrued interest, if any, of this Promissory Note together with any charges set forth herein, shall at the City 's option be immediately due and payable prior to the Maturity Date upon any of the following events of default ("Event of Default"):

6.1.1. Maker fails to pay any amounts due under this Promissory Note;

6.1.2. Maker materially breaches any of the covenants of this Promissory Note, the Deed of Trust, or the Loan Agreement, including the breach of any covenant contained in Section 1.2 of the Loan Agreement; and such breach continues uncured for more than thirty (30) days after Maker's receipt of written notice thereof from City, provided, however, if the nature of such material breach is such that it cannot be reasonably cured within such 30-day period, then Maker shall have up to one hundred twenty (120) days to cure such breach so long as Maker commenced such cure within the initial 30-day period and continues to diligently pursue such cure to completion; or

6.1.3. Maker (i) becomes insolvent or unable to pay Maker's debts generally as they mature, (ii) makes a general assignment for the benefit of creditors, (iii) admits in writing Maker's inability to pay Maker's debts generally as they mature, (iv) files or has filed against it a petition in bankruptcy or a petition or answer seeking a reorganization, arrangement with creditors or other similar relief under the Federal bankruptcy laws or under any other applicable law of the United States of America or any state thereof and such petition is not dismissed within ninety (90) days after the date of filing, or (v) consents to the appointment of a trustee or receiver for it or for a substantial part of Maker's property; or

6.1.4. Any order, judgment or decree is entered appointing, without Maker's consent, a trustee or receiver for it or for a substantial part of Maker's property that is not removed within ninety (90) days from such entry; or

6.1.5. Maker voluntarily or involuntarily transfers, in any way, the Property or any portion thereof without the City's prior written consent.

6.2. Notwithstanding the above, in the event of an actual or deemed entry of an order for relief with respect to Maker under the Federal Bankruptcy Code, this Promissory Note and all interest and other amounts due hereon shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by Maker. The City may exercise City's option to accelerate upon the occurrence of any Event of Default, regardless of any prior forbearance.

7. Default Rate. Upon the occurrence of an Event of Default and subject to Section 1.7 of the Loan Agreement, the entire remaining indebtedness shall accrue interest at a rate of 10.00% per annum (the "Default Rate"). The parties hereto agree that the Default Rate represents a reasonable sum considering all of the circumstances existing on the date of this Promissory Note and represents a fair and reasonable estimate of the costs and damages that City will incur by reason of the late payment or Event of Default. The parties hereto further agree that proof of actual damages would be costly or inconvenient. Acceptance of the Default Rate shall not constitute a waiver of the default with respect to the overdue amount, and shall not prevent City from exercising any of the other rights and remedies available to City. The foregoing shall not be construed as obligating the City to accept any payment after its due date.

8. Removal of Liens. City shall only remove, or cause to be removed, the Loan Agreement and the Deed of Trust as liens against the Property after Maker has fully complied with the terms of this Promissory Note, the Loan Agreement and the Deed of Trust.

9. Notice of Default. Maker shall provide notice to City of any notice of default sent by any lender with a security interest in the Property within three (3) days of the date of Maker's receipt of such notice.

10. Costs Paid by Owner. Maker agrees to pay the following costs, expenses and attorneys' fees paid or incurred by the City, or as adjudged by a court of competent jurisdiction: (a) reasonable costs of collection, costs and expenses and attorneys' fees paid or incurred in connection with the collection or enforcement of this Promissory Note, whether or not suit is filed; and (b) costs of suit in such sum as the court may adjudge reasonable as attorneys' fees in any action to enforce payment of this instrument.

11. Waiver. Maker hereby waives diligence, presentment, protest and demand, notice of protest, dishonor and nonpayment of this instrument, and expressly agrees that, without in any way affecting the liability of Maker hereunder, the City may extend any maturity date or the time for payment of any installment due hereunder, accept additional security, release any party liable hereunder or release any security now or hereafter securing this Promissory Note. Maker hereby waives, to the fullest extent permitted by law, the right to plead any and all statutes of limitations as a defense to any demand on this instrument or any deed of trust, security agreement, guarantee or other agreement now or hereafter securing this Promissory Note.

12. Disclaimer of Personal Liability. Despite anything to the contrary in the Promissory Note or in the Deed of Trust securing this Promissory Note, but without in any way affecting the validity of this Promissory Note or of the lien of the Deed of Trust, in the event of any Event of Default under this Promissory Note or the Deed of Trust, City 's sole recourse for any and all such defaults shall be by judicial foreclosure or by exercise of the trustee's power of sale, and the undersigned Maker(s) shall not be personally liable for the payment of this Promissory Note or for any other default under the Deed of Trust

or for the payment of any deficiency established after judicial foreclosure or after a trustee's sale under the Deed of Trust. Despite the foregoing, Maker(s) shall be personally liable and shall indemnify, defend, protect and hold the City harmless from and against any and all loss, damage, liability, action, cause of action, cost or expense, including, without limitation, reasonable attorneys' fees and expenses incurred by the City, arising as a result of any (i) fraud or material misrepresentation by the Maker under or in connection with the Agreement; (ii) intentional bad faith waste of the real property encumbered by the Deed of Trust which secures this Promissory Note; and (iii) losses resulting from Maker's failure to maintain insurance as required under the provisions of the Deed of Trust securing this Promissory Note. Maker's obligation to indemnify the City as aforesaid shall be a recourse obligation of the Maker, and in the event of any breach of such obligations, the City shall have the right to proceed directly against the Maker to recover any and all losses, damages, liability, costs and expenses (including without limitation, reasonable attorneys' fees and expenses) and may bring any action and institute any proceeding to obtain a deficiency judgment in or following foreclosure for any and all such losses, damages, liabilities, costs and expenses resulting from such breach.

13. Severability. If any provision of this Promissory Note is determined by a court of competent jurisdiction to be void or unenforceable, such determination shall not affect any other provision of this instrument, and all other provisions hereof shall remain valid and in full force and effect.

14. Non-Waiver. No delay in demanding or failure to demand performance hereunder shall constitute a waiver by the City of its right to subsequently demand such performance or to exercise any remedies for any default hereunder. Further, in order to be effective, any waiver of any of the City's rights and remedies hereunder shall be expressed in a writing signed by a duly appointed representative of the City. Further, waiver by the City of any right hereunder shall not constitute a waiver of any other right, including, but not limited to, the right to exercise any and all remedies for a different or subsequent event of default hereunder.

15. Successors and Assigns. This Promissory Note shall bind Maker and Maker's successors and assigns and the benefit hereof shall inure to City and City's successors and assigns.

16. Intentionally Omitted.

17. Other Encumbrances.

17.1. Maker shall not further encumber, mortgage, or subject the Property or any interest therein to a deed of trust without the prior written consent of the City.

17.2. Unless the City shall expressly agree otherwise in writing, any subsequent mortgage and deed of trust documents affecting the Property shall provide that in the event of any default or breach by the Maker under any mortgage or deed of trust other than the Deed of Trust entitling any party thereunder to accelerate the indebtedness secured thereby and foreclose upon the Property the City shall have the right (but not the obligation) to (a) cure the default prior to the completion of any foreclosure and reinstate the mortgage or deed of trust, or (b) pay the total unpaid indebtedness secured by such mortgage or deed of trust, in which event, such mortgage or deed of trust shall be released. Amounts expended by the City under this paragraph shall be reimbursed by Maker upon demand of the Maker therefore, and, in any event, shall bear interest at the Default Rate from the date advanced by the City until paid in full. All such amounts shall be added to the principal of this Promissory Note. The approval by Maker of any mortgage or deed of trust documents, and the placing of a security interest therefore on the Property or any portion thereof, not containing the provisions required by this section shall constitute a default under this Promissory Note.

18. Governing Law. The validity, interpretation and performance of this Promissory Note shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of laws principles.

19. Jurisdiction and Venue. Any legal action or proceeding to interpret, enforce, or which in any way arises out of this Promissory Note shall be instituted and prosecuted in the appropriate court in San Bernardino County, California.

20. Amendments and Modifications. This Promissory Note may be amended or modified only in writing signed by the City and the Maker.

21. Time of the Essence. Time is of the essence with regard to this Promissory Note.

22. Attorneys' Fees . Maker hereby waives demand, presentment for payment, notice of nonpayment, protest and notice of protest hereon, and agrees to pay, in the Event of Default hereunder, all costs of collection, including reasonable attorneys' fees of City, whether or not suit is commenced.

IN WITNESS WHEREOF, Maker executes and enters into this Promissory Note as of the date of the loan as first written above:

MAKER:

CORE HOTEL VENTURE, LLC, a California limited liability company

By: _____
Robert Diaz
Manager

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

City of Ontario
303 E. B Street
Ontario, CA 91762
ATTN: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE
EXEMPT FROM RECORDING FEES PURSUANT TO GOV. CODE § 27383

DEED OF TRUST

This DEED OF TRUST is made as of _____, 2024, among **CORE HOTEL VENTURE, LLC, a California limited liability company** ("Trustor"); **[***INSERT NAME AND TYPE OF BUSINESS ENTITY, i.e., ABC Inc., a Delaware corporation***]**, as trustee ("Trustee"); and the CITY OF ONTARIO, a California municipal corporation, as beneficiary ("Beneficiary"). This Deed of Trust is made with respect to that certain Loan Agreement by and between the City of Ontario and **CORE HOTEL VENTURE, LLC, a California limited liability company** dated _____, 2024, which is incorporated herein by reference ("Loan Agreement").

1. Grant in Trust. Trustor irrevocably grants, bargains, sells, and conveys to Trustee in trust, with the power of sale and the right of entry, for the benefit of Beneficiary that certain real property located in the City of Ontario, County of San Bernardino, State of California, more particularly described and depicted in Exhibit "A" attached hereto and incorporated herein by this reference (the "Land"), together with all buildings, structures and other improvements now or in the future located or to be constructed on the Land (the "Improvements") and all other rights and interests now or in the future benefiting or otherwise relating to the Land or Improvements, including easements, rights-of-way, water rights and water stock (the "Appurtenances," and together with the Land and the Improvements, the "Property").

2. Secured Obligation. Trustor makes this grant for the purpose of securing payment and performance of the following: (i) all present and future indebtedness evidenced by any promissory note Trustor has executed pursuant to the Loan Agreement, which states that it is or such obligations are secured by this Deed of Trust; and (ii) all present and future obligations of Trustor to Beneficiary under this Deed of Trust, the Promissory Note or the Loan Agreement; and (iii) all additional present and future obligations of Trustor to Beneficiary under any other agreement or instrument acknowledged by Trustor (whether existing now or in the future), which states that it is or such obligations are, secured by this Deed of Trust; and (iv) all modifications, supplements, amendments, renewals, and extensions of any of the foregoing, whether evidenced by new or additional documents; and (v) reimbursement of all amounts advanced by or on behalf of Beneficiary to protect Beneficiary's interest under this Deed of Trust (collectively referred to as the "Secured Obligations").

3. Property Provisions. To protect the security of this Deed of Trust, and with respect to the Property described above, Trustor agrees:

3.1 To keep the Property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of the law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

3.2 To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

3.3 To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee.

3.4 To pay: before delinquency all taxes and assessments affecting the Property, including assessments on the Property when due, all encumbrances, charges and liens, with interest, on the Property or any part thereof, which appear to be prior or superior hereto.

4. Additional Provisions. It is mutually agreed:

4.1 That any award of damages in connection with any condemnation for public use of or injury to the Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by it in the same manner and with the same effect as above provided for disposition or proceeds of fire or other insurance.

4.2 That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

4.3 That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust for endorsement, and without affecting the personal liability or any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of the Property; consent to making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

4.4 That upon written request of Beneficiary stating that all sums secured hereby have been paid, and Trustor has complied with its obligations under this Deed of Trust, the Promissory Note and the Loan Agreement, and that upon surrender of this Deed of Trust to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

4.5 Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor of successors to any Trustee named

herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.

4.6 That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the Promissory Note and Loan Agreement secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or the neuter, and the singular number includes the plural.

4.7 The Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obliged to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

4.8 Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge thereof does not exceed the maximum allowed by laws.

4.9 The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him or her at his or her address hereinbefore set forth.

5. Event of Default. The term "Event of Default" as used in this Deed of Trust is deemed to occur if: (a) Trustor fails to pay any amounts due under the Loan Agreement, the Note and this Deed of Trust; (b) Trustor materially breaches any of the covenants of the Note, this Deed of Trust, or the Loan Agreement, including the breach of any covenant contained in Section 1.2 of this Loan Agreement; and such breach continues uncured for more than thirty (30) days after Trustor's receipt of written notice thereof from Beneficiary, provided, however, if the nature of such material breach is such that it cannot be reasonably cured within such 30-day period, then Trustor shall have up to one hundred twenty (120) days to cure such breach so long as Trustor commenced such cure within the initial 30-day period and continues to diligently pursue such cure to completion; (c) Trustor (i) becomes insolvent or unable to pay Trustor's debts generally as they mature, (ii) makes a general assignment for the benefit of creditors, (iii) admits in writing Trustor's inability to pay Trustor's debts generally as they mature, (iv) files or has filed against it a petition in bankruptcy or a petition or answer seeking a reorganization, arrangement with creditors or other similar relief under the Federal bankruptcy laws or under any other applicable law of the United States of America or any state thereof and such petition is not dismissed within ninety (90) days after the date of filing, or (v) consents to the appointment of a trustee or receiver for it or for a substantial part of Trustor's property; or (d) any order, judgment or decree is entered appointing, without Trustor's consent, a trustee or receiver for it or for a substantial part of Trustor's property that is not removed within ninety (90) days from such entry; or (e) Trustor voluntarily or involuntarily transfers, in any way, the Property or any portion thereof without the Beneficiary's prior written consent.

6. Remedies upon Event of Default. Upon the occurrence of any Event of Default (defined in Section 5 above): (i) declare the entire remaining indebtedness hereby evidenced to be immediately due and payable, regardless of the Maturity Date;(ii) exercise any collection procedures allowed by State law or by the City of Ontario Municipal Code; and/or (iii) pursue any legal remedy available to secure payment of any and all monies owed by Trustor.

Beneficiary may execute and deliver to Trustee written notice of default and of its election to cause all or any part of the Property to be sold, which notice Trustee shall cause to be filed for record; and after the lapse of such time as may then be required by law following the recordation of such notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell such Property at the time and place fixed by it in such notice of sale, either as a whole or in separate parcels and in such order as Beneficiary may direct (Trustor waiving any right to direct the order of sale), at public auction to the highest bidder for cash in lawful money of the United States (or cash equivalents acceptable to Trustee to the extent permitted by applicable law), payable at the time of sale. Any person, including Trustee or Beneficiary, may purchase at such sale, and any bid by Beneficiary may be, in whole or in part, in the form of cancellation of all or any part of the Secured Obligations. Any such sale shall be free and clear of any interest of Trustor and any lease, encumbrance or other matter affecting the Property so sold which is subject or subordinate to this Deed of Trust.

All proceeds of collection, sale or other liquidation of the Property shall be applied first to all costs, fees, expenses and other amounts (including interest) payable by Trustor under this Deed of Trust and to all other secured obligations not otherwise repaid in such order and manner as Beneficiary may determine, and the remainder, if any, to the person or persons legally entitled thereto.

Each of the remedies provided in this Deed of Trust is cumulative and not exclusive of, and shall not prejudice, any other remedy provided in this Deed of Trust or by applicable laws and shall be subject and subordinate to the remedies of any holder of a senior lien permitted hereunder. Trustor, for itself and for any other person claiming by or through Trustor, waives, to the fullest extent permitted by applicable laws, all rights to require a marshaling of assets by Trustee or Beneficiary or to require Trustee or Beneficiary to first resort to any particular portion of the Property or any other security (whether such portion shall have been retained or conveyed by Trustor) before resorting to any other portion, and all rights of redemption, stay and appraisal.

7. Costs, Fees and Expenses. Trustor shall pay, within ten (10) business days after receipt of written demand for Beneficiary, all costs, fees, expenses, advances, charges, losses and liabilities of Trustee and Beneficiary under or in connection with this Deed of Trust or the enforcement of, or the exercise of any remedy or any other action taken by Trustee or Beneficiary under, this Deed of Trust or the collection of the Secured Obligations, in each case including (i) reconveyance and foreclosure fees of Trustee, (ii) costs and expenses in connection with the operation, maintenance, preservation, or sale of the Property or foreclosure of this Deed of Trust, (iii) advances made by Beneficiary to complete or partially construct all or any part of any construction on the Land, (iv) cost of evidence of title, and (v) the reasonable fees and disbursements of Trustee's and Beneficiary's legal counsel.

8. Miscellaneous Provisions.

8.1 Governing Law. This instrument shall be deemed to have been made in the State of California, and the validity of this Deed of Trust, its construction, interpretation, and enforcement, and the parties' rights hereunder and concerning the Property, shall be decided under, governed by, and construed in accordance with the laws of the State of California. The parties agree that all actions or proceedings arising in connection with this Deed of Trust shall be tried and litigated only in the state courts located in the County of San Bernardino, State of California, or federal courts located in the Central District of California. Trustor waives any right Trustor may have to assert the doctrine of forum non conveniens or to object to such venue.

8.2 Notices. Any notice, demand, request, consent, approval, communication either party desires or is required to give the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail to the address set forth below.

To Beneficiary:	To Trustor:
CITY OF ONTARIO	CORE HOTEL VENTURE LLC c/o National Community Renaissance of California 9692 Haven Avenue, Suite 100 Rancho Cucamonga, CA 91730 Attn: Robert Diaz, Manager
Attention: City Manager 303 E. B Street Ontario, California 91764	_____ _____ _____ _____

Copy to:

BEST BEST & KRIEGER LLP

Attention: City Attorney
[Insert Ontario Office Address]

Notice shall be deemed given five (5) calendar days after the date of mailing to the party, or, if personally delivered, when received by the Beneficiary or the Trustor, as applicable.

8.3 Liability for Acts or Omissions. Beneficiary shall not be liable or responsible for its acts or omissions under this Deed of Trust, except for Beneficiary's own gross negligence or willful misconduct, or be liable or responsible for any acts or omissions of any agent, attorney, or employee of Beneficiary, if selected with reasonable care.

8.4 Joint and Several Obligations. If more than one person is named as Trustor, each obligation of Trustor under this Deed of Trust shall be the joint and several obligations of each such person.

8.5 Severability. If any provision of this Deed of Trust shall be declared invalid, inoperative or unenforceable by a final judgment or decree of a court of competent jurisdiction such invalidity or unenforceability of such provision shall not affect the remaining parts of this Deed of Trust which are hereby declared by the parties to be severable from any other part which is found by a court to be invalid or unenforceable.

8.6 Meaning of Certain Terms. As used in this Deed of Trust and unless the context otherwise provides, the words “herein,” “hereunder” and “hereof” mean and include this Deed of Trust as a whole, rather than any particular provision of it.

8.7 Captions. Captions and paragraph headings used in this Deed of Trust are for convenience of reference only, are not a part of this Deed of Trust and shall not be used in construing it.

IN WITNESS WHEREOF, Trustor has executed and delivered this Deed of Trust as of the date first written above.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE TO DEED OF TRUST

TRUSTOR:

CORE HOTEL VENTURE LLC, a California limited liability company

By: By:_____
Robert Diaz
Its: Manager

Exhibit "A"

Legal Description of Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

LOT "A" IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA OF THAT CERTAIN LOT LINE ADJUSTMENT RECORDED ON AUGUST 24, 1989 AS INSTRUMENT NO. 89-311209 OFFICIAL RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL A OF LOT LINE ADJUSTMENT NO. L83-13, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS APPROVED BY THE CITY COUNCIL OF SAID CITY ON SEPTEMBER 23, 1983, AND RECORDED OCTOBER 10, 1983 AS INSTRUMENT NO. 83-237239 OF OFFICIAL RECORDS, TOGETHER WITH THE SOUTHWESTERLY 145.18 FEET OF PARCEL 1 OF PARCEL MAP NO. 8818, AS SHOWN ON A MAP RECORDED IN BOOK 93, PAGES 97 AND 98 OF PARCEL MAPS, BOTH RECORDS OF SAID COUNTY, AND THAT PORTION OF LOT 3, BLOCK 24, TRACT NO. 2244, AS RECORDED IN BOOK 35, PAGES 50 THROUGH 56 OF MAPS, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF PARCEL 1 OF PARCEL MAP NO. 8818, AS RECORDED IN BOOK 93, PAGES 97 AND 98 OF PARCEL MAPS, RECORDS OF SAID COUNTY; THENCE SOUTH 44 DEG. 31' 22" EAST, 188.64 FEET ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL 1 TO THE MOST SOUTHERLY CORNER THEREOF; THENCE SOUTH 45 DEG. 28' 38" WEST, 56.16 FEET ALONG THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF SAID PARCEL 1 TO THE NORTHERLY RIGHT-OF-WAY LINE OF THE SAN BERNARDINO FREEWAY (I-10), AS DOCUMENT RECORDED IN BOOK 4589, PAGE 306, ET SEQ. OF OFFICIAL RECORDS, RECORDS OF SAID COUNTY AND AS SHOWN ON CALIFORNIA STATE DIVISION OF HIGHWAYS RIGHT-OF-WAY MAP FILE NO. 987563; THENCE NORTH 44 DEG. 31' 22" WEST, 186.64 FEET ALONG SAID RIGHT-OF-WAY LINE; THENCE NORTH 45 DEG. 28' 38" EAST, 56.16 FEET TO THE POINT OF BEGINNING.

EXCEPTING FROM A PORTION OF SAID LAND ALL OIL, GAS AND OTHER HYDROCARBONS, GEOTHERMAL RESOURCES AS DEFINED IN SECTION 6903 OF THE CALIFORNIA PUBLIC RESOURCES CODE AND ALL OTHER MINERALS, WHETHER SIMILAR TO THOSE HEREIN SPECIFIED OR NOT, WITHIN OR THAT MAY BE PRODUCED FROM THE PROPERTY; PROVIDED, HOWEVER, THAT ALL RIGHTS AND INTERESTS IN THE SURFACE OF THE PROPERTY WERE CONVEYED TO GRANTEE, AS SET FORTH IN THE DEED EXECUTED BY CHEVRON LAND AND DEVELOPMENT COMPANY RECORDED JUNE 14, 1984 AS INSTRUMENT NO. 84-140177 OFFICIAL RECORDS.

ALSO EXCEPTING FROM A PORTION OF SAID LAND ALL OIL, GAS AND OTHER HYDROCARBONS, NON-HYDROCARBON GASES OR GASEOUS SUBSTANCES, ALL OTHER MINERALS OF WHATSOEVER NATURE, WITHOUT REGARD TO SIMILARITY TO THE ABOVE-MENTIONED SUBSTANCES, AND ALL SUBSTANCES THAT MAY BE PRODUCED THEREWITH FROM THE PROPERTY, AND EXCEPTING ALL GEOTHERMAL RESOURCES, EMBRACING INDIGENOUS STEAM, HOT WATER AND HOT SPRINGS, STEAM AND OTHER

GASSES, HOT WATER AND HOT BRINES RESULTING FROM WATER, GAS OR OTHER FLUIDS ARTIFICIALLY INTRODUCED INTO SUBSURFACE FORMATIONS, HEAT OR OTHER ASSOCIATED ENERGY FOUND BENEATH THE SURFACE OF THE EARTH, AND BYPRODUCTS OF ANY OF THE FOREGOING SUCH AS MINERALS (EXCLUSIVE OF OIL OR HYDROCARBON GAS THAT CAN BE SEPARATELY PRODUCED) WHICH ARE FOUND IN SOLUTION OR ASSOCIATION WITH OR DERIVED FROM ANY OF THE FOREGOING, THE RIGHTS DO NOT INCLUDE AND DO NOT EXCEPT OR RESERVE ANY RIGHT TO USE THE SURFACE OF THE PROPERTY OR THE FIRST 500 FEET BELOW THE SURFACE OF THE PROPERTY OR TO CONDUCT ANY OPERATIONS THEREON OR THEREIN, AS RESERVED IN THE DEED FROM CHEVRON LAND AND DEVELOPMENT COMPANY, RECORDED MARCH 31, 1988 AS INSTRUMENT NO. 88-095116, OFFICIAL RECORDS, AND RESERVED IN THE DEED FROM THE ONTARIO CENTER, A CORPORATION, RECORDED JULY 11, 1989 AS INSTRUMENT NO. 89-251109 OFFICIAL RECORDS.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR PARKING AND ACCESS, FOR INGRESS, EGRESS, PARKING AND MOTOR VEHICLES OVER AND ACROSS A PORTION OF PARCEL 1 OF PARCEL MAP 8818 AS RECORDED IN BOOK 93 PAGES 97 AND 98 OF PARCEL MAPS, UPON THE CONDITIONS AND PROVISIONS SET FORTH IN THAT CERTAIN SHARED PARKING, ACCESS AND MAINTENANCE AGREEMENT RECORDED DECEMBER 22, 1989 AS INSTRUMENT NO. 89-499243 OFFICIAL RECORDS AND AMENDED BY DOCUMENT RECORDED JULY 23, 1996, INSTRUMENT NO. 96-262990, OFFICIAL RECORDS.

PARCEL 3:

RECIPROCAL PARKING EASEMENTS, COMMON AREA EASEMENTS, AND PEDESTRIAN PATHWAYS AS SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS, RECORDED DECEMBER 28, 1983 AS INSTRUMENT NO. 83-304769 OFFICIAL RECORDS AND AMENDED BY DOCUMENTS RECORDED JUNE 25, 1985 AS INSTRUMENT NO. 85-152322, DECEMBER 3, 1985 AS INSTRUMENT NO. 85-305152, MARCH 24, 1986 AS INSTRUMENT NO. 86-075242, NOVEMBER 16, 1987 AS INSTRUMENT NO. 87-406521, AUGUST 15, 1989 AS INSTRUMENT NO. 89-297661, SEPTEMBER 11, 1997 AS INSTRUMENT NO. 97-334117 AND MAY 16, 2003 AS INSTRUMENT NO. 20030330335, OFFICIAL RECORDS.

PARCEL 4:

NON-EXCLUSIVE RIGHT-OF-WAY EASEMENT AS SET FORTH IN THE PRIVATE BROADWAY EASEMENT AND SUPPLEMENT TO DECLARATION, RECORDED JANUARY 14, 1988 AS INSTRUMENT NO. 88-011236 OF OFFICIAL RECORDS.

APN: 0210-211-33-0-000

ALL-PURPOSE ACKNOWLEDGMENT FOR CALIFORNIA

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

On _____, before me, _____,

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____

Signature of Notary Public

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

ECONOMIC DEVELOPMENT SUBSIDY REPORT
PURSUANT TO GOVERNMENT CODE SECTION 53083
FOR A LOAN AGREEMENT
BY AND BETWEEN
THE CITY OF ONTARIO
AND CORE HOTEL VENTURE, LLC

Pursuant to Government Code Section 53083, the City Council of the City of Ontario must hold a noticed public hearing and, prior to the public hearing, provide all of the following information in written form and available to the public and through the City's website, regarding a proposed economic development subsidy to be provided by the City pursuant to a Loan Agreement ("Agreement") by and between the City of Ontario ("City") and CORE HOTEL VENTURE, LLC, a California limited liability company. Notice was published in the local newspaper for a public hearing to be held on November 5, 2024.

The purpose of this report is to provide the information required pursuant to Government Code Section 53083 in regard to the Agreement. This report shall remain available to the public and posted on the City's website until the end date of the economic development subsidy.

1. **The name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy.**

   The Agreement is with CORE HOTEL VENTURE, LLC, a California company

   CORE HOTEL VENTURE, LLC
   9692 Haven Ave., Suite 100
   Rancho Cucamonga, CA 91730

2. **The start and end dates and schedule, if applicable, for the economic development subsidy.**

   If the Loan Agreement is approved by the City Council, the Effective Date of the Loan Agreement will be the date of Council approval. The Maturity Date will be three (3) years from the first initial draw of the loan.

3. **A description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy.**

   The economic development subsidy to complete the rehabilitation and reopening of a hotel located at 700 N. Haven Avenue, Ontario California, 91764 and shall be a short-term loan in an amount not to exceed $20,000,000. Interest on the first $15,000,000 shall be equal to the California Asset Management Program ("CAMP") rate on the date of approval by the City Council. Interest on the remaining authorized amount of the loan up to $5,000,000 shall be equal to the CAMP rate on the date of such draw, plus 200 basis points. CORE shall pay semi-annual payments to the City; provided however, they may

defer the payment of interest on the loan for a period of not-to-exceed twelve (12) months. Deferred interest shall compound annually from the date of delivery until the first payment. All outstanding principal and accrued but unpaid interest shall be payable in full by the maturity date, which is three (3) years from the first initial draw of the loan.

4. A statement of the public purposes for the economic development subsidy.

The City has determined that the economic subsidy will result in benefits to the City including but not limited to the following:

- Provide employment for the continued operations of the property.
- Creation of employment opportunities for skilled workers during the renovation of the property.
- Expanded employment at stabilization of the operations of the property.
- Increased Transient Occupancy Taxes and contributions to the Tourism Marketing District.
- Increased ad valorem taxes on the property.
- Enhancement of the Ontario International Airport's profile and support of the airport, sports arena, and convention center.

5. The projected tax revenue to the local agency as a result of the economic development subsidy.

The City anticipates that the renovation and expansion of the hotel will generate significant increases in Property Tax and Transient Occupancy Tax (TOT) revenues. The 2024 projected TOT generated from this property to the City is $532,092. The projected TOT upon completion of the project and stabilization of its operations in 2028 is $1,491,623, an annual increase of $959,531. These projections are based on current estimates and an anticipated increase in occupancy rates at higher room rates, post-renovation. The assessed value of the property in 2023 was $21,896,809. The estimated assessed value of the property due to the change in ownership and the rehabilitation of the property upon stabilization of its operations in 2028 is $55,400,000, an anticipated increase of $33,503,191. The increase in property valuation will generate approximately $56,285 in additional property tax revenues to the City per year.

6. The estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.

During construction, the project will create approximately 50-75 full-time prevailing-wage jobs for skilled workers across various trades. In addition, 5-10 full-time management and supervisory positions will be required to oversee the project. Post-renovation, up to 46 jobs will be added upon the stabilization of the operations of the property. The increase will include positions across various departments, such as housekeeping, banquets, shuttle airport drivers, restaurant and bar services, engineering, and a revenue manager. This not only enhances the operational capabilities of the Ontario Airport Hotel and Conference Center, but also injects additional economic vitality into our community by providing diverse employment opportunities.

CITY OF ONTARIO *Agenda Report* **November 5, 2024**	**SECTION:** **ADMINISTRATIVE REPORTS/DISCUSSION/ACTION**
Department: Financial Services Prepared By: Jennifer Schaefer Staff Member Presenting: Armen Harkalyan, Executive Director of Finance Reviewed By: Matthew Hernandez, Claudia Hernandez Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 16

SUBJECT: **A RESOLUTION AUTHORIZING THE ISSUANCE OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 64 (SUNSET RANCH) 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. 64 (Sunset Ranch) Special Tax Bonds, Series 2024, in an aggregate principal amount not-to-exceed $30 million, authorizing the execution and delivery of an Indenture, a Bond Purchase Agreement, and a Continuing Disclosure 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 Sunset Ranch project and the Ontario Ranch development;
D. Approve the forms of the Indenture, the Bond Purchase Agreement, the Continuing Disclosure 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 an Indenture, the Bond Purchase Agreement, the Continuing Disclosure Agreement, a deemed final certification 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

FISCAL IMPACT: The use of Mello-Roos financing for public facilities in the residential development of the Sunset Ranch project in the Ontario Ranch development, is estimated to generate approximately $30 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. 64 (Sunset Ranch) Special Tax Bonds, Series 2024, and related matters, limits the principal amount of the bonds to $30 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. 64 (Sunset Ranch).

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 March 7, 2023, 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. 2023-013, declaring the City's intention to establish the District and to authorize the levy of special taxes, and Resolution No. 2023-014 deeming it necessary for the District to incur bonded indebtedness. On April 18, 2023, the City Council adopted Resolution No. 2023-025 forming the District. Based on a successful property owner election held on April 18, 2023, the City Council adopted Ordinance No. 3247 on May 2, 2023, authorizing the levy of special taxes within the District to finance public improvements related to the Sunset Ranch project.

The public improvements to be financed by the District are as follows:

- Water and Recycled Water System Facilities;
- Streets and Traffic Circulation System Facilities; and
- Fiber Optic System Facilities.

The Sunset Ranch project addresses the residential development of 59.92 gross acres located in two separate zones. Zone 1 is located south of Edison Avenue, west of Clifton Street, east of Mill Creek Avenue, and north of Chatham Street. Zone 2 is located south of Chino Avenue, west of Archibald Avenue, east of Kinglet Avenue, and north of Dolomite Street. At build out, the project is projected to include 468 units, comprised of 149 single-family detached units, 174 row townhomes, and 145 units within 10-plex townhomes.

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. 64 (Sunset Ranch). The documents are listed below and are on file with the Records Management Department:

- Indenture;
- Bond Purchase Agreement;
- Continuing Disclosure 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. 64 (SUNSET RANCH) SPECIAL TAX BONDS, SERIES 2024, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED $30,000,000, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A BOND PURCHASE AGREEMENT AND A CONTINUING DISCLOSURE 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. 64 (Sunset Ranch) (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. 64 (Sunset Ranch) Special Tax Bonds, Series 2024 (the "Series 2024 Bonds"), in the aggregate principal amount of not to exceed $30,000,000;

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, there have been prepared and submitted to this meeting forms of:

(a) the Indenture;

(b) the Purchase Agreement;

(c) the Continuing Disclosure Agreement; and

(d) the Preliminary Official Statement;

WHEREAS, Kitty Siino & Associates, Inc. has prepared and provided to the Community Facilities District an appraisal report, dated October 2, 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 $30,000,000, 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 $30,000,000, 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 5.50%.

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. 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 9. 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 10. 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 11. 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 12. 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 13. 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 5th day of November, 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 November 5, 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 November 5, 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 $27,850,000 (the "Estimated Principal Amount"), which does not include approximately $1,321,135 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 $29,171,135 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 4.73%.

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 $817,750.

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 $26,578,635.

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 $54,807,889, 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. 64 (Sunset Ranch) (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. 64 (Sunset Ranch) 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 $30,000,000 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 5th day of November, 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 November 5, 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 November 5, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

INDENTURE

by and between

CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 64
(SUNSET RANCH)

and

ZIONS BANCORPORATION, NATIONAL ASSOCIATION,
AS TRUSTEE

Dated as of _____ 1, 2024

Relating to
City of Ontario
Community Facilities District No. 64
(Sunset Ranch)
Special Tax Bonds

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INDENTURE

THIS INDENTURE (this "Indenture"), dated as of _____ 1, 2024, is by and between CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 64 (SUNSET RANCH), a community facilities district organized and existing under the laws of the State of California (the "Community Facilities District"), and ZIONS BANCORPORATION, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as trustee (the "Trustee").

W I T N E S S E T H:

WHEREAS, the City Council of the City of Ontario has formed 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 a portion of the Facilities, the Community Facilities District desires to provide for the issuance of its City of Ontario Community Facilities District No. 64 (Sunset Ranch) Special Tax Bonds, Series 2024 (the "Series 2024 Bonds"), in the aggregate principal amount of not to exceed $_____;

WHEREAS, the Community Facilities District desires to provide for the issuance of additional bonds (the "Additional Bonds") for refunding purposes payable from the Special Tax on a parity with the Series 2024 Bonds, provided that said issuance is in accordance with the Act and this Indenture (the Series 2024 Bonds and any such Additional Bonds being collectively referred to as the "Bonds");

WHEREAS, in order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and secured and to secure the payment of the principal thereof, premium, if any, and interest thereon, the Community Facilities District has authorized the execution and delivery of this Indenture; and

WHEREAS, the Community Facilities District has determined that all acts and proceedings required by law necessary to make the Bonds, when executed by the Community Facilities District, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal special, limited obligations of the Community Facilities District, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of this Indenture has been in all respects duly authorized;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the principal of, premium, if any, and the interest on all Bonds at any time issued and outstanding under this Indenture, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the

Bonds by the owners thereof, and for other valuable consideration, the receipt whereof is hereby acknowledged, the Community Facilities District does hereby covenant and agree with the Trustee, for the benefit of the respective owners from time to time of the Bonds, as follows:

ARTICLE I

DEFINITIONS; RULES OF CONSTRUCTION; EQUAL SECURITY

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined in this Section shall for all purposes of this Indenture and of any certificate, opinion or other document herein or therein mentioned, have the meanings herein specified.

"Accounts" means the accounts from time to time established pursuant to this Indenture in any of the Funds established and maintained by the Trustee pursuant hereto.

"Act" means the Mello-Roos Community Facilities Act of 1982, constituting Sections 53311 *et seq.* of the California Government Code.

"Additional Bonds" means Bonds other than Series 2024 Bonds issued hereunder in accordance with the provisions of Sections 3.05 and 3.06.

"Administrative Expense Fund" means the Fund by that name established and held by the Trustee pursuant to Section 5.07.

"Administrative Expenses" means any reasonably necessary or appropriate expenses incurred in the administration of the Community Facilities District and the Bonds, including (a) the administrative and legal costs of levying and collecting the Special Tax (including costs incurred in connection with any appeals relating thereto and litigation expenses incurred in connection with the collection of such Special Tax), (b) the fees, costs and indemnifications due the Trustee, (c) the costs incurred with on-going disclosure in connection with the Bonds, (d) the costs incurred in connection with the disclosure of the Special Tax to property owners and potential purchasers of property, (e) the amounts required to calculate and pay arbitrage rebate payments to the federal government, and (f) an allocable share of the salaries of the City staff providing services on behalf of the Community Facilities District directly related to the foregoing and an allocable share of City general administrative overhead related thereto.

"Affiliate" of another Person means (a) each Person that, directly or indirectly, owns or controls, whether beneficially or as trustee, guardian, or other fiduciary, 50% or more of any class of equity securities of such other Person, and (b) each Person that controls, is controlled by or is under common control with or by such Person or any Affiliate of such Person. For the purpose of this definition, "control" of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.

"Annual Debt Service" means, for each Bond Year, the sum of (a) the interest due on the Outstanding Bonds in such Bond Year, assuming that the Outstanding Bonds are retired as scheduled (including by reason of mandatory sinking fund redemptions), and (b) the principal of the Outstanding Bonds due in such Bond Year (including by reason of mandatory sinking fund redemptions).

"Authorized Denominations" means (a) with respect to the Series 2024 Bonds, $5,000 and any integral multiple thereof, and (b) with respect to each Series of Additional Bonds, the

authorized denominations for such Series of Additional Bonds specified in the Supplemental Indenture pursuant to which such Additional Bonds are issued.

"Authorized Representative" means, with respect to the Community Facilities District, the Mayor of the City, the City Manager of the City, the Assistant City Manager of the City, the Executive Director of Finance of the City and the Deputy City Treasurer of the City, and any other Person designated as an Authorized Representative of the Community Facilities District in a Written Certificate of the Community Facilities District submitted to the Trustee.

"Average Annual Debt Service" means the average of the Annual Debt Service for all Bond Years, including the Bond Year in which the calculation is made.

"Beneficial Owners" means those Persons for which the Participants have caused the Depository to hold Book-Entry Bonds.

"Bond Counsel" means a firm of nationally recognized bond counsel selected by the Community Facilities District.

"Bond Fund" means the Fund by that name established and held by the Trustee pursuant to Section 5.03.

"Bond Year" means the twelve-month period beginning on September 2 in each year and extending to the next succeeding September 1, both dates inclusive, except that the first Bond Year shall begin on the Closing Date and end on September 1, 2025.

"Bonds" means the City of Ontario Community Facilities District No. 64 (Sunset Ranch) Special Tax Bonds issued hereunder, and includes the Series 2024 Bonds and any Additional Bonds.

"Book-Entry Bonds" means the Bonds of a Series registered in the name of the Depository, or the Nominee thereof, as the registered owner thereof pursuant to the terms and provisions of Section 2.07.

"Business Day" means a day that is not (a) a Saturday, Sunday or legal holiday in the State, (b) a day on which banking institutions in the State, or in any state in which the Office of the Trustee is located, are required or authorized by law (including executive order) to close, or (c) a day on which the New York Stock Exchange is closed.

"Cede & Co." means Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to a Series of Book-Entry Bonds.

"Circulation System Facility" has the meaning ascribed to the term "Circulation System Segment" in the NMC Acquisition Agreement.

"City" means the City of Ontario, a general law city organized and existing under the laws of the State, and its successors.

"City Council" means the City Council of the City.

"City Facilities Account" means the Account by that name within the Improvement Fund established and held by the Trustee pursuant to Section 3.04.

"City Park Account" means the Account by that name within the Improvement Fund established and held by the Trustee pursuant to Section 3.04.

"Closing Date" means the date upon which the Series 2024 Bonds are delivered to the Original Purchaser, being _____, 2024.

"Code" means the Internal Revenue Code of 1986.

"Community Facilities District" means City of Ontario Community Facilities District No. 64 (Sunset Ranch), a community facilities district organized and existing under the laws of the State, and its successors.

"Continuing Disclosure Agreement" means the Continuing Disclosure Agreement, dated as of _____ 1, 2024, by and between the Community Facilities District and Zions Bancorporation, National Association, as Trustee, as originally executed and as it may be amended, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"Corresponding Bond Year" means, with respect to any Fiscal Year, the Bond Year that commences in such Fiscal Year.

"Costs of Issuance" means all items of expense directly or indirectly payable by or reimbursable to the Community Facilities District relating to the authorization, issuance, sale and delivery of the Bonds, including printing expenses, rating agency fees, filing and recording fees, initial fees, expenses and charges of the Trustee and its counsel, including the Trustee's first annual administrative fee, fees, charges and disbursements of attorneys, municipal advisors, accounting firms, consultants and other professionals, fees and charges for preparation, execution and safekeeping of the Bonds, any premium for a bond insurance policy securing payment of the Bonds, and any other cost, charge or fee in connection with the original issuance of the Bonds.

"Costs of Issuance Fund" means the Fund by that name established and held by the Trustee pursuant to Section 3.03.

"County" means the County of San Bernardino, a county and political subdivision of the State organized and existing under the laws of the State, and any successor thereto.

"County Assessor" means the Assessor of the County.

"County Auditor" means the Auditor-Controller of the County.

"Defeasance Securities" means (a) non-callable direct obligations of the United States of America ("United States Treasury Obligations"), and (b) evidences of ownership of proportionate interests in future interest and principal payments on United States Treasury Obligations held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying

United States Treasury Obligations are not available to any person claiming through the custodian or to whom the custodian may be obligated.

"Depository" means DTC, and its successors as securities depository for any Series of Book-Entry Bonds, including any such successor appointed pursuant to Section 2.07.

"DTC" means The Depository Trust Company, a limited-purpose trust company organized under the laws of the State of New York.

"Electronic Means" means e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder.

"Event of Default" means any event specified in Section 7.01.

"Facilities" means the public facilities authorized to be financed by the Community Facilities District, as described in the Resolution of Formation.

"Fiscal Year" means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other twelve-month period hereafter selected and designated as the official fiscal year period of the Community Facilities District.

"Funds" means the separate funds from time to time established and maintained by the Trustee pursuant hereto.

"Improvement Fund" means the Fund by that name established and held by the Trustee pursuant to Section 3.04.

"Indenture" means this Indenture, dated as of _____ 1, 2024, by and between the Community Facilities District and Zions Bancorporation, National Association, as Trustee, as originally executed and as it may be amended, supplemented or otherwise modified from time to time by any Supplemental Indenture.

"Independent Consultant" means any consultant or firm of such consultants selected by the Community Facilities District and who, or each of whom (a) is generally recognized to be qualified in the financial consulting field, (b) is in fact independent and not under the control of the Community Facilities District, the City, NMC Builders, KB HOME or any Affiliate thereof, (c) does not have any substantial interest, direct or indirect (i) with or in the Community Facilities District, the City, NMC Builders, KB HOME or any Affiliate thereof, (ii) with or in any owner of real property in the Community Facilities District, or (iii) in any real property in the Community Facilities District, and (d) is not connected with the Community Facilities District, the City, NMC Builders, KB HOME or any Affiliate thereof as an officer or employee thereof, but who may be regularly retained to make reports to the Community Facilities District or the City.

"Interest Account" means the Account by that name within the Bond Fund established and held by the Trustee pursuant to Section 5.03.

"Interest Payment Dates" means March 1 and September 1 of each year, commencing [March] 1, 2025.

"KB HOME" means KB HOME Coastal Inc., a corporation organized and existing under the laws of the State, and any successor thereto.

"KB HOME Acquisition Account" means the Account by that name within the Improvement Fund established and held by the Trustee pursuant to Section 3.04.

"KB HOME Acquisition Agreement" means the Acquisition and Funding Agreement, dated as of April 1, 2023, by and between the City and KB HOME, as originally executed and as it may be amended, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"KB HOME Facilities" has the meaning ascribed to the term "Facilities" in the KB HOME Acquisition Agreement.

"KB HOME Payment Request" has the meaning ascribed to the term "Payment Request" in the KB HOME Acquisition Agreement.

"Letter of Representations" means the Letter of Representations from the Community Facilities District to the Depository, in which the Community Facilities District makes certain representations with respect to issues of its securities for deposit by the Depository.

"Maximum Annual Debt Service" means the largest Annual Debt Service for any Bond Year, including the Bond Year in which the calculation is made.

"Moody's" means Moody's Investors Service, Inc., a corporation duly organized and existing under the laws of the State of Delaware, and its successors and assigns, except that if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency selected by the Community Facilities District.

"Net Special Tax Revenues" means Special Tax Revenues, less amounts required to pay Administrative Expenses.

"NMC Acquisition Account" means the Account by that name within the Improvement Fund established and held by the Trustee pursuant to Section 3.04.

"NMC Acquisition Agreement" means the Amended and Restated Acquisition and Funding Agreement, dated as of November 1, 2022, by and between the City and NMC Builders, as originally executed and as it may be amended, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"NMC Builders" means NMC Builders, LLC, a limited liability company organized and existing under the laws of the State of California, and any successor thereto.

"NMC Facilities" has the meaning ascribed to the term "Facilities" in the NMC Acquisition Agreement.

"NMC Payment Request" has the meaning ascribed to the term "Payment Request" in the NMC Acquisition Agreement.

"Nominee" means the nominee of the Depository, which may be the Depository, as determined from time to time pursuant to Section 2.07.

"Office of the Trustee" means the principal corporate trust office of the Trustee in Los Angeles, California, or such other office as may be specified to the Community Facilities District by the Trustee in writing; provided, however, that with respect to presentation of Bonds for payment or for registration of transfer and exchange, such term shall mean the office or agency of the Trustee at which, at any particular time, its corporate trust agency business shall be conducted, which other office or agency shall be specified to the Community Facilities District by the Trustee in writing.

"Ordinance" means any ordinance adopted by the City Council levying the Special Tax.

"Original Purchaser" means the original purchaser of the Series 2024 Bonds from the Community Facilities District.

"Outstanding" means, when used as of any particular time with reference to Bonds, subject to the provisions of Section 11.07, all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except (a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation, (b) Bonds with respect to which all liability of the Community Facilities District shall have been discharged in accordance with Section 10.01, and (c) Bonds in lieu of which other Bonds shall have been authenticated and delivered by the Trustee, or that have been paid without surrender thereof, pursuant to Section 2.08.

"Owner" means, with respect to a Bond, the Person in whose name such Bond is registered on the Registration Books.

"Participant" means any entity that is recognized as a participant by DTC in the book-entry system of maintaining records with respect to Book-Entry Bonds.

"Participating Underwriter" has the meaning ascribed to such term in the Continuing Disclosure Agreement.

"Permitted Investments" is defined in Exhibit A hereto.

"Person" means an individual, corporation, limited liability company, firm, association, partnership, trust or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

"Principal Account" means the Account by that name within the Bond Fund established and held by the Trustee pursuant to Section 5.03.

"Rate and Method" means the rate and method of apportionment of the Special Tax approved by the qualified electors of the Community Facilities District.

"Rebate Fund" means the Fund by that name established and held by the Trustee pursuant to Section 5.06.

"Rebate Requirement" has the meaning ascribed to such term in the Tax Certificate.

"Record Date" means, with respect to interest payable on any Interest Payment Date, the 15th calendar day of the month preceding such Interest Payment Date, whether or not such day is a Business Day.

"Redemption Fund" means the Fund by that name established and held by the Trustee pursuant to Section 5.05.

"Redemption Price" means the aggregate amount of principal of and premium, if any, on the Bonds upon the redemption thereof pursuant hereto.

"Registration Books" means the records maintained by the Trustee for the registration of ownership and registration of transfer of the Bonds pursuant to Section 2.05.

"Reserve Fund" means the Fund by that name established and held by the Trustee pursuant to Section 5.04.

"Reserve Requirement" means, as of the date of any calculation, the least of (a) "10% of the proceeds of the issue," within the meaning of Section 148 of the Code, with respect to the Bonds (excluding from such calculation Bonds refunded with the proceeds of subsequently issued Bonds), (b) Maximum Annual Debt Service, and (c) 125% of Average Annual Debt Service.

"Resolution of Formation" means Resolution No. 2023-025, adopted by the City Council on April 18, 2023, as originally adopted and as it may be amended, supplemented or otherwise modified from time to time.

"S&P" means S&P Global Ratings, a business unit of Standard and Poor's Financial Services, LLC, and its successors and assigns, except that if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term "S&P" shall be deemed to refer to any other nationally recognized securities rating agency selected by the Community Facilities District.

"Series" means the initial series of Bonds executed, authenticated and delivered on the date of initial issuance of the Bonds and designated pursuant to this Indenture as the Series 2024 Bonds, and any Additional Bonds issued pursuant to a Supplemental Indenture and identified as a separate Series of Bonds.

"Series 2024 Bonds" means the City of Ontario Community Facilities District No. 64 (Sunset Ranch) Special Tax Bonds, Series 2024, issued hereunder.

"Services" has the meaning ascribed to such term in the Rate and Method.

"Special Tax" means the special tax described and defined in the Rate and Method as "Special Tax A" approved by the qualified electors to be levied within the Community Facilities District pursuant to the Act and the Rate and Method.

"Special Tax Fund" means the Fund by that name established and held by the Trustee pursuant to Section 5.02.

"Special Tax Revenues" means the proceeds of the Special Tax received by or on behalf of the Community Facilities District, other than proceeds of the Special Tax levied to pay the costs of Services received by or on behalf of the Community Facilities District, including any prepayments thereof, interest and penalties thereon and proceeds of the redemption or sale of property sold as a result of foreclosure of the lien of the Special Tax, which shall be limited to the amount of said lien and interest and penalties thereon.

"State" means the State of California.

"Supplemental Indenture" means any supplemental indenture modifying or amending this Indenture, but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

"Tax Certificate" means the Tax Certificate executed by the Community Facilities District at the time of issuance of the Series 2024 Bonds relating to the requirements of Section 148 of the Code, as originally executed and as it may be amended, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"Trustee" means Zions Bancorporation, National Association, a national banking association organized and existing under the laws of the United States of America, or any successor thereto as Trustee hereunder substituted in its place as provided herein.

"Verification Report" means, with respect to the deemed payment of Bonds pursuant to clause (ii) of Section 10.02(a), a report of a nationally recognized certified public accountant, or firm of such accountants, verifying that the Defeasance Securities and cash, if any, deposited in connection with such deemed payment satisfy the requirements of clause (ii) of Section 10.02(a).

"Written Certificate" and **"Written Request"** of the Community Facilities District mean, respectively, a written certificate or written request signed in the name of the Community Facilities District by an Authorized Representative. Any such certificate or request may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

Section 1.02. Rules of Construction. (a) The terms defined herein expressed in the singular shall, unless the context otherwise indicates, include the plural and vice versa.

(b) The use herein of the masculine, feminine or neuter gender is for convenience only and shall be deemed and construed to include correlative words of the masculine, feminine or neuter gender, as appropriate.

(c) References herein to a document shall include all amendments, supplements or other modifications to such document, and any replacements, substitutions or novation of, that document.

(d) Any term defined herein by reference to another document shall continue to have the meaning ascribed thereto whether or not such other document remains in effect.

(e) The use herein of the words "including" and "includes," and words of similar import, shall be deemed to be followed by the phrase "without limitation."

(f) Headings of Articles and Sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(g) All references herein to designated "Articles," "Sections," "Exhibits," "subsections," "paragraphs," "clauses," and other subdivisions are to the designated Articles, Sections, Exhibits, subsections, paragraphs, clauses, and other subdivisions of this Indenture.

(h) The words "hereof" (except when preceded by a specific Section or Article reference) "herein," "hereby," "hereunder," "hereinabove," "hereinafter," and other equivalent words and phrases used herein refer to this Indenture and not solely to the particular portion hereof in which any such word is used.

(i) Any reference to a Person, or a Person in a specified capacity, shall be construed to include such Person's successors or such Person's successors in such capacity, as the case may be.

Section 1.03. Equal Security. In consideration of the acceptance of the Bonds by the Owners thereof, this Indenture shall be deemed to be and shall constitute a contract among the Community Facilities District, the Trustee and the Owners from time to time of all Bonds authorized, executed, issued and delivered hereunder and then Outstanding to secure the full and final payment of the principal of, premium, if any, and interest on all Bonds that may from time to time be authorized, executed, issued and delivered hereunder, subject to the agreements, conditions, covenants and provisions contained herein; and all agreements and covenants set forth herein to be performed by or on behalf of the Community Facilities District shall be for the equal and proportionate benefit, protection and security of all Owners of the Bonds without distinction, preference or priority as to security or otherwise of any Bonds over any other Bonds by reason of the number or date thereof or the time of authorization, sale, execution, issuance or delivery thereof or for any cause whatsoever, except as expressly provided herein or therein.

ARTICLE II

THE BONDS

Section 2.01. Authorization of Bonds; Special, Limited Obligations. (a) The Community Facilities District hereby authorizes the issuance of the Bonds under and subject to the terms of this Indenture, the Act and other applicable laws of the State. The Bonds may consist of one or more Series of Bonds of varying denominations, dates, maturities, interest rates and other provisions, subject to the provisions and conditions contained herein. The Bonds shall be designated generally as the "City of Ontario Community Facilities District No. 64 (Sunset Ranch) Special Tax Bonds," each Series thereof to bear such additional designation as may be necessary or appropriate to distinguish such Series from every other Series of Bonds.

(b) The Bonds shall be special, limited obligations of the Community Facilities District, payable, as provided herein, solely from Net Special Tax Revenues and the other assets pledged therefor hereunder. Neither the faith and credit nor the taxing power of the Community Facilities District (except to the limited extent set forth herein), the City or the State, or any political subdivision thereof, is pledged to the payment of the Bonds.

Section 2.02. Terms of Series 2024 Bonds. (a) The Series 2024 Bonds shall be designated "City of Ontario Community Facilities District No. 64 (Sunset Ranch) Special Tax Bonds, Series 2024." The aggregate principal amount of Series 2024 Bonds that may be issued and Outstanding under this Indenture shall not exceed $_____, except as may be otherwise provided in Section 2.08.

(b) The Series 2024 Bonds shall be issued in fully registered form without coupons in Authorized Denominations, so long as no Series 2024 Bond shall have more than one maturity date. The Series 2024 Bonds shall be dated as of the Closing Date, shall be in the aggregate principal amount of $_____, shall mature on September 1 of each year, shall bear interest at the rates per annum (calculated on the basis of a 360-day year comprised of twelve 30-day months) and shall be in the principal amounts as follows:

Maturity Date (September 1)	Principal Amount	Interest Rate
	$	%

(c) Interest on the Series 2024 Bonds shall be payable from the Interest Payment Date next preceding the date of authentication thereof unless (i) a Series 2024 Bond is authenticated on or before an Interest Payment Date and after the close of business on the preceding Record Date, in which event interest thereon shall be payable from such Interest Payment Date, (ii) a Series 2024 Bond is authenticated on or before the first Record Date, in which event interest thereon shall be payable from the Closing Date, or (iii) interest on any Series 2024 Bond is in default as of the date of authentication thereof, in which event interest thereon shall be payable from the date to which interest has previously been paid or duly provided for. Interest shall be paid in lawful money of the United States on each Interest Payment Date. Interest shall be paid by check of the Trustee mailed by first-class mail, postage prepaid, on each Interest Payment Date to the Owners of the Series 2024 Bonds at their respective addresses shown on the Registration Books as of the close of business on the preceding Record Date. Notwithstanding the foregoing, interest on any Series 2024 Bond that is not punctually paid or duly provided for on any Interest Payment Date shall, if and to the extent that amounts subsequently become available therefor, be paid on a payment date established by the Trustee to the Person in whose name the ownership of such Series 2024 Bond is registered on the Registration Books at the close of business on a special record date to be established by the Trustee for the payment of such defaulted interest, notice of which shall be given to such Owner not less than ten days prior to such special record date.

(d) The principal of the Series 2024 Bonds shall be payable in lawful money of the United States of America upon presentation and surrender thereof upon maturity or earlier redemption at the Office of the Trustee.

(e) The Series 2024 Bonds shall be subject to redemption as provided in Article IV.

(f) The Series 2024 Bonds shall be in substantially the form set forth in Exhibit B hereto, with appropriate or necessary insertions, omissions and variations as permitted or required hereby.

Section 2.03. Execution of Bonds. The Bonds shall be executed in the name and on behalf of the Community Facilities District with the manual or facsimile signature of the Mayor of the City attested by the manual or facsimile signature of the City Clerk of the City. The Bonds shall then be delivered to the Trustee for authentication by it. In case any of such officers who shall have signed or attested any of the Bonds shall cease to be such officers before the Bonds so signed or attested shall have been authenticated or delivered by the Trustee, or issued by the Community Facilities District, such Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the Community Facilities District as though those who signed and attested the same had continued to be such officers, and also any Bonds may be signed and attested on behalf of the Community Facilities District by such Persons as at the actual date of execution of such Bonds shall be the proper officers of the City although at the nominal date of such Bonds any such Person shall not have been such officer of the City.

Section 2.04. Authentication of Bonds. Only such of the Bonds as shall bear thereon a certificate of authentication substantially in the form as that set forth in Exhibit B hereto for the Series 2024 Bonds, manually executed by the Trustee, shall be valid or obligatory for any

purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

Section 2.05. Registration Books. The Trustee shall keep or cause to be kept, at the Office of the Trustee, sufficient records for the registration and transfer of ownership of the Bonds, which shall be open to inspection during regular business hours and upon reasonable notice by the Community Facilities District. Upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such records, the ownership of the Bonds.

Section 2.06. Transfer and Exchange of Bonds. (a) Any Bond may be transferred upon the Registration Books by the Person in whose name it is registered, in person or by such Person's duly authorized attorney, upon surrender of such Bond to the Trustee for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Trustee. Whenever any Bond or Bonds shall be so surrendered for transfer, the Community Facilities District shall execute and the Trustee shall authenticate and shall deliver a new Bond or Bonds of the same Series and maturity in a like aggregate principal amount, in any Authorized Denomination. The Trustee shall require the Owner requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer.

(b) The Bonds may be exchanged at the Office of the Trustee for a like aggregate principal amount of Bonds of the same Series and maturity of other Authorized Denominations. The Trustee shall require the payment by the Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange.

(c) The Trustee shall not be obligated to make any transfer or exchange of Bonds of a Series pursuant to this Section during the period established by the Trustee for the selection of Bonds of such Series for redemption, or with respect to any Bonds of such Series selected for redemption.

Section 2.07. Book-Entry System. (a) Prior to the issuance of a Series of Bonds, the Community Facilities District may provide that such Series of Bonds shall initially be issued as Book-Entry Bonds, and in such event, the Bonds of such Series for each maturity date shall be in the form of a separate single fully registered Bond (which may be typewritten). Upon initial issuance, the ownership of each such Bond of such Series shall be registered in the Registration Books in the name of the Nominee, as nominee of the Depository. The Series 2024 Bonds shall initially be issued as Book-Entry Bonds.

Payment of principal of, and interest and premium, if any, on, any Book-Entry Bond registered in the name of the Nominee shall be made on the applicable payment date by wire transfer of New York clearing house or equivalent next day funds or by wire transfer of same day funds to the account of the Nominee. Such payments shall be made to the Nominee at the address that is, on the Record Date, shown for the Nominee in the Registration Books.

(b) With respect to Book-Entry Bonds, the Community Facilities District and the Trustee shall have no responsibility or obligation to any Participant or to any Person on behalf of

which such a Participant holds an interest in such Book-Entry Bonds. Without limiting the immediately preceding sentence, the Community Facilities District and the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee or any Participant with respect to any ownership interest in Book-Entry Bonds, (ii) the delivery to any Participant or any other Person, other than an Owner as shown in the Registration Books, of any notice with respect to Book-Entry Bonds, including any notice of redemption, (iii) the selection by the Depository and its Participants of the beneficial interests in Book-Entry Bonds of a maturity to be redeemed in the event such Book-Entry Bonds are redeemed in part, (iv) the payment to any Participant or any other Person, other than an Owner as shown in the Registration Books, of any amount with respect to principal of, or premium, if any, or interest on Book-Entry Bonds, or (v) any consent given or other action taken by the Depository as Owner.

(c) The Community Facilities District and the Trustee may treat and consider the Person in whose name each Book-Entry Bond is registered in the Registration Books as the absolute Owner of such Book-Entry Bond for the purpose of payment of principal of, and premium, if any, and interest on such Bond, for the purpose of selecting any Bonds, or portions thereof, to be redeemed, for the purpose of giving notices of redemption and other matters with respect to such Book-Entry Bond, for the purpose of registering transfers with respect to such Book-Entry Bond, for the purpose of obtaining any consent or other action to be taken by Owners and for all other purposes whatsoever, and the Community Facilities District and the Trustee shall not be affected by any notice to the contrary.

(d) In the event of a redemption of all or a portion of a Book-Entry Bond, the Depository, in its discretion (i) may request the Trustee to authenticate and deliver a new Book-Entry Bond, or (ii) if the Depository is the sole Owner of such Book-Entry Bond, shall make an appropriate notation on the Book-Entry Bond indicating the date and amounts of the reduction in principal thereof resulting from such redemption, except in the case of final payment, in which case such Book-Entry Bond must be presented to the Trustee prior to payment.

(e) The Trustee shall pay all principal of, and premium, if any, and interest on the Book-Entry Bonds only to or "upon the order of" (as that term is used in the Uniform Commercial Code as adopted in the State) the respective Owner, as shown in the Registration Books, or such Owner's respective attorney duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the obligations with respect to payment of principal of, and premium, if any, and interest on the Book-Entry Bonds to the extent of the sum or sums so paid. No Person other than an Owner, as shown in the Registration Books, shall receive an authenticated Book-Entry Bond. Upon delivery by the Depository to the Owners, the Community Facilities District and the Trustee of written notice to the effect that the Depository has determined to substitute a new nominee in place of the Nominee, and subject to the provisions herein with respect to Record Dates, the word Nominee in this Indenture shall refer to such nominee of the Depository.

(f) In order to qualify the Book-Entry Bonds for the Depository's book-entry system, the Community Facilities District shall execute and deliver to the Depository a Letter of Representations. The execution and delivery of a Letter of Representations shall not in any way impose upon the Community Facilities District or the Trustee any obligation whatsoever with respect to Persons having interests in such Book-Entry Bonds other than the Owners, as shown

on the Registration Books. Such Letter of Representations may provide the time, form, content and manner of transmission, of notices to the Depository. In addition to the execution and delivery of a Letter of Representations by the Community Facilities District, the Community Facilities District and the Trustee shall take such other actions, not inconsistent with this Indenture, as are reasonably necessary to qualify Book-Entry Bonds for the Depository's book-entry program.

(g) In the event the Community Facilities District determines that it is in the best interests of the Beneficial Owners that they be able to obtain certificated Bonds and that such Bonds should therefore be made available and notifies the Depository and the Trustee of such determination, the Depository will notify the Participants of the availability through the Depository of certificated Bonds. In such event, the Trustee shall transfer and exchange certificated Bonds as requested by the Depository and any other Owners in appropriate amounts. In the event (i) the Depository determines not to continue to act as securities depository for Book-Entry Bonds, or (ii) the Depository shall no longer so act and gives notice to the Trustee of such determination, then the Community Facilities District shall discontinue the Book-Entry system with the Depository. If the Community Facilities District determines to replace the Depository with another qualified securities depository, the Community Facilities District shall prepare or direct the preparation of a new single, separate, fully registered Bond of the appropriate Series for each maturity date of such Book-Entry Bonds, registered in the name of such successor or substitute qualified securities depository or its nominee. If the Community Facilities District fails to identify another qualified securities depository to replace the Depository, then the Book-Entry Bonds shall no longer be restricted to being registered in the Registration Books in the name of the Nominee, but shall be registered in whatever name or names the Owners transferring or exchanging such Bonds shall designate, in accordance with the provisions of Sections 2.06, 2.08 and 2.09. Whenever the Depository requests the Community Facilities District to do so, the Community Facilities District shall cooperate with the Depository in taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the Book-Entry Bonds to any Participant having Book-Entry Bonds credited to its account with the Depository, and (ii) to arrange for another securities depository to maintain custody of certificates evidencing the Book-Entry Bonds.

(h) Notwithstanding any other provision of this Indenture to the contrary, if the Depository is the sole Owner of the Bonds of a Series, so long as any Book-Entry Bond of such Series is registered in the name of the Nominee, all payments of principal of, and premium, if any, and interest on such Book-Entry Bond and all notices with respect to such Book-Entry Bond shall be made and given, respectively, as provided in the Letter of Representations or as otherwise instructed by the Depository.

(i) In connection with any notice or other communication to be provided to Owners pursuant to this Indenture by the Community Facilities District or the Trustee, with respect to any consent or other action to be taken by Owners of Book-Entry Bonds, the Trustee shall establish a record date for such consent or other action and give the Depository notice of such record date not less than 15 calendar days in advance of such record date to the extent possible.

Section 2.08. <u>Bonds Mutilated, Lost, Destroyed or Stolen</u>. If any Bond shall become mutilated, the Community Facilities District, at the expense of the Owner of said Bond, shall

execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of the same Series and maturity in a like principal amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be canceled by it and delivered to, or upon the order of, the Community Facilities District. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence and indemnity reasonably satisfactory to the Trustee shall be given, the Community Facilities District, at the expense of the Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of the same Series and maturity in a like aggregate principal amount in lieu of and in replacement for the Bond so lost, destroyed or stolen (or if any such Bond shall have matured or shall have been selected for redemption, instead of issuing a replacement Bond, the Trustee may pay the same without surrender thereof). The Community Facilities District may require payment by the Owner of a sum not exceeding the actual cost of preparing the replacement Bond delivered thereto under this Section and the expenses incurred by the Community Facilities District and the Trustee in connection therewith. Any Bond of a Series issued under the provisions of this Section in lieu of any Bond of such Series alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Community Facilities District whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be entitled to the benefits of this Indenture with all other Bonds of such Series secured by this Indenture.

Section 2.09. Temporary Bonds. The Bonds of a Series may be issued in temporary form exchangeable for definitive Bonds of such Series when ready for delivery. Any temporary Bonds may be printed, lithographed or typewritten, shall be of such Authorized Denominations as may be determined by the Community Facilities District, shall be in fully registered form without coupons and may contain such reference to any of the provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Community Facilities District and authenticated by the Trustee upon the same conditions and in substantially the same manner as the definitive Bonds. If the Community Facilities District issues temporary Bonds of a Series it shall execute and deliver definitive Bonds of such Series as promptly thereafter as practicable, and thereupon the temporary Bonds of such Series may be surrendered, for cancellation, at the Office of the Trustee and the Trustee shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of such Series and maturities in Authorized Denominations. Until so exchanged, the temporary Bonds of such Series shall be entitled to the same benefits under this Indenture as definitive Bonds of such Series authenticated and delivered hereunder.

ARTICLE III

ISSUANCE OF SERIES 2024 BONDS; APPLICATION OF PROCEEDS; ADDITIONAL BONDS

Section 3.01. Issuance of Series 2024 Bonds. The Community Facilities District may at any time execute the Series 2024 Bonds and deliver the same to the Trustee. The Trustee shall authenticate the Series 2024 Bonds and deliver the Series 2024 Bonds to the Original Purchaser upon receipt of a Written Request of the Community Facilities District and upon receipt of the purchase price therefor.

Section 3.02. Application of Proceeds. (a) On the Closing Date, the proceeds of the sale of the Series 2024 Bonds received by the Trustee, $_____, shall be deposited by the Trustee as follows:

(i) the Trustee shall deposit the amount of $_____ in the Costs of Issuance Fund;

(ii) the Trustee shall deposit the amount of $_____ in the Reserve Fund, which is equal to the Reserve Requirement;

(iii) the Trustee shall deposit the amount of $_____ in the KB HOME Acquisition Account;

(iv) the Trustee shall deposit the amount of $_____ in the City Park Account; and

(v) the Trustee shall deposit the amount of $_____ in the NMC Acquisition Account.

(b) On the Closing Date, the amount transferred by the Community Facilities District to the Trustee, $_____, which consists of amounts of the Special Tax collected by the Community Facilities District, shall be deposited by the Trustee in the KB HOME Acquisition Account.

Section 3.03. Costs of Issuance Fund. (a) The Trustee shall establish and maintain a separate Fund designated the "Costs of Issuance Fund." On the Closing Date, the Trustee shall deposit in the Costs of Issuance Fund the amount required to be deposited therein pursuant to Section 3.02. There shall additionally be deposited in the Cost of Issuance Fund the portion, if any, of the proceeds of the sale of any Additional Bonds required to be deposited therein under the Supplemental Indenture pursuant to which such Additional Bonds are issued.

(b) The moneys in the Costs of Issuance Fund shall be used and withdrawn by the Trustee from time to time to pay the Costs of Issuance upon submission of a Written Request of the Community Facilities District stating (i) the Person to whom payment is to be made, (ii) the amount to be paid and instructions for such payment, (iii) the purpose for which such costs were incurred, (iv) that such payment is a proper charge against the Costs of Issuance Fund, and (v) that payment of such amount has not been the subject of a prior disbursement from the Costs

of Issuance Fund, in each case together with a statement or invoice for each amount requested thereunder. On the last Business Day that is no later than six months after the Closing Date, the Trustee shall transfer any amount remaining in the Costs of Issuance Fund to the City Park Account, and, upon making such transfer, the Costs of Issuance Fund shall be closed.

(c) If the Costs of Issuance Fund has been closed in accordance with the provisions hereof, the Costs of Issuance Fund shall be reopened and reestablished by the Trustee in connection with the issuance of any Additional Bonds, if so provided in the Supplemental Indenture pursuant to which such Additional Bonds are issued.

Section 3.04. Improvement Fund. (a) The Trustee shall establish and maintain a separate Fund designated the "Improvement Fund." Within the Improvement Fund, the Trustee shall establish and maintain a separate Account designated the "KB HOME Acquisition Account," a separate Account designated the " NMC Acquisition Account," a separate Account designated the "City Facilities Account," and a separate Account designated the "City Park Account." On the Closing Date, the Trustee shall deposit in each of the Accounts within the Improvement Fund the amount, if any, required to be deposited therein pursuant to Section 3.02. There shall additionally be deposited in each of the Accounts within the Improvement Fund (i) the portion, if any, of the proceeds of the sale of any Additional Bonds required to be deposited therein under the Supplemental Indenture pursuant to which such Additional Bonds are issued, and (ii) amounts received by the Trustee when accompanied by a Written Request of the Community Facilities District that such amounts are to be deposited in such Account, which amounts may include Special Tax Revenues collected and received by the Community Facilities District prior to the Closing Date.

(b) The moneys in the KB HOME Acquisition Account shall be used and withdrawn by the Trustee from time to time to pay the costs of the KB HOME Facilities upon submission of a Written Request of the Community Facilities District stating (i) the Person to whom payment is to be made, (ii) the amount to be paid and instructions for such payment, (iii) the purpose for which such costs were incurred, (iv) that such payment is for costs of the KB HOME Facilities and is a proper charge against the KB HOME Acquisition Account, (v) that payment of such costs has not been the subject of a prior disbursement from any of the Accounts within the Improvement Fund, and (vi) whether or not such costs of the KB HOME Facilities are to be paid pursuant to a KB HOME Payment Request submitted in accordance with the KB HOME Acquisition Agreement, in each case together with a statement or invoice for each amount requested thereunder. If costs of the KB HOME Facilities are to be paid pursuant to a KB HOME Payment Request submitted in accordance with the KB HOME Acquisition Agreement, a duplicate original of the signed and approved KB HOME Payment Request relating to such costs of the KB HOME Facilities, together with all exhibits and attachments thereto, must accompany such Written Request of the Community Facilities District.

Upon the submission of a Written Certificate of the Community Facilities District stating (i) that the portion of the KB HOME Facilities to be financed from the KB HOME Acquisition Account has been completed and that all costs of such KB HOME Facilities have been paid, or (ii) that such portion of the KB HOME Facilities has been substantially completed and that all remaining costs of such portion of the KB HOME Facilities have been determined and specifying

the amount to be retained therefor, the Trustee shall transfer all of the amount remaining in the KB HOME Acquisition Account (less any such retention) to the City Park Account.

(c) The moneys in the NMC Acquisition Account shall be used and withdrawn by the Trustee from time to time to pay the costs of the NMC Facilities upon submission of a Written Request of the Community Facilities District stating (i) the Person to whom payment is to be made, (ii) the amount to be paid and instructions for such payment, (iii) the purpose for which such costs were incurred, (iv) that such payment is for costs of the NMC Facilities and is a proper charge against the NMC Acquisition Account, (v) that payment of such costs has not been the subject of a prior disbursement from any of the Accounts within the Improvement Fund or from any other fund or account established with respect to a community facilities district formed by the City Council and from which costs of NMC Facilities are authorized to be paid, and (vi) whether or not such costs of the NMC Facilities are to be paid pursuant to a NMC Payment Request submitted in accordance with the NMC Acquisition Agreement, in each case together with a statement or invoice for each amount requested thereunder. If costs of the NMC Facilities are to be paid pursuant to a NMC Payment Request submitted in accordance with the NMC Acquisition Agreement, a duplicate original of the signed and approved NMC Payment Request relating to such costs of the NMC Facilities, together with all exhibits and attachments thereto, must accompany such Written Request of the Community Facilities District.

If, on the date the Community Facilities District submits to the Trustee a Written Request of the Community Facilities District to pay costs of the NMC Facilities, there are insufficient moneys in the NMC Acquisition Account to pay such costs in full, the amount remaining unpaid shall be paid as and to the extent that moneys are subsequently deposited in the NMC Acquisition Account, but only after the payment in full of all amounts that the Community Facilities District, by a Written Request of the Community Facilities District, previously directed the Trustee to pay from the NMC Acquisition Account.

If the NMC Payment Request submitted to the Trustee pursuant to this subsection requests that the costs of the NMC Facilities to be paid thereunder be paid to the Person or Persons, in the amounts, set forth in the completed Purchase Price Payment Instructions attached to such NMC Payment Request as Attachment B, the Trustee shall, as and when amounts become available in the NMC Acquisition Account to pay all or a portion of such costs, pay from the NMC Acquisition Account such costs or portion thereof to such Person or Persons. If the NMC Payment Request submitted to the Trustee pursuant to this subsection indicates that the costs of the NMC Facilities to be paid thereunder be paid to the Person or Persons, in the amounts, to be set forth in Purchase Price Payment Instructions to be submitted to the Trustee as and when amounts become available in the NMC Acquisition Account to pay all or a portion of such costs, the Trustee shall, as and when such amounts become available, notify NMC Builders in writing of (i) the number or other designation of the NMC Payment Request pursuant to which such payment of such costs is requested to be made, (ii) the amount available in the NMC Acquisition Account to pay such costs or portion thereof, and (iii) the name of the Community Facilities District, and, upon submission to the Trustee by NMC Builders of completed and signed Purchase Price Payment Instructions in the form attached to such NMC Payment Request as Attachment B, the Trustee shall pay from the NMC Acquisition Account such costs or portion thereof to the Person or Persons, in the amounts, set forth in such Purchase Price Payment Instructions.

If, on the date the Community Facilities District submits to the Trustee a Written Request of the Community Facilities District to pay 85% of the costs of a Circulation System Facility, there are insufficient moneys in the NMC Acquisition Account to pay such portion of such costs in full, the amount remaining unpaid shall be paid as and to the extent that moneys are subsequently deposited in the NMC Acquisition Account, but only after the payment in full of all amounts that the Community Facilities District, by a Written Request of the Community Facilities District, previously directed the Trustee to pay from the NMC Acquisition Account.

If the NMC Payment Request submitted to the Trustee pursuant to this subsection requests that 85% of the costs of a Circulation System Facility to be paid thereunder be paid to the Person or Persons, in the amounts, set forth in the completed Purchase Price Payment Instructions attached to such NMC Payment Request as Attachment B, the Trustee shall, as and when amounts become available in the NMC Acquisition Account to pay all or a portion of such costs, pay from the NMC Acquisition Account such costs or portion thereof to such Person or Persons. If the NMC Payment Request submitted to the Trustee pursuant to this subsection indicates that 85% of the costs of a Circulation System Facility to be paid thereunder be paid to the Person or Persons, in the amounts, to be set forth in Purchase Price Payment Instructions to be submitted to the Trustee as and when amounts become available in the NMC Acquisition Account to pay all or a portion of such costs, the Trustee shall, as and when such amounts become available, notify NMC Builders in writing of (i) the number or other designation of the NMC Payment Request pursuant to which such payment of such costs is requested to be made, (ii) the amount available in the NMC Acquisition Account to pay such costs or portion thereof, and (iii) the name of the Community Facilities District, and, upon submission to the Trustee by NMC Builders of completed and signed Purchase Price Payment Instructions in the form attached to such NMC Payment Request as Attachment B, the Trustee shall pay from the NMC Acquisition Account such costs or portion thereof to the Person or Persons, in the amounts, set forth in such Purchase Price Payment Instructions.

Upon the submission of a Written Certificate of the Community Facilities District stating (i) that the portion of the NMC Facilities to be financed from the NMC Acquisition Account has been completed and that all costs of such NMC Facilities have been paid, or (ii) that such portion of the NMC Facilities has been substantially completed and that all remaining costs of such portion of the NMC Facilities have been determined and specifying the amount to be retained therefor, the Trustee shall (A) if the amount remaining in the NMC Acquisition Account (less any such retention) is equal to or greater than $25,000, transfer the portion of such amount equal to the largest integral multiple of $5,000 that is not greater than such amount to the Redemption Fund, to be applied to the redemption of Bonds as directed by the Community Facilities District, and (B) after making the transfer, if any, required to be made pursuant to the preceding clause (A), transfer all of the amount remaining in the NMC Acquisition Account (less any such retention) to the Interest Account, to be applied to the payment of interest on the Bonds.

(d) The moneys in the City Facilities Account shall be used and withdrawn by the Trustee from time to time to pay the costs of the Facilities upon submission of a Written Request of the Community Facilities District stating (i) the Person to whom payment is to be made, (ii) the amount to be paid and instructions for such payment, (iii) the purpose for which such costs were incurred, (iv) that such payment is for costs of the Facilities and is a proper charge against the City Facilities Account, and (v) that payment of such costs has not been the subject of

a prior disbursement from any of the Accounts within the Improvement Fund, in each case together with a statement or invoice for each amount requested thereunder.

Upon the submission of a Written Certificate of the Community Facilities District stating (i) that the portion of the Facilities to be financed from the City Facilities Account has been completed and that all costs of such Facilities have been paid, or (ii) that such portion of the Facilities has been substantially completed and that all remaining costs of such portion of the Facilities have been determined and specifying the amount to be retained therefor, the Trustee shall (A) if the amount remaining in the City Facilities Account (less any such retention) is equal to or greater than $25,000, transfer the portion of such amount equal to the largest integral multiple of $5,000 that is not greater than such amount to the Redemption Fund, to be applied to the redemption of Bonds as directed by the Community Facilities District, and (B) after making the transfer, if any, required to be made pursuant to the preceding clause (A), transfer all of the amount remaining in the City Facilities Account (less any such retention) to the Interest Account, to be applied to the payment of interest on the Bonds.

(e) The moneys in the City Park Account shall be used and withdrawn by the Trustee from time to time to pay the costs of the Facilities upon submission of a Written Request of the Community Facilities District stating (i) the Person to whom payment is to be made, (ii) the amount to be paid and instructions for such payment, (iii) the purpose for which such costs were incurred, (iv) that such payment is for costs of the Facilities and is a proper charge against the City Park Account, and (v) that payment of such costs has not been the subject of a prior disbursement from any of the Accounts within the Improvement Fund, in each case together with a statement or invoice for each amount requested thereunder.

Upon the submission of a Written Certificate of the Community Facilities District stating (i) that the portion of the Facilities to be financed from the City Park Account has been completed and that all costs of such Facilities have been paid, or (ii) that such portion of the Facilities has been substantially completed and that all remaining costs of such portion of the Facilities have been determined and specifying the amount to be retained therefor, the Trustee shall (A) if the amount remaining in the City Park Account (less any such retention) is equal to or greater than $25,000, transfer the portion of such amount equal to the largest integral multiple of $5,000 that is not greater than such amount to the Redemption Fund, to be applied to the redemption of Bonds as directed by the Community Facilities District, and (B) after making the transfer, if any, required to be made pursuant to the preceding clause (A), transfer all of the amount remaining in the City Park Account (less any such retention) to the Interest Account, to be applied to the payment of interest on the Bonds.

Section 3.05. Conditions for the Issuance of Additional Bonds. The Community Facilities District may at any time issue one or more Series of Additional Bonds payable from Net Special Tax Revenues as provided herein on a parity with all other Bonds theretofore issued hereunder, but only subject to the following conditions, which are hereby made conditions precedent to the issuance of such Additional Bonds:

(a) upon the issuance of such Additional Bonds, no Event of Default shall have occurred and be continuing hereunder;

(b) the issuance of such Additional Bonds shall have been authorized under and pursuant to this Indenture and the Act and shall have been provided for by a Supplemental Indenture, which shall specify the following:

(i) the purposes for which the proceeds of such Additional Bonds are to be applied, which purposes may only include one or more of (A) providing funds to refund any Bonds previously issued hereunder, (B) providing funds to pay Costs of Issuance incurred in connection with the issuance of such Additional Bonds, and (C) providing funds to make any deposit to the Reserve Fund required pursuant to paragraph (viii) below;

(ii) the designation of such Series of Additional Bonds, the aggregate principal amount of the Additional Bonds of such Series, and the principal amount of, and the interest rate to be borne by, each maturity of such Additional Bonds;

(iii) that such Additional Bonds shall be payable as to interest on the Interest Payment Dates, except that the first installment of interest may be payable on either March 1 or September 1 and shall be for a period of not longer than twelve months;

(iv) the date, the maturity date or dates and the dates on which mandatory sinking fund redemptions, if any, are to be made for such Additional Bonds; provided, however, that each such maturity date and date on which a mandatory sinking fund redemption is to be made shall be a September 1 and, provided, further, that serial maturities of serial Bonds or mandatory sinking fund redemptions for term Bonds, or any combination thereof, shall be established to provide for the redemption or payment of such Additional Bonds on or before their respective maturity dates;

(v) the Authorized Denominations of such Additional Bonds;

(vi) the redemption premiums and terms, if any, for such Additional Bonds;

(vii) the form of such Additional Bonds;

(viii) the amount, if any, to be deposited from the proceeds of sale of such Additional Bonds in the Reserve Fund; provided, however, that the amount on deposit in the Reserve Fund at the time that such Additional Bonds become Outstanding shall be at least equal to the Reserve Requirement; and

(ix) such other provisions that are appropriate or necessary and are not inconsistent with the provisions hereof;

(c) The Community Facilities District shall have received a certificate from an Independent Consultant certifying that Annual Debt Service in each Bond Year, calculated for all Bonds that will be Outstanding after the issuance of such Additional

Bonds, will be less than or equal to Annual Debt Service in such Bond Year, calculated for all Bonds that are Outstanding immediately prior to the issuance of such Additional Bonds.

Nothing contained herein shall limit the issuance of any special tax bonds payable from the Special Tax if, after the issuance and delivery of such special tax bonds, none of the Bonds theretofore issued hereunder will be Outstanding.

Section 3.06. Procedure for the Issuance of Additional Bonds. At any time after the sale of any Additional Bonds in accordance with the Act, such Additional Bonds shall be executed by the Community Facilities District for issuance hereunder and shall be delivered to the Trustee and thereupon shall be authenticated and delivered by the Trustee, but only upon receipt by the Trustee of the following:

(a) a certified copy of the Supplemental Indenture authorizing the issuance of such Additional Bonds;

(b) a Written Request of the Community Facilities District as to the delivery of such Additional Bonds;

(c) a Written Certificate of the Community Facilities District stating that the conditions precedent to the issuance of such Additional Bonds specified in Section 3.05 have been satisfied;

(d) an opinion of Bond Counsel substantially to the effect that (i) this Indenture, as modified and amended by all Supplemental Indentures theretofore, or thereupon being, entered into has been duly authorized, executed and delivered by, and constitutes the valid and binding obligation of, the Community Facilities District, (ii) such Additional Bonds constitute valid and binding special, limited obligations of the Community Facilities District, and (iii) the issuance of such Additional Bonds, in and of itself, will not adversely affect the exclusion of interest on the Bonds Outstanding prior to the issuance of such Additional Bonds from gross income for federal income tax purposes;

(e) the proceeds of the sale of such Additional Bonds; and

(f) such further documents or money as are required by the provisions hereof or by the provisions of the Supplemental Indenture pursuant to which such Additional Bonds are issued.

Section 3.07. Additional Bonds. The Community Facilities District shall not incur any obligations payable from Net Special Tax Revenues on a parity with the Bonds, except as provided in Sections 3.05 and 3.06.

ARTICLE IV

REDEMPTION OF BONDS

Section 4.01. Redemption of Series 2024 Bonds. (a) *Optional Redemption.* The Series 2024 Bonds maturing on and after September 1, 20__, shall be subject to optional redemption, in whole, or in part in Authorized Denominations, on any date on or after September 1, 20__ from any source of available funds, at the following respective Redemption Prices (expressed as percentages of the principal amount of the Series 2024 Bonds to be redeemed), plus accrued interest thereon to the date of redemption:

Redemption Dates	Redemption Price
September 1, 20__ through August 31, 20__	103%
September 1, 20__ through August 31, 20__	102
September 1, 20__ through August 31, 20__	101
September 1, 20__ and any date thereafter	100

The Community Facilities District shall give the Trustee written notice of its intention to redeem Series 2024 Bonds pursuant to this subsection not less than 45 days prior to the applicable redemption date, unless a later date is agreed to by the Trustee.

(b) *Mandatory Redemption from Special Tax Prepayments.* The Series 2024 Bonds shall be subject to mandatory redemption, in whole, or in part in Authorized Denominations, on any Interest Payment Date, from and to the extent of Special Tax prepayments required to be applied thereto pursuant to Section 5.02(a) and any amount required to be applied thereto pursuant to Section 5.04(c), at the following respective Redemption Prices (expressed as percentages of the principal amount of the Series 2024 Bonds to be redeemed), plus accrued interest thereon to the date of redemption:

Redemption Dates	Redemption Price
March 1, 20__ through March 1, 20__	103%
September 1, 20__ and March 1, 20__	102
September 1, 20__ and March 1, 20__	101
September 1, 20__ and any Interest Payment Date thereafter	100

(c) *Mandatory Sinking Fund Redemption.* The Series 2024 Bonds maturing September 1, 20__ shall be subject to mandatory sinking fund redemption, in part, on September 1 in each year, commencing September 1, 20__, at a Redemption Price equal to the principal amount of the Series 2024 Bonds maturing September 1, 20__ to be redeemed, without premium, plus accrued interest thereon to the date of redemption, in the aggregate respective principal amounts in the respective years as follows:

Sinking Fund Redemption Date (September 1)	Principal Amount to be Redeemed
	$

(Maturity)

If some but not all of the Series 2024 Bonds maturing on September 1, 20__ are redeemed pursuant to Section 4.01(a), the principal amount of the Series 2024 Bonds maturing on September 1, 20__ to be redeemed pursuant to Section 4.01(c) on any subsequent September 1 shall be reduced, by $5,000 or an integral multiple thereof, as designated by the Community Facilities District in a Written Certificate of the Community Facilities District submitted to the Trustee; provided, however, that the aggregate amount of such reductions shall not exceed the aggregate amount of the Series 2024 Bonds maturing on September 1, 20__ redeemed pursuant to Section 4.01(a). If some but not all of the Series 2024 Bonds maturing on September 1, 20__ are redeemed pursuant to Section 4.01(b), the principal amount of the Series 2024 Bonds maturing on September 1, 20__ to be redeemed pursuant to Section 4.01(c) on any subsequent September 1 shall be reduced by the aggregate principal amount of the Series 2024 Bonds maturing on September 1, 20__ so redeemed pursuant to Section 4.01(b), such reduction to be allocated among redemption dates as nearly as practicable on a pro rata basis in amounts of $5,000 or integral multiples thereof, as determined by the Trustee, notice of which determination shall be given by the Trustee to the Community Facilities District.

The Series 2024 Bonds maturing September 1, 20__ shall be subject to mandatory sinking fund redemption, in part, on September 1 in each year, commencing September 1, 20__, at a Redemption Price equal to the principal amount of the Series 2024 Bonds maturing September 1, 20__ to be redeemed, without premium, plus accrued interest thereon to the date of redemption, in the aggregate respective principal amounts in the respective years as follows:

Sinking Fund Redemption Date (September 1)	Principal Amount to be Redeemed
	$

(Maturity)

If some but not all of the Series 2024 Bonds maturing on September 1, 20__ are redeemed pursuant to Section 4.01(a), the principal amount of the Series 2024 Bonds maturing on September 1, 20__ to be redeemed pursuant to Section 4.01(c) on any subsequent September 1 shall be reduced, by $5,000 or an integral multiple thereof, as designated by the Community Facilities District in a Written Certificate of the Community Facilities District submitted to the Trustee; provided, however, that the aggregate amount of such reductions shall not exceed the aggregate

amount of the Series 2024 Bonds maturing on September 1, 20__ redeemed pursuant to Section 4.01(a). If some but not all of the Series 2024 Bonds maturing on September 1, 20__ are redeemed pursuant to Section 4.01(b), the principal amount of the Series 2024 Bonds maturing on September 1, 20__ to be redeemed pursuant to Section 4.01(c) on any subsequent September 1 shall be reduced by the aggregate principal amount of the Series 2024 Bonds maturing on September 1, 20__ so redeemed pursuant to Section 4.01(b), such reduction to be allocated among redemption dates as nearly as practicable on a pro rata basis in amounts of $5,000 or integral multiples thereof, as determined by the Trustee, notice of which determination shall be given by the Trustee to the Community Facilities District.

Section 4.02. Notice of Redemption. The Trustee on behalf and at the expense of the Community Facilities District shall mail (by first-class mail) notice of any redemption to the respective Owners of any Bonds designated for redemption at their respective addresses appearing on the Registration Books and to the Original Purchaser, at least 30 but not more than 60 days prior to the date fixed for redemption. Such notice shall state the date of the notice, the redemption date, the redemption place and the Redemption Price and shall designate the CUSIP numbers, if any, the Bond numbers and the maturity or maturities of the Bonds to be redeemed (except in the event of redemption of all of the Bonds of such maturity or maturities in whole), and shall require that such Bonds be then surrendered at the Office of the Trustee for redemption at the Redemption Price, giving notice also that further interest on such Bonds will not accrue from and after the date fixed for redemption. Neither the failure to receive any notice so mailed, nor any defect in such notice, shall affect the validity of the proceedings for the redemption of the Bonds or the cessation of accrual of interest thereon from and after the date fixed for redemption. With respect to any notice of any optional redemption of Bonds, unless at the time such notice is given the Bonds to be redeemed shall be deemed to have been paid within the meaning of Section 10.02, such notice shall state that such redemption is conditional upon receipt by the Trustee, on or prior to the date fixed for such redemption, of moneys that, together with other available amounts held by the Trustee, are sufficient to pay the Redemption Price of, and accrued interest on, the Bonds to be redeemed, and that if such moneys shall not have been so received said notice shall be of no force and effect and the Community Facilities District shall not be required to redeem such Bonds. In the event a notice of redemption of Bonds contains such a condition and such moneys are not so received, the redemption of Bonds as described in the conditional notice of redemption shall not be made and the Trustee shall, within a reasonable time after the date on which such redemption was to occur, give notice to the Persons and in the manner in which the notice of redemption was given, that such moneys were not so received and that there shall be no redemption of Bonds pursuant to such notice of redemption.

Section 4.03. Selection of Bonds for Redemption. Whenever provision is made in this Indenture for the redemption of less than all of the Bonds, the Trustee shall select the Bonds to be redeemed from all Bonds not previously called for redemption (a) with respect to any optional redemption of Bonds of a Series, among maturities of Bonds of such Series as directed in a Written Request of the Community Facilities District, (b) with respect to any redemption pursuant to Section 4.01(b) and the corresponding provisions of any Supplemental Indenture pursuant to which Additional Bonds are issued, among maturities of all Series of Bonds on a *pro rata* basis as nearly as practicable, and (c) with respect to any other redemption of Additional Bonds, among maturities as provided in the Supplemental Indenture pursuant to which such Additional Bonds are issued, and by lot among Bonds of the same Series with the same maturity

in any manner that the Trustee in its sole discretion shall deem appropriate. For purposes of such selection, all Bonds shall be deemed to be comprised of the greatest number of separate denominations that would result in each such denomination being an Authorized Denomination and each such separate denomination shall be treated as a separate Bond that may be separately redeemed.

Section 4.04. Partial Redemption of Bonds. Upon surrender of any Bonds redeemed in part only, the Community Facilities District shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Community Facilities District, a new Bond or Bonds of the same Series in Authorized Denominations in an aggregate principal amount equal to the unredeemed portion of the Bonds surrendered.

Section 4.05. Effect of Notice of Redemption. (a) Notice of redemption of the Bonds subject to redemption having been mailed as aforesaid, and moneys for the Redemption Price thereof, and the interest thereon to the applicable date fixed for redemption, having been set aside with the Trustee, such Bonds shall become due and payable on said date, and, upon presentation and surrender thereof at the Office of the Trustee, said Bonds shall be paid at the Redemption Price thereof, together with interest accrued and unpaid to said date.

(b) If, on said date fixed for redemption, moneys for the Redemption Price of all the Bonds to be redeemed, together with interest to said date, shall be held by the Trustee so as to be available therefor on such date, and, if notice of redemption thereof shall have been mailed as aforesaid and not canceled, then, from and after said date, interest on said Bonds shall cease to accrue and become payable. All moneys held by or on behalf of the Trustee for the redemption of Bonds shall be held in trust for the account of the Owners of the Bonds so to be redeemed without liability to such Owners for interest thereon.

(c) All Bonds paid at maturity or redeemed prior to maturity pursuant to the provisions hereof shall be canceled upon surrender thereof and destroyed.

ARTICLE V

SECURITY FOR BONDS; FLOW OF FUNDS; INVESTMENTS

Section 5.01. Pledge. Subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein, in order to secure the payment of the principal of, premium, if any, and interest on the Bonds in accordance with their terms, the provisions of this Indenture and the Act, the Community Facilities District hereby pledges to the Owners, and grants thereto a lien on and a security interest in, all of the Net Special Tax Revenues and any other amounts held in the Special Tax Fund, the Bond Fund and the Reserve Fund. Said pledge shall constitute a first lien on and security interest in such assets, which shall immediately attach to such assets and be effective, binding and enforceable against the Community Facilities District, its successors, purchasers of any of such assets, creditors and all others asserting rights therein, to the extent set forth in, and in accordance with, this Indenture, irrespective of whether those parties have notice of the pledge of, lien on and security interest in such assets and without the need for any physical delivery, recordation, filing or further act.

Section 5.02. Special Tax Fund. (a) The Trustee shall establish and maintain a separate Fund designated the "Special Tax Fund." As soon as practicable after the receipt by the Community Facilities District of any Special Tax Revenues, but in any event no later than the date ten Business Days after such receipt, the Community Facilities District shall transfer such Special Tax Revenues to the Trustee for deposit in the Special Tax Fund; provided, however, that with respect to any such Special Tax Revenues that represent a Special Tax prepayment (i) said Special Tax prepayment shall be identified as such in a Written Certificate of the Community Facilities District submitted to the Trustee at the time such Special Tax prepayment is transferred to the Trustee, (ii) the portion of such Special Tax prepayment that is to be applied to the Redemption Price of the Bonds shall be identified in such Written Certificate of the Community Facilities District, shall be deposited by the Trustee in the Redemption Fund and shall be applied to the redemption of Bonds pursuant to Section 4.01(b) and the corresponding provisions of any Supplemental Indenture pursuant to which Additional Bonds are issued, and (iii) the portion of such Special Tax prepayment that is to be applied to the payment of interest on the Bonds to be so redeemed shall be identified in such Written Certificate of the Community Facilities District, shall be deposited by the Trustee in the Interest Account and shall be applied to the payment of such interest.

(b) Upon receipt of a Written Request of the Community Facilities District, the Trustee shall withdraw from the Special Tax Fund and transfer to the Administrative Expense Fund the amount specified in such Written Request of the Community Facilities District as the amount necessary to be transferred thereto in order to have sufficient amounts available therein to pay Administrative Expenses.

(c) No later than the Business Day immediately preceding each Interest Payment Date, after having made any requested transfer to the Administrative Expense Fund, the Trustee shall withdraw from the Special Tax Fund Net Special Tax Revenues in an amount sufficient to enable the Trustee to make the following transfers in the following order of priority:

(i) *Interest Account*. To the Interest Account, the amount, if any, necessary to cause the amount on deposit in the Interest Account to be equal to the interest due on the Bonds on such Interest Payment Date;

(ii) *Principal Account*. To the Principal Account, the amount, if any, necessary to cause the amount on deposit in the Principal Account to be equal to the principal, if any, due on the Bonds on such Interest Payment Date, including principal due and payable by reason of mandatory sinking fund redemption of such Bonds; and

(iii) *Reserve Fund*. To the Reserve Fund, the amount, if any, necessary to cause the amount on deposit in the Reserve Fund to be equal to the Reserve Requirement.

(d) So long as the City Facilities Account has not been closed pursuant to Section 3.04(d), on each September 2, after having made any requested transfer to the Administrative Expense Fund, the Trustee shall transfer from the Special Tax Fund to the City Facilities Account any amount remaining in the Special Tax Fund; provided, however, that the Community Facilities District may, in a Written Request of the Community Facilities District submitted to the Trustee prior to such September 2, direct the Trustee to retain in the Special Tax Fund all or a portion of such remaining amount.

Section 5.03. Bond Fund. (a) The Trustee shall establish and maintain a separate Fund designated the "Bond Fund." Within the Bond Fund, the Trustee shall establish and maintain a separate Account designated the "Principal Account" and a separate Account designated the "Interest Account." The Trustee shall deposit in the Interest Account and the Principal Account from time to time the amounts required to be deposited therein pursuant to Section 5.02. There shall additionally be deposited in the Interest Account the portion, if any, of the proceeds of the sale of Additional Bonds required to be deposited therein under the Supplemental Indenture pursuant to which such Additional Bonds are issued.

(b) In the event that, on the Business Day prior to an Interest Payment Date, after the deposit in the Interest Account of the amounts required to be deposited therein pursuant to Section 5.02, amounts in the Interest Account are insufficient to pay the interest on the Bonds due and payable on such Interest Payment Date, the Trustee shall withdraw from the Reserve Fund, to the extent of any funds therein, the amount of such insufficiency, and shall transfer any amounts so withdrawn to the Interest Account.

(c) On each Interest Payment Date, the Trustee shall withdraw from the Interest Account for payment to the Owners of the Bonds the interest on the Bonds then due and payable.

(d) In the event that, on the Business Day prior to a September 1 on which principal of the Bonds is due and payable, after the deposit in the Principal Account of the amounts required to be deposited therein pursuant to Section 5.02, including principal due and payable by reason of mandatory sinking fund redemption of the Bonds, amounts in the Principal Account are insufficient to pay such principal, after having withdrawn any amounts from the Reserve Fund required to be withdrawn therefrom on such date pursuant to subsection (b) of this Section, the Trustee shall withdraw from the Reserve Fund, to the extent of any funds therein, the amount of such insufficiency, and shall transfer any amounts so withdrawn to the Principal Account.

(e) On each September 1 on which principal of the Bonds is due and payable, including principal due and payable by reason of mandatory sinking fund redemption of the Bonds, the Trustee shall withdraw from the Principal Account for payment to the Owners of the Bonds such principal then due and payable.

Section 5.04. Reserve Fund. (a) The Trustee shall establish and maintain a separate Fund designated the "Reserve Fund." On the Closing Date, the Trustee shall deposit in the Reserve Fund the amount required to be deposited therein pursuant to Section 3.02. The Trustee shall deposit in the Reserve Fund from time to time the amounts required to be deposited therein pursuant to Section 5.02(c). There shall additionally be deposited in the Reserve Fund, in connection with the issuance of Additional Bonds, the amount required to be deposited therein under the Supplemental Indenture pursuant to which such Additional Bonds are issued.

(b) Except as otherwise provided in this Section, amounts in the Reserve Fund shall be used and withdrawn by the Trustee solely for the purpose of (i) making transfers to the Interest Account in accordance with Section 5.03(b) in the event of any deficiency in the Interest Account of the amount then required for payment of the interest on the Bonds, (ii) making transfers to the Principal Account in accordance with Section 5.03(d) in the event of any deficiency in the Principal Account of the amount then required for payment of the principal of the Bonds, and (iii) redeeming Bonds in accordance with the provisions of this Section.

(c) Whenever Bonds are to be optionally redeemed or redeemed from Special Tax prepayments, a proportionate share, determined as provided below, of the amount on deposit in the Reserve Fund shall, on the date on which amounts to redeem such Bonds are deposited in the Redemption Fund or otherwise deposited with the Trustee pursuant to Section 10.02, be transferred by the Trustee from the Reserve Fund to the Redemption Fund or to such deposit held by the Trustee and shall be applied to the redemption of said Bonds; provided, however, that such amount shall be so transferred only if and to the extent that the amount remaining on deposit in the Reserve Fund will be at least equal to the Reserve Requirement (excluding from the calculation thereof said Bonds to be redeemed). Such proportionate share shall be equal to the largest integral multiple of the minimum Authorized Denomination for said Bonds that is not larger than the amount equal to the product of (i) the amount on deposit in the Reserve Fund on the date of such transfer, times (ii) a fraction, the numerator of which is the principal amount of Bonds to be so redeemed and the denominator of which is the principal amount of Bonds to be Outstanding on the day prior to the date on which such Bonds are to be so redeemed.

(d) Whenever the balance in the Reserve Fund exceeds the amount required to redeem or pay all Outstanding Bonds, including interest accrued to the date of payment or redemption and premium, if any, due upon redemption, the Trustee shall, upon receipt of a Written Request of the Community Facilities District, transfer the amount in the Reserve Fund to the Interest Account, Principal Account and/or Redemption Fund, as applicable, to be applied, on the next succeeding Interest Payment Date to the payment and redemption of all of the Outstanding Bonds.

(e) If, as a result of the scheduled payment of principal of or interest on the Bonds, the Reserve Requirement is reduced, the Trustee shall transfer an amount equal to the amount of such reduction to the Interest Account.

Section 5.05. Redemption Fund. (a) The Trustee shall establish and maintain a separate Fund designated the "Redemption Fund." The Trustee shall deposit in the Redemption Fund (i) amounts received from the Community Facilities District in connection with the Community Facilities District's exercise of its rights to optionally redeem Bonds, (ii) the portion of Special Tax prepayments required to be deposited therein pursuant to Section 5.02(a), (iii) amounts required to be transferred to the Redemption Fund from the Improvement Fund (or Accounts therein) pursuant to Section 3.04, (iv) amounts required to be transferred to the Redemption Fund from the Reserve Fund pursuant to Section 5.04(c) or Section 5.04(d), and (v) amounts required to be deposited therein pursuant to any Supplemental Indenture.

(b) Amounts in the Redemption Fund shall be disbursed therefrom for the payment of the Redemption Price of Series 2024 Bonds redeemed pursuant to Section 4.01(a) or Section 4.01(b) and for the payment of the Redemption Price of Additional Bonds redeemed under the Supplemental Indenture pursuant to which such Additional Bonds are issued (other than mandatory sinking fund redemptions thereof).

Section 5.06. Rebate Fund. (a) The Trustee shall establish and maintain a separate Fund designated the "Rebate Fund." There shall be deposited in the Rebate Fund such amounts as are required to be deposited therein pursuant to the Tax Certificate, as specified in a Written Request of the Community Facilities District. All money at any time deposited in the Rebate Fund shall be held by the Trustee in trust, to the extent required to satisfy the Rebate Requirement, for payment to the United States of America. Notwithstanding defeasance of the Bonds pursuant to Article X or anything to the contrary contained herein, all amounts required to be deposited into or on deposit in the Rebate Fund shall be governed exclusively by this Section and by the Tax Certificate, which is hereby incorporated herein as if fully set forth herein. The Trustee shall be deemed conclusively to have complied with such provisions if it follows the written directions of the Community Facilities District, and shall have no liability or responsibility to enforce compliance by the Community Facilities District with the terms of the Tax Certificate. The Trustee may conclusively rely upon the Community Facilities District's determinations, calculations and certifications required by the Tax Certificate. The Trustee shall have no responsibility to independently make any calculation or determination or to review the Community Facilities District's calculations.

(b) Any funds remaining in the Rebate Fund after payment in full of all of the Bonds and after payment of any amounts described in this Section, shall, upon receipt by the Trustee of a Written Request of the Community Facilities District, be withdrawn by the Trustee and remitted to the Community Facilities District.

Section 5.07. Administrative Expense Fund. (a) The Trustee shall establish and maintain a separate Fund designated the "Administrative Expense Fund." The Trustee shall deposit in the Administrative Expense Fund the amounts transferred from the Special Tax Fund and required to be deposited therein pursuant to Section 5.02.

(b) The moneys in the Administrative Expense Fund shall be used and withdrawn by the Trustee from time to time to pay the Administrative Expenses upon submission of a Written Request of the Community Facilities District stating (i) the Person to whom payment is to be made, (ii) the amount to be paid and instructions for such payment, (iii) the purpose for which

such costs were incurred and that such purpose constitutes an Administrative Expense, (iv) that such payment is a proper charge against the Administrative Expense Fund, and (v) that payment of such amount has not been the subject of a prior disbursement from the Administrative Expense Fund, in each case together with a statement or invoice for each amount requested thereunder.

Section 5.08. Investment of Moneys. (a) Except as otherwise provided herein, all moneys in any of the Funds or Accounts shall be invested by the Trustee solely in Permitted Investments, as directed in a Written Request of the Community Facilities District received by the Trustee no later than two Business Days prior to the making of such investment. Moneys in all such Funds and Accounts shall be invested in Permitted Investments maturing not later than the date on which it is estimated that such moneys will be required for the purposes specified in this Indenture; provided, however, that Permitted Investments in which moneys in the Reserve Fund are so invested shall mature no later than the earlier of five years from the date of investment or the final maturity date of the Bonds and, provided, further, that if such Permitted Investments may be redeemed at par so as to be available on each Interest Payment Date, any amount in the Reserve Fund may be invested in such redeemable Permitted Investments maturing on any date on or prior to the final maturity date of the Bonds. Absent a timely Written Request of the Community Facilities District with respect to the investment of moneys in any of the Funds or Accounts, the Trustee shall invest such moneys in Permitted Investments described in paragraph (7) of the definition thereof; provided, however, that any such investment shall be made by the Trustee only if, prior to the date on which such investment is to be made, the Trustee shall have received a Written Request of the Community Facilities District specifying a specific money market fund that satisfies the requirements of said paragraph in which such investment is to be made and, if no such Written Request of the Community Facilities District is so received, the Trustee shall hold such moneys uninvested.

(b) Subject to the provisions of Section 5.06, all interest, profits and other income received from the investment of moneys in any Fund or Account (other than the Reserve Fund) shall be retained therein. Subject to the provisions of Section 5.06, all interest, profits or other income received from the investment of moneys in the Reserve Fund shall be transferred to the Interest Account; provided, however, that, notwithstanding the foregoing, any such transfer shall be made from the Reserve Fund only if and to the extent that, after such transfer, the amount on deposit in the Reserve Fund is at least equal to the Reserve Requirement.

(c) Permitted Investments acquired as an investment of moneys in any Fund or Account shall be credited to such Fund or Account. For the purpose of determining the amount in any Fund or Account, all Permitted Investments credited to such Fund or Account shall be valued by the Trustee at the market value thereof, such valuation to be performed not less frequently than semiannually on or before each February 15 and August 15. In determining the market value of Permitted Investments, the Trustee may use and rely upon generally recognized pricing information services, including brokers and dealers in securities, available to it.

(d) The Trustee may act as principal or agent in the making or disposing of any investment. Upon the Written Request of the Community Facilities District, the Trustee shall sell or present for redemption any Permitted Investments so purchased whenever it shall be necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the

Fund or Account to which such Permitted Investments are credited, and the Trustee shall not be liable or responsible for any loss resulting from any investment made or sold pursuant to this Section. For purposes of investment, the Trustee may commingle moneys in any of the Funds and Accounts. The Trustee, in making or disposing of any investment permitted by this Section, may deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or such affiliate is acting as an agent of the Trustee or for any third person or dealing as a principal for its own account but only if such dealing is not in conflict with, contrary to or in violation of any of the Trustee's fiduciary obligations as Trustee hereunder.

(e) The Community Facilities District acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Community Facilities District the right to receive brokerage confirmations of security transactions as they occur, at no additional cost, the Community Facilities District specifically waives receipt of such confirmations to the extent permitted by law. The Trustee shall furnish the Community Facilities District periodic cash transaction statements, which shall include detail for all investment transactions made by the Trustee hereunder.

ARTICLE VI

COVENANTS

Section 6.01. Collection of Special Tax Revenues. (a) The Community Facilities District shall comply with all requirements of the Act so as to assure the timely collection of Special Tax Revenues, including the enforcement of delinquent Special Tax payments.

(b) Prior to August 1 of each year, the Community Facilities District shall ascertain from the County Assessor the relevant parcels on which the Special Tax is to be levied, taking into account any parcel splits during the preceding and then current year. The Community Facilities District shall effect the levy of the Special Tax each Fiscal Year in accordance with the Ordinance by each August 10, or otherwise such that the computation of the levy is complete before the final date on which the County Auditor will accept the transmission of the Special Tax amounts for the parcels within the Community Facilities District for inclusion on the next real property tax roll. Upon the completion of the computation of the amounts of the levy, the Community Facilities District shall prepare or cause to be prepared, and shall transmit to the County Auditor, such data as the County Auditor requires in order to include the levy of the Special Tax on the next real property tax roll.

(c) The Community Facilities District shall fix and levy the Special Tax within the Community Facilities District in each Fiscal Year in accordance with the Rate and Method and, subject to the limitations in the Rate and Method as to the maximum Special Tax that may be levied on each parcel, in an amount sufficient to yield Special Tax Revenues in the amount required for (i) the payment of principal of and interest on any Outstanding Bonds becoming due and payable during the Corresponding Bond Year, (ii) any necessary replenishment of the Reserve Fund, and (iii) the payment of Administrative Expenses estimated to be paid from such Special Tax Revenues, taking into account the balances in the Funds and Accounts.

(d) The Special Tax shall be payable and be collected in the same manner and at the same time and in the same installment as the general taxes on real property are payable (or in such other manner as the City Council shall determine, including direct billing of the affected property owners), and have the same priority, become delinquent at the same time and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the *ad valorem* taxes on real property.

Section 6.02. Foreclosure. Pursuant to Section 53356.1 of the Act, the Community Facilities District hereby covenants with and for the benefit of the Owners that it will determine or cause to be determined, no later than August 15 of each year, whether or not any owners of property within the Community Facilities District are delinquent in the payment of the Special Tax levied thereon and, if such delinquencies exist, the Community Facilities District will order and cause to be commenced no later than October 1, and thereafter diligently prosecute, an action in the superior court to foreclose the lien of the Special Tax or installment thereof not paid when due; provided, however, that the Community Facilities District shall not be required to order the commencement of foreclosure proceedings if (a) the total Special Tax delinquency in the Community Facilities District for such Fiscal Year is less than 5% of the total amount of the Special Tax levied in such Fiscal Year, and (b) the amount then on deposit in the Reserve Fund

is equal to the Reserve Requirement. Notwithstanding the foregoing, if the Community Facilities District determines that any single parcel in the Community Facilities District is delinquent in excess of $7,500 in the payment of the Special Tax, then the Community Facilities District shall diligently institute, prosecute and pursue foreclosure proceedings against such parcel.

Section 6.03. Compliance with Act. The Community Facilities District shall comply with all applicable provisions of the Act.

Section 6.04. Punctual Payment. The Community Facilities District shall punctually pay or cause to be paid the principal, premium, if any, and interest to become due in respect of all the Bonds, in strict conformity with the terms of the Bonds and of this Indenture, according to the true intent and meaning thereof, but only out of Net Special Tax Revenues and other assets pledged for such payment as provided in this Indenture and received by the Community Facilities District or the Trustee.

Section 6.05. Extension of Payment of Bonds. The Community Facilities District shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the purchase of such Bonds or by any other arrangement, and in case the maturity of any of the Bonds or the time of payment of any such claims for interest shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest thereon that shall not have been so extended. Nothing in this Section shall be deemed to limit the right of the Community Facilities District to issue Bonds for the purpose of refunding any Outstanding Bonds in accordance with the provisions hereof, and such issuance shall not be deemed to constitute an extension of maturity of the Bonds.

Section 6.06. Against Encumbrances; Defense of Pledge. The Community Facilities District shall not create, or permit the creation of, any pledge of, lien on, security interest in or charge or other encumbrance upon the assets pledged under this Indenture, except as permitted hereby. The Community Facilities District shall at all times, to the extent permitted by law, defend, preserve and protect said pledge of such assets, and the lien thereon and security interest therein created hereby, against all claims and demands of all Persons whomsoever.

Section 6.07. Tax Covenants. (a) The Community Facilities District shall not take any action, or fail to take any action, if such action or failure to take such action would adversely affect the exclusion from gross income of interest on the Series 2024 Bonds under Section 103 of the Code. Without limiting the generality of the foregoing, the Community Facilities District shall comply with the requirements of the Tax Certificate, which is incorporated herein as if fully set forth herein. This covenant shall survive payment in full or defeasance of the Series 2024 Bonds.

(b) In the event that at any time the Community Facilities District is of the opinion that for purposes of this Section it is necessary or helpful to restrict or limit the yield on the investment of any moneys in any of the Funds or Accounts, the Community Facilities District shall so instruct the Trustee in writing, and the Trustee shall take such action as may be necessary in accordance with such instructions.

(c) Notwithstanding any provisions of this Section, if the Community Facilities District shall provide to the Trustee an opinion of Bond Counsel to the effect that any specified action required under this Section is no longer required or that some further or different action is required to maintain the exclusion from federal income tax of interest on the Series 2024 Bonds, the Trustee may conclusively rely on such opinion in complying with the requirements of this Section and of the Tax Certificate, and the covenants hereunder shall be deemed to be modified to that extent.

Section 6.08. Non-Cash Payments of Special Tax. The Community Facilities District shall not authorize owners of taxable parcels within the Community Facilities District to satisfy Special Tax obligations by the tender of Bonds unless the Community Facilities District shall have first obtained a report of an Independent Consultant certifying that doing so would not result in the Community Facilities District having insufficient Special Tax Revenues to pay the principal of and interest on all Outstanding Bonds when due.

Section 6.09. Reduction in Special Tax. The Community Facilities District shall not initiate proceedings under the Act to modify the Rate and Method if such modification would adversely affect the security for the Bonds. If an initiative is adopted that purports to modify the Rate and Method in a manner that would adversely affect the security for the Bonds, the Community Facilities District shall, to the extent permitted by law, commence and pursue reasonable legal actions to prevent the modification of the Rate and Method in a manner that would adversely affect the security for the Bonds.

Section 6.10. Continuing Disclosure. Each of the Community Facilities District and the Trustee shall comply with and carry out all of the provisions of the Continuing Disclosure Agreement applicable to it. Notwithstanding any other provision of this Indenture, failure of the Community Facilities District or the Trustee to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default; provided, however, that the Trustee may (and, at the written direction of any Participating Underwriter or the Owners of at least 25% aggregate principal amount of Outstanding Series 2024 Bonds, and upon receipt of indemnification reasonably satisfactory to the Trustee, shall) or any Owner or Beneficial Owner of the Series 2024 Bonds may, take such actions as may be necessary and appropriate to compel performance, including seeking mandate or specific performance by court order.

Section 6.11. Accounting Records. The Community Facilities District shall keep or cause to be kept appropriate accounting records in which complete and correct entries shall be made of all transactions relating to the Special Tax, which records shall be available for inspection by the Trustee at reasonable hours and under reasonable conditions.

Section 6.12. State Reporting. If at any time principal or interest due on any scheduled payment date for the Bonds is not paid, or if funds are withdrawn from the Reserve Fund to pay principal of or interest on the Bonds, the Trustee shall notify the Community Facilities District in writing of such failure or withdrawal, and the Community Facilities District shall notify the California Debt and Investment Advisory Commission of such failure or withdrawal within ten days of the failure to make such payment or the date of such withdrawal.

Section 6.13. Annual Reports to the California Debt and Investment Advisory Commission. Not later than October 30 of each year, commencing October 30, 2025 and continuing until the October 30 following the final maturity of the Bonds, the Community Facilities District shall supply to the California Debt and Investment Advisory Commission the information required to be provided thereto pursuant to Section 53359.5(b) of the Act. Such information shall be made available to any Owner upon written request to the Community Facilities District accompanied by a fee determined by the Community Facilities District to pay the costs of the Community Facilities District in connection therewith. The Community Facilities District shall in no event be liable to any Owner or any other person or entity in connection with any error in any such information.

Section 6.14. Further Assurances. The Community Facilities District shall make, execute and deliver any and all such further agreements, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture and for the better assuring and confirming unto the Owners of the rights and benefits provided in this Indenture.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.01. Events of Default. The following events shall be Events of Default:

(a) failure to pay any installment of principal of any Bonds when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption or otherwise;

(b) failure to pay any installment of interest on any Bonds when and as the same shall become due and payable;

(c) failure by the Community Facilities District to observe and perform any of the other covenants, agreements or conditions on its part in this Indenture or in the Bonds contained, if such failure shall have continued for a period of 30 days after written notice thereof, specifying such failure and requiring the same to be remedied, shall have been given to the Community Facilities District by the Trustee, or to the Community Facilities District and the Trustee by the Owners of not less than 5% in aggregate principal amount of the Bonds at the time Outstanding; provided, however, that, if in the reasonable opinion of the Community Facilities District the failure stated in the notice can be corrected, but not within such 30 day period, such failure shall not constitute an Event of Default if corrective action is instituted by the Community Facilities District within such 30 day period and the Community Facilities District shall thereafter diligently and in good faith cure such failure in a reasonable period of time, provided, further, that, unless otherwise consented to by the Trustee, such period of time shall not exceed 180 days; or

(d) the commencement by the Community Facilities District of a voluntary case under Title 11 of the United States Code or any substitute or successor statute.

Section 7.02. Foreclosure. If an Event of Default shall occur under Section 7.01(a) or Section 7.01(b) then, and in each and every such case during the continuance of such Event of Default, the Trustee may, or at the written direction of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding, and upon being indemnified to its satisfaction therefor, shall, commence foreclosure against any parcels of land in the Community Facilities District delinquent in the payment of the Special Tax, as provided in Section 53356.1 of the Act; provided, however, that the Trustee shall not be required to pursue a foreclosure action against any such parcel if the Trustee would be required to take title to, or an ownership interest in, such parcel in connection with or as a result of such foreclosure action.

Section 7.03. Other Remedies. If an Event of Default shall have occurred and be continuing, the Trustee shall have the right:

(a) by mandamus, suit, action or proceeding, to compel the Community Facilities District and its officers, agents or employees to perform each and every term, provision and covenant contained in this Indenture and in the Bonds, and to require the carrying out of any or all such covenants and agreements of the Community Facilities District and the fulfillment of all duties imposed upon it by this Indenture and the Act;

(b) by suit, action or proceeding in equity, to enjoin any acts or things that are unlawful, or the violation of any of the rights of the Trustee or the Owners; or

(c) by suit, action or proceeding in any court of competent jurisdiction, to require the Community Facilities District and its officers and employees to account as if it and they were the trustees of an express trust.

Section 7.04. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Trustee or to the Owners is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

Section 7.05. Application of Net Special Tax Revenues After Default. If an Event of Default shall occur and be continuing, all Net Special Tax Revenues and any other funds thereafter received by the Trustee under any of the provisions of this Indenture shall be applied by the Trustee as follows and in the following order:

(a) to the payment of any expenses incurred by the Trustee necessary in the opinion of the Trustee to protect the interests of the Owners and payment of reasonable fees, charges and expenses of the Trustee (including reasonable fees and disbursements of its counsel) incurred in and about the performance of its powers and duties under this Indenture;

(b) to the payment of the principal and interest then due with respect to the Bonds (upon presentation of the Bonds to be paid, and stamping thereon of the payment if only partially paid, or surrender thereof if fully paid) subject to the provisions of this Indenture, as follows:

First: to the payment to the Persons entitled thereto of all installments of interest on the Bonds then due in the order of the maturity of such installments and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the Persons entitled thereto, without any discrimination or preference; and

Second: to the payment to the Persons entitled thereto of all installments of principal of the Bonds then due, whether at maturity or by call for redemption, with interest on the overdue principal at the rate borne by the respective Bonds on the date of maturity or redemption, and, if the amount available shall not be sufficient to pay in full all the Bonds, together with such interest, then to the payment thereof ratably, according to the amounts of principal due on such date to the Persons entitled thereto, without any discrimination or preference;

(c) any remaining funds shall be transferred by the Trustee to the Special Tax Fund.

Section 7.06. Power of Trustee to Enforce. All rights of action under this Indenture or the Bonds or otherwise may be prosecuted and enforced by the Trustee without the possession of any of the Bonds or the production thereof in any proceeding relating thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in the name of the Trustee for the benefit and protection of the Owners of such Bonds, subject to the provisions of this Indenture. Nothing herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Owner any plan of reorganization, arrangement, adjustment, or composition affecting the Bonds or the rights of any Owner thereof, or to authorize the Trustee to vote in respect of the claim of any Owner in any such proceeding without the approval of the Owners so affected.

Section 7.07. Owners' Direction of Proceedings. Anything in this Indenture to the contrary notwithstanding, the Owners of a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, by an instrument or concurrent instruments in writing executed and delivered to the Trustee, and upon indemnification of the Trustee to its reasonable satisfaction, to direct the method of conducting all remedial proceedings taken by the Trustee hereunder; provided, however, that such direction shall not be otherwise than in accordance with the provisions of this Indenture, the Act and other applicable law and, provided, further, that the Trustee shall have the right to decline to follow any such direction that in the opinion of the Trustee would be unjustly prejudicial to Owners not parties to such direction.

Section 7.08. Limitation on Owners' Right to Sue. No Owner of any Bond shall have the right to institute any suit, action or proceeding at law or in equity, for the protection or enforcement of any right or remedy under this Indenture, the Act or any other applicable law with respect to such Bond, unless (a) such Owner shall have given to the Trustee written notice of the occurrence of an Event of Default, (b) the Owners of a majority in aggregate principal amount of the Bonds then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such suit, action or proceeding in its own name, (c) such Owner or said Owners shall have tendered to the Trustee indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request, and (d) the Trustee shall have refused or omitted to comply with such request for a period of 60 days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of any remedy hereunder or under law; it being understood and intended that no one or more Owners shall have any right in any manner whatever by such Owner's or Owners' action to affect, disturb or prejudice the security of this Indenture or the rights of any other Owners, or to enforce any right under the Bonds, this Indenture, the Act or other applicable law with respect to the Bonds, except in the manner herein provided, and that all proceedings at law or in equity to enforce any such right shall be instituted, had and maintained in the manner herein provided and for the benefit and protection of all Owners, subject to the provisions of this Indenture.

Section 7.09. Absolute Obligation. Nothing in this Indenture or the Bonds contained shall affect or impair the obligation of the Community Facilities District, which is absolute and unconditional, to pay the principal of and interest on the Bonds to the respective Owners as the

same become due, as herein provided, but only out of the Net Special Tax Revenues and other assets pledged therefor hereunder, or affect or impair the right of such Owners, which is also absolute and unconditional, to enforce such payment by virtue of the contract embodied in the Bonds.

Section 7.10. Termination of Proceedings. In case any proceedings taken by the Trustee or any one or more Owners on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or the Owners, then in every such case the Community Facilities District, the Trustee and the Owners, subject to any determination in such proceedings, shall be restored to their former positions and rights hereunder, severally and respectively, and all rights, remedies, powers and duties of the Community Facilities District, the Trustee and the Owners shall continue as though no such proceedings had been taken.

Section 7.11. No Waiver of Default. No delay or omission of the Trustee or of any Owner to exercise any right or power arising upon the occurrence of any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or an acquiescence therein, and every power and remedy given by this Indenture to the Trustee or to the Owners may be exercised from time to time and as often as may be deemed expedient.

ARTICLE VIII

TRUSTEE

Section 8.01. Duties and Liabilities of Trustee. The Trustee shall, prior to an Event of Default, and after the curing or waiver of all Events of Default that may have occurred, perform such duties and only such duties as are expressly and specifically set forth in this Indenture. The Trustee shall, during the existence of any Event of Default that has not been cured or waived, exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

Section 8.02. Qualifications; Removal and Resignation; Successors. (a) The Trustee initially a party hereto and any successor thereto shall at all times be a trust company, national banking association or bank having trust powers in good standing in or incorporated under the laws of the United States or any state thereof, that is (or if such trust company, national banking association or bank is a member of a bank holding company system, its parent bank holding company is) (i) a national banking association that is supervised by the Office of the Comptroller of the Currency and has at least $250 million of assets, or (ii) a state-chartered commercial bank that is a member of the Federal Reserve System and has at least $1 billion of assets. If such trust company, national banking association or bank publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining agency above referred to, then for the purpose of this subsection the combined capital and surplus of such trust company, national banking association or bank shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) The Community Facilities District may, by an instrument in writing, upon at least 30 days' notice to the Trustee, remove the Trustee initially a party hereto and any successor thereto unless an Event of Default shall have occurred and then be continuing, and shall remove the Trustee initially a party hereto and any successor thereto if (i) at any time requested to do so by an instrument or concurrent instruments in writing signed by the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding (or their attorneys duly authorized in writing), or (ii) the Trustee shall cease to be eligible in accordance with subsection (a) of this Section, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, in each case by giving written notice of such removal to the Trustee.

(c) The Trustee may at any time resign by giving written notice of such resignation by first-class mail, postage prepaid, to the Community Facilities District, and to the Owners at the respective addresses shown on the Registration Books. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of subsection (a) of this Section, the Trustee shall resign immediately in the manner and with the effect specified in this Section.

(d) Upon removal or resignation of the Trustee, the Community Facilities District shall promptly appoint a successor Trustee by an instrument in writing. Any removal or

resignation of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee; provided, however, that any successor Trustee shall be qualified as provided in subsection (a) of this Section. If no qualified successor Trustee shall have been appointed and have accepted appointment within 45 days following notice of removal or notice of resignation as aforesaid, the removed or resigning Trustee or any Owner (on behalf of such Owner and all other Owners) may petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice, if any, as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture shall signify its acceptance of such appointment by executing and delivering to the Community Facilities District and to its predecessor Trustee a written acceptance thereof, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless at the Written Request of the Community Facilities District or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the successor Trustee shall, within 15 days after such acceptance, mail, by first-class mail postage prepaid, a notice of the succession of such Trustee to the trusts hereunder to the Owners at the addresses shown on the Registration Books.

(e) Any trust company, national banking association or bank into which the Trustee may be merged or converted or with which it may be consolidated or any trust company, national banking association or bank resulting from any merger, conversion or consolidation to which it shall be a party or any trust company, national banking association or bank to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such trust company, national banking association or bank shall be eligible under subsection (a) of this Section, shall be the successor to such Trustee, without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

Section 8.03. Liability of Trustee. (a) The recitals of facts herein and in the Bonds contained shall be taken as statements of the Community Facilities District, and the Trustee shall not assume responsibility for the correctness of the same or incur any responsibility in respect thereof, other than as expressly stated herein in connection with the respective duties or obligations herein or in the Bonds assigned to or imposed upon it. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds.

(b) The Trustee makes no representations as to the validity or sufficiency of this Indenture or of any Bonds, or in respect of the security afforded by this Indenture and the Trustee shall incur no responsibility in respect thereof. The Trustee shall be under no responsibility or duty with respect to the issuance of the Bonds for value, the application of the proceeds thereof except to the extent that such proceeds are received by it in its capacity as Trustee, or the

application of any moneys paid to the Community Facilities District or others in accordance with this Indenture.

(c) The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct.

(d) No provision of this Indenture or any other document related hereto shall require the Trustee to risk or advance its own funds.

(e) The Trustee may execute any of its powers or duties hereunder through attorneys, agents or receivers and shall not be answerable for the actions of such attorneys, agents or receivers if selected by it with reasonable care.

(f) The Trustee shall not be liable for any error of judgment made in good faith by a responsible officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.

(g) The immunities and protections extended to the Trustee also extend to its directors, officers, employees and agents.

(h) Before taking action under Article VII, under this Article or upon the direction of the Owners, the Trustee may require indemnity reasonably satisfactory to the Trustee be furnished to it to protect it against all fees and expenses, including those of its attorneys and advisors, and protect it against all liability it may incur.

(i) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

(j) The Trustee may become the Owner of Bonds with the same rights it would have if it were not Trustee and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners, whether or not such committee shall represent the Owners of a majority in aggregate principal amount of the Bonds then Outstanding.

(k) The Trustee shall have no responsibility with respect to any information, statement, or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds.

(l) The Trustee shall not be liable for the failure to take any action required to be taken by it hereunder if and to the extent that the Trustee's taking such action is prevented by reason of an act of God, terrorism, war, riot, strike, fire, flood, earthquake, epidemic or other, similar occurrence that is beyond the control of the Trustee and could not have been avoided by exercising due care.

(m) The Trustee shall not be deemed to have knowledge of an Event of Default hereunder unless it has actual knowledge thereof.

(n) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and it shall not be answerable for other than its negligence or willful misconduct.

(o) The Trustee shall not be responsible for or accountable to anyone for the subsequent use or application of any moneys that shall be released or withdrawn in accordance with the provisions hereof.

Section 8.04. Right to Rely on Documents and Opinions. (a) The Trustee shall be protected in acting upon any notice, resolution, request, requisition, facsimile, consent, order, certificate, report, opinion, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. Each statement of facts contained in a Written Request of the Community Facilities District or a Written Certificate of the Community Facilities District shall be sufficient evidence to the Trustee of the facts so stated and the Trustee shall have no duty to confirm the accuracy of such facts.

(b) The Trustee shall have the right to accept and act upon a Written Request of the Community Facilities District delivered using Electronic Means. If the Community Facilities District elects to deliver a Written Request of the Community Facilities District to the Trustee using Electronic Means and the Trustee acts upon such Written Request, the Trustee's understanding of such Written Request shall be deemed controlling. The Community Facilities District understands and agrees that the Trustee cannot determine the identity of the actual sender of such Written Request and that the Trustee shall conclusively presume that Written Requests of the Community Facilities District that purport to have been sent by an Authorized Representative of the Community Facilities District have been sent by such Authorized Representative. The Community Facilities District shall be responsible for ensuring that only Authorized Representatives transmit such Written Requests of the Community Facilities District to the Trustee and that the Community Facilities District is solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt thereof by the Community Facilities District. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such Written Requests of the Community Facilities District delivered using Electronic Means notwithstanding such directions conflict or are inconsistent with a subsequent written Written Requests of the Community Facilities District. The Community Facilities District agrees (i) to assume all risks arising out of the use of Electronic Means to submit Written Requests of the Community Facilities District to the Trustee, including the risk of the Trustee acting on unauthorized Written Requests of the Community Facilities District, and the risk of interception and misuse by third parties, (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Written Requests of the Community Facilities District to the Trustee and that there may be more secure methods of transmitting Written Requests of the Community Facilities District than the method selected by the Community Facilities District, (iii) that the security procedures, if any, to be followed in connection with its transmission of Written Requests of the Community Facilities District provide to it a commercially reasonable degree of protection in light of its particular needs and

circumstances, and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures. Notwithstanding the foregoing, the provisions of this subsection, and the Trustee's actions pursuant hereto, are subject to the Trustee's standard of care and limitations on liability set forth in Sections 8.03 and 8.04; provided, however, that the Trustee's reliance on a Written Request of the Community Facilities District that purports to have been sent by an Authorized Representative of the Community Facilities District delivered in accordance with this Section using Electronic Means shall not, in and of itself, be construed as negligence.

(c) Whenever in the administration of the duties imposed upon it by this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate of the Community Facilities District, and such Written Certificate shall be full warrant to the Trustee for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such Written Certificate, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as it may deem reasonable.

(d) The Trustee may consult with counsel, who may be counsel to the Community Facilities District, with regard to legal questions, including with respect to compliance herewith of amendments hereto, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

Section 8.05. Accounting Records and Financial Statements. The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with prudent corporate trust industry standards, in which accurate entries shall be made of all transactions made by it relating to the proceeds of the Bonds, the Special Tax Revenues received by it and all Funds and Accounts established by it pursuant to this Indenture. Such books of record and account shall be available for inspection by the Community Facilities District during regular business hours and upon reasonable notice and under reasonable circumstances as agreed to by the Trustee. The Trustee shall deliver to the Community Facilities District a monthly accounting of the Funds and Accounts; provided, however, that the Trustee shall not be obligated to deliver an accounting for any Fund or Account that (a) has a balance of zero, and (b) has not had any activity since the last reporting date.

Section 8.06. Preservation and Inspection of Documents. All documents received by the Trustee under the provisions of this Indenture shall be retained in its possession and shall be subject during business hours and upon reasonable notice to the inspection of the Community Facilities District, the Owners and their agents and representatives duly authorized in writing.

Section 8.07. Compensation and Indemnification. The Community Facilities District shall pay to the Trustee from time to time from Special Tax Revenues all reasonable compensation pursuant to a pre-approved fee letter for all services rendered under this Indenture, and also all reasonable expenses, charges, legal and consulting fees pursuant to a pre-approved fee letter and other disbursements pursuant to a pre-approved fee letter and those of its attorneys,

agents and employees, incurred in and about the performance of their powers and duties under this Indenture. The Community Facilities District shall, to the extent permitted by law, from Special Tax Revenues, indemnify and save the Trustee and its officers, directors and employees harmless against any costs, suits, judgments, damages, liabilities, claims, expenses, including legal fees and expenses, and liabilities that it may incur in the exercise and performance of its powers and duties hereunder, including the enforcement of any remedies and the defense of any suit, and that are not due to its negligence or its willful misconduct. The duty of the Community Facilities District to indemnify the Trustee shall survive the resignation or removal of the Trustee and the discharge and satisfaction of this Indenture.

ARTICLE IX

SUPPLEMENTAL INDENTURES

Section 9.01. Supplemental Indentures. (a) This Indenture and the rights and obligations of the Community Facilities District, the Trustee and the Owners hereunder may be amended, supplemented or otherwise modified from time to time and at any time by a Supplemental Indenture, which the Community Facilities District and the Trustee may enter into when there are submitted to the Trustee the written consents of the Owners of a majority of the aggregate principal amount of the Bonds then Outstanding, exclusive of Bonds disqualified as provided in Section 11.07. No such modification or amendment shall (i) extend the fixed maturity of any Bond, reduce the amount of principal thereof or the rate of interest thereon, extend the time of payment thereof or alter the redemption provisions thereof, without the prior written consent of the Owner of each Bond so affected, (ii) permit any pledge of, or the creation of any lien on, security interest in or charge or other encumbrance upon the assets pledged under this Indenture prior to or on a parity with the pledge contained in, and the lien and security interest created by, this Indenture or deprive the Owners of the pledge contained in, and the lien and security interest created by, this Indenture, except as expressly provided in this Indenture, without the prior written consents of the Owners of all Bonds then Outstanding, or (iii) modify or amend this Section without the prior written consents of the Owners of all Bonds then Outstanding.

(b) This Indenture and the rights and obligations of the Community Facilities District, the Trustee and the Owners hereunder may also be amended, supplemented or otherwise modified from time to time and at any time by a Supplemental Indenture, which the Community Facilities District and the Trustee may enter into without the consent of any Owners for any one or more of the following purposes:

(i) to add to the covenants and agreements of the Community Facilities District in this Indenture contained, other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Bonds (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon the Community Facilities District;

(ii) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision contained in this Indenture, provided that such modification or amendment does not materially adversely affect the rights or interests of the Owners hereunder;

(iii) to provide for the issuance of one or more Series of Additional Bonds, and to provide the terms and conditions under which such Series of Additional Bonds may be issued, subject to and in accordance with the provisions of Article III;

(iv) to permit the qualification of this Indenture under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect;

(v) to cause interest on the Bonds to be excludable from gross income for purposes of federal income taxation by the United States of America; and

(vi) in any other respect whatsoever as the Community Facilities District may deem necessary or desirable, provided that such modification or amendment does not materially adversely affect the rights or interests of the Owners hereunder.

(c) Promptly after the execution by the Community Facilities District and the Trustee of any Supplemental Indenture, the Trustee shall mail a notice (the form of which shall be furnished to the Trustee by the Community Facilities District), by first-class mail postage prepaid, setting forth in general terms the substance of such Supplemental Indenture, to the Owners at the respective addresses shown on the Registration Books. Any failure to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such Supplemental Indenture.

Section 9.02. Effect of Supplemental Indenture. Upon the execution of any Supplemental Indenture pursuant to this Article, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Community Facilities District, the Trustee and the Owners shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 9.03. Endorsement of Bonds; Preparation of New Bonds. Bonds delivered after the effective date of any Supplemental Indenture pursuant to this Article may and, if the Community Facilities District so determines, shall bear a notation by endorsement or otherwise in form approved by the Community Facilities District and the Trustee as to any modification or amendment provided for in such Supplemental Indenture, and, in that case, upon demand of the Owner of any Bond Outstanding at the time of such effective date and presentation of such Bond for such purpose at the Office of the Trustee a suitable notation shall be made on such Bonds. If the Supplemental Indenture shall so provide, new Bonds so modified as to conform, in the opinion of the Community Facilities District and the Trustee, to any modification or amendment contained in such Supplemental Indenture, shall be prepared and executed by the Community Facilities District and authenticated by the Trustee and, in that case, upon demand of the Owner of any Bond Outstanding at the time of such effective date, and presentation of such Bond for such purpose at the Office of the Trustee, such a new Bond in equal principal amount of the same Series, interest rate and maturity shall be exchanged for such Owner's Bond so surrendered.

Section 9.04. Amendment of Particular Bonds. The provisions of this Article shall not prevent any Owner from accepting any amendment, supplement or other modification as to any particular Bond owned by it, provided that due notation thereof is made on such Bond.

ARTICLE X

DEFEASANCE

Section 10.01. Discharge of Indenture. (a) If the Community Facilities District shall pay or cause to be paid or there shall otherwise be paid to the Owners of all Outstanding Bonds the principal thereof and the interest and premium, if any, thereon at the times and in the manner stipulated herein and therein, then the Owners shall cease to be entitled to the pledge of the Net Special Tax Revenues and the other assets pledged therefor hereunder, and all agreements, covenants and other obligations of the Community Facilities District hereunder shall thereupon cease, terminate and become void and this Indenture shall be discharged and satisfied. In such event, the Trustee shall execute and deliver to the Community Facilities District all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Trustee shall pay over or deliver to the Community Facilities District all money or securities held by it pursuant hereto that are not required for the payment of the principal of and interest and premium, if any, on the Bonds.

(b) Subject to the provisions of subsection (a) of this Section, if the Community Facilities District shall pay or cause to be paid to the Owner of an Outstanding Bond the principal thereof and the interest and premium, if any, thereon at the times and in the manner stipulated herein and therein, such Owner shall cease to be entitled to the pledge of the Net Special Tax Revenues and the other assets pledged therefor hereunder and all agreements, covenants and other obligations of the Community Facilities District hereunder shall thereupon cease, terminate and become void and this Indenture shall be discharged and satisfied as to such Bond.

(c) Notwithstanding the discharge and satisfaction of this Indenture or the discharge and satisfaction of this Indenture in respect of any Bond, those provisions of this Indenture relating to the maturity of the Bonds, interest payments and dates thereof, exchange and transfer of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, non-presentment of Bonds, and the duties of the Trustee in connection with all of the foregoing, shall remain in effect and shall be binding upon the Trustee and the Owner of such Bond, and the Trustee shall continue to be obligated to hold in trust any moneys or investments then held by the Trustee for the payment of the principal of and interest and premium, if any, on such Bond, and to pay to the Owner of such Bond the funds so held by the Trustee as and when such payment becomes due. Notwithstanding the discharge and satisfaction of this Indenture, the obligation of the Community Facilities District to indemnify the Trustee pursuant to Section 8.07 shall remain in effect and be binding upon the Community Facilities District.

Section 10.02. Bonds Deemed To Have Been Paid. (a) If moneys shall have been set aside and held by the Trustee for the payment or redemption of any Bond and the payment of the interest thereon to the maturity or redemption date thereof, such Bond shall be deemed to have been paid within the meaning and with the effect provided in Section 10.01. Any Outstanding Bond shall prior to the maturity date or redemption date thereof be deemed to have been paid within the meaning of and with the effect expressed in Section 10.01 if (i) in case such Bond is to be redeemed on any date prior to its maturity date, the Community Facilities District shall have

given to the Trustee in form satisfactory to it irrevocable instructions to mail, on a date in accordance with the provisions of Section 4.02, notice of redemption of such Bond on said redemption date, said notice to be given in accordance with Section 4.02, (ii) there shall have been deposited with the Trustee either (A) money in an amount that shall be sufficient, or (B) Defeasance Securities, the principal of and the interest on which when due, and without any reinvestment thereof, together with the money, if any, deposited therewith, will provide moneys that shall be sufficient to pay when due the interest to become due on such Bond on and prior to the maturity date or redemption date thereof, as the case may be, and the principal of and premium, if any, on such Bond, and (iii) in the event such Bond is not by its terms subject to redemption within the next succeeding 60 days, the Community Facilities District shall have given the Trustee, in form satisfactory to it, irrevocable instructions to mail as soon as practicable, a notice to the Owner of such Bond that the deposit required by clause (ii) above has been made with the Trustee and that such Bond is deemed to have been paid in accordance with this Section and stating the maturity date or redemption date upon which money is to be available for the payment of the principal of and premium, if any, on such Bond.

(b) No Bond shall be deemed to have been paid pursuant to clause (ii) of subsection (a) of this Section unless the Community Facilities District shall have caused to be delivered to the Community Facilities District and the Trustee (i) an executed copy of a Verification Report with respect to such deemed payment, addressed to the Community Facilities District and the Trustee, in form and in substance acceptable to the Community Facilities District, (ii) a copy of the escrow agreement entered into in connection with the deposit pursuant to clause (ii)(B) of subsection (a) of this Section resulting in such deemed payment, which escrow agreement shall be in form and in substance acceptable to the Community Facilities District and which escrow agreement shall provide that no substitution of Defeasance Securities shall be permitted except with other Defeasance Securities and upon delivery of a new Verification Report, and no reinvestment of Defeasance Securities shall be permitted except as contemplated by the original Verification Report or upon delivery of a new Verification Report, and (iii) a copy of an opinion of Bond Counsel, dated the date of such deemed payment and addressed to the Community Facilities District and the Trustee, in form and in substance acceptable to the Community Facilities District, to the effect that such Bond has been paid within the meaning and with the effect expressed in this Indenture, all agreements, covenants and other obligations of the Community Facilities District hereunder have ceased, terminated and become void and the Indenture has been discharged and satisfied as to such Bonds.

Section 10.03. Unclaimed Moneys. Any moneys held by the Trustee in trust for the payment of the principal of, or premium or interest on, any Bond that remain unclaimed for two years after the date when such principal, premium or interest has become payable, if such moneys were held by the Trustee at such date, or for two years after the date of deposit of such moneys if deposited with the Trustee after the date when such principal, premium or interest become payable, shall be repaid by the Trustee to the Community Facilities District as its absolute property free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Owner of such Bond shall look only to the Community Facilities District for the payment of such principal, premium or interest. The Trustee shall hold any such moneys uninvested.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Successor Is Deemed Included in All References to Predecessor. Whenever in this Indenture either the Community Facilities District or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained required hereby to be performed by or on behalf of the Community Facilities District or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 11.02. Limitation of Rights. Nothing in this Indenture or in the Bonds expressed or implied is intended or shall be construed to give to any Person other than the Trustee, the Community Facilities District and the Owners, any legal or equitable right, remedy or claim under or in respect of this Indenture or any covenant, condition or provision therein or herein contained, and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Trustee, the Community Facilities District and the Owners.

Section 11.03. Destruction of Bonds. Whenever in this Indenture provision is made for the cancellation by the Trustee and the delivery to the Community Facilities District of any Bonds, the Trustee shall, in lieu of such cancellation and delivery, destroy such Bonds.

Section 11.04. Severability of Invalid Provisions. If any term or provision of this Indenture or the Bonds, or the application of the term or provision to any Person or circumstance is, to any extent, held to be invalid or unenforceable in any jurisdiction, but the extent of such invalidity or unenforceability does not destroy the basis of the bargain between the parties as contained herein, the remainder of this Indenture or the Bonds, as applicable, or the application of the term or provision to Persons or circumstances other than those as to which the term or provision is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability, and each remaining term or provision of this Indenture and the Bonds shall be valid and will be enforced to the fullest extent permitted by law.

Section 11.05. Notices. Any written notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication to be given hereunder shall be given to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other parties in writing from time to time, namely:

If to the Community Facilities District:

City of Ontario Community Facilities District
No. 64 (Sunset Ranch)
c/o City of Ontario
303 East "B" Street
Ontario, California 91764
Attention: Executive Director of Finance

If to the Trustee:

Zions Bancorporation, National Association
550 South Hope Street, Suite 2875
Los Angeles, California 90071
Attention: Corporate Trust Services

If to NMC Builders:

NMC Builders, LLC
c/o SC Ontario Development Corporation
1156 North Mountain Avenue
Upland, California 91786
Attention: Administrative Member

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the party to whom it is addressed (a) if given by courier or delivery service or if personally served or delivered, upon delivery, (b) if given by electronic mail, on the date sent, but only if confirmation of the receipt of such electronic mail is received or if notice is concurrently sent by another means specified herein, (c) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, or (d) if given by any other means, upon delivery at the address specified in this Section.

Section 11.06. Evidence of Rights of Owners. (a) Any request, consent or other instrument required or permitted by this Indenture to be signed and executed by Owners may be in any number of concurrent instruments of substantially similar tenor and shall be signed or executed by such Owners in person or by an agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and the Community Facilities District if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such request, consent or other instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the Person signing such request, consent or other instrument acknowledged to such notary public or such officer the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer.

(c) The ownership of Bonds shall be proved by the Registration Books.

(d) Any request, consent or other instrument or writing of the Owner of any Bond shall bind every future Owner of the same Bond and the Owner of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Community Facilities District in accordance therewith or reliance thereon.

Section 11.07. Disqualified Bonds. In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds that are actually known by the Trustee to be owned or held by or for the account of the Community Facilities District, or by any other obligor on the Bonds, or by any Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Community Facilities District or any other obligor on the Bonds, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination; provided, however, that if 100% of the Bonds are so owned or held, such Bonds shall be deemed to be Outstanding. Bonds so owned that have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Bonds and that the pledgee is not a Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Community Facilities District or any other obligor on the Bonds. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Community Facilities District shall specify in a Written Certificate of the Community Facilities District submitted to the Trustee those Bonds, if any, that are, as of the date of such Written Certificate, owned or held by or for the account of the Community Facilities District.

Section 11.08. Money Held for Particular Bonds. The money held by the Trustee for the payment of the interest, principal or premium due on any date with respect to particular Bonds (or portions of Bonds in the case of Bonds redeemed in part only) shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Owner entitled thereto, subject, however, to the provisions of Section 10.03, but without any liability for interest thereon.

Section 11.09. Funds and Accounts. Any Fund or Account required by this Indenture to be established and maintained by the Trustee may be established and maintained in the accounting records of the Trustee, either as a fund or an account, and may, for the purposes of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account, but all such records with respect to all such Funds and Accounts shall at all times be maintained in accordance with prudent corporate trust industry standards, and with due regard for the requirements hereof and for the protection of the security of the Bonds and the rights of every Owner thereof. The Trustee may establish any such additional Funds or Accounts as it deems necessary to perform its obligations hereunder.

Section 11.10. Business Days. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Indenture, shall not be a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Indenture and, unless otherwise specifically provided in this Indenture, no interest shall accrue for the period from and after such nominal date.

Section 11.11. Waiver of Personal Liability. No member, officer, agent or employee of the Community Facilities District or the City shall be individually or personally liable for the payment of the principal of or premium or interest on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof, but nothing herein contained shall

relieve any such member, officer, agent or employee from the performance of any official duty provided by any applicable provision of law or by this Indenture.

Section 11.12. Conflict with Act. In the event of any conflict between any provision of this Indenture and any provision of the Act, the provision of the Act shall prevail over the provision of this Indenture.

Section 11.13. Conclusive Evidence of Regularity. Bonds issued pursuant to this Indenture shall constitute evidence of the regularity of all proceedings under the Act relative to their issuance and to the levy of the Special Tax.

Section 11.14. Governing Laws. This Indenture shall be governed by and construed in accordance with the laws of the State.

Section 11.15. Electronic Signature. Each of the parties hereto agrees that the transaction consisting of this Indenture may be conducted by electronic means. Each party agrees, and acknowledges that it is such party's intent, that if such party signs this Indenture using an electronic signature, it is signing, adopting and accepting this Indenture and that signing this Indenture using an electronic signature is the legal equivalent of having placed its handwritten signature on this Indenture on paper. Each party acknowledges that it is being provided with an electronic or paper copy of this Indenture in a usable format.

Section 11.16. Execution in Several Counterparts. This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Community Facilities District has caused this Indenture to be signed in its name by its representative thereunto duly authorized, and the Trustee, in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its officer thereunto duly authorized, all as of the day and year first above written.

CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 64 (SUNSET RANCH)

By: _____

_____,
_____ of the City of Ontario

ZIONS BANCORPORATION, NATIONAL ASSOCIATION, AS TRUSTEE

By: _____

_____,
Vice President,
Zions Bank Division

[Signature Page to Indenture]

EXHIBIT A

PERMITTED INVESTMENTS

"Permitted Investments" means the following:

(1) (a) Direct obligations (other than an obligation subject to variation in principal repayment) of the United States of America ("United States Treasury Obligations"), (b) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by the United States of America, (c) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by any agency or instrumentality of the United States of America when such obligations are backed by the full faith and credit of the United States of America, or (d) evidences of ownership of proportionate interests in future interest and principal payments on obligations described above held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying government obligations are not available to any person claiming through the custodian or to whom the custodian may be obligated.

(2) Federal Housing Administration debentures.

(3) The listed obligations of government-sponsored agencies which are not backed by the full faith and credit of the United States of America:

- Federal Home Loan Mortgage Corporation (FHLMC)
  Senior debt obligations and participation certificates (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts)
- Farm Credit System (formerly: Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives)
  Consolidated system wide bonds and notes
- Federal Home Loan Banks (FHL Banks)
  Consolidated debt obligations
- Federal National Mortgage Association (FNMA)
  Senior debt obligations
  Mortgage-backed securities (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts)

(4) Unsecured certificates of deposit, time deposits or other bank deposit products, and bankers' acceptances (having maturities of not more than 365 days) of any bank, the short-term obligations of which are rated "A-1+" or better by S&P and "Prime-1" by Moody's.

(5) Deposits the aggregate amount of which are fully insured by the Federal Deposit Insurance Corporation, in banks which have capital and surplus of at least $15 million.

(6) Commercial paper (having original maturities of not more than 270 days) rated at the time of purchase "A-1+" by S&P and "Prime-1" by Moody's.

(7) Money market mutual funds rated "AAm" or "AAm-G" by S&P, or better and, if rated by Moody's, rated "Aa2" or better, including a fund for which the Trustee, its parent holding company, if any, or any affiliates or subsidiaries of the Trustee provide transfer agency, custodial, investment advisory or other management services, and, subject to the prior written consent of S&P and Moody's, the investment pool maintained by the county in which the Community Facilities District is located or other investment pools, in either case so long as such pool is rated in one of the two highest rating categories by S&P and Moody's.

(8) State Obligations, which means

(a) Direct general obligations of any state of the United States of America or any subdivision or agency thereof to which is pledged the full faith and credit of a state the unsecured general obligation debt of which is rated at least "A3" by Moody's and at least "A-" by S&P, or better, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured general obligation debt is so rated.

(b) Direct, general short-term obligations of any state agency or subdivision or agency thereof described in (a) above and rated "A-1+" by S&P and "MIG-1" by Moody's.

(c) Special Revenue Bonds (as defined in the United States Bankruptcy Code) of any state or state agency in (a) above and rated "AA-" or better by S&P and "Aa3" or better by Moody's.

(9) Pre-refunded municipal obligations rated "AA+" by S&P and "Aaa" by Moody's meeting the following requirements:

(a) the municipal obligations are (i) not subject to redemption prior to maturity or (ii) the trustee for the municipal obligations has been given irrevocable instructions concerning their call and redemption and the issuer of the municipal obligations has covenanted not to redeem such municipal obligations other than as set forth in such instructions;

(b) the municipal obligations are secured by cash or United States Treasury Obligations which may be applied only to payment of the principal of, interest and premium on such municipal obligations;

(c) the principal of and interest on the United States Treasury Obligations (plus any cash in the escrow) has been verified by the report of

independent certified public accountants to be sufficient to pay in full all principal of, interest, and premium, if any, due and to become due on the municipal obligations ("Verification Report");

(d) the cash or United States Treasury Obligations serving as security for the municipal obligations are held by an escrow agent or trustee in trust for owners of the municipal obligations;

(e) no substitution of a United States Treasury Obligation shall be permitted except with another United States Treasury Obligation and upon delivery of a new Verification Report; and

(f) the cash or the United States Treasury Obligations are not available to satisfy any other claims, including those by or against the trustee or escrow agent.

(10) Repurchase agreements:

A. With (i) any domestic bank, or domestic branch of a foreign bank, the long term debt of which is rated at least "A-" by S&P and "Aa3" by Moody's; (ii) any broker-dealer with "retail customers" or a related affiliate thereof which broker-dealer has, or the parent company (which guarantees the provider) of which has, long-term debt rated at least "A-" by S&P and "Aa3" Moody's, which broker-dealer falls under the jurisdiction of the Securities Investors Protection Corporation; or (iii) any other entity rated at least "A-" by S&P and "A3" by Moody's (each, an "Eligible Provider"), provided that:

a. The (i) permitted collateral shall include U.S. Treasury Obligations, or senior debt obligations of GNMA, FNMA or FHLMC (no collateralized mortgage obligations shall be permitted for these providers), and (ii) collateral levels must be at least 102% of the total principal when the collateral type is U.S. Treasury Obligations, 103% of the total principal when the collateral type is GNMAs and 104% of the total principal when the collateral type is FNMA and FHLMC ("Eligible Collateral");

b. The Trustee or a third party acting solely as agent therefor or for the Community Facilities District (the "Custodian") has possession of the collateral or the collateral has been transferred to the Custodian in accordance with applicable state and federal laws (other than by means of entries on the transferor's books);

c. The collateral shall be marked to market on a daily basis and the provider or Custodian shall send monthly reports to the Trustee and the Community Facilities District setting forth the type of collateral, the collateral percentage required for that collateral type, the market value of the collateral on the valuation date and the name of the Custodian holding the collateral;

d. The repurchase agreement shall state, and an opinion of counsel shall be rendered at the time such collateral is delivered that the Custodian has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof; and

e. The repurchase agreement shall provide that if during its term the provider's rating by either Moody's or S&P is withdrawn or suspended or falls below "A-" by S&P or "A3" by Moody's, as appropriate, the provider must, notify the Trustee and the Community Facilities District within five days of receipt of such notice. Within ten days of receipt of such notice, the provider shall either (i) post Eligible Collateral, or (ii) assign the agreement to an Eligible Provider. If the provider does not perform a remedy within ten business days, the provider shall, at the direction of the Trustee or the Community Facilities District repurchase all collateral and terminate the repurchase agreement, with no penalty or premium to the Trustee or the Community Facilities District.

(11) Investment agreements with a domestic or foreign bank or corporation the long-term debt of which, or, in the case of a guaranteed corporation the long-term debt, or, in the case of a monoline financial guaranty insurance company, claims paying ability, of the guarantor is rated at least "AA-" by S&P and "Aa3" by Moody's (each, an "Eligible Provider"); provided, that, by the terms of the investment agreement:

(a) interest payments are to be made to the Trustee at times and in amounts as necessary to pay debt service on the Bonds;

(b) the invested funds are available for withdrawal without penalty or premium, at any time upon not more than seven days' prior notice; the Trustee and the Community Facilities District hereby agree to give or cause to be given notice in accordance with the terms of the investment agreement so as to receive funds thereunder with no penalty or premium paid;

(c) the provider shall send monthly reports to the Trustee and the Community Facilities District setting forth the balance the Community Facilities District or the Trustee has invested with the provider and the amounts and dates of interest accrued and paid by the provider;

(d) the investment agreement shall state that it is an unconditional and general obligation of the provider, and is not subordinated to any other obligation of, the provider thereof or, if the provider is a bank, the agreement or the opinion of counsel shall state that the obligation of the provider to make payments thereunder ranks pari passu with the obligations of the provider to its other depositors and its other unsecured and unsubordinated creditors;

(e) the Trustee and the Community Facilities District shall receive an opinion of domestic counsel to the provider that such investment agreement is

legal, valid and binding and enforceable against the provider in accordance with its terms;

(f) the Trustee and the Community Facilities District shall receive an opinion of foreign counsel to the provider (if applicable) that (i) the investment agreement has been duly authorized, executed and delivered by the provider and constitutes the legal, valid and binding obligation of the provider, enforceable against the provider in accordance with its terms, (ii) the choice of law of the state set forth in the investment agreement is valid under that country's laws and a court in such country would uphold such choice of law, and (iii) any judgment rendered by a court in the United States would be recognized and enforceable in such country;

(g) the investment agreement shall provide that if during its term (i) the provider's rating by either S&P or Moody's falls below "AA-" or "Aa3", respectively, the provider shall, at its option, within ten days of receipt of publication of such downgrade, either (A) post Eligible Collateral with the Trustee, the Community Facilities District or a third party acting solely as agent therefor (the "Custodian") free and clear of any third party liens or claims, (B) assign the agreement to an Eligible Provider, or (C) repay the principal of and accrued but unpaid interest on the investment, and (ii) the provider's rating by either S&P or Moody's falls below "A-" or "A3", respectively, the provider must, at the direction of the Trustee or the Community Facilities District, within ten days of receipt of such direction, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium to the Trustee or the Community Facilities District;

(h) in the event the provider is required to collateralize, permitted collateral shall include U.S. Treasury Obligations, or senior debt obligations of GNMA, FNMA or FHLMC (no collateralized mortgage obligations shall be permitted for these providers) and collateral levels must be 102% of the total principal when the collateral type is U.S. Treasury Obligations, 103% of the total principal when the collateral type is GNMAs and 104% of the total principal when the collateral type is FNMA and FHLMC ("Eligible Collateral"). In addition, the collateral shall be marked to market on a daily basis and the provider or Custodian shall send monthly reports to the Trustee and the Community Facilities District setting forth the type of collateral, the collateral percentage required for that collateral type, the market value of the collateral on the valuation date and the name of the Custodian holding the collateral;

(i) the investment agreement shall state, and an opinion of counsel shall be rendered, in the event collateral is required to be pledged by the provider under the terms of the investment agreement, at the time such collateral is delivered, that the Custodian has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof; and

(j) the investment agreement must provide that if during its term (i) the provider shall default in its payment obligations, the provider's obligations under the investment agreement shall, at the direction of the Trustee or the Community Facilities District, be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Trustee or the Community Facilities District, as appropriate, and (ii) the provider shall become insolvent, not pay its debts as they become due, be declared or petition to be declared bankrupt, etc. ("event of insolvency"), the provider's obligations shall automatically be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Trustee or the Community Facilities District, as appropriate.

EXHIBIT B

FORM OF SERIES 2024 BOND

No. _____ $_____

CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 64
(SUNSET RANCH)
SPECIAL TAX BOND, SERIES 2024

INTEREST RATE	MATURITY DATE	DATED DATE	CUSIP
_____%	September 1, 20__	_____, 2024	_____

REGISTERED OWNER:

PRINCIPAL AMOUNT:

City of Ontario Community Facilities District No. 64 (Sunset Ranch) (the "Community Facilities District"), for value received, hereby promises to pay, solely from the sources hereinafter described, to the Registered Owner identified above or registered assigns (the "Registered Owner"), on the Maturity Date identified above or on any earlier redemption date, the Principal Amount identified above in lawful money of the United States of America; and to pay interest thereon at the Interest Rate identified above in like lawful money from the date hereof payable semiannually on March 1 and September 1 in each year, commencing [March] 1, 2025 (the "Interest Payment Dates"), until payment of such Principal Amount in full.

This Bond is one of a series of a duly authorized issue of bonds approved by the qualified electors of the Community Facilities District, pursuant to the Mello-Roos Community Facilities Act of 1982, constituting Sections 53311 *et seq*. of the California Government Code (the "Act"), and issued for the purpose of financing certain public facilities, and is one of the series of bonds designated "City of Ontario Community Facilities District No. 64 (Sunset Ranch) Special Tax Bonds, Series 2024" (the "Series 2024 Bonds") in the aggregate principal amount of $_____. The Series 2024 Bonds are issued pursuant to the Indenture, dated as of _____ 1, 2024 (the "Indenture"), by and between the Community Facilities District and Zions Bancorporation, National Association, as trustee (said entity or any successor thereto as trustee under the Indenture, the "Trustee"), and this reference incorporates the Indenture herein, and by acceptance hereof the owner of this Bond assents to said terms and conditions. Pursuant to and as more particularly provided in the Indenture, additional bonds ("Additional Bonds") may be issued by the Community Facilities District on a parity with the Series 2024 Bonds. The Series 2024 Bonds and any Additional Bonds are collectively referred to as the "Bonds." The Indenture is entered into, and this Bond is issued

under, the Act and the laws of the State of California. Capitalized undefined terms used herein shall have the meanings ascribed thereto in the Indenture.

Interest on the Series 2024 Bonds shall be payable from the Interest Payment Date next preceding the date of authentication thereof unless (a) a Series 2024 Bond is authenticated on or before an Interest Payment Date and after the close of business on the preceding Record Date, in which event interest thereon shall be payable from such Interest Payment Date, (b) a Series 2024 Bond is authenticated on or before the first Record Date, in which event interest thereon shall be payable from the Closing Date, or (c) interest on any Series 2024 Bond is in default as of the date of authentication thereof, in which event interest thereon shall be payable from the date to which interest has previously been paid or duly provided for. Interest shall be paid in lawful money of the United States on each Interest Payment Date. Interest shall be paid by check of the Trustee mailed by first-class mail, postage prepaid, on each Interest Payment Date to the Owners of the Series 2024 Bonds at their respective addresses shown on the Registration Books as of the close of business on the preceding Record Date. Notwithstanding the foregoing, interest on any Series 2024 Bond that is not punctually paid or duly provided for on any Interest Payment Date shall, if and to the extent that amounts subsequently become available therefor, be paid on a payment date established by the Trustee to the Person in whose name the ownership of such Series 2024 Bond is registered on the Registration Books at the close of business on a special record date to be established by the Trustee for the payment of such defaulted interest, notice of which shall be given to such Owner not less than ten days prior to such special record date. The principal of the Series 2024 Bonds shall be payable in lawful money of the United States of America upon presentation and surrender thereof upon maturity or earlier redemption at the Office of the Trustee.

The Bonds are special, limited obligations of the Community Facilities District, payable, as provided in the Indenture, solely from Net Special Tax Revenues and the other assets pledged therefor thereunder. Neither the faith and credit nor the taxing power of the Community Facilities District (except to the limited extent set forth in the Indenture), the City of Ontario or the State of California, or any political subdivision thereof, is pledged to the payment of the Bonds.

Pursuant to and as more particularly provided in the Indenture, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein, in order to secure the payment of the principal of, premium, if any, and interest on the Bonds in accordance with their terms, the provisions of the Indenture and the Act, the Community Facilities District pledges to the Owners, and grants thereto a lien on and a security interest in, all of the Net Special Tax Revenues and any other amounts held in the Special Tax Fund, the Bond Fund and the Reserve Fund. Said pledge constitutes a first lien on and security interest in such assets, which shall immediately attach to such assets and be effective, binding and enforceable against the Community Facilities District, its successors, purchasers of any of such assets, creditors and all others asserting rights therein, to the extent set forth in, and in accordance with, the Indenture, irrespective of whether those parties have notice of the pledge of, lien on and security interest in such assets and without the need for any physical delivery, recordation, filing or further act.

The Series 2024 Bonds are subject to redemption on the dates, at the Redemption Prices and pursuant to the terms set forth in the Indenture. Notice of redemption of any Series 2024 Bond or any portion thereof shall be given as provided in the Indenture.

The Series 2024 Bonds are issuable as fully registered Bonds without coupons in Authorized Denominations ($5,000 and any integral multiple thereof).

Any Series 2024 Bond may be transferred upon the Registration Books by the Person in whose name it is registered, in person or by such Person's duly authorized attorney, upon surrender of such Series 2024 Bond to the Trustee for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Trustee. Whenever any Series 2024 Bond or Series 2024 Bonds shall be so surrendered for transfer, the Community Facilities District shall execute and the Trustee shall authenticate and shall deliver a new Series 2024 Bond or Series 2024 Bonds of the same maturity in a like aggregate principal amount, in any Authorized Denomination. The Trustee shall require the Owner requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer. The Series 2024 Bonds may be exchanged at the Office of the Trustee for a like aggregate principal amount of Series 2024 Bonds of the same maturity of other Authorized Denominations. The Trustee shall require the payment by the Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange.

The Indenture and the rights and obligations of the Community Facilities District, the Owners and the Trustee may be modified or amended in the manner, to the extent, and upon the terms provided in the Indenture.

The Indenture contains provisions permitting the Community Facilities District to make provision for the payment of the principal of and the interest and premium, if any, on any of the Bonds so that such Bonds shall no longer be deemed to be Outstanding under the terms of the Indenture.

Unless this Bond is presented by an authorized representative of The Depository Trust Company to the Trustee for registration of transfer, exchange or payment, and any Bond issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

IN WITNESS WHEREOF, the Community Facilities District has caused this Bond to be signed in its name and on its behalf by the manual or facsimile signature of the Mayor of the City of Ontario, attested by the manual or facsimile signature of the City Clerk of the City of Ontario, all as of the Dated Date identified above.

CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 64 (SUNSET RANCH)

By: _____
Mayor of the City of Ontario

ATTEST:

_____
City Clerk

CERTIFICATE OF AUTHENTICATION

This is one of the Series 2024 Bonds described in the within-mentioned Indenture and registered on the Registration Books.

Date: _____, 2024

ZIONS BANCORPORATION, NATIONAL ASSOCIATION, AS TRUSTEE

By: _____
Authorized Officer

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto _____, whose address and social security or other tax identifying number is _____, the within-mentioned Bond and hereby irrevocably constitute(s) and appoint(s) _____ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

_____

Note: Signature guarantee shall be made by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Trustee.

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

$_____
CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 64
(SUNSET RANCH)
SPECIAL TAX BONDS, SERIES 2024

BOND PURCHASE AGREEMENT

_____, 2024

City of Ontario
Community Facilities District No. 64
(Sunset Ranch)
303 East "B" Street
Ontario, California 91764

Ladies and Gentlemen:

Samuel A. Ramirez & Co., Inc., as underwriter (the "Underwriter"), acting not as a fiduciary or agent for you, but on behalf of itself, offers to enter into this Bond Purchase Agreement (this "Purchase Agreement") with City of Ontario Community Facilities District No. 64 (Sunset Ranch) (the "Community Facilities District"), which upon acceptance will be binding upon the Underwriter and the Community Facilities District. The agreement of the Underwriter to purchase the Bonds (as hereinafter defined) is contingent upon the Community Facilities District satisfying all of the obligations imposed upon them under this Purchase Agreement. This offer is made subject to the Community Facilities District's acceptance by the execution of this Purchase Agreement and its delivery to the Underwriter at or before 11:59 p.m., local time, on the date hereof, and, if not so accepted, will be subject to withdrawal by the Underwriter upon notice delivered to the Community Facilities District at any time prior to the acceptance hereof by the Community Facilities District. All capitalized terms used herein, which are not otherwise defined, shall have the meaning provided for such terms in that certain Indenture, dated as of [December] 1, 2024 (the "Indenture"), by and between the Community Facilities District and Zions Bancorporation, National Association, as trustee (the "Trustee").

1. Purchase, Sale and Delivery of the Bonds.

Subject to the terms and conditions and in reliance upon the representations, warranties and agreements set forth herein, the Underwriter hereby agrees to purchase from the Community Facilities District and the Community Facilities District hereby agrees to sell to the Underwriter all (but not less than all) of the $_____ aggregate principal amount of the City of Ontario Community Facilities District No. 64 (Sunset Ranch) Special Tax Bonds, Series 2024 (the "Bonds"), dated the Closing Date (as hereinafter defined), bearing interest at the rates and maturing on the dates and in the principal amounts set forth in Exhibit A hereto. The purchase price for the Bonds shall be $_____ (being 100% of the aggregate principal amount thereof, plus an original issue premium of $_____ and less an Underwriter's discount of $_____).

The Underwriter agrees to make a bona fide public offering of all of the Bonds initially at the public offering prices (or yields) set forth in Exhibit A attached hereto and incorporated herein by reference. Subsequent to the initial public offering, the Underwriter reserves the right to change the public offering prices (or yields) as it deems necessary in connection with the marketing of the Bonds subject to Section 4 hereof, provided that the Underwriter shall not change the interest rates set forth in Exhibit A. The Bonds will be offered and sold to certain dealers at prices lower than such initial offering prices.

The Bonds shall be substantially in the form described in, shall be issued and secured under the provisions of, and shall be payable from the Net Special Tax Revenues as provided in the Indenture, the Preliminary Official Statement (as hereinafter defined), and the Mello-Roos Community Facilities Act of 1982, as amended (Section 53311 *et seq*. of the Government Code of the State of California) (the "Community Facilities District Act"). The issuance of the Bonds has been duly authorized by the City Council of the City of Ontario (the "City"), as the legislative body for the Community Facilities District, pursuant to a resolution (the "Community Facilities District Resolution of Issuance") adopted on _____, 2024.

The net proceeds of the Bonds will be used to (i) provide financing for certain authorized facilities and costs with respect thereto related to the development within the Community Facilities District, (ii) fund a reserve fund with respect to the Bonds, and (iii) pay the costs of issuance with respect to the Bonds.

A. The Community Facilities District hereby acknowledges that the Underwriter is entering into this Purchase Agreement in reliance on the representations, warranties and agreements made by the Community Facilities District herein, and the Community Facilities District shall take all action necessary to enforce its rights hereunder for the benefit of the Underwriter and shall immediately notify the Underwriter if it becomes aware that any representation, warranty or agreement made by the Community Facilities District herein is incorrect in any material respect.

The Community Facilities District acknowledges and agrees that (i) the purchase and sale of the Bonds pursuant to this Purchase Agreement is an arm's-length commercial transaction between the Community Facilities District and the Underwriter, (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriter is and has been acting solely as principal and is not acting as the agent or fiduciary of, or a municipal or financial advisor of, the Community Facilities District and has not assumed any advisory or fiduciary responsibility to the Community Facilities District with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter has provided or is currently providing other services to the Community Facilities District on other matters), (iv) the Underwriter has financial interests that differ from those of the Community Facilities District, (v) the only obligations the Underwriter has to the Community Facilities District with respect to the transaction contemplated hereby are expressly set forth in this Purchase Agreement, except as otherwise provided by applicable rules and regulations of the Securities and Exchange Commission or the rules of the MSRB (as defined below) or other law, and (vi) the Community Facilities District has consulted its own legal, financial, accounting, tax, and other advisors to the extent they have deemed appropriate in connection with this transaction. The Community Facilities District acknowledges that it has previously provided the Underwriter with an acknowledgement of receipt of the required Underwriter disclosure under Rule G-17 of the Municipal Securities Rulemaking Board ("MSRB"). The Community Facilities District acknowledges and represents that it has engaged Urban Futures, Inc. as its municipal advisor (as

defined in Securities and Exchange Commission Rule 15Ba1) and will rely solely on the financial advice of Urban Futures, Inc. with respect to the Bonds.

B. Pursuant to the authorization of the Community Facilities District, the Underwriter has distributed copies of the Preliminary Official Statement dated [POS Date], relating to the Bonds, which, together with the cover page, inside cover page and appendices thereto is herein called the "Preliminary Official Statement." By its acceptance of this Purchase Agreement, the Community Facilities District hereby ratifies the use by the Underwriter of the Preliminary Official Statement, and the Community Facilities District agrees to execute a final official statement relating to the Bonds (the "Official Statement") which will consist of the Preliminary Official Statement with such changes as may be made thereto, with the approval of Orrick Herrington & Sutcliffe LLP, Bond Counsel ("Bond Counsel"), Best Best & Krieger LLP, Disclosure Counsel ("Disclosure Counsel"), and the Underwriter, and to provide copies thereof to the Underwriter as set forth herein. The Community Facilities District hereby authorizes and requires the Underwriter to use and promptly distribute, in connection with the offer and sale of the Bonds, the Preliminary Official Statement, the Official Statement and any supplement or amendment thereto. The Community Facilities District further authorizes the Underwriter to use and distribute, in connection with the offer and sale of the Bonds, the Indenture, the Continuing Disclosure Agreement executed by the Community Facilities District in connection with the Bonds (the "Continuing Disclosure Agreement"), this Purchase Agreement and all information contained herein, and all other documents, certificates and statements furnished by or on behalf of the Community Facilities District to the Underwriter in connection with the transactions contemplated by this Purchase Agreement.

C. To assist the Underwriter in complying with Securities and Exchange Commission Rule 15c2-12(b)(5) (the "Rule"), the Community Facilities District will undertake pursuant to the Continuing Disclosure Agreement, in the form attached as an appendix to the Official Statement, to provide annual reports and notices of certain enumerated events. A description of this undertaking is set forth in the Preliminary Official Statement and will also be set forth in the Official Statement.

D. Except as the Underwriter and the Community Facilities District may otherwise agree, the Community Facilities District will deliver to the Underwriter, at the offices of Bond Counsel in Los Angeles, California, or at such other location as may be mutually agreed upon by the Underwriter and the Community Facilities District, the documents hereinafter mentioned; and the Community Facilities District will deliver to the Underwriter through the facilities of The Depository Trust Company ("DTC"), the Bonds, in definitive form (all Bonds bearing CUSIP numbers), duly executed by the Community Facilities District and authenticated by the Trustee in the manner provided for in the Indenture and the Community Facilities District Act at 8:00 a.m. California time, on [Closing Date] (the "Closing Date"), and the Underwriter will accept such delivery and pay the purchase price of the Bonds as set forth in paragraph (A) of this Section by wire transfer, payable in federal or other immediately available funds (such delivery and payment being herein referred to as the "Closing"). The Bonds shall be in fully registered book-entry form (which may be typewritten) and shall be registered in the name of Cede & Co., as nominee of DTC.

2. Representations, Warranties and Covenants of the Community Facilities District. The Community Facilities District represents, warrants and covenants to the Underwriter on behalf of itself and the City that:

A. The City is duly organized and validly existing as a general law city under the Constitution and laws of the State of California and has duly authorized the formation of the Community Facilities District and the incurring of bonded indebtedness thereby pursuant to resolutions duly adopted by the City Council (collectively, the "Community Facilities District Formation Resolutions" and, together with the Community Facilities District Resolution of Issuance, the "Community Facilities District Resolutions") and the Community Facilities District Act. The City Council, as the legislative body of the City and the Community Facilities District, has duly adopted the Community Facilities District Formation Resolutions and an ordinance of the City Council levying the Special Tax within the Community Facilities District (the "Ordinance"), and has caused to be recorded in the real property records of the County of San Bernardino, a notice of special tax lien, and any required amendments thereof (collectively, the "Notice of Special Tax Lien" and, together with the Community Facilities District Formation Resolutions and the Ordinance, the "Formation Documents"), and has duly adopted the Community Facilities District Resolution of Issuance. Each of its Formation Documents remains in full force and effect as of the date hereof and has not been amended or rescinded. The Community Facilities District is duly organized and validly existing as a Community Facilities District under the laws of the State of California. The Community Facilities District has, and at the Closing Date will have, as the case may be, full legal right, power and authority: (i) to execute, deliver and perform its obligations under this Purchase Agreement, the Continuing Disclosure Agreement and the Indenture, and to carry out all transactions contemplated by each of such agreements; (ii) to issue, sell and deliver the Bonds as provided herein; and (iii) to carry out, give effect to and consummate the transactions contemplated by the Formation Documents, the Indenture, the Bonds, the Continuing Disclosure Agreement, this Purchase Agreement, that certain Acquisition and Funding Agreement dated as of April 1, 2023 (the "KB Home Acquisition Agreement"), by and between the City and KB Home Coastal Inc. ("KB Home"), that certain Amended and Restated Acquisition and Funding Agreement, dated as of November 1, 2022, by and between the City and NMC Builders (the "NMC Builders Acquisition Agreement" and, together with the KB Home Acquisition Agreement, the "Acquisition Agreements"), and the Official Statement.

This Purchase Agreement, the Indenture, the Bonds, the Continuing Disclosure Agreement, and the Acquisition Agreements are collectively referred to herein as the "Community Facilities District Documents."

B. The Community Facilities District and the City, as applicable, have each complied, and will at the Closing Date be in compliance in all material respects, with the Formation Documents and the Community Facilities District Documents, and any immaterial noncompliance by the Community Facilities District and the City, if any, will not impair the ability of the Community Facilities District and the City, as applicable, to carry out, give effect to or consummate the transactions contemplated by the foregoing. From and after the date of issuance of the Bonds, the Community Facilities District will continue to comply with the covenants of the Community Facilities District contained in the Community Facilities District Documents.

C. The information in the Preliminary Official Statement and in the Official Statement relating to the Community Facilities District and the Bonds (other than statements pertaining to the book-entry system, as to which no view is expressed), is true and correct in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and, upon delivery and up to and including 25 days after the End of the Underwriting Period (as defined in paragraph (D) below), the Official Statement will be amended

and supplemented so as to contain no misstatement of any material fact or omission of any statement necessary to make the statements contained therein, in the light of the circumstances in which such statements were made, not misleading.

D. Up to and including 25 days after the End of the Underwriting Period (as defined below), the Community Facilities District will advise the Underwriter promptly of any proposal to amend or supplement the Official Statement and will not affect or consent to any such amendment or supplement without the consent of the Underwriter, which consent will not be unreasonably withheld. The Community Facilities District will advise the Underwriter promptly of the institution of any proceedings known to it by any governmental agency prohibiting or otherwise materially affecting the use of the Official Statement in connection with the offering, sale or distribution of the Bonds. As used herein, the term "End of the Underwriting Period" means the later of such time as: (i) the Bonds are delivered to the Underwriter; or (ii) the Underwriter does not retain, directly or as a member of an underwriting syndicate, an unsold balance of the Bonds for sale to the public. Unless the Underwriter gives notice to the contrary, the End of the Underwriting Period shall be deemed to be the Closing Date. Any notice delivered pursuant to this provision shall be written notice delivered to the Community Facilities District at or prior to the Closing Date, and shall specify a date (other than the Closing Date) to be deemed the "End of the Underwriting Period."

E. Except as described in the Preliminary Official Statement, the Community Facilities District is not, in any respect material to the transactions referred to herein or contemplated hereby, in breach of or in default under, any law or administrative rule or regulation of the State of California, the United States of America, or of any department, division, agency or instrumentality of either thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, resolution, indenture, contract, agreement or other instrument to which the Community Facilities District is a party or is otherwise subject or bound, and the performance of its obligations under the Community Facilities District Documents and compliance with the provisions of each thereof, or the performance of the conditions precedent to be performed by the Community Facilities District pursuant to this Purchase Agreement, will not conflict with or constitute a breach of or default under any applicable law or administrative rule or regulation of the State, the United States of America, or of any department, division, agency or instrumentality of either thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, resolution, indenture, contract, agreement or other instrument to which the Community Facilities District is a party or is otherwise subject or bound, in any manner which would materially and adversely affect the performance by the Community Facilities District of its obligations under the Community Facilities District Documents or the performance of the conditions precedent to be performed by the Community Facilities District pursuant to this Purchase Agreement.

F. Except as may be required under the "blue sky" or other securities laws of any jurisdiction, all approvals, consents, authorizations, elections and orders of, or filings or registrations with, any governmental authority, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would materially adversely affect, the performance by the Community Facilities District of its obligations under the Community Facilities District Documents, and the performance of the conditions precedent to be performed by the Community Facilities District pursuant to this Purchase Agreement, have been or will be obtained at the Closing Date and are or will be in full force and effect at the Closing Date.

G. The Community Facilities District Documents conform as to form and tenor to the descriptions thereof contained in the Official Statement.

H. The Bonds are payable from the Net Special Tax Revenues of the Community Facilities District, as set forth in the Indenture, the levy of which has been duly and validly authorized pursuant to the Community Facilities District Act and the Special Tax within the Community Facilities District will be fixed and levied in an amount which, together with other available funds, is required for the payment of the principal of, and interest on, the Bonds when due and payable, all as provided in the Indenture. The Community Facilities District has covenanted to cause the Special Tax to be levied and collected at the same time and in the same manner as ordinary *ad valorem* property taxes or in such other manner as the City Council shall determine.

I. The Indenture creates a valid pledge of, first lien upon and security interest in, the Net Special Tax Revenues of the Community Facilities District, and in the moneys in the Special Tax Fund, the Bond Fund, and the Reserve Fund established pursuant to the Indenture, on the terms and conditions set forth in the Indenture.

J. Except as disclosed in the Preliminary Official Statement, there are, to the best of the Community Facilities District's knowledge, no entities with outstanding assessment liens against any of the properties within the Community Facilities District or which are senior to or on a parity with the Special Tax of the Community Facilities District referred to in paragraph (H) hereof.

K. The information contained in the Preliminary Official Statement and in the Official Statement (other than statements therein pertaining to the DTC and its book-entry system, as to which no view is expressed) is true and correct in all material respects and such information does not and shall not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

L. The Preliminary Official Statement was deemed final by a duly authorized officer of the Community Facilities District prior to its delivery to the Underwriter, except for the omission of such information as is permitted to be omitted in accordance with paragraph (b)(1) of the Rule. The Community Facilities District hereby covenants and agrees that, within seven (7) business days from the date hereof, or upon reasonable written notice from the Underwriter within sufficient time to accompany any confirmation requesting payment from any customers of the Underwriter, the Community Facilities District shall cause a final printed form of the Official Statement to be delivered to the Underwriter in sufficient quantity to comply with paragraph (b)(4) of the Rule and Rules G-12, G-15, G-32 and G-36 of the MSRB.

M. At the time of acceptance hereof there is and as of the Closing there will be no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body (collectively and individually, an "Action") pending (notice of which has been served on the City or the Community Facilities District) or to the best knowledge of the Community Facilities District or the City threatened, in which any such Action: (i) in any way questions the existence of the Community Facilities District or the titles of the officers of the Community Facilities District to their respective offices; (ii) affects, contests or seeks to prohibit, restrain or enjoin the issuance or delivery of the Bonds or the payment or collection of Special Tax or any amounts pledged or to be pledged to pay the principal of and interest on the Bonds, or in any way contests or affects the validity of the Community Facilities District Documents or the consummation of the transactions on the part of the Community Facilities District contemplated thereby; (iii) contests the exemption of interest on the Bonds from federal or State income taxation or contests the powers of the Community Facilities District which may result in any

material adverse change relating to the financial condition of the Community Facilities District; or (iv) contests the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto or asserts that the Preliminary Official Statement or the Official Statement contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and as of the time of acceptance hereof there is and, as of the Closing Date, there will be no basis for any action, suit, proceeding, inquiry or investigation of the nature described in clauses (i) through (iv) of this sentence.

N. Any certificate signed on behalf of the Community Facilities District by any officer or employee of the Community Facilities District authorized to do so shall be deemed a representation and warranty by the Community Facilities District to the Underwriter on behalf of itself and the Community Facilities District as to the statements made therein.

O. At or prior to the Closing, the Community Facilities District will have duly authorized, executed and delivered the Continuing Disclosure Agreement in substantially the form attached as an appendix to the Official Statement. Based upon a review of its previous undertakings, and except as disclosed in the Preliminary Official Statement, the City and the City Entities (as defined in the Preliminary Official Statement) have not failed to comply in all material respects with any previous undertakings with regard to the Rule to provide annual reports or notices of enumerated events in the last five years. The Community Facilities District has not previously entered into any undertaking pursuant to the Rule.

P. The Community Facilities District will apply the proceeds of the Bonds in accordance with the Indenture and as described in the Preliminary Official Statement and Official Statement.

Q. Until such time as moneys have been set aside in an amount sufficient to pay all then outstanding Bonds at maturity or to the date of redemption if redeemed prior to maturity, plus unpaid interest thereon and premium, if any, to maturity or to the date of redemption if redeemed prior to maturity, the Community Facilities District will faithfully perform and abide by all of the covenants, undertakings and provisions contained in the Indenture.

R. Between the date of this Purchase Agreement and the date of Closing, the Community Facilities District will not offer or issue any bonds, notes or other obligations for borrowed money not previously disclosed to the Underwriter.

S. The City, on behalf of the Community Facilities District, has adopted local debt policies in accordance with Section 8855(i) of the California Government Code.

The Community Facilities District hereby approves the preparation and distribution of the Official Statement, consisting of the Preliminary Official Statement with such changes as are noted thereon and as may be made thereto, with the approval of Bond Counsel, Disclosure Counsel and the Underwriter, from time to time prior to the Closing Date.

The Community Facilities District hereby ratifies any prior use of and authorizes the future use by the Underwriter, in connection with the offering and sale of the Bonds, of the Preliminary Official Statement, the Official Statement, this Purchase Agreement and all information contained herein, and all other documents, certificates and written statements furnished by the Community

Facilities District to the Underwriter in connection with the transactions contemplated by this Purchase Agreement.

The execution and delivery of this Purchase Agreement by the Community Facilities District shall constitute a representation by the Community Facilities District to the Underwriter that the representations and warranties contained in this Section 2 with respect to the Community Facilities District are true as of the date hereof.

3. Conditions to the Obligations of the Underwriter. The obligation of the Underwriter to accept delivery of and pay for the Bonds on the Closing Date shall be subject, at the option of the Underwriter, to the accuracy in all material respects of the representations and warranties on the part of the Community Facilities District contained herein, to the accuracy in all material respects of the statements of the officers and other officials of the Community Facilities District made in any certificates or other documents furnished pursuant to the provisions hereof, to the performance by the Community Facilities District of their obligations to be performed hereunder at or prior to the Closing Date, and in reliance upon the representations and covenants of KB Home contained in the certificate(s) delivered as of the Closing Date, and to the following additional conditions:

A. At the Closing Date, the Community Facilities District Resolutions and the Community Facilities District Documents shall be in full force and effect, and shall not have been amended, modified or supplemented, except as may have been agreed to in writing by the Underwriter, and there shall have been taken in connection therewith, with the issuance of the Bonds and with the Bonds, and with the transactions contemplated thereby, and by this Purchase Agreement, all such actions as, in the opinion of Bond Counsel, shall be necessary and appropriate.

B. At the Closing Date, except as described in the Preliminary Official Statement, the City shall not be, in any respect material to the transactions referred to herein or contemplated hereby, in breach of or in default under, any law or administrative rule or regulation of the State of California, the United States of America, or of any department, division, agency or instrumentality of either thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, resolution, indenture, contract, agreement or other instrument to which the City is a party or is otherwise subject or bound, and the performance of the conditions precedent to be performed hereunder will not conflict with or constitute a breach of or default under any applicable law or administrative rule or regulation of the State of California, the United States of America, or of any department, division, agency or instrumentality of either thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, resolution, indenture, contract, agreement or other instrument to which the City is a party or is otherwise subject or bound, in any manner which would materially and adversely affect the performance of the conditions precedent to be performed by the City hereunder.

C. At the Closing Date, except as described in the Preliminary Official Statement, the Community Facilities District shall not be, in any respect material to the transactions referred to herein or contemplated hereby, in breach of or in default under any law or administrative rule or regulation of the State of California, the United States of America, or of any department, division, agency or instrumentality of either thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, resolution, indenture, contract, agreement or other instrument to which the Community Facilities District is a party or is otherwise subject or bound, and the performance by the Community Facilities District of its obligations under the Bonds, the Community Facilities District Resolutions, the Indenture, and any other instruments contemplated

by any of such documents, and compliance with the provisions of each thereof, or the performance of the conditions precedent to be performed hereunder, will not conflict with or constitute a breach of or default under any applicable law or administrative rule or regulation of the State of California, the United States of America, or of any department, division, agency or instrumentality of either thereof, or under any applicable court or administrative decree or order, or under any loan agreement, note, resolution, indenture, contract, agreement or other instrument to which the Community Facilities District is a party or is otherwise subject or bound, in any manner which would materially and adversely affect the performance by the Community Facilities District of its obligations under the Indenture, the Bonds or the performance of the conditions precedent to be performed by the Community Facilities District hereunder.

D. The information contained in the Official Statement is, as of the Closing Date and as of the date of any supplement or amendment thereto pursuant hereto, true and correct in all material respects and does not, as of the Closing Date or as of the date of any supplement or amendment thereto, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

E. Between the date hereof and the Closing Date, the market price or marketability, at the initial offering prices set forth on the cover page of the Official Statement, of the Bonds or the ability of the Underwriter to enforce contracts for the sale of the Bonds, shall not have been materially adversely affected, in the reasonable judgment of the Underwriter (evidenced by a written notice to the Community Facilities District terminating the obligation of the Underwriter to accept delivery of and pay for the Bonds), by reason of any of the following:

1. Legislation introduced in or enacted (or resolution passed) by the Congress of the United States of America or recommended to the Congress by the President of the United States, the Department of the Treasury, the Internal Revenue Service, or any member of Congress, or favorably reported for passage to either House of Congress by any committee of such House to which such legislation had been referred for consideration, or a decision rendered by a court established under Article III of the Constitution of the United States of America or by the Tax Court of the United States of America, or an order, ruling, regulation (final, temporary or proposed), press release or other form of notice issued or made by or on behalf of the Treasury Department of the United States of America or the Internal Revenue Service, with the purpose or effect, directly or indirectly, of imposing federal income taxation upon such interest as would be received by any owners of the Bonds beyond the extent to which such interest is subject to taxation as of the date hereof;

2. Legislation introduced in or enacted (or resolution passed) by the Congress or an order, decree or injunction issued by any court of competent jurisdiction, or an order, ruling, regulation (final, temporary or proposed), press release or other form of notice issued or made by or on behalf of the Securities and Exchange Commission ("SEC"), or any other governmental agency having jurisdiction of the subject matter, to the effect that obligations of the general character of the Bonds, including any or all underlying arrangements, are not exempt from registration under or other requirements of the Securities Act of 1933, as amended, or that the Indenture is not exempt from qualification under or other requirements of the Trust Indenture Act of 1939, as amended, or that the issuance, offering or sale of obligations of the general character of the Bonds, including any or all underlying arrangements, as contemplated hereby or by the Official Statement or otherwise is or would be in violation of the federal securities laws as amended and then in effect;

3. A general suspension of trading on the New York Stock Exchange or other major exchange shall be in force, or minimum or maximum prices for trading shall have been fixed and be in force, or maximum ranges for prices for securities shall have been required and be in force on any such exchange, whether by virtue of determination by that exchange or by order of the SEC or any other governmental authority having jurisdiction;

4. The introduction, proposal or enactment of any amendment to the federal or California Constitution or any action by any federal or California court, legislative body, regulatory body or other authority materially adversely affecting the tax status of the Community Facilities District, its property, income, securities (or interest thereon), the validity or enforceability of the Special Tax, or the ability of the Community Facilities District to construct or acquire the improvements as contemplated by the Formation Documents, the Community Facilities District Documents or the Official Statement or the right of any owner of the property within the Community Facilities District to develop such property in the manner described in the Official Statement, or the ability of the Community Facilities District to issue the Bonds as contemplated by the Indenture and the Official Statement;

5. Any event occurring, or information becoming known which, in the judgment of the Underwriter, makes untrue in any material respect any statement or information contained in the Preliminary Official Statement or in the Official Statement, or has the effect that the Preliminary Official Statement or the Official Statement contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

6. Any national securities exchange, the Comptroller of the Currency, or any other governmental authority, shall impose as to the Bonds, or obligations of the general character of the Bonds, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, the Underwriter;

7. There shall have occurred (1) an outbreak or escalation of hostilities or the declaration by the United States of a national emergency or war, (2) any other calamity or crisis in the financial markets of the United States or elsewhere, or (3) the sovereign debt rating of the United States is downgraded by any major credit rating agency or a payment default occurs on United States Treasury obligations;

8. Except as disclosed in or contemplated by the Official Statement, any material adverse change in the affairs of the City or Community Facilities District shall have occurred;

9. Any event or circumstance shall exist that either makes untrue or incorrect in any material respect any statement or information in the Official Statement (other than any statement provided by the Underwriter) or is not reflected in the Official Statement but should be reflected therein in order to make the statements therein, in the light of the circumstances under which they were made, not misleading and, in either such event, the Community Facilities District refuses to permit the Official Statement to be supplemented to supply such statement or information, or the effect of the Official Statement as so supplemented is to materially adversely affect the market price or marketability of the Bonds or the ability of the Underwriter to enforce contracts for the sale of the Bonds;

10. A general banking moratorium shall have been declared by federal or State authorities having jurisdiction and be in force;

11. A material disruption in securities settlement, payment or clearance services affecting the Bonds shall have occurred;

12. Any new restriction on transactions in securities materially affecting the market for securities (including the imposition of any limitation on interest rates) or the extension of credit by, or a charge to the net capital requirements of, underwriters shall have been established by the New York Stock Exchange, the SEC, any other federal or State agency or the Congress of the United States, or by Executive Order;

13. A decision by a court of the United States shall be rendered, or a stop order, release, regulation or no-action letter by or on behalf of the SEC or any other governmental agency having jurisdiction of the subject matter shall have been issued or made, to the effect that the issuance, offering or sale of the Securities, including the underlying obligations as contemplated by this Purchase Agreement or by the Official Statement, or any document relating to the issuance, offering or sale of the Securities, is or would be in violation of any provision of the federal securities laws at the Closing Date, including the Securities Act, the Exchange Act and the Trust Indenture Act;

14. Any proceeding shall have been commenced or be threatened in writing by the Securities and Exchange Commission against the City or the Community Facilities District; or

15. The commencement of any Action.

F. At or prior to the Closing Date, the Underwriter shall have received a counterpart original or certified copy of the following documents, in each case satisfactory in form and substance to the Underwriter:

1. The Official Statement, executed on behalf of the Community Facilities District by an authorized officer;

2. The Indenture, duly executed and delivered by the Community Facilities District and the Trustee;

3. The Community Facilities District Resolutions and the other Formation Documents, and the Community Facilities District Documents, together with a certificate dated as of the Closing Date of the City Clerk to the effect that the Community Facilities District Resolutions and the Ordinance are true, correct and complete copies of the ones duly adopted by the City Council;

4. The Continuing Disclosure Agreement executed and delivered by the Community Facilities District and the Trustee, as dissemination agent, and the Continuing Disclosure Certificate dated the Closing Date of KB Home (the "Developer Continuing Disclosure Certificate"), in each case substantially in the respective forms attached as appendixes to the Official Statement;

5. An unqualified approving opinion for the Bonds, dated the Closing Date and addressed to the Community Facilities District, of Bond Counsel, to the effect that the Bonds are the valid, legal and binding obligations of the Community Facilities District and that the

interest thereon is excluded from gross income for federal income tax purposes and exempt from personal income taxes of the State of California, in substantially the form included as an appendix to the Official Statement, together with a letter of Bond Counsel, dated the Closing Date and addressed to the Underwriter and the Trustee, to the effect that such opinion addressed to the Community Facilities District may be relied upon by the Underwriter and the Trustee to the same extent as if such opinion was addressed to it;

6. A supplemental opinion or opinions of Bond Counsel dated the Closing Date and addressed to the Underwriter to the effect that:

(i) this Purchase Agreement and the Continuing Disclosure Agreement have been duly executed and delivered by the Community Facilities District and, assuming due authorization, execution and delivery by the other parties thereto, constitute the valid and binding obligations of the Community Facilities District, except to the extent that enforceability may be limited by moratorium, bankruptcy, reorganization, insolvency or other similar laws affecting creditors' rights generally or by the exercise of judicial discretion in accordance with general principles of equity or otherwise in appropriate cases and by limitations on legal remedies against public agencies in the State;

(ii) the Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended;

(iii) the statements contained in the Official Statement under the captions "THE SERIES 2024 BONDS" (except information relating to DTC and its book-entry system and information under the caption "Debt Service Schedule," as to which no opinion is expressed), "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2024 BONDS," (except information under the captions "Special Tax" and "Rate and Method of Apportionment" as to which no opinion is expressed), "TAX MATTERS," and Appendix F - "SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE," excluding any material that may be treated as included under such captions by cross-reference or reference to other documents or sources, insofar as such statements expressly summarize certain provisions of the Indenture and certain matters addressed in Bond Counsel's final approving opinion, are accurate in all material respects.

7. A letter, dated the Closing Date and addressed to the Underwriter and the Community Facilities District, of Disclosure Counsel, to the effect that no facts have come to the attention of the attorneys in such firm rending legal services in connection with the Bonds that cause them to believe that the Preliminary Official Statement, as of its date and as of the date of this Purchase Agreement, and the Official Statement, as of its date or as of the Closing Date, contained or contains any untrue statement of a material fact or omitted or omits to state any material fact necessary to make the statement made therein, in light of the circumstances under which they were made, not misleading (except that no opinion or belief need be expressed as to any appendices, CUSIP numbers, financial, accounting, statistical, economic, engineering or demographic data or forecasts, numbers, charts, tables, graphs, estimates, projections, assumptions or expressions of opinion, any determinations regarding valuation, real estate, and environmental matters, or any basis therefor; information about the Underwriter, underwriting; statements relating to the treatment of the Bonds or the interest, discount or premium related thereto for tax purposes under the laws of any jurisdiction and statements contained in the Official Statement under the caption "TAX MATTERS" and any information about the Depository Trust Company or the book-entry system);

8. A certificate dated the Closing Date and signed by an authorized representative of the Community Facilities District or an authorized designee, on behalf of the Community Facilities District to the effect that: (i) the representations and warranties made by the Community Facilities District contained herein are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date; (ii) to the best knowledge of such officer, no event has occurred since the date of the Official Statement which should be disclosed in the Official Statement for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information therein not misleading in any material respect; (iii) the Community Facilities District has complied with all the agreements and satisfied all the conditions on its part to be satisfied under this Purchase Agreement, the Community Facilities District Resolutions, the Community Facilities District Documents and the Official Statement at or prior to the Closing Date; and (iv) all information in the Official Statement relating to the Community Facilities District (other than information therein provided by the Special Tax Consultant) is true and correct in all material respects as of the date of the Official Statement and as of the Closing Date;

9. An opinion of Issuer's Counsel dated the date of Closing and addressed to the Underwriter, the Trustee and the City, substantially in the form attached hereto as Exhibit D;

10. A certificate dated the Closing Date from Kitty Siino & Associates, Inc., as appraiser (the "Appraiser"), addressed to the Community Facilities District and the Underwriter substantially to the effect that (i) the assumptions made in the appraisal of the taxable properties within the Community Facilities District, dated _____, 2024 (the "Appraisal Report"), prepared by the Appraiser are reasonable; the Appraisal Report fairly and accurately described, as of the stated date of value, the market values of the properties in the Community Facilities District that are subject to the Special Tax, (ii) the Appraiser is not aware of any event or act which occurred since the date of value of the Appraisal Report which, in its opinion, would materially and adversely affect the conclusions as to the market value of the appraised property in the Community Facilities District, (iii) the Appraiser consents to the reproduction of the Appraisal Report as an appendix to the Preliminary Official Statement and the final Official Statement, each with respect to the Bonds, and to the references to the Appraiser and the Appraisal Report made in the Preliminary Official Statement and the Official Statement, (iv) the Appraisal Report complies with the Appraisal Standards for Land-Secured Financings issued by the California Debt and Investment Advisory Commission dated July, 2004, (v) a true and correct copy of the Appraisal Report is attached as an appendix to the Preliminary Official Statement and the Official Statement; and (vi) neither the Appraisal Report nor the information in the Preliminary Official Statement or the Official Statement referring to it contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading;

11. A certificate dated the Closing Date from Goodwin Consulting Group, Inc. addressed to the Community Facilities District and the Underwriter to the effect that: (i) the Special Tax, if levied and collected in the maximum amounts permitted pursuant to the Rate and Method of Apportionment of Special Tax of the Community Facilities District, as of the Closing Date, would generate at least 110% of the annual debt service payable with respect to the related issue of Bonds, net of estimated Administrative Expenses, based on such assumptions and qualifications as shall be acceptable to the Underwriter; (ii) the statements in the Preliminary Official Statement and the Official Statement provided by Goodwin Consulting Group, Inc. concerning the

Special Tax in the Community Facilities District and all information supplied by it for use in the Official Statement were as of the date of the Preliminary Official Statement, the date of the Official Statement and are as of the Closing Date true and correct, and do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) all information supplied by Goodwin Consulting Group, Inc. to the Appraiser is true and correct as of the date of the Preliminary Official Statement and the date of the Official Statement and as of the Closing Date, based on such assumptions as may have been supplied by it; and (iv) the information contained in the Appraisal Report with respect to taxes and tax rates applicable, and projected to be applicable, to the property in the Community Facilities District is consistent with such information provided by Goodwin Consulting Group, Inc. to the Appraiser, which information so provided was based on information obtained by Goodwin Consulting Group, Inc. from the Community Facilities District, KB Home, and the City;

12. Certified copies of the general resolution of the Trustee authorizing the execution and delivery of certain documents by certain officers of the Trustee, which resolution authorizes the execution of the Indenture and the authentication of the Bonds;

13. A certificate of the Trustee, addressed to the Underwriter, and the Community Facilities District dated the Closing Date, to the effect that: (i) the Trustee is authorized to carry out corporate trust powers, and has full power and authority to perform its duties under the Indenture and the Continuing Disclosure Agreement; (ii) the Trustee is duly authorized to execute and deliver the Indenture and the Continuing Disclosure Agreement, to accept the obligations created by the Indenture and the Continuing Disclosure Agreement and to authenticate the Bonds pursuant to the terms of the Indenture; (iii) no consent, approval, authorization or other action by any governmental or regulatory authority having jurisdiction over the Trustee that has not been obtained is or will be required for the authentication of the Bonds or the consummation by the Trustee of the other transactions contemplated to be performed by the Trustee in connection with the authentication of the Bonds and the acceptance and performance of the obligations created by the Indenture; and (iv) to the best of its knowledge, compliance with the terms of the Indenture will not conflict with, or result in a violation or breach of, or constitute a default under, any material agreement or material instrument to which the Trustee is a party or by which it is bound, or any law or any rule, regulation, order or decree of any court or governmental agency or body having jurisdiction over the Trustee or any of its activities or properties;

14. An opinion of counsel to the Trustee dated the Closing Date, addressed to the Underwriter, and the Community Facilities District to the effect that (i) the Trustee is a national banking association duly organized and validly existing under the laws of the jurisdiction of its organization and has the corporate power to execute and deliver the Indenture, the Continuing Disclosure Agreement, and any other documentation relating to the Indenture, (ii) the execution and delivery by the Trustee of the Indenture, the Continuing Disclosure Agreement, and any other documentation relating to the Indenture, and its performance of its obligations under the Indenture, have been and are as of the date hereof duly authorized by all necessary corporate action, (iii) the Indenture and the Continuing Disclosure Agreement have been duly executed and delivered and constitute the valid and legally binding obligations of the Trustee enforceable against it in accordance with their terms except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought as a

proceeding in equity or at law), and (iv) the Bonds have been duly authenticated and delivered by the Trustee;

15. A certificate of the Community Facilities District dated the Closing Date, in a form acceptable to Bond Counsel and the Underwriter, that the Bonds are not arbitrage bonds within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended;

16. From counsel to KB Home, (i) a negative assurance letter of such counsel, dated the date of the Closing, in form and substance acceptable to the Underwriter and Bond Counsel, and (ii) an opinion letter of such counsel, dated the date of the Closing, in form and substance acceptable to the Underwriter and Bond Counsel, to the effect that the Developer Continuing Disclosure Certificate has been duly authorized, executed and delivered by KB Home;

17. A Letter of Representations from KB Home dated the date of printing the Preliminary Official Statement, substantially in the form attached hereto as Exhibit B;

18. A Closing Certificate from KB Home dated the Closing Date, substantially in the form attached hereto as Exhibit C, or as such Closing Certificate may be modified with the approval of the Underwriter and Disclosure Counsel;

19. A certificate dated the Closing Date from Empire Economics, Inc. addressed to the Community Facilities District and the Underwriter to the effect that the statements in the Official Statement provided by Empire Economics, Inc. and all information supplied by it for use in the Official Statement were as of the date of the Official Statement and are as of the Closing Date true and correct, and do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading;

20. An opinion of Kutak Rock LLP, counsel to the Underwriter, dated the date of Closing and addressed to the Underwriter in form and substance acceptable to the Underwriter;

21. A certificate of Urban Futures, Inc., the City's municipal advisor (the "Municipal Advisor"), to the effect that the Municipal Advisor has participated in the preparation of the Preliminary Official Statement and the Official Statement and nothing has come to the attention of the Municipal Advisor which would lead it to believe that the Preliminary Official Statement or the Official Statement contain any untrue statement of a material fact or omits to state a fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading; and

22. Such additional legal opinions, certificates, instruments and other documents as the Underwriter may reasonably request to evidence the truth and accuracy, as of the date hereof and as of the Closing Date, of the material representations and warranties of the Community Facilities District contained herein, and of the statements and information contained in the Official Statement and the due performance or satisfaction by the Community Facilities District at or prior to the Closing of all agreements then to be performed and all conditions then to be satisfied by the Community Facilities District in connection with the transactions contemplated hereby and by the Indenture and the Official Statement.

If the Community Facilities District shall be unable to satisfy the conditions to the obligations of the Underwriter to purchase, accept delivery of and pay for the Bonds contained in this Purchase Agreement, or if the obligations of the Underwriter to purchase, accept delivery of and pay for the Bonds shall be terminated for any reason permitted by this Purchase Agreement, this Purchase Agreement shall terminate and neither the Community Facilities District nor the Underwriter shall be under any further obligation hereunder, except that the respective obligations of the Underwriter and the Community Facilities District set forth in Section 5 hereof shall continue in full force and effect.

4. Establishment of Issue Price.

A. The Underwriter agrees to assist the Community Facilities District in establishing the issue price of the Bonds and shall execute and deliver to the Community Facilities District at Closing an "issue price" or similar certificate, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit E, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter, the Community Facilities District and Bond Counsel (as defined herein), to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Bonds. All actions to be taken by the Community Facilities District under this section to establish the issue price of the Bonds may be taken on behalf of the Community Facilities District by the Municipal Advisor and any notice or report to be provided to the Community Facilities District may be provided to the Community Facilities District's Municipal Advisor.

B. Except as otherwise set forth in Exhibit A attached hereto, the Community Facilities District will treat the first price at which 10% of each maturity of the Bonds (the "10% test") is sold to the public as the issue price of that maturity. At or promptly after the execution of this Purchase Agreement, the Underwriter shall report to the Community Facilities District the price or prices at which it has sold to the public each maturity of Bonds. If at that time the 10% test has not been satisfied as to any maturity of the Bonds, the Underwriter agrees to promptly report to the Community Facilities District the prices at which it sells the unsold Bonds of that maturity to the public. That reporting obligation shall continue, whether or not the Closing Date (as defined herein) has occurred, until the 10% test has been satisfied as to the Bonds of that maturity or until all Bonds of that maturity have been sold to the public, provided that the Underwriter's reporting obligation after the date of the Closing may be at reasonable periodic intervals or otherwise upon request of the Community Facilities District or Bond Counsel. For purposes of this Section, if Bonds mature on the same date but have different interest rates, each separate CUSIP number within that maturity will be treated as a separate maturity of the Bonds. For clarity, and notwithstanding any other condition to Closing set forth in this Purchase Agreement, the sale of 10% of each maturity of the Bonds to the public prior to the Closing Date shall not be a condition to Closing.

C. The Underwriter confirms that it has offered the Bonds to the public on or before the date of this Purchase Agreement at the offering price or prices (the "initial offering price"), or at the corresponding yield or yields, set forth in Exhibit A attached hereto. Exhibit A also sets forth, as of the date of this Purchase Agreement, the maturities, if any, of the Bonds for which the 10% test has not been satisfied and for which the Community Facilities District and the Underwriter agree that the restrictions set forth in the next sentence shall apply, which will allow the Community Facilities District to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the "hold-the-offering-price rule"). So long as the hold-the-offering-price rule remains applicable to any maturity of the Bonds, the Underwriter will neither offer nor sell unsold Bonds of that maturity to any person at a price that is higher than the

initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

(1) the close of the fifth (5th) business day after the sale date; or

(2) the date on which the Underwriter has sold at least 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public.

The Underwriter will advise the Community Facilities District promptly after the close of the fifth (5th) business day after the sale date whether it has sold 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public.

D. The Underwriter confirms that:

(1) any selling group agreement and any third-party distribution agreement relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each dealer who is a member of the selling group and each broker-dealer that is a party to such third-party distribution agreement, as applicable:

(a)(i) to report the prices at which it sells to the public the unsold Bonds of each maturity allocated to it, whether or not the Closing has occurred, until either all Bonds of that maturity allocated to it have been sold or it is notified by the Underwriter that the 10% test has been satisfied as to the Bonds of that maturity, provided that the reporting obligation after the date of the Closing may be at reasonable periodic intervals or otherwise upon request of the Underwriter, and (ii) to comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Underwriter,

(b) to promptly notify the Underwriter of any sales of Bonds that, to its knowledge, are made to a purchaser who is a related party to an underwriter participating in the initial sale of the Bonds to the public (each such term being used as defined below), and

(c) to acknowledge that, unless otherwise advised by the dealer or broker-dealer, the Underwriter shall assume that each order submitted by the dealer or broker-dealer is a sale to the public.

(2) any selling group agreement relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each dealer that is a party to a third-party distribution agreement to be employed in connection with the initial sale of the Bonds to the public to require each broker-dealer that is a party to such third-party distribution agreement to (A) report the prices at which it sells to the public the unsold Bonds of each maturity allocated to it, whether or not the Closing has occurred, until either all Bonds of that maturity allocated to it have been sold or it is notified by the Underwriter or the dealer that the 10% test has been satisfied as to the Bonds of that maturity, provided that the reporting obligation after the date of the Closing may be at reasonable periodic

intervals or otherwise upon request of the Underwriter or the dealer, and (B) comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Underwriter or the dealer and as set forth in the related pricing wires.

E. The Community Facilities District acknowledges that, in making the representations set forth in this subsection, the Underwriter will rely on (i) in the event a selling group has been created in connection with the initial sale of the Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the requirements for establishing the issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Bonds, as set forth in a selling group agreement and the related pricing wires, and (ii) in the event that a third-party distribution agreement was employed in connection with the initial sale of the Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the requirements for establishing the issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Bonds, as set forth in the third-party distribution agreement and the related pricing wires. The Community Facilities District further acknowledges that the Underwriter shall not be liable for the failure of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a third-party distribution agreement, to comply with its corresponding agreement to comply with the requirements for establishing the issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule if applicable to the Bonds.

F. The Underwriter acknowledges that sales of any Bonds to any person that is a related party to an underwriter participating in the initial sale of the Bonds to the public (each such term being used as defined below) shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

(1) "public" means any person other than an underwriter or a related party;

(2) "underwriter" means (A) any person that agrees pursuant to a written contract with the Community Facilities District (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Bonds to the public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Bonds to the public);

(3) a purchaser of any of the Bonds is a "related party" to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other); and

(4) "sale date" means the date of execution of this Purchase Agreement by all parties.

5. Expenses. Whether or not the Bonds are delivered to the Underwriter as set forth herein:

A. The Underwriter shall be under no obligation to pay, and the Community Facilities District shall pay or cause to be paid (out of any legally available funds of the Community Facilities District) all expenses incident to the performance of the Community Facilities District's obligations hereunder, including, but not limited to, the cost of printing, engraving and delivering the Bonds to DTC, the cost of preparation, printing, distributing and delivering of the Indenture, the Preliminary Official Statement, the Official Statement, any amendment or supplement to the Preliminary Official Statement or the Official Statement and this Purchase Agreement, and all other agreements and documents contemplated hereby (and drafts of any thereof) in such reasonable quantities as requested by the Underwriter; and the fees and disbursements of the Trustee, Bond Counsel, Disclosure Counsel and any financial advisors, special tax consultants, appraisers, accountants, engineers or any other experts or consultants the City or the Community Facilities District may have retained in connection with the Bonds; and

B. The Community Facilities District shall be under no obligation to pay, and the Underwriter shall pay, any fees of the California Debt and Investment Advisory Commission, the cost of preparation of any "blue sky" or legal investment memoranda and this Purchase Agreement; expenses to qualify the Bonds for sale under any "blue sky" or other state securities laws; and all other expenses incurred by the Underwriter in connection with its public offering and distribution of the Bonds (except those specifically enumerated in paragraph (a) of this section), including the fees and disbursements of its counsel, meals, transportation and lodging (but not entertainment expenses), and any advertising expenses in connection with the public offering of the Bonds.

6. Notices. Any notice or other communication to be given to the Community Facilities District or the Community Facilities District under this Purchase Agreement may be given by delivering the same in writing to the City of Ontario, 303 East "B" Street, Ontario, California 91764, Attention: City Manager; any notice or other communication to be given to the Underwriter under this Purchase Agreement may be given by delivering the same in writing to Samuel A. Ramirez & Co., Inc., 633 W. 5th, Suite 2693, Los Angeles, California 90071, Attention: Public Finance.

7. Parties In Interest. This Purchase Agreement is made solely for the benefit of the Community Facilities District and Underwriter (including any successors or assignees of the Underwriter) and no other person shall acquire or have any right hereunder or by virtue hereof.

8. Survival of Representations and Warranties. The representations and warranties of the Community Facilities District under this Purchase Agreement shall not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing and regardless of any investigations made by or on behalf of the Underwriter (or statements as to the results of such investigations) concerning such representations and statements of the Community Facilities District and regardless of delivery of and payment for the Bonds.

9. Execution in Counterparts. This Purchase Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

10. Effective. This Purchase Agreement shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by the Community Facilities District and shall be valid and enforceable as of the time of such acceptance.

11. No Prior Agreements. This Purchase Agreement supersedes and replaces all prior negotiations, agreements and understanding among the parties hereto in relation to the sale of the Bonds by the Community Facilities District.

12. Governing Law. This Purchase Agreement shall be governed by the laws of the State of California.

13. Effective Date. This Purchase Agreement shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by the Community Facilities District and shall be valid and enforceable as of the time of such acceptance.

Very truly yours,

SAMUEL A. RAMIREZ & CO., INC.

By: _____
Its: Authorized Officer

The foregoing is hereby agreed to and
accepted as of the date first above written:

CITY OF ONTARIO COMMUNITY
FACILITIES DISTRICT NO. 64
(SUNSET RANCH)

By: _____
Authorized Officer

Time of Execution: _____ California time

EXHIBIT A

CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 64
(SUNSET RANCH)
SPECIAL TAX BONDS, SERIES 2024

MATURITY SCHEDULE

Maturity (September 1)	Principal Amount	Interest Rate	Yield	Price	10% Test Satisfied*	10% Test Not Satisfied	Subject to Hold-The-Offering-Price Rule
2025							
2026							
2027							
2028							
2029							
2030							
2031							
2032							
2033							
2034							
20__ (T)							
20__ (T)							
20__ (T)							
20__ (T)							

(T) Term Bond.
(C) Priced to optional redemption date of September 1, 20__, at [par].
* At the time of execution of this Purchase Agreement and assuming orders are confirmed immediately after the execution of this Purchase Agreement.

REDEMPTION PROVISIONS

Optional Redemption. The Bonds maturing on and after September 1, 20__, shall be subject to optional redemption, in whole, or in part in Authorized Denominations, on any date on or after September 1, 20__ from any source of available funds, at the following respective Redemption Prices (expressed as percentages of the principal amount of the Bonds to be redeemed), plus accrued interest thereon to the date of redemption:

Redemption Dates	Redemption Price
September 1, 20__ through August 31, 20__	103%
September 1, 20__ through August 31, 20__	102
September 1, 20__ through August 31, 20__	101
September 1, 20__ and any date thereafter	100

Mandatory Redemption from Special Tax Prepayments. The Bonds shall be subject to mandatory redemption, in whole, or in part in Authorized Denominations, on any Interest Payment Date, from and to the extent of Special Tax prepayments required to be applied thereto pursuant to the Indenture and any amount required to be applied thereto pursuant to the Indenture, at the following respective Redemption Prices (expressed as percentages of the principal amount of the Bonds to be redeemed), plus accrued interest thereon to the date of redemption:

Redemption Dates	Redemption Price
Any Interest Payment Date through March 1, 20__	103%
September 1, 20__ and March 1, 20__	102
September 1, 20__ and March 1, 20__	101
September 1, 20__ and any Interest Payment Date thereafter	100

Mandatory Sinking Fund Redemption. The Bonds maturing September 1, 20__ shall be subject to mandatory sinking fund redemption, in part, on September 1 in each year, commencing September 1, 20__ at a Redemption Price equal to the principal amount of the Bonds maturing September 1, 20__ to be redeemed, without premium, plus accrued interest thereon to the date of redemption, in the aggregate respective principal amounts in the respective years as follows:

Sinking Fund Redemption Date (September 1)	Principal Amount to be Redeemed

The Bonds maturing September 1, 20__ shall be subject to mandatory sinking fund redemption, in part, on September 1 in each year, commencing September 1, 20__ at a Redemption Price equal to the principal amount of the Bonds maturing September 1, 20__ to be redeemed,

without premium, plus accrued interest thereon to the date of redemption, in the aggregate respective principal amounts in the respective years as follows:

Sinking Fund Redemption Date (September 1)	Principal Amount to be Redeemed

The Bonds maturing September 1, 20__ shall be subject to mandatory sinking fund redemption, in part, on September 1 in each year, commencing September 1, 20__ at a Redemption Price equal to the principal amount of the Bonds maturing September 1, 20__ to be redeemed, without premium, plus accrued interest thereon to the date of redemption, in the aggregate respective principal amounts in the respective years as follows:

Sinking Fund Redemption Date (September 1)	Principal Amount to be Redeemed

The Bonds maturing September 1, 20__ shall be subject to mandatory sinking fund redemption, in part, on September 1 in each year, commencing September 1, 20__ at a Redemption Price equal to the principal amount of the Bonds maturing September 1, 20__ to be redeemed, without premium, plus accrued interest thereon to the date of redemption, in the aggregate respective principal amounts in the respective years as follows:

Sinking Fund Redemption Date (September 1)	Principal Amount to be Redeemed

EXHIBIT B

CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 64
(SUNSET RANCH)
SPECIAL TAX BONDS, SERIES 2024

LETTER OF REPRESENTATIONS OF
KB HOME COASTAL INC.

[POS Date]

City of Ontario Community Facilities District
No. 64 (Sunset Ranch)
303 East B Street
Ontario, California 91764

Samuel A. Ramirez & Co., Inc.
633 W. 5th, Suite 2693
Los Angeles, California 90071

Ladies and Gentlemen:

Reference is made to the City of Ontario Community Facilities District No. 64 (Sunset Ranch) Special Tax Bonds, Series 2024 (the "**Bonds**") and to the Bond Purchase Agreement to be entered into in connection therewith (the "**Bond Purchase Agreement**"). This Letter of Representations of KB Home Coastal Inc. (the "**Letter of Representations**") is delivered pursuant to and in satisfaction of Section 3(F)(17) of the Bond Purchase Agreement. Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the Bond Purchase Agreement.

The undersigned certifies that he or she is familiar with the facts herein certified and is authorized and qualified to certify the same as an authorized officer or representative of KB Home Coastal Inc., a California corporation (the "**Developer**"), and the undersigned, on behalf of the Developer, further certifies as follows:

1. The Developer is duly organized and validly existing under the laws of the State of California and has all requisite right, power and authority (i) to execute and deliver this Letter of Representations, and (ii) to develop its property in the City of Ontario Community Facilities District No. 64 (Sunset Ranch) (the "**Community Facilities District**") as described in the Preliminary Official Statement.

2. As set forth in the Preliminary Official Statement, title to a certain portion of the property within the Community Facilities District is held in the name of the Developer (herein, the "**Property**"). The undersigned, on behalf of the Developer, makes the representations herein with respect to all such Property. Except as otherwise described in the Preliminary Official Statement, the Developer's current expectation is that the Developer shall remain the party responsible for the

construction and sale of homes within the Property. Except as disclosed in the Preliminary Official Statement, the Developer has not entered into an agreement for development or management of the Property by any other entity, except such subcontracts, consultant agreements and similar agreements for land development activities associated with the Developer's development plan as are entered into in the ordinary course of business.

3. Except as set forth in the Preliminary Official Statement, no action, suit, proceeding, inquiry or investigation at law or in equity, before or by any court, regulatory agency, public board or body is pending against the Developer (with proper service of process to the Developer having been accomplished) or, to the Actual Knowledge of the Undersigned,[1] is pending against any current Affiliate[2] (with proper service of process to such Affiliate having been accomplished) or to the Actual Knowledge of the Undersigned is threatened in writing against the Developer or any such Affiliate (a) to restrain or enjoin the collection of the special tax levied on the Property by the Community Facilities District (the "**Special Tax**") or other sums pledged or to be pledged to pay the principal of and interest on the Bonds (e.g., the reserve fund established under the Indenture (herein, the "**Reserve Fund**")), (b) to restrain or enjoin the development of the Property as described in the Preliminary Official Statement, (c) to materially adversely affect the ability of the Developer to perform its obligations under the Continuing Disclosure Certificate (as hereinafter defined), (d) in any way contesting or affecting the validity of the Special Tax, or (e) which is reasonably likely to materially and adversely affect the Developer's ability to develop and sell the Property as described in the Preliminary Official Statement or to pay the Special Tax due with respect to the Property (to the extent the responsibility of the Developer) prior to delinquency.

4. As of the date of the Preliminary Official Statement, to the Actual Knowledge of the Undersigned, the information contained therein solely with respect to the Developer, its Affiliates, the proposed development of the Property, ownership of the Property, the Developer's development plan, the Developer's financing plan, the Developer's lenders, if any, and contractual arrangements of the Developer or any Affiliates (including, if material to the Developer's development plan or the

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1 "**Actual Knowledge of the Undersigned**" means, as of the date of this Letter of Representations, the actual (as opposed to constructive) knowledge that the individual signing on behalf of the Developer currently has or has obtained through (i) interviews with such current officers and responsible employees of the Developer and its Affiliates as the undersigned has determined are reasonably likely, in the ordinary course of their respective duties, to have knowledge of the matters set forth in this Letter of Representations, and/or (ii) review of documents that were reasonably available to the undersigned and which the undersigned has reasonably deemed necessary for the undersigned to obtain knowledge of the matters set forth in this Letter of Representations. The undersigned has not conducted any extraordinary inspection or inquiry other than such inspections or inquiries as are prudent and customary in connection with the ordinary course of the Developer's current business and operations. Individuals who are no longer employees of the Developer and its Affiliates have not been contacted.

2 "**Affiliate**" means, with respect to the Developer, any other Person (i) who directly, or indirectly through one or more intermediaries, is currently controlling, controlled by or under common control with the Developer, and (ii) for whom information, including financial information or operating data, concerning such Person is material to potential investors in their evaluation of the Community Facilities District and investment decision regarding the Bonds (i.e., information relevant to (a) the Developer's development plans with respect to the Property and ability to pay its Special Taxes on the Property (to the extent the responsibility of the Developer) prior to delinquency, or (b) such Person's assets or funds that would materially affect the Developer's ability to develop the Property as described in the Preliminary Official Statement or to pay its Special Taxes on the Property (to the extent the responsibility of the Develop) prior to delinquency. "**Person**" means an individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a trust, any unincorporated organization or a government or political subdivision thereof. For purposes hereof, the term "**control**" (including the terms "**controlling**," "**controlled by**" or "**under common control with**") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

Developer's financing plan, other loans of such Affiliates) as set forth under the sections of the Preliminary Official Statement captioned "PROPERTY OWNERSHIP AND THE DEVELOPMENT" and "CONTINUING DISCLOSURE – Developer Continuing Disclosure Certificate" (but in all cases under all captions excluding therefrom (i) information regarding the Appraisal Report (as defined herein), market value ratios and annual special tax ratios, and (ii) information which is identified as having been provided by a source other than the Developer), is true and correct in all material respects and did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

5. Except as described in the Preliminary Official Statement, there are no material loans outstanding and unpaid and no material lines of credit of the Developer or its Affiliates, that are secured by an interest in the Property. Neither the Developer nor, to the Actual Knowledge of the Undersigned, any of its Affiliates is currently in material default on any loans, lines of credit or other obligation related to the development of the Property or any other project which default is reasonably likely to materially and adversely affect the Developer's ability to develop the Property as described in the Preliminary Official Statement or to pay the Special Tax due with respect to the Property (to the extent the responsibility of the Developer) prior to delinquency.

6. To the Actual Knowledge of the Undersigned, other than as disclosed in the Preliminary Official Statement, the Developer is not aware that any of the Property has a current liability with respect to the presence of a substance presently classified as hazardous under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 or applicable California law or is adversely affected by the presence of endangered or threatened species or habitat for endangered or threatened species.

7. The Developer covenants that, while the Bonds or any refunding obligations related thereto are outstanding, the Developer and its Affiliates which it controls will not bring any action, suit, proceeding, inquiry or investigation at law or in equity, before any court, regulatory agency, public board or body, that in any way seeks to challenge or overturn the formation of the Community Facilities District, to challenge the adoption of the ordinance of the Community Facilities District levying Special Tax within the Community Facilities District, to invalidate the Community Facilities District or any of the Bonds or any refunding bonds related thereto, or to invalidate the special tax liens imposed under Section 3115.5 of the Streets and Highways Code based on recordation of the notices of special tax lien relating thereto. The foregoing covenant shall not prevent the Developer in any way from bringing any other action, suit, proceeding, inquiry or investigation at law or in equity, before any court, regulatory agency, public board or body including, without limitation, (a) an action or suit contending that the Special Tax has not been levied in accordance with the methodologies contained in the Rate and Method of Apportionment of Special Tax pursuant to which Special Tax is levied, (b) an action or suit with respect to the application or use of the Special Tax levied and collected or (c) an action or suit to enforce the obligations of the City and/or the Community Facilities District under the Community Facilities District Resolutions, the Ordinance, the Indenture, or any other agreements among the Developer, an Affiliate, the City and/or the Community Facilities District or to which the Developer or an Affiliate is a party or beneficiary.

8. The Developer consents to the issuance of the Bonds. The Developer acknowledges and agrees that the proceeds of the Bonds will be used as described in the Preliminary Official Statement.

9. The Developer intends to comply with the provision of the Mello-Roos Community Facilities Act of 1982, as amended relating to the Notice of Special Tax described in Government Code Section 53341.5 in connection with the sale of the Property, or portions thereof.

10. To the Actual Knowledge of the Undersigned, the Developer is able to pay its bills as they become due and no legal proceedings are pending against the Developer (with proper service of process having been accomplished) or, to the Actual Knowledge of the Undersigned, threatened in writing in which the Developer may be adjudicated as bankrupt or discharged from any and all of its debts or obligations, or granted an extension of time to pay its debts or obligations, or be allowed to reorganize or readjust its debts, or be subject to control or supervision of the Federal Deposit Insurance Corporation.

11. The Developer agrees to execute at Closing the Continuing Disclosure Certificate, substantially in the form attached as Appendix H to the Preliminary Official Statement (the "**Continuing Disclosure Certificate**"), with such additional changes as may be agreed to by the Developer and the Underwriter. Except as disclosed in the Preliminary Official Statement, to the Actual Knowledge of the Undersigned, the Developer is not aware of any material failures by it or any entity under managerial control of the Developer to comply in all material respects with previous continuing disclosure undertakings in a written certificate or agreement executed by it or an entity under the managerial control of the Developer to provide periodic continuing disclosure reports or notices of material events respecting securities offerings in California within the past five years.

12. To the Actual Knowledge of the Undersigned, execution and delivery of the Continuing Disclosure Certificate, and the performance by the Developer of its obligations under the Continuing Disclosure Certificate, will not conflict with or constitute a breach of or default under any loans, lines of credit, agreements, or other contractual or financial obligations of the Developer, or any applicable law, regulation, judgment or decree.

13. To the Actual Knowledge of the Undersigned, Affiliates of the Developer are able to pay their bills as they become due and no legal proceedings are pending against any Affiliate of the Developer (with proper service of process having been accomplished) or to the Actual Knowledge of the Undersigned, threatened in writing in which the Affiliates of the Developer may be adjudicated as bankrupt or discharged from any or all of their debts or obligations, or granted an extension of time to pay their debt or obligations, or be allowed to reorganize or readjust their debts or obligations, or be subject to control or supervision of the Federal Deposit Insurance Corporation which is reasonably likely to have a materially adverse impact on the ability of the Developer to develop the Property as described in the Preliminary Official Statement, to perform its obligations under the Continuing Disclosure Certificate, or to pay the Special Tax or ad valorem tax obligations with respect to the portion of the Property then owned by the Developer (to the extent the responsibility of the Developer) prior to delinquency.

14. The Developer has been developing or has been involved in the development of numerous projects over an extended period of time. It is likely that the Developer and its Affiliates have been delinquent at one time or another in the payment of ad valorem property taxes, special assessments or special taxes. However, to the Actual Knowledge of the Undersigned, during the last five years, neither the Developer nor any current Affiliate has, during the period of its ownership, been delinquent to any material extent in the payment of any *ad valorem* property tax, special assessment or special tax on property included within the boundaries of a community facilities district or an assessment district in California that (a) caused a draw on a reserve fund relating to

such assessment district or community facilities district financing or (b) resulted in a foreclosure action being commenced against the delinquent Developer or such Affiliate in a court of law.

15. The Developer has not filed for the reassessment of the assessed value of any portions of the Property, other than in connection with the sale of homes to individual homebuyers.

16. To the Actual Knowledge of the Undersigned, there are no claims, disputes, suits, actions or contingent liabilities by and among the Developer, its Affiliates or any contractors working on the development of the Property which is reasonably likely to materially and adversely affect the Developer's development of the Property as described in the Preliminary Official Statement, the performance of its obligations under the Continuing Disclosure Certificate, or the payment of the Special Tax due with respect to the Property (to the extent the responsibility of the Developer) prior to delinquency.

17. Based upon the current development plans, including, without limitation, the current budget and subject to economic conditions and risks generally inherent in the development of real property, including, but not limited to, the risks described in the Preliminary Official Statement under the section entitled "SPECIAL RISK FACTORS," the Developer presently anticipates that it will have sufficient funds to develop the Property as described in the Preliminary Official Statement and to pay Special Tax levied against the Property (to the extent the responsibility of the Developer) prior to delinquency and does not anticipate that the City or the Community Facilities District will be required to resort to a draw on the Reserve Fund for payment of principal of or interest on the Bonds due to the Developer's nonpayment of Special Tax. However, neither the Developer nor any of its Affiliates are obligated to make any additional capital contribution or loan to the Developer at any time, and the Developer reserves the right to change its development plans and financing plans for the Property at any time without notice.

18. An appraisal of the taxable properties within the Community Facilities District, dated _____, 2024 (the "**Appraisal Report**"), was prepared by Kitty Siino & Associates, Inc. (the "**Appraiser**"). The Appraisal Report estimates the market value of the taxable properties within the Community Facilities District as of August 30, 2024 (the "**Date of Value**"). To the Actual Knowledge of the Undersigned, all information submitted by, or on behalf of and authorized by, the Developer to the Appraiser and contained in the sections of the Appraisal Report highlighted in yellow or circled in Exhibit A attached hereto, was true and correct in all material respects as of the Date of Value.

19. Solely as to the limited information described in the sections of the Preliminary Official Statement indicated in Paragraph 4 herein (and subject to the limitations and exclusions set forth in Paragraph 4), the Developer agrees to indemnify and hold harmless, to the extent permitted by law, the City, the Community Facilities District, and their officials and employees, and each Person, if any, who controls any of the foregoing within the meaning of Section 15 of the Securities Act of 1933, as amended, or of Section 20 of the Securities Exchange Act of 1934, as amended (each, an "**Indemnified Party**" and, collectively, the "**Indemnified Parties**"), against any and all losses, claims, damages or liabilities, joint or several, to which such Indemnified Party may become subject under any statute or at law or in equity and shall reimburse any such Indemnified Party for any reasonable legal or other expense incurred by it in connection with investigating any such claim against it and defending any such action, insofar as and solely to the extent such losses, claims, damages, liabilities or actions, or legal or other expenses, arise out of or are based upon any untrue statement or alleged untrue statement of a material fact or the omission or alleged omission of a

material fact by the Developer in the above-referenced information in the Preliminary Official Statement, as of its date, necessary to make the statements made by the Developer contained therein, in light of the circumstances under which they were made not misleading. This indemnity provision shall not be construed as a limitation on any other liability which the Developer may otherwise have to any Indemnified Party, *provided* that in no event shall the Developer be obligated for double indemnification, or for the negligence or willful misconduct of an Indemnified Party.

If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any Indemnified Party in respect of which indemnification may be sought pursuant to the above paragraph, such Indemnified Party shall promptly notify the Developer in writing; provided that the failure to notify the Developer shall not relieve it from any liability that it may have hereunder except to the extent that it has been materially prejudiced by such failure; and provided, further, that the failure to notify the Developer shall not relieve it from any liability that it may have to an Indemnified Party otherwise than under the above paragraph unless such liability was also conditioned upon such notice. If any such proceeding shall be brought or asserted against an Indemnified Party and it shall have notified the Developer thereof, the Developer shall retain counsel reasonably satisfactory to the Indemnified Party and approved thereby to represent the Indemnified Party in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding, as incurred. In any such proceeding, any Indemnified Party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless (i) the Developer and the Indemnified Party shall have mutually agreed to the contrary; (ii) the Developer has failed within a reasonable time to retain counsel reasonably satisfactory to the Indemnified Party; (iii) the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it that are different from or in addition to those available to the Developer such that a material conflict of interest exists for such counsel; or (iv) the named parties in any such proceeding (including any impleaded parties) include the Developer and the Indemnified Party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interest between them. It is understood and agreed that the Developer shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified Parties, and that all such fees and expenses, to the extent reasonable, shall be paid or reimbursed as they are incurred. Any such separate firm shall be designated in writing by such Indemnified Parties. The Developer shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the Developer agrees to indemnify each Indemnified Party from and against any loss or liability by reason of such settlement or judgment as set forth above. If the Developer shall, after receiving notice of the indemnification obligation of the Developer and within a period of time necessary to preserve any and all defenses to any claim asserted, fails to assume the defense or to retain counsel for that purpose satisfactory to the Indemnified Party, the Indemnified Party shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle the claim or other matter on behalf of, for the account of and at the risk of, the Developer. The Developer shall not, without the written consent of the Indemnified Party, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Party is a party and indemnification could have been sought hereunder by such Indemnified Party, unless such settlement (x) includes an unconditional release of such Indemnified Party, in form and substance reasonably satisfactory to such Indemnified Party, from all liability on claims that are the subject matter of such proceeding and (y) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Party.

20. If between the date hereof and the Closing Date any event relating to or affecting the Developer, its Affiliates, the proposed development of the Property, ownership of the Property, the Developer's development plan, the Developer's financing plan, the Developer's lenders, if any, and contractual arrangements of the Developer or any Affiliates (including, if material to the Developer's development plan or the Developer's financing plan, other loans of such Affiliates) shall occur of which the undersigned has actual knowledge which would cause the information under the sections of the Preliminary Official Statement indicated in Paragraph 4 hereof (and subject to the limitations and exclusions contained in Paragraph 4 hereof), to contain an untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Developer shall notify the City, the Community Facilities District and the Underwriter and if in the opinion of counsel to the City or the Underwriter such event requires the preparation and publication of a supplement or amendment to the Preliminary Official Statement, the Developer shall reasonably cooperate with the City and the Community Facilities District in the preparation of an amendment or supplement to the Preliminary Official Statement in form and substance satisfactory to counsel to the City, the Community Facilities District and to the Underwriter.

21. The Developer agrees to deliver a Closing Certificate dated the date of issuance of the Bonds at the time of issuance of the Bonds in substantially the form attached as Exhibit C to the Bond Purchase Agreement. If any event related to or affecting the Developer, its Affiliates, or the ownership, development, or sale of the Property occurs, as a result of which it is necessary to modify the Closing Certificate, the Developer agrees to deliver a new Closing Certificate revised to reflect such event.

22. On behalf of the Developer, I have reviewed the contents of this Letter of Representations and have had the opportunity to discuss with counsel to the Developer the meaning of the contents of this Letter of Representations. The Developer acknowledges and understands that a variety of state and federal securities laws, including, but not limited to the Securities Act of 1933, as amended, and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, as amended, may apply to the Developer and that under some circumstances, certification as to the matters set forth in this Letter of Representations, without additional disclosures or other action, may not fully discharge all duties and obligations of the Developer under such securities laws.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

The undersigned has executed this Letter of Representations solely in his or her capacity as an authorized officer or representative of the Developer and he or she will have no personal liability arising from or relating to this Letter of Representations. Any liability arising from or relating to this Letter of Representations may only be asserted against the Developer.

KB HOME COASTAL INC., a California corporation

By: _____
Name: _____
Title: _____

[EXECUTION PAGE OF LETTER OF REPRESENTATIONS OF KB HOME COASTAL INC.]

EXHIBIT A

To

LETTER OF REPRESENTATIONS
OF KB HOME COASTAL INC.

DEVELOPER PROVIDED INFORMATION IN APPRAISAL REPORT

See attached.

EXHIBIT C

FORM OF CLOSING CERTIFICATE

$_____
CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 64
(SUNSET RANCH)
SPECIAL TAX BONDS, SERIES 2024

CLOSING CERTIFICATE OF
KB HOME COASTAL INC.

[Closing Date]

City of Ontario Community Facilities District
No. 64 (Sunset Ranch)
303 East B Street
Ontario, California 91764
Attn: City Manager

Samuel A. Ramirez & Co., Inc.
633 W. 5th, Suite 2693
Los Angeles, California 90071

Ladies and Gentlemen:

Reference is made to the above-captioned bonds (the "**Bonds**") and to the Bond Purchase Agreement, dated [BPA Date] (the "**Bond Purchase Agreement**"), entered into in connection therewith. This Closing Certificate of KB Home Coastal Inc. (the "**Closing Certificate**") is delivered pursuant to Section 3(F)(18) of the Bond Purchase Agreement. Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the Letter of Representations of KB Home Coastal Inc. (the "**Letter of Representations**"), dated [POS Date], delivered by KB Home Coastal Inc., a California corporation (the "**Developer**").

The undersigned certifies that he or she is familiar with the facts herein certified and is authorized and qualified to certify the same as an authorized officer or representative of the Developer, and the undersigned, on behalf of the Developer, further certifies as follows:

1. The Developer has received the final Official Statement dated [BPA Date] relating to the Bonds (the "**Official Statement**"). To the Actual Knowledge of the Undersigned, each statement, representation and warranty made in the Letter of Representations is true and correct in all material respects on and as of the date hereof with the same effect as if made on the date hereof, except that all references therein to the Preliminary Official Statement shall be deemed to be references to the Official Statement and all references to the Continuing Disclosure Certificate herein

shall be deemed to be references to the Continuing Disclosure Certificate as executed by the Developer in connection with the sale of the Bonds.

2. To the Actual Knowledge of the Undersigned, no event has occurred since the date of the Preliminary Official Statement affecting the statements and information described in Paragraph 4 of the Letter of Representations (and subject to the limitations and exclusions contained in Paragraph 4 of the Letter of Representations) relating to the Developer, its Affiliates, the proposed development of the Property, ownership of the Property, the Developer's development plan, the Developer's financing plan, the Developer's lenders, if any, and contractual arrangements of the Developer or any Affiliates (including, if material to the Developer's development plan or the Developer's financing plan, other loans of its Affiliates), which should be disclosed in the Official Statement for the purposes for which it is to be used in order to make such statements and information contained in the Official Statement not misleading in any material respect.

3. For the period through 25 days after the "**End of the Underwriting Period**" as defined in the Bond Purchase Agreement (provided the Developer may assume the End of the Underwriting Period is the Closing Date (as defined in the Bond Purchase Agreement), unless it receives written notice from the Underwriter that the End of the Underwriting Period is later than the Closing Date), if any event relating to or affecting the Developer, its Affiliates, the proposed development of the Property, ownership of the Property, the Developer's development plan, the Developer's financing plan, the Developer's lenders, if any, and contractual arrangements of the Developer or any Affiliates (including, if material to the Developer's development plan or the Developer's financing plan, other loans of its Affiliates) shall occur as a result of which it is necessary, in the opinion of the Underwriter or counsel to the City or the Community Facilities District, to amend or supplement the Official Statement in order to make the information under the sections of the Official Statement indicated in Paragraph 4 of the Letter of Representations (and subject to the limitations and exclusions contained in Paragraph 4 of the Letter of Representations) not misleading in the light of the circumstances under which they were made, the Developer shall reasonably cooperate with the City, the Community Facilities District and the Underwriter in the preparation and publication of a supplement or amendment to the information under the sections of the Official Statement indicated in Paragraph 4 of the Letter of Representations (and subject to the limitations and exclusions contained in Paragraph 4 of the Letter of Representations), in form and substance satisfactory to the Underwriter and counsel to the City and the Community Facilities District which will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

4. The Developer has duly authorized the execution and delivery of the Continuing Disclosure Certificate and is duly authorized to perform the obligation on its part to be performed thereunder, and the Continuing Disclosure Certificate constitutes the legal, valid and binding obligation of the Developer, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, arrangement, moratorium, fraudulent conveyance and other similar laws affecting the rights of creditors and certain equitable, legal or statutory principles affecting enforcement of contractual rights generally, regardless of whether such enforcement is considered in a proceeding of law or equity.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

The undersigned has executed this Closing Certificate solely in his or her capacity as an authorized officer or representative of the Developer and he or she will have no personal liability arising from or relating to this Closing Certificate. Any liability arising from or relating to this Closing Certificate may only be asserted against the Developer.

KB HOME COASTAL INC., a California corporation

By: _____
Name: _____
Title: _____

EXHIBIT D

FORM OF ISSUER'S COUNSEL OPINION

[Closing Date]

City of Ontario
Community Facilities District No. 64
(Sunset Ranch)
303 East "B" Street
Ontario, California 91764

Samuel A. Ramirez & Co., Inc., as
Underwriter
633 West Fifth Street, Suite 2693
Los Angeles, California 90071

Zions Bancorporation,
National Association, as Trustee
550 South Hope Street, Suite 2875
Los Angeles, California 90071

ISSUER'S COUNSEL OPINION

Re: $_____ City of Ontario Community Facilities District No. 64 (Sunset Ranch) Special Tax Bonds, Series 2024

Ladies and Gentlemen:

We have acted as issuer's counsel ("Issuer's Counsel") to the City of Ontario (the "City") and the City of Ontario Community Facilities District No. 64 (Sunset Ranch) (the "Community Facilities District"), in connection with the issuance of the $____ City of Ontario Community Facilities District No. 64 (Sunset Ranch) Special Tax Bonds, Series 2024 (the "Bonds"). In such capacity, we have been asked to render this opinion in connection with Section 3(F)(9) of that certain Bond Purchase Agreement, dated [BPA Date] (the "Bond Purchase Agreement"), by and between Samuel A. Ramirez & Co., Inc., as underwriter, and the Community Facilities District relating to the Bonds. All capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Bond Purchase Agreement.

In rendering this opinion, we have examined and relied upon originals or copies of the following documents upon which we are relying, without further inquiry or investigation (although we advise you that we have no actual knowledge to the contrary of any matters related thereto): (i) the Community Facilities District Resolution of Issuance, (ii) Resolution No. ____, adopted by the City Council of the City (the "City Council") on _____ (the "Resolution of Intention"), (iii) Resolution No. _____, adopted by the City Council on _____ (the "Resolution to Incur Indebtedness"), (iv) Resolution No. _____, adopted by the City Council on _____ (the "Resolution of Formation"), (v) Resolution No. _____, adopted by the City Council on _____ (the "Resolution Deeming it Necessary to Incur Indebtedness"), (vi) Resolution No. _____, adopted by the City

Council on _____ (the "Resolution Calling Election"), (vii) Resolution No. _____, adopted by the City Council on _____ (the "Resolution Declaring Results"), (viii) Ordinance No. ___, adopted by the City Council on _____ (the "Ordinance" and, together with the Resolution of Intention, the Resolution to Incur Indebtedness, the Resolution of Formation, the Resolution Deeming it Necessary to Incur Indebtedness, the Resolution Calling Election, and the Resolution Declaring Results the "Formation Documents"), (xvii) the Community Facilities District Documents, and (xviii) the Official Statement, relating to the Bonds, and we have made such other investigations of law and facts as we have deemed necessary to render the following opinions.

In rendering this opinion, we have assumed, without independent investigation, that all documents submitted to or reviewed by us are accurate and complete and, if not originals, are true and correct copies of originals and the accuracy of the statements and representations contained in such documents. As to questions of fact material to this opinion letter, we have relied upon representations and information supplied to us by the City and the Community Facilities District and their respective officers, employees, and representatives and upon representations and certificates of various public officials. In addition, we have assumed the authority of and due execution by each of the parties to the documents other than the City and the Community Facilities District. In the course of our representation, nothing has come to our attention that caused us to believe that any of the factual representations upon which we have relied are not true, but we have made no other factual investigations.

When used herein, the phrase "current actual knowledge" means knowledge as we have obtained from (i) the incumbency and signature certificate of the Community Facilities District, (ii) the representations and warranties contained in each closing certificate of the City or the Community Facilities District, (iii) knowledge of facts or other information currently known to lawyers in our firm who have performed legal services for the City or the Community Facilities District, and (iv) a litigation search in California State and federal court conducted on _____, 20___.

Based on the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The City is a municipal corporation and general law city, duly organized and validly existing pursuant to the Constitution and laws of the State of California (the "State").

2. The Community Facilities District is duly organized and validly existing as a community facilities district under the Constitution and laws of the State.

3. The Community Facilities District Resolution of Issuance and the Formation Documents have been duly adopted at meetings of the City Council, which were called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, and the Community Facilities District Resolution of Issuance and the Formation Documents are in full force and effect and have not, other than as described in the Official Statement, been modified, amended, rescinded or repealed since the respective dates of their adoption.

4. The Community Facilities District Documents and the Official Statement have been duly authorized, executed and delivered by the Community Facilities District and constitute the legal, valid and binding obligations of the Community Facilities District enforceable against the Community Facilities District in accordance with their terms, subject

to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights, to the application of equitable principles where equitable remedies are sought and to the exercise of judicial discretion in appropriate cases or seeks to restrain or to enjoin the development of property within the Community Facilities District.

5. Except as may be stated in the Official Statement, to our current actual knowledge, there is no action, suit, proceeding or investigation before or by any court, public board or body pending (notice of which has been served on the City or the Community Facilities District) or threatened wherein an unfavorable decision, ruling or finding would: (a) affect the creation, organization, existence or powers of the City or the Community Facilities District, or the titles of their members and officers to their respective offices; or (b) affect the validity of the Community Facilities District Documents or restrain or enjoin the repayment of the Bonds or in any way contest or affect the validity of the Community Facilities District Documents or contest the authority of the Community Facilities District to enter into or perform its obligations under any of the Community Facilities District Documents or under which a determination adverse to the City or Community Facilities District would have a material adverse effect upon the financial condition or the revenues of the City or Community Facilities District, questions the right of the Community Facilities District to use the Special Tax levied within the Community Facilities District for the repayment of the Bonds or affects in any manner the right or ability of the Community Facilities District to collect or pledge the Special Tax levied within the Community Facilities District for the repayment of the Bonds.

6. To our current actual knowledge, the execution and delivery of the Bonds and the Community Facilities District Documents, and compliance with the provisions of each, will not conflict with or constitute a breach of or default under any loan agreement, note, ordinance, resolution, indenture, contract, agreement or other instrument of which the Community Facilities District is a party or is otherwise subject or bound, a consequence of which could be to materially and adversely affect the ability of the Community Facilities District to perform its obligations under the Bonds or the Community Facilities District Documents.

7. All approvals, consents, authorization, elections and orders of or filings or registrations with any governmental authority, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would materially adversely affect, the ability of the Community Facilities District, to perform its obligations under the Bonds or the Community Facilities District Documents, have been obtained or made, as the case may be, and are in full force and effect.

The opinions set forth above are subject to the following additional qualifications:

(a) We express no opinion with respect to the laws of any state or jurisdiction other than California and the United States regarding the enforceability of any transaction mentioned herein or the interpretation, authorization, execution, validity, enforceability or effect of any of the documents mentioned herein; provided further that we express no opinion with respect to California or federal tax and securities law.

(b) As Issuer's Counsel in this matter, we have not rendered financial advice to the Community Facilities District and do not represent by this opinion, or otherwise, that we

reviewed or made any assessment about, nor do we express any opinion about, the ability of the Community Facilities District to pay debt service or amounts due under the Indenture, and accordingly, we offer no opinion whatsoever regarding such financial feasibility or ability to repay the Bonds.

(c) We express no opinion with respect to any indemnification, contribution, lien priority or choice of law provisions contained in the foregoing documents.

(d) General principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law; and limitations imposed by bankruptcy, insolvency, fraudulent conveyance, receivership, conservatorship, reorganization, arrangement, liquidation, moratorium or other similar laws affecting the enforcement of creditors' rights in general heretofore or hereafter enacted, as such laws may be applied in the event of bankruptcy, insolvency, reorganization, arrangement, receivership, conservatorship, liquidation, readjustment of debt or other similar proceedings of, or moratorium or similar occurrence affecting municipal corporations in the State.

No attorney-client relationship exists between you and us (other than the City and Community Facilities District). This opinion is solely for the benefit of the addressees in connection with the transactions covered by the first paragraph of this letter and may not be relied upon or used by, circulated, quoted or referred to, nor may copies hereof be delivered to, any other person or for any other purpose without our prior written approval; provided, however, copies of this opinion may be included in the closing transcripts for the transactions connected with the issuance of the Bonds.

This opinion letter speaks only as of its date, and we disclaim any obligation to update this opinion letter for events occurring or coming to our attention after the date hereof. The opinions herein are limited to the matters expressly set forth herein, and no opinion is to be implied or may be inferred beyond the matters expressly so stated.

We bring to your attention the fact that our conclusions are an expression of professional judgment and are not a guarantee of a result.

Respectfully submitted,

EXHIBIT E

$_____
CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 64
(SUNSET RANCH)
SPECIAL TAX BONDS, SERIES 2024

FORM OF ISSUE PRICE CERTIFICATE

The undersigned, Samuel A. Ramirez & Co., Inc. ("Ramirez"), hereby certifies as set forth below with respect to the sale and issuance of the above-captioned obligations (the "Bonds").

1. ***Bond Purchase Agreement.*** On [BPA Date] (the "Sale Date"), Ramirez and the Issuer executed a Bond Purchase Agreement (the "Purchase Agreement") in connection with the sale of the Bonds. Ramirez has not modified the Purchase Agreement since its execution on the Sale Date.

2. ***Price.*** As of the date of this Certificate, for each Maturity of the Bonds, the first price at which at least 10% of each such Maturity of the Bonds was sold to the Public was the respective price for such Maturity listed in Schedule A attached hereto.

3. ***Defined Terms.***

   (a) *"Issuer"* means the City of Ontario Community Facilities District No. 64 (Sunset Ranch).

   (b) *"Maturity"* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.

   (c) *"Public"* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term "related party" for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

   (d) *"Underwriter"* means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead Underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

4. ***Reserve* Fund.** The funding of the Reserve Fund under the Indenture, and as provided in the Tax Certificate, is reasonably required, was a vital factor in marketing the Bonds, facilitated the marketing of the Bonds at an interest rate comparable to that of bonds and other tax-exempt obligations of a similar type, and is not in excess of the amount necessary for such purpose.

5. The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents Ramirez's interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the Tax Certificate of the Issuer dated [Closing Date] and with respect to compliance with the federal income tax rules affecting the Bonds, and by Bond Counsel, in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the Issuer from time to time relating to the Bonds.

SAMUEL A. RAMIREZ & CO., INC.

By:_____

Dated: [Closing Date]

SCHEDULE A
TO
ISSUE PRICE CERTIFICATE

[TO BE ATTACHED]

CONTINUING DISCLOSURE AGREEMENT

by and between

CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 64
(SUNSET RANCH)

and

ZIONS BANCORPORATION, NATIONAL ASSOCIATION,
AS TRUSTEE

Dated as of _____ 1, 2024

City of Ontario
Community Facilities District No. 64
(Sunset Ranch)
Special Tax Bonds, Series 2024

CONTINUING DISCLOSURE AGREEMENT

THIS CONTINUING DISCLOSURE AGREEMENT (this "Disclosure Agreement"), dated as of _____ 1, 2024, is by and between CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 64 (Sunset Ranch), a community facilities district organized and existing under the laws of the State of California (the "Community Facilities District"), and ZIONS BANCORPORATION, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as Trustee (the "Trustee").

W I T N E S S E T H :

WHEREAS, the Community Facilities District has issued its City of Ontario Community Facilities District No. 64 (Sunset Ranch) Special Tax Bonds, Series 2024 (the "Series 2024 Bonds"), in the aggregate principal amount of $_____, pursuant to the Indenture, dated as of _____ 1, 2024 (the "Indenture"), by and between the Community Facilities District and the Trustee; and

WHEREAS, this Disclosure Agreement is being executed and delivered by the Community Facilities District and the Trustee for the benefit of the owners and beneficial owners of the Series 2024 Bonds and in order to assist the underwriter of the Series 2024 Bonds in complying with Securities and Exchange Commission Rule 15c2-12(b)(5);

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

Section 1. Definitions. Unless the context otherwise requires, the terms defined in this Section shall for all purposes of this Disclosure Agreement have the meanings herein specified. Capitalized undefined terms used herein shall have the meanings ascribed thereto in the Indenture.

"Annual Report" means any Annual Report provided by the Community Facilities District pursuant to, and as described in, Sections 2 and 3 hereof.

"Annual Report Date" means the date in each year that is the first day of the month following the ninth month after the end of the Community Facilities District's fiscal year, which date, as of the date of this Disclosure Agreement, is April 1.

"Community Facilities District" means City of Ontario Community Facilities District No. 64 (Sunset Ranch), a community facilities district organized and existing under the laws of the State, and its successors.

"Disclosure Representative" means the Deputy City Treasurer of the City, or his or her designee, or such other person as the Community Facilities District shall designate in writing to the Trustee from time to time.

"Dissemination Agent" means the Trustee, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Community Facilities District and which has filed with the Trustee a written acceptance of such designation.

"Financial Obligation" means (a) a debt obligation of the Community Facilities District, (b) a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation of the Community Facilities District, or (c) a guarantee of (i) a debt obligation of the Community Facilities District, or (ii) a derivative instrument described in clause (b), above; provided, however, that the term "Financial Obligation" shall not include "municipal securities" (as such term is defined in the Securities Exchange Act of 1934, as amended) as to which a "final official statement" (as such term is defined in the Rule) has been provided to the MSRB consistent with the Rule.

"Indenture" means the Indenture, dated as of _____ 1, 2024, by and between the Community Facilities District and Zions Bancorporation, National Association, as Trustee, as originally executed and as it may be modified or amended from time to time in accordance with its terms.

"Listed Events" means any of the events listed in subsection (a) or subsection (b) of Section 4 hereof.

"MSRB" means the Municipal Securities Rulemaking Board or any other entity designated or authorized by the Securities and Exchange Commission to receive reports pursuant to the Rule. Until otherwise designated by the MSRB or the Securities and Exchange Commission, filings with the MSRB are to be made through the Electronic Municipal Market Access (EMMA) website of the MSRB, currently located at http://emma.msrb.org.

"Participating Underwriter" means the original underwriter of the Series 2024 Bonds required to comply with the Rule in connection with the offering of the Series 2024 Bonds.

"Rule" means Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

"Trustee" means Zions Bancorporation, National Association, as Trustee under the Indenture, or any successor thereto as Trustee thereunder substituted in its place as provided therein.

Section 2. Provision of Annual Reports. (a) The Community Facilities District shall, or shall cause the Dissemination Agent to, provide to the MSRB an Annual Report that is consistent with the requirements of Section 3 hereof, not later than the Annual Report Date, commencing with the report for the 2023-24 Fiscal Year. The Annual Report may include by reference other information as provided in Section 3 hereof; provided, however, that the audited financial statements of the Community Facilities District, if any, may be submitted separately from the balance of the Annual Report, and later than the date required above for the filing of the Annual Report if they are not available by that date. If the Community Facilities District's fiscal year changes, it shall, or it shall instruct the Dissemination Agent to, give notice of such change in a filing with the MSRB.

(b) Not later than 15 business days prior to the date specified in subsection (a) of this Section for the providing of the Annual Report to the MSRB, the Community Facilities District shall provide the Annual Report to the Dissemination Agent and the Trustee (if the Trustee is not the Dissemination Agent). If by such date, the Trustee has not received a copy of the Annual Report, the Trustee shall contact the Community Facilities District and the Dissemination Agent to determine if the Community Facilities District is in compliance with the first sentence of this subsection (b).

(c) If the Trustee is unable to verify that an Annual Report has been provided to the MSRB by the date required in subsection (a) of this Section, the Trustee shall, in a timely manner, send a notice to the MSRB in substantially the form attached as Exhibit A.

(d) The Dissemination Agent shall:

(i) provide each Annual Report received by it to the MSRB, as provided herein; and

(ii) file a report with the Community Facilities District and (if the Dissemination Agent is not the Trustee) the Trustee certifying that such Annual Report has been provided pursuant to this Disclosure Agreement and stating the date it was provided to the MSRB.

Section 3. Content of Annual Reports. The Community Facilities District's Annual Report shall contain or incorporate by reference the following:

(a) The Community Facilities District's audited financial statements, if any, prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the Community Facilities District's audited financial statements, if any, are not available by the time the Annual Report is required to be filed pursuant to subsection (a) of Section 2 hereof, the Annual Report shall contain unaudited financial statements, in a format similar to that used for the Community Facilities District's audited financial statements, and the audited financial statements, if any, shall be filed in the same manner as the Annual Report when they become available.

(b) The following information:

(i) The principal amount of Series 2024 Bonds Outstanding as of the December 31 next preceding the Annual Report Date;

(ii) The principal amount of Additional Bonds, if any, Outstanding as of the December 31 next preceding the Annual Report Date;

(iii) The balance in (A) the KB HOME Acquisition Account, and (B) the NMC Acquisition Account, as of the December 31 next preceding the Annual Report Date;

(iv) The balance in the Reserve Fund, and a statement of the Reserve Requirement, as of the December 31 next preceding the Annual Report Date;

(v) The total assessed value of all parcels within the Community Facilities District on which the Special Tax is levied, as shown on the assessment roll of the San Bernardino County Assessor last equalized prior to the December 31 next preceding the Annual Report Date, and a statement of assessed value-to-Bonded debt ratios therefor, either by individual parcel or by categories (e.g., "below 3:1," "3:1 to 4:1," etc.);

(vi) The Special Tax delinquency rate for all parcels within the Community Facilities District, as shown on the assessment roll of the San Bernardino County Assessor last equalized prior to the December 31 next preceding the Annual Report Date, the number of parcels within the Community Facilities District delinquent in payment of the Special Tax as of the December 31 next preceding the Annual Report Date, the amount of each delinquency, the length of time delinquent and the date on which foreclosure was commenced, or similar information pertaining to delinquencies deemed appropriate by the Community Facilities District; provided, however, that parcels with aggregate delinquencies of $2,000 or less (excluding penalties and interest) may be grouped together and such information may be provided by category;

(vii) The status of foreclosure proceedings and a summary of the results of any foreclosure sales as of the December 31 next preceding the Annual Report Date;

(viii) The identity of any property owner representing more than 5% of the Special Tax levy delinquent in payment of the Special Tax as of the December 31 next preceding the Annual Report Date;

(ix) A land ownership summary listing property owners responsible for more than 5% of the annual Special Tax, as shown on the assessment roll of the San Bernardino County Assessor last equalized prior to the December 31 next preceding the Annual Report Date; and

(x) A description of any changes to the Rate and Method approved by, or submitted for approval to, the qualified electors of the Community Facilities District during the period from the date of filing the prior year's Annual Report to the date of filing such Annual Report.

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the Community Facilities District or related public entities that have been made available to the public on the MSRB's website. The Community Facilities District shall clearly identify each such other document so included by reference.

Section 4. Reporting of Significant Events. (a) Pursuant to the provisions of this Section, the Community Facilities District shall give, or cause to be given, notice of the

occurrence of any of the following events with respect to the Series 2024 Bonds in a timely manner not later than ten business days after the occurrence of the event:

(i) Principal and interest payment delinquencies.

(ii) Unscheduled draws on debt service reserves reflecting financial difficulties.

(iii) Unscheduled draws on credit enhancements reflecting financial difficulties.

(iv) Substitution of credit or liquidity providers, or their failure to perform.

(v) Adverse tax opinions or issuance by the Internal Revenue Service of proposed or final determination of taxability or of a Notice of Proposed Issue (IRS Form 5701 TEB).

(vi) Tender offers.

(vii) Defeasances.

(viii) Rating changes.

(ix) Bankruptcy, insolvency, receivership or similar event of the Community Facilities District.

(x) Default, event of acceleration, termination event, modification of terms or other similar events under the terms of a Financial Obligation, any of which reflect financial difficulties.

For purposes of the event identified in paragraph (ix) of this subsection, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Community Facilities District in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Community Facilities District, or if such jurisdiction has been assumed by leaving the existing governmental body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Community Facilities District.

(b) Pursuant to the provisions of this Section, the Community Facilities District shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Series 2024 Bonds, if material, in a timely manner not later than ten business days after the occurrence of the event:

(i) Unless described in paragraph (v) of subsection (a) of this Section, material notices or determinations by the Internal Revenue Service with respect to the tax status of the Series 2024 Bonds or other material events affecting the tax status of the Series 2024 Bonds.

(ii) Modifications to rights of holders of the Series 2024 Bonds.

(iii) Series 2024 Bond calls.

(iv) Release, substitution, or sale of property securing repayment of the Series 2024 Bonds.

(v) Non-payment related defaults.

(vi) The consummation of a merger, consolidation, or acquisition involving the Community Facilities District or the sale of all or substantially all of the assets of the Community Facilities District other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms.

(vii) Appointment of a successor or additional Trustee or the change of name of a Trustee.

(viii) Incurrence of a Financial Obligation, or agreement to covenants, events of default, remedies, priority rights or other similar terms of a Financial Obligation, any of which affect holders of the Series 2024 Bonds.

(c) The Trustee shall, within one business day of obtaining actual knowledge of the occurrence of any of the Listed Events, contact the Disclosure Representative and inform such person of the event. The Trustee shall have no responsibility for determining the materiality of any such event, or whether any such event reflects financial difficulties.

(d) Whenever the Community Facilities District obtains knowledge of the occurrence of a Listed Event described in subsection (b) of this Section, the Community Facilities District shall determine if such event would be material under applicable Federal securities law.

(e) Whenever the Community Facilities District obtains knowledge of the occurrence of a Listed Event described in subsection (a) of this Section, or determines that knowledge of a Listed Event described in subsection (b) of this Section would be material under applicable Federal securities law, the Community Facilities District shall, or shall cause the Dissemination Agent to, file a notice of the occurrence of such Listed Event with the MSRB, within ten business days of such occurrence.

(f) Notwithstanding the foregoing, notice of Listed Events described in paragraph (iii) of subsection (b) of this Section need not be given any earlier than the notice (if any) of the underlying event is given to holders of affected Series 2024 Bonds pursuant to the Indenture.

Section 5. Format for Filings with MSRB. Any report or filing with the MSRB pursuant to this Disclosure Agreement must be submitted in electronic format, accompanied by such identifying information as is prescribed by the MSRB.

Section 6. Termination of Reporting Obligation. The Community Facilities District's obligations under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Series 2024 Bonds. If such termination occurs prior to the final maturity of the Series 2024 Bonds, the Community Facilities District shall give, or cause to be given, notice of such termination in a filing with the MSRB.

Section 7. Dissemination Agent. The Community Facilities District may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent may resign by providing 30 days' written notice to the Community Facilities District. If at any time there is not any other designated Dissemination Agent, the Trustee shall be the Dissemination Agent.

Section 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Agreement, the Community Facilities District and the Trustee may amend this Disclosure Agreement (and the Trustee shall agree to any amendment so requested by the Community Facilities District, so long as such amendment does not adversely affect the rights or materially increase the obligations of the Trustee), and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) if the amendment or waiver relates to the provisions of subsection (a) of Section 2 hereof, Section 3 hereof or subsection (a) or (b) of Section 4 hereof, it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Series 2024 Bonds, or the type of business conducted;

(b) the undertakings herein, as proposed to be amended or waived, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the primary offering of the Series 2024 Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) the proposed amendment or waiver (i) is approved by Owners of the Series 2024 Bonds in the manner provided in the Indenture for amendments to the Indenture with the consent of Owners, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of Owners or Beneficial Owners of the Series 2024 Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the Community Facilities District shall describe such amendment or waiver in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Community

Facilities District. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements (i) notice of such change shall be given in a filing with the MSRB, and (ii) the Annual Report for the year in which the change is made shall present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

Section 9. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Community Facilities District from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice required to be filed pursuant to this Disclosure Agreement, in addition to that which is required by this Disclosure Agreement. If the Community Facilities District chooses to include any information in any Annual Report or notice in addition to that which is specifically required by this Disclosure Agreement, the Community Facilities District shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event or any other event required to be reported.

Section 10. Default. In the event of a failure of the Community Facilities District, the Trustee or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the Trustee may (and, at the written direction of any Participating Underwriter or the Owners of at least 25% of the aggregate principal amount of Outstanding Series 2024 Bonds, shall, upon receipt of indemnification reasonably satisfactory to the Trustee), or any Owner or Beneficial Owner of the Series 2024 Bonds may, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Community Facilities District, the Trustee or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Agreement in the event of any failure of the Community Facilities District, the Trustee or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance.

Section 11. Duties, Immunities and Liabilities of Trustee and Dissemination Agent. Article VIII of the Indenture is hereby made applicable to this Disclosure Agreement as if this Disclosure Agreement were (solely for this purpose) contained in the Indenture. The Dissemination Agent shall be entitled to the protections and limitations from liability afforded to the Trustee thereunder. Neither the Trustee nor the Dissemination Agent shall be responsible for the form or content of any Annual Report or notice of Listed Event. The Dissemination Agent shall receive reasonable compensation for its services provided under this Disclosure Agreement and shall be reimbursed for its reasonable expenses (including attorneys' fees and expenses) incurred by it in the exercise or performance of its powers and duties hereunder. The Dissemination Agent (if other than the Trustee or the Trustee in its capacity as Dissemination Agent) shall have only such duties as are specifically set forth in this Disclosure Agreement. To the extent permitted by law, the Community Facilities District agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities that any such Person may incur in the exercise or performance of the Dissemination Agent's powers and duties hereunder, including the costs and expenses (including

attorneys' fees and expenses) of defending against any claim of liability, and that are not due to such Person's negligence or its willful misconduct. The obligations of the Community Facilities District under this Section shall survive resignation or removal of the Dissemination Agent and the termination of this Disclosure Agreement.

Section 12. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Community Facilities District, the Trustee, the Dissemination Agent, the Participating Underwriter and the Owners and Beneficial Owners from time to time of the Series 2024 Bonds, and shall create no rights in any other person or entity.

Section 13. Governing Laws. This Disclosure Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 14. Electronic Signature. Each of the parties hereto agrees that the transaction consisting of this Disclosure Agreement may be conducted by electronic means. Each party agrees, and acknowledges that it is such party's intent, that if such party signs this Disclosure Agreement using an electronic signature, it is signing, adopting and accepting this Disclosure Agreement and that signing this Disclosure Agreement using an electronic signature is the legal equivalent of having placed its handwritten signature on this Disclosure Agreement on paper. Each party acknowledges that it is being provided with an electronic or paper copy of this Disclosure Agreement in a usable format.

Section 15. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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

CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 64 (SUNSET RANCH)

By: _____

_____,
_____ of the City of Ontario

ZIONS BANCORPORATION, NATIONAL ASSOCIATION, AS TRUSTEE

By: _____

_____,
Vice President,
Zions Bank Division

EXHIBIT A

NOTICE OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer: City of Ontario Community Facilities District No. 64 (Sunset Ranch)

Name of Issue: City of Ontario Community Facilities District No. 64 (Sunset Ranch) Special Tax Bonds, Series 2024

Date of Issuance: _____, 2024

NOTICE IS HEREBY GIVEN that City of Ontario Community Facilities District No. 64 (Sunset Ranch) (the "Community Facilities District") has not provided an Annual Report with respect to the above-named Bonds as required by the Continuing Disclosure Agreement, dated as of _____ 1, 2024, by and between the Community Facilities District and Zions Bancorporation, National Association, as Trustee. [The Community Facilities District anticipates that such Annual Report will be filed by _____.]

Dated: _____

Zions Bancorporation, National Association, as Trustee, on behalf of City of Ontario Community Facilities District No. 64 (Sunset Ranch)

cc: City of Ontario
Community Facilities District
No. 64 (Sunset Ranch)