CITY OF ONTARIO

Regular City Council/Housing Authority Meeting
JUNE 3, 2025

City Hall
303 East B Street, Ontario, CA 91764

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

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

WELCOME TO A MEETING OF THE ONTARIO CITY COUNCIL

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

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

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

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

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

ACCOMMODATIONS

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

ORDER OF BUSINESS

The regular City Council and Housing Authority meeting begins with Closed Session and Closed Session Comment at 5:30 p.m., Public Comment at 6:30 p.m. immediately followed by the Regular Meeting and Public Hearings. No agenda item will be introduced for consideration after 10:00 p.m. except by majority vote of the City Council.

CALL TO ORDER *(OPEN SESSION)*

ROLL CALL

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

CLOSED SESSION PUBLIC COMMENT

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

CLOSED SESSION

GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN: 0216-174-06, 0216-174-07, 0216-174-08, 0216-174-15, 0218-121-04, 0218-121-05, 0218-122-04, 0218-122-10, 0218-131-04; 8775 East Riverside Drive, 0 South Vineyard Avenue, 8919 East Chino Avenue, 8931 East Chino Avenue, 9141 East Chino Avenue, 0 East Chino Avenue; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: B and G Hay Company, Bekendam Family Trust, Link Real Estate, Inc, American Superior Land, LLC, Bidart Family Trust, Ronald and Kristine Peitersma Family Trust, San Bernardino County Flood Control District; Under negotiation: Price and terms of payment.

GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN: 1048-564-06, 1048-564-05, 1048-564-04, 1048-564-03, 121-143 North Euclid Avenue. City/Authority negotiator: City City Manager or his designee. Negotiating party: LAB-CO, LLC. Under negotiation: Price and Terms.

GC 54656.9(d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION:

Robles, et al. v. City of Ontario et al ., Case No. CIVDS2007038

ATTACHMENT: 20250603 Closed Session

PLEDGE OF ALLEGIANCE

Council Member Macias

INVOCATION

Pastor Richard Hernandez, The Church of God

REPORT ON CLOSED SESSION

City Attorney

PUBLIC COMMENTS 6:30 P.M.

The Public Comment portion of the Council/Housing Authority meeting is limited to 30 minutes. 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.

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1. APPROVAL OF MINUTES

Minutes for the regular meetings of the City Council and Housing Authority of May 6, 2025, and approving same as on file in the Records Management Department.

ATTACHMENT: 20250506 Meeting Minutes (Not Official Until Approved).docx

2. BILLS & PAYROLL

Bills May 2, 2025 through May 15, 2025, and Payroll April 20, 2025 through May 3, 2025.

3. A CONSTRUCTION CONTRACT WITH OUTSOURCE UTILITY CONTRACTOR, LLC FOR THE FISCAL YEAR 2024-25 CDBG AND CIP STREET LIGHT INSTALLATION PROJECT

That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to execute a Construction Contract with Outsource Utility Contractor, LLC, of Torrance, California, for the Fiscal Year 2024-25 CDBG and CIP Street Light Installation Project in the amount of $344,900 plus a 10% contingency of $34,490 for a total not-to-exceed contract amount of $379,390; and
B. Authorize the City Manager, or his designee, to execute all documents required for the completion of the project which may include, but are not limited to, agreements, assessments, easements, reduction of retention accounts, contracts amendments within the authorization limits, and filing a notice of completion at the conclusion of all construction-related activities.

ATTACHMENT: Exhibit A & B.pdf
ATTACHMENT: Outsource_Utility_Contractor__LLC_Contract rev.pdf

4. A RESOLUTION ADOPTING THE LIST OF PROJECTS FOR FISCAL YEAR 2025-26 FUNDED BY SENATE BILL 1, THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017

That the City Council adopt a Resolution approving the Fiscal Year 2025-26 Project List for Senate Bill 1 (SB1), the Road Repair and Accountability Act of 2017.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING A LIST OF PROJECTS FOR FISCAL YEAR 2025-26 FUNDED BY SENATE BILL 1, THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017.

ATTACHMENT: 20250603 Road Maintenance and Rehabilitation Account 01^RESO^RM.doc
ATTACHMENT: Exhibit A-Road Maintenance and Rehabilitation Account.pdf

5. **A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY, AND FINAL TRACT MAP NO. 20659 GENERALLY LOCATED ON WEST FIFTH STREET BETWEEN BENSON AVENUE AND MOUNTAIN AVENUE**

That the City Council adopt a Resolution approving an Improvement Agreement, Improvement Security, and Final Tract Map No. 20659, generally located on West Fifth Street between Benson Avenue and Mountain Avenue.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 20659 GENERALLY LOCATED ON WEST FIFTH STREET BETWEEN BENSON AVENUE AND MOUNTAIN AVENUE.

ATTACHMENT: 20250603 TM-20659^01 EXH A.pdf
ATTACHMENT: 20250603 TM-20659 02^RESO^RM.docx
ATTACHMENT: 20250603 TM-20659^03 SIA.pdf

6. **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 75 (SPRINGHILL)**

That the City Council adopt an Ordinance authorizing the levy of special taxes within City of Ontario Community Facilities District No. 75 (Springhill).

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING A SPECIAL TAX WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 75 (SPRINGHILL).

ATTACHMENT: CFD No. 75 Springhill Ordinance Lvy Tax 01^ORD^RM

7. **AN AMENDMENT TO THE INLAND VALLEY HUMANE SOCIETY & SPCA CONTRACT AND APPROVAL TO ADMIT THE CITY OF CHINO HILLS AS A MEMBER AGENCY IN THE ANIMAL RESOURCE CENTER OF THE INLAND EMPIRE**

That the City Council take the following actions:

A. Authorize the City Manager, or designee, to execute Amendment No.1 to the Inland Valley Humane Society & SPCA contract; and
B. Approve the admission of the City of Chino Hills to the Animal Resource Center of the Inland Empire.

ATTACHMENT: Agenda Attachments for Admission of Chino Hills to ARC of IE JPA Agreement.pdf
ATTACHMENT: ARC-011 Adding The City of Chino Hills as a Member of the Agency.pdf
ATTACHMENT: Ontario IVHS Amendment #1 6.3.25.pdf

8. **ACCEPT A WRITTEN PETITION TO CREATE A COMMUNITY FACILITIES DISTRICT; ADOPT A RESOLUTION OF INTENTION TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 74 (REMINGTON APG LLC) AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES**

That the City Council consider and:

A. Accept a written petition (on file with the Records Management Department) from Remington APG LLC ("Landowners"), to create a Community Facilities District ("CFD") and to waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982; and
B. Adopt a Resolution of Intention to establish City of Ontario Community Facilities District No. 74 (Remington APG LLC), authorize the associated levy of special taxes therein; and set a public hearing for the formation of the CFD as part of the regularly scheduled City Council meeting on Tuesday, July 15, 2025.

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. 74 (REMINGTON APG LLC SERVICES) AND TO AUTHORIZE THE LEVY OF A SPECIAL TAX THEREIN.

ATTACHMENT: CFD No. 74 Remington APG LLC Resolution of Intention 01^RESO^RM.doc
ATTACHMENT: CFD No. 74 Remington APG LLC^01A EXH A, Boundary Map_ Back-Up.pdf
ATTACHMENT: CFD No. 74 Remington APG LLC^01B EXH C, RMA_Back-Up.pdf

9. A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC., FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT FOR THE PROPOSED CITY'S CORPORATE YARD

That the City Council authorize the City Manager to execute a Professional Services Agreement with Kimley-Horn and Associates, Inc., of Riverside, in the amount of $411,200, plus a 10% contingency of $41,120, for a total authorized expenditure of $452,320 to prepare an Environmental Impact Report (EIR) for the proposed City's Corporate Yard at 2200 E. Philadelphia Street.

ATTACHMENT: Kimley-Horn - Professional Services Agreement - City Yard.docx
ATTACHMENT: PSA Exhibit A - Ontario PW Corporate Yard EIR - CEQA Proposal_revised 5.2.25.pdf
ATTACHMENT: PSA Exhibit B - Ontario PW Corporate Yard EIR - Schedule.pdf
ATTACHMENT: PSA Exhibit C - Ontario PW Corporate Yard EIR - Fee Estimate.pdf

10. AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT WITH RONALD IVIE FOR BROADBAND STRATEGY, DEVELOPMENT, AND OPERATIONS SUPPORT CONSULTING SERVICES

That the City Council authorize the City Manager, or his designee, to execute Amendment No. 2 to the Professional Services Agreement with Ronald Ivie to increase the authorized contract amount by $180,000, for a revised total not-to-exceed amount of $1,260,000.

ATTACHMENT: AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT CITY FIBER OPTICS NETWORK

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

That the City Council authorize Change Order #2 to the construction agreement with SLS Property Solutions Inc. of Santa Ana, CA for emergency board ups and abatements, extending the term of the agreement by one (1) additional year and increasing the total not-to-exceed amount to $550,000 for the term of the agreement; and authorize the City Manager, or his designee, to execute said Agreement and future change orders within authorization limits.

ATTACHMENT: SLS Property Solutons - Change Order 2.pdf

12. A PROFESSIONAL SERVICES AGREEMENT WITH PLACEWORKS, INC., TO PROVIDE PLANNING AND ENVIRONMENTAL CONSULTING SERVICES FOR A GENERAL PLAN AMENDMENT (TECHNICAL AMENDMENT) TO THE ONTARIO PLAN

That the City Council authorize the City Manager to execute a Professional Services Agreement with PlaceWorks, Inc., of Santa Ana, in the amount of $183,740, plus an 8% contingency of $14,699, for a total authorized expenditure of $198,439 to prepare a technical amendment to The Ontario Plan Policy Plan (General Plan) and an Addendum to The Ontario Plan (2050) Supplemental Environmental Impact Report (SEIR) to streamline future development and comply with legislative mandates.

ATTACHMENT: Placeworks Professional Services Agreement - Technical Amendment.docx
ATTACHMENT: PSA Exhibit A - Ontario_TechnicalGPU_Proposal_20250502.pdf
ATTACHMENT: PSA Exhibit B - Ontario_TechnicalGPU_Schedule_20250502.pdf
ATTACHMENT: PSA Exhibit C - Ontario_TechnicalGPU_Budget_20250502.pdf

13. A PROFESSIONAL SERVICES AGREEMENT WITH PLACEWORKS, INC., TO PROVIDE PLANNING AND ENVIRONMENTAL CONSULTING SERVICES FOR A GENERAL PLAN AMENDMENT (POLICY PLAN AMENDMENT) TO THE ONTARIO PLAN

That the City Council authorize the City Manager to execute a Professional Services Agreement with PlaceWorks, Inc., of Santa Ana, in the amount of $1,083,809, plus a 10% contingency of $108,381, for a total authorized expenditure of $1,192,190 to prepare an amendment to The Ontario Plan Policy Plan (General Plan) and a Supplemental Environmental Impact Report (EIR) to streamline future development and comply with legislative mandates.

ATTACHMENT: Placeworks Professional Services Agreement - Policy Plan Amendment.docx
ATTACHMENT: PSA Exhibit A - OntarioGPA_Proposal_20250502.pdf
ATTACHMENT: PSA Exhibit B - OntarioGPA_Schedule_20250502.pdf
ATTACHMENT: PSA Exhibit C - OntarioGPA_Budget_20250502.pdf

14. AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT WITH CAL BUILDING SYSTEMS, INC. FOR SPRINKLER AND HOOD SUPPRESSION MAINTENANCE AND REPAIR SERVICES

That the City Council authorize the City Manager, or his designee, to execute Amendment No. 3

to the Maintenance Services Agreement with Cal Building Systems, Inc., of Yorba Linda, California, for sprinkler and hood suppression maintenance and repair services in the amount of $40,000. This amendment increases the contract amount from $236,221 to $276,221 and raises the total authorized not-to-exceed amount from $266,221 to $306,221.

ATTACHMENT: Cal Building Systems Inc. Amendment No. 3.pdf

15. A CONSTRUCTION CONTRACT WITH CT&T CONCRETE PAVING, INC. FOR AMERICANS WITH DISABILITIES ACT (ADA) CONCRETE RAMP CONSTRUCTION SERVICES

That the City Council authorize the City Manager, or his designee, to execute a one year Construction Contract with CT&T Concrete Paving, Inc., of Diamond Bar, California, for Americans with Disabilities Act (ADA) concrete ramp construction services for a total not-to-exceed contract amount of $175,000.

ATTACHMENT: CT&T Concrete Paving Inc. - Construction Contract - ADA Concrete Ramps SM 2526-7.pdf

16. A MAINTENANCE SERVICES AGREEMENT WITH TOWO ENTERPRISE, INC. FOR CITYWIDE CONCRETE REPAIR AND MAINTENANCE SERVICES

That the City Council authorize the City Manager, or his designee, to execute a Maintenance Services Agreement with Towo Enterprise, Inc., of Fullerton, California, for citywide concrete repair and maintenance services. The agreement shall have an initial term of three (3) years, with a total amount not-to-exceed $4,065,000, and may include up to two (2) additional one-year extensions, for a total contract amount not-to-exceed $6,775,000 over a maximum term of five (5) years.

ATTACHMENT: Towo Enterprise Inc. - MSA Concrete Repairs and Maintenance SM2526-1 5.14.pdf

17. AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT WITH CAN/AM TECHNOLOGIES, INC. FOR CASHIERING SERVICES-ARC CHAMELEON TELLER INTEGRATION

That the City Council authorize the City Manager, or his designee, to execute Amendment No. 2 to the Professional Services Agreement with Can/Am Technologies, Inc., to provide enterprise cashiering software, licensing, and support services for the integration of the Animal Resource Center of the Inland Empire (ARC) Chameleon Teller system in the amount of $23,530 increasing the not-to-exceed contract amount to $570,680 and extend the agreement term by one year.

ATTACHMENT: CAN-AM Amendment 2 Final.pdf

18. A CONSTRUCTION CONTRACT WITH PAVEMENT RECYCLING SYSTEMS FOR CITYWIDE ASPHALT GRINDING SERVICES

That the City Council authorize the City Manager, or his designee, to execute a Construction Contract with Pavement Recycling Systems, of Jurupa Valley, California, for citywide asphalt grinding services for a total contract amount not-to-exceed $1,233,000 for five (5) years.

ATTACHMENT: Pavement Recycling Systems, Inc. - Construction Contract - Asphalt Grinding Services.pdf

19. A MAINTENANCE SERVICES AGREEMENT WITH SAFE USA, INC. FOR CITYWIDE CRACK SEALING SERVICES

That the City Council authorize the City Manager, or their designee, to execute a Maintenance Services Agreement with Safe USA, Inc., of Ontario, California, for citywide crack sealing services. The agreement shall have an initial term of three (3) years, with a total amount not-to-exceed $396,000, and may include up to two (2) additional one-year extensions, for a total contract amount not-to-exceed $681,000 over a maximum term of five (5) years.

ATTACHMENT: Safe USA Inc. - MSA - Crack Sealing Services SM 2526-3 5.23.pdf

20. AMENDMENT TO PROFESSIONAL SERVICES AGREEMENTS WITH STOEL RIVES LLP FOR LEGAL AND TECHNICAL SERVICES PERTAINING TO WATER MATTERS

That the City Council approve and authorize the City Manager, or designee, to execute Amendment No. 3 to the Professional Services Agreement with Stoel Rives LLP of Sacramento, California, for legal and technical services relating to water supply and water rights in the amount of $120,000 for a total not-to-exceed amount of $834,000, and to extend the term until June 30, 2027.

ATTACHMENT: 20250603 PSA with Stoel Rives Amendment No. 3^01 AGMT.pdf

21. AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA23-006) BETWEEN THE CITY OF ONTARIO, LEGACY LAND PARTNERS, LLC, JAB MILL CREEK, LLC, AND RICHLAND ONTARIO DEVELOPERS, LLC.

That the City Council adopt an Ordinance Approving a Development Agreement (File No. PDA23-006) between the City of Ontario, Legacy Land Partners, LLC, JAB Mill Creek, LLC, and Richland Ontario Developers, LLC.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING CITY COUNCIL APPROVE FILE NO. PDA23-006, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND LEGACY LAND PARTNERS, LLC, JAB MILL CREEK, LLC, AND RICHLAND ONTARIO DEVELOPERS, LLC, TO ESTABLISH THE TERMS AND CONDITIONS ASSOCIATED WITH TENTATIVE PARCEL MAP 20685 (FILE NO. PMTT23-004), LOCATED AT THE NORTHWEST CORNER OF ONTARIO RANCH ROAD AND MILL CREEK AVENUE WITHIN PLANNING AREAS 3C, 5A AND 5C (LIGHT INDUSTRIAL DISTRICT AND OPEN SPACE – NON RECREATION) OF THE RICH HAVEN SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APNS: 218-016-22 AND 218-211-42

ATTACHMENT: File No. PDA23-006_Richland Ontario Developers LLC^01 EXH A&B.pdf
ATTACHMENT: File No. PDA23-006 Richland Ontario Developers LLC 02^ORD^RM
ATTACHMENT: File No. PDA23-006_Richland Ontario Developers LLC^03^DEV^AGR.docx

22. AUTHORIZATION TO ISSUE A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES TO EVALUATE THE FEASIBILITY OF WASTEWATER AND RECYCLED WATER SERVICE ALTERNATIVES

That the City Council authorize the City Manager, or designee, to issue a Request for Qualifications (RFQ) to solicit proposals from qualified firms to evaluate the feasibility of wastewater and recycled water service alternatives.

23. AUTHORIZE THE RENEWAL OF THE CITY'S ENTERPRISE RESOURCE PLANNING SOFTWARE, WORKDAY, INC.

That the City Council authorize the City Manager, or his designee, to execute the renewal to the Master Subscription Agreement (MSA) with Workday, Inc. of Pleasanton, CA, for licensing and maintenance, for a total amount of $12,931,493. Additionally, authorize a 15% contingency amount of $1,939,724 to accommodate annual renewals for two testing and development environments, as well as any unforeseen modules. The total authorization for this agreement amounts to $14,871,217 over a ten-year term.

ATTACHMENT: Workday 10 Year Renewal 2025.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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24. A RESOLUTION APPROVING PURSUANT TO CEQA FINDINGS AS TO THE CERTIFIED FINAL ENVIRONMENTAL IMPACT REPORT FOR THE DOWNTOWN CIVIC CENTER PLANNED UNIT DEVELOPMENT (SCH NO. 2004051155) AS PREVIOUSLY AMENDED, A DISPOSITION AND DEVELOPMENT AGREEMENT AND LOAN AGREEMENT BETWEEN THE CITY OF ONTARIO AND A BLOCK, LLC FOR THE ADAPTIVE REUSE OF HISTORIC PROPERTY AND NEW DEVELOPMENT LOCATED AT THE 100 BLOCK OF NORTH EUCLID AVENUE; ACCEPTING THE ECONOMIC OPPORTUNITY STATUTE (GOVT CODE SECTION 52220 ET. SEQ) REPORT AND MAKING RELATED FINDINGS AUTHORIZING THE SALE OF THE PROPERTIES

A. That the City Council adopt a Resolution approving the Disposition and Development Agreement ("DDA") between the City of Ontario ("City") and A Block, LLC ("Developer"); approving a Construction Loan Agreement ("Loan Agreement") between the City of Ontario ("Lender") and A Block, LLC ("Borrower"); approving, as amended, the certified Downtown Civic Center Planned Unit Development Environmental Impact Report (SCH No. 2004051155) findings; and

B. Authorize the City Manager, or his designee, to sign all documents necessary to implement the Disposition and Development Agreement and Loan Agreement.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING, PURSUANT TO CEQA FINDINGS AS TO THE CERTIFIED FINAL ENVIRONMENTAL IMPACT REPORT FOR THE DOWNTOWN CIVIC CENTER PLANNED UNIT DEVELOPMENT (SCH NO. 2004051155) AS PREVIOUSLY AMENDED, THE DISPOSITION AND DEVELOPMENT AGREEMENT AND LOAN

AGREEMENT BETWEEN THE CITY OF ONTARIO AND A BLOCK, LLC FOR THE ADAPTIVE REUSE OF HISTORIC PROPERTY AND NEW DEVELOPMENT LOCATED AT THE 100 BLOCK OF NORTH EUCLID AVENUE; ACCEPTING THE ECONOMIC OPPORTUNITY STATUTE (GOVT CODE SECTION 52220 ET. SEQ) REPORT AND MAKING RELATED FINDINGS AUTHORIZING THE SALE OF THE PROPERTIES.

ATTACHMENT: 100 Block N Euclid Exhibit A to Staff Report^01.pdf
ATTACHMENT: 100 Block N Euclid DDA Loan 02^RESO^RM
ATTACHMENT: 100 Block N Euclid DDA^03^RESO^EXH A
ATTACHMENT: 100 Block N Euclid DDA-EO Summary Report^04^RESO^EXH B
ATTACHMENT: 100 Block N Euclid-Secured Promissory Note^06
ATTACHMENT: 100 Block N Euclid DDA-Construction Loan Agreement^05 (003).doc

STAFF MATTERS

City Manager Ochoa

COUNCIL MATTERS

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

ADJOURNMENT

CITY OF ONTARIO
CLOSED SESSION REPORT
City Council // Housing Authority // Other // *(GC 54957.1)*
June 3, 2025

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

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

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

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
  Property: APN: 0216-174-06, 0216-174-07, 0216-174-08, 0216-174-15, 0218-121-04, 0218-121-05, 0218-122-04, 0218-122-10, 0218-131-04; 8775 East Riverside Drive, 0 South Vineyard Avenue, 8919 East Chino Avenue, 8931 East Chino Avenue, 9141 East Chino Avenue, 0 East Chino Avenue; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: B and G Hay Company, Bekendam Family Trust, Link Real Estate, Inc, American Superior Land, LLC, Bidart Family Trust, Ronald and Kristine Peitersma Family Trust, San Bernardino County Flood Control District; Under negotiation: Price and terms of payment.

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

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

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
  Property: APN: 1048-564-06, 1048-564-05, 1048-564-04, 1048-564-03, 121-143 North Euclid Avenue. City/Authority negotiator: City City Manager or his designee. Negotiating party: LAB-CO, LLC. Under negotiation: Price and Terms.

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

CITY OF ONTARIO
CLOSED SESSION REPORT
City Council // Housing Authority // Other // *(GC 54957.1)*
June 3, 2025
(Continued)

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

- GC 54656.9(d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: Robles, et al. v. City of Ontario et al., Case No. CIVDS2007038

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

Reported by:

_____

City Attorney / City Manager / Executive Director

ONTARIO CITY COUNCIL/
ONTARIO HOUSING AUTHORITY
MINUTES
MAY 6, 2025
(Not Official Until Approved)

JOINT MEETINGS

The regular meetings of the Ontario City Council and Housing Authority were held on Tuesday, May 6, 2025 at Ontario City Hall, 303 E. B Street Ontario, California.

OPEN MEETING CALLED TO ORDER

Mayor Leon called the joint meetings to order at 5:30 p.m.

ROLL CALL

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

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.

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 5:31 p.m. for discussion of the following:

GC 54956.9 (e)(5), CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION: One (1) case; Significant exposure to litigation; a copy of the documented threat is available in the office of the City Clerk.

GC 54956.9 (d)(4), CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION: One (1) case

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

OPEN MEETING CALLED TO ORDER

Mayor Leon reconvened the meetings at 6:33 p.m. for the regular session.

PLEDGE OF ALLEGIANCE

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

INVOCATION

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

REPORT ON CLOSED SESSION

City Attorney Duran announced there was no reportable action.

PUBLIC COMMENT

Assistant City Clerk Isbell announced that there were five written comments:
Mariely Fuentes, regarding biodiversity in the community.
Andrew De La Torre, regarding code enforcement needs.
John Li, regarding code enforcement needs.
Kristyn Bonayon, regarding enforcement of speed limits.
Brad Neumann, regarding personnel matters.

Mayor Leon called upon the first speaker:
Russell Mahdari, spoke regarding businesses operating with expired business licenses.
Kizzee, thanked the City Council and Ontario Police Department for addressing homelessness.
Nathan Cleary, spoke regarding dog breeding.
Tina Silva, spoke regarding land acknowledgment.
Chris Robles, spoke on budget meetings.
Tommy Mushegain, expressed his concerns.
Mariely Fuentes, spoke on a sustainable city.

AGENDA REVIEW/ANNOUNCEMENTS

City Manager Ochoa noted the need to pull Item No. 21 from the agenda.

CONSENT CALENDAR

Public Comment:
Chris Robles, spoke in opposition to Item No. 20.
Aaron Matthiesen, spoke in support of Item Nos. 18 and 20.

MOTION: Moved by Council Member Bowman, seconded by Council Member Porada and carried by a unanimous vote of 5-0, with Council Member Macias recused from Item No. 13.

1. APPROVAL OF MINUTES

Minutes for the regular meetings of the City Council and Housing Authority of March 19, 2025, and regular meetings of the City Council, Housing Authority and Ontario Public Financing Authority of April 1, 2025, and approving same as on file in the Records Management Department.

2. BILLS & PAYROLL

Approved bills March 28, 2025 through April 24, 2025, in the amount of $107,064,371.58, and Payroll March 9, 2025 through April 5, 2025 in the amount of $11,390,071.13.

3. A PROFESSIONAL SERVICES AGREEMENT FOR ANNUAL PHYSICAL AND WELLNESS ASSESSMENTS WITH ON DUTY HEALTH, PLLC.

The City Council authorized the City Manager, or their designee, to execute a Cooperative Agreement with On Duty Health, PLLC. located in Redlands, California, to conduct National Fire Protection Association (NFPA) Compliant Annual Physical and Wellness Assessments, for a term of up to two (2) years with a total not-to-exceed amount of $816,032.

4. A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR THE CITYWIDE COMPREHENSIVE SAFETY ACTION PLAN

The City Council authorized the City Manager, or his designee, to execute a Professional Services Agreement with Kimley-Horn and Associates, Inc., of Orange, California, to provide professional engineering services for the Citywide Comprehensive Safety Action Plan for a total not-to-exceed contract amount of $442,337.

5. A RESOLUTION OF INTENT TO DESIGNATE PORTIONS OF D STREET, LYNN HAVEN COURT, NOCTA STREET, AND SULTANA AVENUE AS A RESIDENTIAL PERMIT PARKING ZONE FOR THE BENEFIT OF ADJACENT RESIDENCES

The City Council adopted a Resolution declaring the intent to designate portions of D Street, Lynn Haven Court, Nocta Street, and Sultana Avenue as a residential permit parking zone for the benefit of adjacent residences and to set the date, time, and place for a public hearing to consider the matter.

RESOLUTION NO. 2025-030 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, PERTAINING TO DESIGNATING PORTIONS OF D STREET, LYNN HAVEN COURT, NOCTA STREET, AND SULTANA AVENUE AS A RESIDENTIAL PERMIT PARKING ZONE AND TO SET THE DATE,

TIME, AND PLACE FOR A PUBLIC HEARING.

6. A RESOLUTION TO DESIGNATE A PORTION OF LAUREL AVENUE AS A ONE-WAY STREET AND DIAGONAL PARKING ZONE

The City Council adopted a Resolution to designate a portion of Laurel Avenue as a one-way street and diagonal parking zone.

RESOLUTION NO. 2025-031 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DESIGNATING PORTIONS OF LAUREL AVENUE AS A ONE-WAY STREET AND DIAGONAL PARKING ZONE.

7. A DEVELOPMENT IMPACT FEE CREDIT AND REIMBURSEMENT AGREEMENT (FILE NO. PDIF23-001) BETWEEN THE CITY OF ONTARIO AND BON VIEW INDUSTRIAL LLC AND BONVIEW GREEN LLC FOR FACILITY CONSTRUCTION ASSOCIATED WITH THE DEVELOPMENT PLAN (FILE NO. PDEV21-030), LOCATED 1932 SOUTH BON VIEW AVENUE, APPROXIMATELY 132 FEET NORTH OF CEDAR STREET, WITHIN THE IG (GENERAL INDUSTRIAL) ZONING DISTRICT

The City Council approved the Development Impact Fee Credit and Reimbursement Agreement (File No. PDIF23-001) between the City of Ontario and Bon View Industrial LLC, and Bonview Green LLC, for facility construction associated with the Development Plan (PDEV21-030), located 1932 South Bon View Avenue, approximately 132 feet North of Cedar Street, within the IG (general industrial) zoning district; and authorized the City Manager to execute the Agreement.

8. A RESOLUTION ADOPTING THE REVISED SALARY SCHEDULES IN COMPLIANCE WITH CALPERS REPORTING REQUIREMENTS.

The City Council adopted a Resolution approving the revised salary schedules for January 5, 2020, through January 1, 2025, in compliance with California Public Employees' Retirement System (CalPERS) requirements.

RESOLUTION NO. 2025-032 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING THE REVISED SALARY SCHEDULES FOR THE PERIOD OF JANUARY 5, 2020, THROUGH JANUARY 1, 2025.

9. PURCHASE OF PARAMETRIC EARTHQUAKE INSURANCE FROM AUTHORITY FOR CALIFORNIA EXCESS LIABILITY (ACCEL) FOR FISCAL YEAR 2025-26

The City Council authorized the City Manager, or his designee, to procure Parametric Earthquake Insurance as provided by the Authority for California Excess Liability (ACCEL), the City's Joint Power Authority (JPA) for Liability and Insurance. The annual premium for the insurance is $160,916 for Fiscal Year 2025-2026.

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

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

RESOLUTION NO. 2025-033 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE TERMS AND CONDITIONS FOR FIRE DEPARTMENT RESPONSE AWAY FROM THEIR OFFICIAL DUTY STATION AND ASSIGNED TO AN EMERGENCY INCIDENT.

11. AN AMENDMENT TO THE SOFTWARE LICENSE AGREEMENT WITH SAFE SOFTWARE, INC., FOR THE CITY'S GEOGRAPHIC INFORMATION SYSTEM INTEGRATION PROCESSES

The City Council authorized the City Manager, or his designee, to execute Amendment No. 1 to the Software License Agreement with Safe Software, Inc., of Surrey, British Columbia, Canada, for the City's Geographic Information System (GIS) integration processes, increasing the authorized contract amount by $190,000, for a total contract not-to-exceed amount of $270,000 and extend the term for five years.

12. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT FOR REMOTE ACCELA SUPPORT WITH TRUEPOINT SOLUTIONS, LLC

The City Council authorized the City Manager, or his designee, to execute Amendment No. 4 to the Professional Services Agreement with TruePoint Solutions, LLC., of Loomis, California, for ongoing service and support for the Accela Civic Platform increasing the authorized contract amount by $300,000 for a total contract not-to-exceed amount of $950,000 and extend the term for three years, with an additional two optional years.

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

The City Council adopted an Ordinance approving a Planned Unit Development, File No. PUD24-002, establishing development standards and guidelines to facilitate the development of a 144-unit residential apartment project. Introduction and first reading took place at a regular City Council meeting on April 15, 2025.

Council Member Macias recused from this item out of an abundance of caution.

ORDINANCE NO. 3304 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PUD24-002, A PLANNED UNIT DEVELOPMENT TO CREATE DEVELOPMENT STANDARDS AND DESIGN GUIDELINES FOR A DEVELOPMENT PLAN TO CONSTRUCT 144-UNIT MULTIPLE-FAMILY RESIDENTIAL APARTMENT COMPLEX ON APPROXIMATELY 5.73 ACRES OF LAND LOCATED NEAR THE NORTHEAST CORNER OF EAST HOLT BOULEVARD AND ALLYN AVENUE WITHIN THE MU-6 (EAST HOLT MIXED USE) ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1048-481-06, 1048-481-07, 1048-481-08, 1048-481-28, 1048-481-29.

14. A RESOLUTION APPROVING THE LEVY OF THE ASSESSMENTS FOR FISCAL YEAR 2025-26 FOR THE DOWNTOWN ONTARIO COMMUNITY BENEFIT DISTRICT

The City Council adopted a Resolution for the Downtown Ontario Improvement Association (DOIA) authorizing the levying of the special assessments for Fiscal Year 2025-26.

RESOLUTION NO. 2025-034 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE LEVY OF THE ASSESSMENTS FOR FISCAL YEAR 2025-26 FOR THE DOWNTOWN ONTARIO COMMUNITY BENEFIT DISTRICT.

15. A RESOLUTION DECLARING CITY OWNED PROPERTY SURPLUS LAND PURSUANT TO GOVERNMENT CODE 54221, APPROVING THE NOTICE OF AVAILABILITY, AND FINDING THAT SUCH DECLARATION IS EXEMPT FROM ENVIRONMENTAL REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council adopted a Resolution declaring the property located at 112-126 West "C" Street, 115-123 West "D" Street, and 324 North Laurel Avenue, identified with Assessor's Parcel Numbers 1048-566-01 through 1048-566-03 and 1048-566-08 through 1048-566-11, approve the Notice of Availability, and finding that such declaration is exempt from the California Environmental Quality Act.

RESOLUTION NO. 2025-035 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, MAKING FINDINGS AND DECLARING, PURSUANT TO GOVERNMENT CODE SECTION 54221, THAT CERTAIN REAL PROPERTY LOCATED AT 112-126 WEST C STREET, 115-123 WEST D STREET AND 324 NORTH LAUREL AVENUE, IDENTIFIED WITH ASSESSOR'S PARCEL NUMBERS 1048-566-01 THROUGH 1048-566-03 AND 1048-566-08 THROUGH 1048-566-11, IS SURPLUS LAND, APPROVING THE NOTICE OF AVAILABILITY THEREFOR, AUTHORIZING THE CITY MANAGER TO COMPLY WITH THE SURPLUS LAND ACT AND TAKING RELATED ACTIONS, FINDING THAT SUCH DECLARATION IS EXEMPT FROM ENVIRONMENTAL REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO SECTIONS 15060(C)(3) AND 15312 OF THE STATE CEQA GUIDELINES AND DIRECTING

STAFF TO ISSUE A NOTICE OF EXEMPTION.

16. AN AMENDMENT TO THE MASTER SERVICES AGREEMENT WITH PAYMENTUS CORPORATION FOR ELECTRONIC BILL PAYMENT PROCESSING SERVICES

The City Council authorized the City Manager, or designee, to execute Amendment No. 2 to the Master Services Agreement with Paymentus Corporation of Charlotte, North Carolina, for electronic bill payment services in the amount of $2,100,000 for Fiscal Year 2024-25 through Fiscal Year 2027-28, for a new total not-to-exceed aggregate amount of $4,700,000.

17. AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT WITH CONVERGINT TECHNOLOGIES, LLC FOR THE CIVIC CENTER EXPANSION - FIRE STATION NO. 1 SECURITY CAMERA AND ACCESS CONTROL SYSTEM

The City Council took the following actions:

A. Authorized the City Manager, or his designee, to execute Amendment No. 5 to the Maintenance Services Agreement with Convergint Technologies, LLC, of La Palma, California, for the Civic Center Expansion - Fire Station No. 1 Project security camera and access control system in the amount of $112,774 for a total not-to-exceed contract amount of $4,366,250; and
B. Authorized the City Manager or his designee to execute all documents required for the completion of the project which may include, but is not limited to agreements, assessments, easements, reduction of retention accounts, contract amendments within the authorization limits, and filing a notice of completion at the conclusion of all construction related activities.

18. A CONSTRUCTION CONTRACT WITH METROCELL CONSTRUCTION, INC. FOR THE JOHN GALVIN PARK LIGHTING UPGRADE PROJECT

The City Council took the following actions:

A. Authorized the City Manager, or his designee, to execute a Construction Contract with Metrocell Construction, Inc., of Ontario, California, to procure and install 19 new light fixtures and conduits for the John Galvin Park Lighting Upgrade project in the amount of $223,985 plus a 10% contingency of $22,399 for a total not-to-exceed contract amount of $246,384; and
B. Authorized the City Manager, or his designee, to execute all documents required for the completion of the project which may include, but is not limited to agreements, assessments, easements, reduction of retention accounts, contracts amendments within the authorization limits, and filing a notice of completion at the conclusion of all construction related activities.

19. A CONSTRUCTION CONTRACT WITH RANCHO PACIFIC ELECTRIC CONSTRUCTION, INC. FOR THE ELECTRICAL WORK AT THE ONTARIO SPORTS EMPIRE SPORTS FIELDS AND A CHANGE ORDER TO THE CONSTRUCTION CONTRACT WITH CREW, INC. FOR THE GRADING AT THE ONTARIO SPORTS EMPIRE

The City Council took the following actions:

A. Authorized the City Manager, or his designee, to execute a Construction Contract with Rancho Pacific Electrical Construction, Inc., of Rancho Cucamonga, California, to provide construction services for the D&C23-022 Ontario Sports Empire – Sports Fields project in the amount of $46,991,200 and authorize a contingency of $4,700,000 for a total not-to-exceed contract amount of $51,691,200, and
B. Authorized the City Manager, or his designee, to execute Change Order No. 1 in the amount of $15,026,000 to the Construction Contract with Crew, Inc., of Compton, California, for D&C23-022 Ontario Sports Empire - Mass Grading project, increasing the contract amount from $41,870,320, to $62,598,920, which includes an increase to the project contingency by $1,502,600 for a new total not-to-exceed contract authorization of $62,598,920, and
C. Authorized the extension of working hours to be Monday through Saturday from 6:00 am to 11:00 pm and on Sunday from 8:00 am to 6:00 pm for the duration of the construction of the Ontario Sports Empire; and
D. Authorized the City Manager, or his designee, to execute all documents required for the completion of the project which may include, but is not limited to agreements, assessments, easements, reduction of retention accounts, contracts amendments within the authorization limits, and filing a notice of completion at the conclusion of all construction related activities.

20. A CONSTRUCTION CONTRACT WITH 3M CONSTRUCTION CORPORATION FOR THE LATIMER FIELD CONCESSION AND RESTROOM RENOVATION PROJECT AT JOHN GALVIN PARK

The City Council took the following actions:

A. Authorized the City Manager, or his designee, to execute a construction contract with 3M Construction Corporation, of Anaheim, California, for the Latimer Field Concession and Restroom Renovation Project at John Galvin Park in the amount of $943,899 plus a 10% contingency of $94,390 to address any unforeseen issues that may arise during the construction, for a total not-to-exceed contract amount of $1,038,289; and
B. Authorized the City Manager, or his designee, to execute all documents required for the completion of the project which may include, but is not limited to agreements, assessments, easements, reduction of retention accounts, contracts amendments within the authorization limits, and filing a notice of completion at the conclusion of all construction related activities.

21. APPROVAL OF A SIDE LETTER AMENDING THE MEMORANDUM OF UNDERSTANDING FOR THE ONTARIO PROFESSIONAL FIREFIGHTER ASSOCIATION IN ACCORDANCE WITH MODIFICATIONS REQUIRED BY CALPERS

This item was pulled.

22. A PROCLAMATION DECLARING MAY 2025 AS HUNTINGTON'S DISEASE AWARENESS MONTH

The City Council proclaimed May 2025 as Huntington's Disease Awareness Month.

PUBLIC HEARINGS

23. AN ORDINANCE AMENDING CHAPTER 25 OF TITLE 5 OF THE ONTARIO MUNICIPAL CODE RELATED TO SHOPPING CARTS

The City Council introduced and waived further readings of an Ordinance amending multiple sections of Chapter 25 of Title 5 of the Ontario Municipal Code revising existing shopping cart regulations and providing for more effective management of shopping carts within the City.

ORDINANCE NO. 3305 (FIRST READING) AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING MULTIPLE SECTIONS OF CHAPTER 25 OF TITLE 5, OF THE ONTARIO MUNICIPAL CODE TO REVISE EXISTING SHOPPING CART REGULATIONS AND PROVIDE FOR MORE EFFECTIVE MANAGEMENT AND CONTROL PRACTICES FOR SHOPPING CARTS WITHIN THE CITY.

MOTION: Moved by Council Member Porada, seconded by Council Member Bowman and carried by a unanimous vote 5-0, to introduce Ordinance No. 3305.

STAFF MATTERS

City Manager Ochoa made no announcements.

COUNCIL MATTERS

Council Member Macias made no comments.

Council Member Bowman made no comments.

Mayor pro Tem Wapner spoke on Huntington’s Disease Awareness month.

Council Member Porada asked for Council concurrence to have Staff develop a scope of work for an RFP or RFQ seeking alternatives to Inland Empire Utilities Agency services.

Mayor Leon spoke on the need to be methodical when making big decisions.

ADJOURNMENT

Mayor Leon adjourned the meetings of the Joint Agencies at 7:06p.m., and announced the next regular meeting was scheduled for May 20, 2025.

Respectfully submitted,

_____
SHEILA MAUTZ, CITY CLERK/SECRETARY

APPROVED:

_____
PAUL S. LEON, MAYOR/CHAIRMAN

CITY OF ONTARIO *Agenda Report* **June 3, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Diego Tapia Department: Prepared By: Diego Tapia Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Khoi Do, Andrea M Lopez, Bonnie Tam Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 3

SUBJECT: **A CONSTRUCTION CONTRACT WITH OUTSOURCE UTILITY CONTRACTOR, LLC FOR THE FISCAL YEAR 2024-25 CDBG AND CIP STREET LIGHT INSTALLATION PROJECT**

RECOMMENDATION: That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to execute a Construction Contract with Outsource Utility Contractor, LLC, of Torrance, California, for the Fiscal Year 2024-25 CDBG and CIP Street Light Installation Project in the amount of $344,900 plus a 10% contingency of $34,490 for a total not-to-exceed contract amount of $379,390; and
B. Authorize the City Manager, or his designee, to execute all documents required for the completion of the project which may include, but are not limited to, agreements, assessments, easements, reduction of retention accounts, contracts amendments within the authorization limits, and filing a notice of completion at the conclusion of all construction-related activities.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
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)

FISCAL IMPACT: The Fiscal Year 2024-25 Adopted Budget includes appropriations in the Community Development Block Grant (CDBG) fund and Capital Improvement Project (CIP) fund for the construction of Fiscal Year 2024-25 CDBG and CIP Street Light Installation Project (Project). The construction for the Fiscal Year 2024-25 CDBG Street Light Installation Project will be on Elma Street from Allyn Avenue to Virginia Avenue. The construction for the Fiscal Year 2024-25 CIP Street Light Installation Project will be on Helen Avenue from Francis Street to Philadelphia Street. The

proposed Construction Contract with Outsource Utility Contractor LLC, is in the amount of $344,900 plus a 10% contingency of $34,490, for a total not-to-exceed contract amount of $379,390.

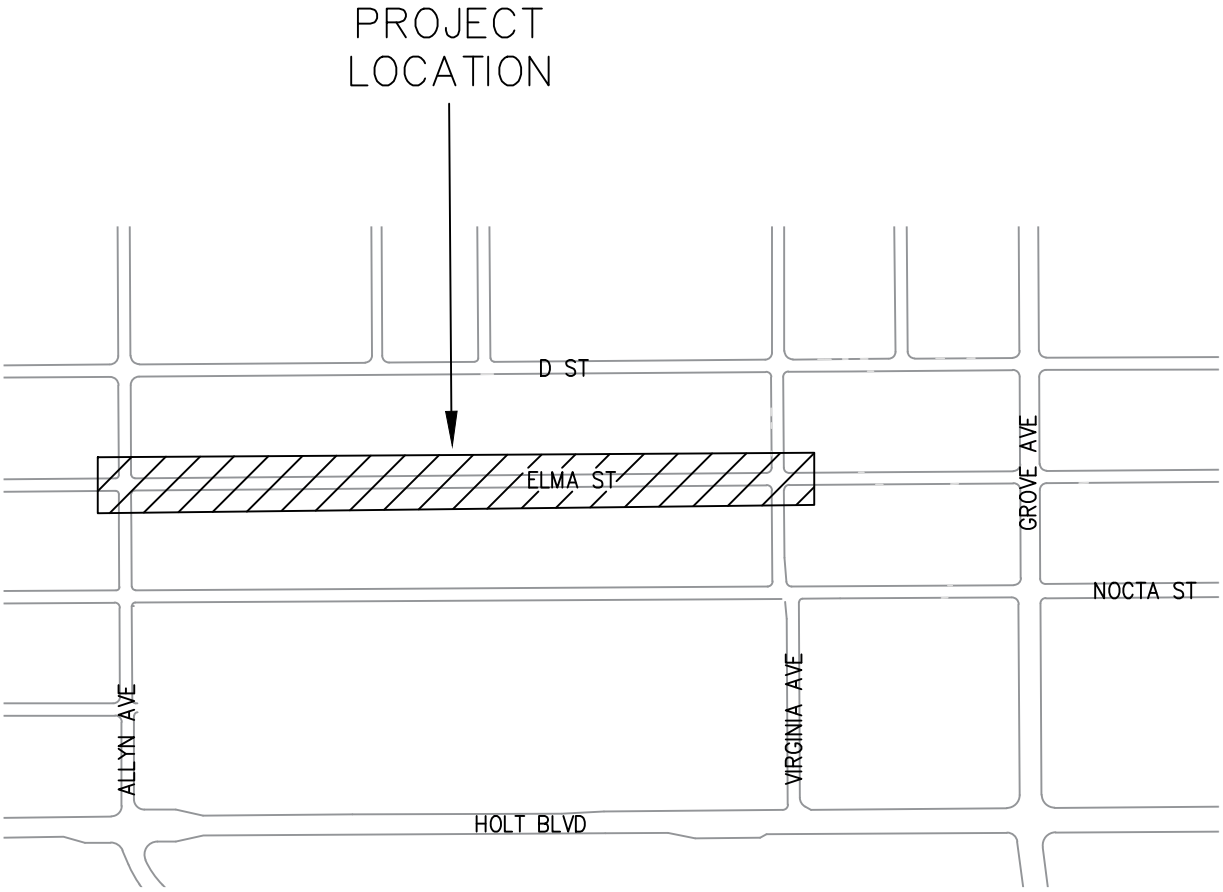
BACKGROUND & ANALYSIS: The general scope of work to be performed under this construction project consists of, but is not limited to, the installation of 17 new street light poles, foundations, LED light fixtures, pull boxes, and other accessories necessary to complete the improvements as described in the Plans and Specifications. The Project will improve roadway illumination and intersection lighting. The Fiscal Year 2024-25 CDBG Street Light Installation Project is located on Elma Street from Allyn Avenue to Virginia Avenue. The Fiscal Year 2024-25 CIP Street Light Installation Project is located on Helen Avenue from Francis Street to Philadelphia Street. Project location maps are provided for reference as Exhibit “A” and Exhibit "B". In April 2025, the City solicited bids for Bid No. 1899. The nine (9) bids received are summarized below:

COMPANY	LOCATION	AMOUNT
Outsource Utility Contractor, LLC	Torrance, CA	$344,900
Servitek Electric, Inc.	Walnut, CA	$378,523
My Electrician, Inc.	Temecula, CA	$438,000
M. Brey, Inc.	Beaumont, CA	$463,827
Elecnor Belco Electric, Inc.	Chino, CA	$476,700
MC Electric	Chino, CA	$506,300
Towo Enterprise, Inc.	Fullerton, CA	$507,800
Metrocell Construction, Inc.	Ontario, CA	$522,300
ISSA Electric, Inc.	Riverside, CA	$785,193

Outsource Utility Contractor, LLC submitted the lowest responsible and responsive bid. Based on their credentials, pricing, and favorable reference checks, Staff recommends that the City Council award a construction contract to Outsource Utility Contractor, LLC for the Fiscal Year 2024-25 CDBG and CIP Street Light Installation Project.

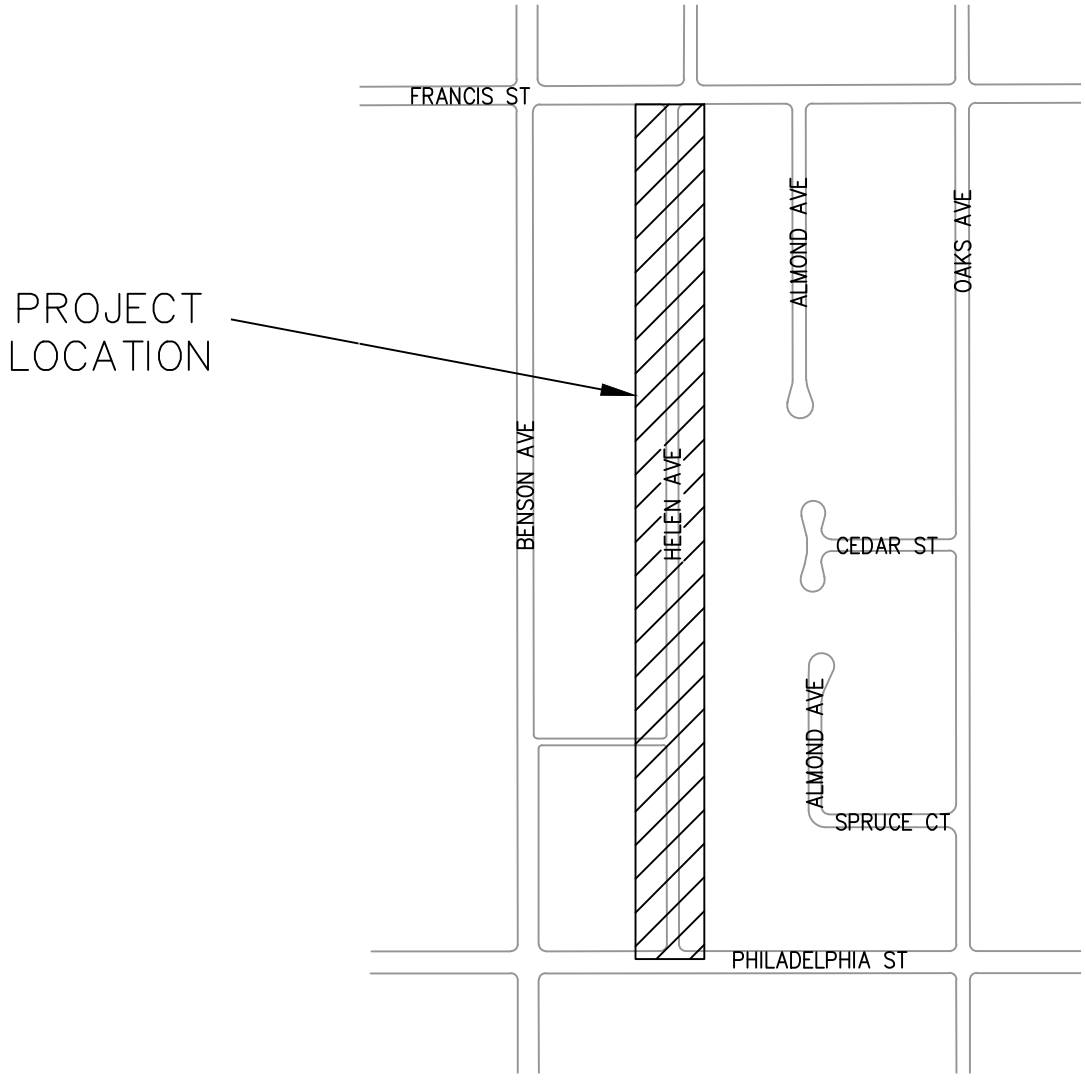
ENVIRONMENTAL REVIEW: The environmental impacts of this Project were reviewed and Staff determined that the Project is categorically exempt from the requirements of the California Environmental Quality Act pursuant to Section 15301 (Class 1, Existing Facilities) of the California Environmental Quality Act, whereas the Project consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of lead agency’s determination.

EXHIBIT "A"
FY 24/25 CDBG STREET LIGHT INSTALLATION PROJECT
ELMA STREET FROM ALLYN AVENUE TO VIRGINIA AVENUE



N.T.S.

EXHIBIT "B"
FY 24/25 CIP STREET LIGHT INSTALLATION PROJECT
HELEN AVENUE FROM FRANCIS STREET TO PHILADELPHIA STREET



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

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500
CONTRACT

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

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

FY 24/25 CDBG AND CIP STREET LIGHT INSTALLATION PROJECT

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 **Seventy [70] Working Days** from the commencement date stated in the Notice to Proceed, herein after the Contract Time. By its signature hereunder, Contractor agrees the Contract Time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE. The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Three Hundred Forty-Four Thousand Nine Hundred and 00/100 ($344,900),** hereinafter the Contract Price. Payment shall be made as set forth in the General Conditions.

ARTICLE 4. LIQUIDATED DAMAGES. The Contractor acknowledges that the City will sustain actual damages for each and every day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be

impracticable or extremely difficult to determine the City's actual damages. Accordingly, as provided in Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of **Three Thousand Six Hundred and 00/100 ($3,600.00)** for each and every calendar day of delay in completing the Work beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event the Liquidated Damages are not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Article does not affect the City's rights to other damages or remedies specified in the Contract Documents or allowed by law.

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

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

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

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

- Notice Inviting Bids
- Instructions to Bidders
- Bid Form
- Contractor's Certificate Regarding Workers' Compensation form
- Bid Bond
- List of Subcontractors form
- Contractor Information and Experience Form
- Non-Collusion Declaration form
- Public Works Contractor Registration Certification form
- Iran Contracting Act Certification form
- Fleet Compliance Certification form
- Contract
- Performance Bond
- Payment Bond
- Environmental documents and approvals (If Applicable)
- General Conditions
- Special Conditions

- Standard Specifications for Public Works Construction (Greenbook), Latest Edition, except Sections 1-9
- Technical Specifications
- Addenda (If Applicable)
- Plans and Drawings
- Approved and fully executed Change Orders
- Applicable Local Agency Standards and Specifications, as last revised
- Federal Requirements (CDBG Forms/Wage Determination Dated 02-28-2025
- Any other documents contained in or incorporated into the Contract

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

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

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

If the Work involves federal funds, the Contractor and all its subcontractors shall comply with all requirements set forth in the attached Federal Requirements.

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

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

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

OUTSOURCE UTILITY CONTRACTOR, LLC.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

END OF CONTRACT

CITY OF ONTARIO *Agenda Report* **June 3, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Tricia Maruki Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Khoi Do, Andrea M Lopez, Bonnie Tam Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 4

SUBJECT: **A RESOLUTION ADOPTING THE LIST OF PROJECTS FOR FISCAL YEAR 2025-26 FUNDED BY SENATE BILL 1, THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017**

RECOMMENDATION: That the City Council adopt a Resolution approving the Fiscal Year 2025-26 Project List for Senate Bill 1 (SB1), the Road Repair and Accountability Act of 2017.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner
Pursue City's Goals and Objectives by Working with Other Governmental Agencies
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: This spending plan identifies the recommended uses for the City's Fiscal Year 2025-26 apportionment of Road Maintenance and Rehabilitation Account (RMRA) funds from SB1, which is projected to be at $4,908,162 for the upcoming fiscal year. The proposed projects for Fiscal Year 2025-26 are consistent with the projects included in the City's proposed Five-Year Capital Improvement Program to be adopted by City Council as part of the Fiscal Year 2025-26 budget.

BACKGROUND & ANALYSIS: On April 28, 2017, Governor Brown signed SB1 (Beall, Chapter 5, Statutes of 2017), which is known as the Road Repair and Accountability Act of 2017. To address basic road maintenance, rehabilitation, and critical safety needs on both the State highway and local streets and road system, RMRA increases per gallon fuel excise taxes, increases diesel fuel sales taxes and vehicle registration fees, and provides for inflationary adjustments to tax rates in future years.

Prior to receiving an annual apportionment of RMRA funds from the California State Controller, the City must submit an adopted list of projects to the California Transportation Commission (CTC) by July 1, 2025. The proposed project list must be adopted by Resolution (with public record of the action taken) of the City Council at a regular public meeting each fiscal year.

The proposed projects for Fiscal Year 2025-26 (Exhibit “A” of the Resolution) are consistent with the projects included in the City’s proposed Five-Year Capital Improvement Program submitted to the City Council for the upcoming fiscal year’s budget.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING A LIST OF PROJECTS FOR FISCAL YEAR 2025-26 FUNDED BY SENATE BILL 1, THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017

WHEREAS, Senate Bill 1 (SB1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the Legislature and Signed into law by the Governor in April 2017 to address the significant multi-modal transportation funding shortfalls statewide; and

WHEREAS, SB1 includes accountability and transparency provisions that will ensure the residents of our City are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year; and

WHEREAS, the City must adopt by resolution a list of all projects proposed to receive fiscal year funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB1, which must include a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement; and

WHEREAS, the City will receive an estimated $4,908,162 in RMRA funding in Fiscal Year 2025-26 from SB1; and

WHEREAS, this is the ninth year in which the City is receiving SB 1 funding and will enable the City to continue essential road maintenance and rehabilitation projects, safety improvements, repairing and replacing aging bridges, and increasing access and mobility options for the traveling public that would not have otherwise been possible without SB1; and

WHEREAS, the City has undergone a robust public process to ensure public input into our community's transportation priorities/the project list; and

WHEREAS, the City used a Pavement Management System to develop the SB1 project list to ensure revenues are being used on the most high-priority and cost-effective projects that also meet the community's priorities for transportation investment; and

WHEREAS, the funding from SB1 will help the City maintain and rehabilitate streets/roads, bridges, and add active transportation infrastructure throughout the City this year and many similar projects into the future; and

WHEREAS, the 2023 California Statewide Local Streets and Roads Needs Assessment found that the City's streets and roads are in a "good" condition and this revenue will help us increase the overall quality of our road system and over the next decade will bring our streets and roads to an "excellent" condition; and

WHEREAS, the SB1 project list and overall investment in our local streets and roads infrastructure, with a focus on basic maintenance and safety, investing in complete streets infrastructure, and using cutting-edge technology, materials and practices, will have significant positive co-benefits statewide.

NOW, THEREFORE, BE IT RESOLVED, ORDERED AND FOUND by the City Council of the City of Ontario, State of California:

1. That the foregoing recitals are true and correct.

2. That the attached list (Exhibit A) of proposed projects will be funded in-part or solely with Fiscal Year 2025-26 Road Maintenance and Rehabilitation Account revenues.

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

PASSED, APPROVED, AND ADOPTED this 3rd day of June, 2025.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2025- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held June 3, 2025 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2025- duly passed and adopted by the Ontario City Council at their regular meeting held June 3, 2025.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

Local Streets and Roads Program
Fiscal Year 2025-26 Proposed Projects List

EXHIBIT A
Local Streets and Roads Program
Fiscal Year 2025-26 Proposed Projects List

AGENCY NAME: City of Ontario
AGENCY CONTACT: Tricia Maruki
tmaruki@ontarioca.gov

Project Title and Description	Project Type	Project Limits	Begin Project	End Project	Estimated Useful Life
FY 2024-25 CARRYOVER					
TCC Mission Boulevard Improvements	Complete Streets	Mission Boulevard from Euclid Ave to Benson Ave	7/1/2023	12/1/2025	5-10 years
Design and construction of one-way Class IV bike lanes and street improvements including curb and gutter, sidewalk, Americans with Disabilities Act (ADA) ramps, parkway landscaping, street lights and drainage improvements as necessary.					
ATP Cycle 5 Bicycle Improvements (Construction)	Complete Streets	B Street and Vine Avenue	9/2/2024	6/30/2026	15-35 years
Construction of 2 miles of combined Class III and IV bike facilities and street improvements including curb extensions, high visibility crosswalks, traffic circles and street lights.					
FY 2025-26					
Quiet Zone Analysis	Traffic Study	At-grade railroad crossings at San Antonio, Vine, Sultana, Campus and Bon View Avenues	7/1/2025	6/30/2026	5-10 years
Study to determine anticipated improvements at railroad crossings in order to qualify for a quiet zone					
FY 2025-26 Traffic Signal Modification	Traffic Signal	Fourth Street and Turner Avenue	7/1/2025	6/30/2026	15-25 years
Construction of north-south left-turn phasing at the intersection of Fourth Street and Turner Avenue.					
FY 2025-26 Pavement Rehabilitation Project (Fall)	Asphalt Overlay	Edison Avenue from Grove Ave to Walker Ave; Vineyard Avenue from Francis St to Raymond Kay Wy; Francis Street from Benson Ave to Mountain Ave; Mountain Ave from Francis St to SR-60; Vineyard Ave & Eighth St; Wineville Avenue from Francis St to Philadelphia St	8/12/2025	12/19/2025	15-35 years
Construction of Rubberized Asphalt Hot Mix pavement including removal and replacement of failing pavement areas, replacement of damaged sidewalk, curb and gutter, placement of ADA ramps,					
FY 2025-26 Pavement Rehabilitation Project (Spring)	Asphalt Overlay	Turner Avenue from Fourth St to Inland Empire Blvd; Vineyard Avenue from I-10 to Holt Blvd	3/17/2026	6/30/2026	15-35 years
Construction of Rubberized Asphalt Hot Mix pavement including removal and replacement of failing pavement areas, replacement of damaged sidewalk, curb and gutter, placement of ADA ramps,					
FY 2025-26 Slurry Seal/Cape Seal Program	Slurry/Cape Seal	Area bounded by SR-60 Freeway to the south, Campus Avenue to the west, Fourth Street to the north, and Etiwanda Avenue to the east	8/19/2025	12/5/2025	10-15 years
Application of Type II Polymer Modified slurry seal, Reclaimed Asphalt Pavement cape seal, and PCC curb ramp construction					
Geyer Court Street, Water and Street Light Improvements Project	Complete Streets	Geyer Court from Euclid Avenue to End	8/12/2025	2/27/2026	15-35 years
Construction of missing curb, gutter, sidewalk and street lights, rehabilitation of the pavement and reconstruction of storm drain on Geyer Court from Euclid Avenue to the cul-de-sac end.					
FY 2025-26 ADA Ramp Improvements	ADA Ramps	Area bounded by Riverside Drive to the south, Benson Avenue to the west, the I-10 Freeway to the north and Etiwanda Avenue to the east	7/1/2025	6/30/2026	15-35 years
Removing and replacing existing non-compliant American with Disabilities Act (ADA) concrete ramps and installation of new ADA concrete ramps that don't currently exist in City neighborhoods.					

CITY OF ONTARIO *Agenda Report* **June 3, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Henry D Pham Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Khoi Do, Andrea M Lopez, Bonnie Tam Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 5

SUBJECT: **A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY, AND FINAL TRACT MAP NO. 20659 GENERALLY LOCATED ON WEST FIFTH STREET BETWEEN BENSON AVENUE AND MOUNTAIN AVENUE**

RECOMMENDATION: That the City Council adopt a Resolution approving an Improvement Agreement, Improvement Security, and Final Tract Map No. 20659, generally located on West Fifth Street between Benson Avenue and Mountain Avenue.

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

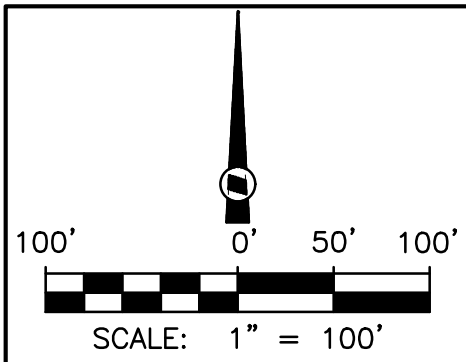
FISCAL IMPACT: There is not a direct fiscal impact associated with this action. All public infrastructure improvements required for this project will be constructed and funded by the Developer at its sole cost.

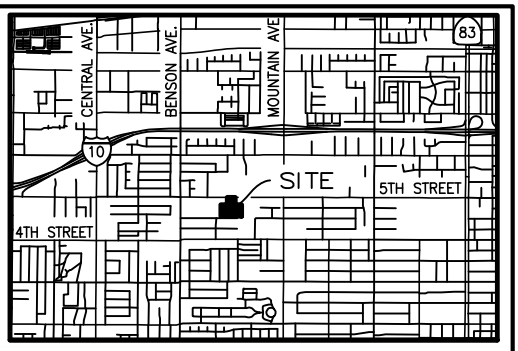
BACKGROUND & ANALYSIS: Landsea Homes of California, LLC (Developer) has submitted Final Tract Map No. 20659, consisting of one (1) numbered lot on approximately three (3) acres of land, as shown on Exhibit A. Tentative Tract Map No. 20659 was approved by the Planning Commission on August 27, 2024.

The Final Tract Map improvements will include street, streetlight, sewer lateral, water 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 is proposing to enter into an Improvement Agreement with the City for Final Tract Map No. 20659 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





VICINITY MAP
NOT TO SCALE

APN: 1008-431-27

FIFTH STREET

APN: 1008-551-11

APN: 1008-551-13

APN: 1008-561-06

TRACT 20659
LOT 1
3.060 AC

APN: 1008-551-01

APN: 1008-551-07

APN: 1008-561-04

APN: 1008-561-05

APN: 1008-551-10

APN: 1008-551-09

APN: 1008-551-08

APN: 1008-551-06

APN: 1008-551-05

APN: 1008-551-04

APN: 1008-551-03

APN: 1008-551-02

PRINCETON STREET

LANDSEA HOMES
7525 IRVINE CENTER DRIVE, SUITE 200
IRVINE, CALIFORNIA 92618
PHONE: (949)272-9870
CONTACT: SAM GRABLE

CITY OF ONTARIO
ENGINEERING DEPARTMENT
EXHIBIT A
TM – 20659

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. 20659 GENERALLY LOCATED ON WEST FIFTH STREET BETWEEN BENSON AVENUE AND MOUNTAIN AVENUE.

WHEREAS, Tentative Tract Map No. 20659 submitted for approval by Sunrise Church, was approved by the Planning Commission of the City of Ontario on August 27, 2024; and

WHEREAS, Tentative Tract Map No. 20659 consists of one numbered lot on approximately three acres of land, in the City of Ontario, County of San Bernardino, State of California, being a subdivision of a portion of lot 785, according to the Map of Ontario, as per plat recorded in book 11 of maps, page 6; and

WHEREAS, to meet the requirements established as prerequisite to final approval of Tract Map No. 20659, Landsea Homes of California LLC, has offered the Improvement Agreement together with good and sufficient improvement security, in conformance with the City Attorney's approved format, for approval and execution by the City; and

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. 20659 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 3rd day of June, 2025.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2025- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held June 3, 2025 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2025- duly passed and adopted by the Ontario City Council at their regular meeting held June 3, 2025.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Ontario
303 East "B" Street
Ontario, CA 91764
Attn: City Engineer

(Exempt from Filing Fees – Government Code § 6103)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBDIVISION IMPROVEMENT AGREEMENT

FOR COMPLETION OF PUBLIC IMPROVEMENTS

TRACT MAP NO. 20659

between

THE CITY OF ONTARIO

a California municipal corporation

and

Landsea Homes of California, LLC

SUBDIVISION IMPROVEMENT AGREEMENT
FOR COMPLETION OF PUBLIC IMPROVEMENTS

TRACT MAP NO. 20659

I. PARTIES AND DATE

This Subdivision Improvement Agreement for the Completion of Public Improvements ("Agreement") is entered into as of this ____ day of _____, 20__, by and between the City of Ontario, a California municipal corporation ("City") and Landsea Homes of California, LLC, an Delaware corporation, with its principal office located at 7525 Irvine Center Drive Suite 200, Irvine, CA 92618 ("Developer"). City and Developer are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

II. RECITALS

A. Developer's tentative parcel map for real property located within City, a legal description of which is attached hereto as Exhibit "A" ("Property"), was conditionally approved by the Ontario Planning Commission on August 27th, 2024. The tentative tract map is identified in City records as Tract Map No. 20659 ("Map").

B. Developer has not completed all of the work or made all of the public improvements required by the City's Municipal Code, the Subdivision Map Act (California Government Code section 66410, *et seq.*) ("Map Act"), the conditions of approval for the Map, or other ordinances, resolutions, or policies of City requiring construction of improvements in conjunction with the subdivision of land.

C. Pursuant to the City's Municipal Code and the applicable provisions of the Map Act, Developer and City enter into this Agreement for the timely construction and completion of the public improvements and the furnishing of the security therefor, acceptable to the City Engineer and City Attorney, for the Map.

D. Developer's execution of this Agreement and the provision of the security are made in consideration of City's approval of the final Map for the Property.

III. TERMS

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

1.1 Definitions. For purposes of enforcing this Agreement, the term "City" shall include, but shall not be limited to, City Council, Public Works Director, City Engineer, Community Development Director, Building Official, or any of their authorized representatives. City shall have the sole and absolute discretion to determine which public body, public official, or public employee may act on behalf of City for any particular purpose.

2.0 Public Improvements. Developer shall construct or have constructed at its own cost, expense, and liability all improvements required by City as part of the approval of the Map, including, but not limited to, all roads, paving, curbs and gutters, pathways, sanitary sewers, fiber optic, traffic controls, landscaping, crosswalk striping, street lights, and all other required facilities as shown in detail on the plans, profiles, and specifications which have been prepared by or on behalf of Developer for the Map ("Public Improvements"). The Public Improvements are more specifically described in Exhibit "B," which is attached hereto and incorporated herein by this reference. Construction of the Public Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. Developer shall be responsible for the replacement, relocation, or removal of any component of any utility system or public improvement in conflict with the construction or installation of the Public Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of the City Engineer and the owner of such utility system or public improvement. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary or required by City to fully and adequately complete the Public Improvements.

2.1 Prior Partial Construction of Public Improvements. Where construction of any Public Improvements has been partially completed prior to the execution of this Agreement, Developer agrees to complete such Public Improvements or assure their completion in accordance with this Agreement.

2.2 Permits; Notices; Utility Statements. Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the Public Improvements and performance of Developer's obligations under this Agreement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer. Prior to commencing any work, Developer shall file a written statement with the City Clerk and the City Engineer, signed by Developer and each utility that will provide utility service to the Property, attesting that Developer has made all deposits legally required by the utility for the extension and provision of utility service to the Property.

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

2.4 Quality of Work; Compliance With Laws and Codes. The construction plans and specifications for the Public Improvements shall be prepared in accordance with all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other

requirements. The Public Improvements shall be completed in accordance with all approved maps, conditions, plans, specifications, standard drawings, and special amendments thereto on file with City, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced.

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

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

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

Developer shall, at all times, enforce strict discipline and good order among its employees and those of its subcontractors and shall not employ any unfit person or anyone not skilled in the assigned task. If any person employed by, the Developer, a contractor or subcontractor fails or

refuses to carry out the directions of the City or appears to the City, in its sole and absolute discretion, to be incompetent or to act in a disorderly or improper manner, such person shall be removed from the project immediately upon request by the City, and such person shall not again be employed on the work. Such removal shall not be the basis for any claim of compensation or damages against the City.

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

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

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

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

4.0 Construction Schedule. Unless extended pursuant to Section 4.1 of this Agreement, Developer shall fully and adequately complete or have completed the Public Improvements within

twelve (12) months following approval of the final Map. At least fifteen (15) days prior to the commencement of such work, Developer shall notify the City Engineer in writing of the date fixed by Developer for commencement of the work.

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

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

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

6.0 Encroachment Permit. Developer shall obtain any necessary encroachment permits from the office of the City Engineer prior to start of any work within the public rights-of-way, and the Developer shall conduct such work in full compliance with the regulations and other requirements contained therein. The Developer shall be responsible for the removal of all loose rock and other debris from the public rights-of-way resulting from work done on adjacent property or within said rights-of-way. Work done within existing public rights-of-way shall be diligently pursued to completion with minimal obstruction or inconvenience to the public and pursuant to

the terms of the encroachment permit and any applicable federal, state or local laws, rules or regulations. The City shall have the right to complete any and all work in the event of unjustified delay in completion, and to recover all costs and expenses incurred from the Developer or its surety by any lawful means. Non-compliance with the terms of the encroachment permit or any applicable federal, state or local laws, rules or regulations may result in the City's cessation of the work and assessment of any applicable penalties or other remedies. Prior to, and as a condition precedent to, the issuance of any required encroachment permit(s), Developer shall provide to the City evidence satisfactory to the City of: (1) the certificate(s), endorsement(s), or policy(ies) of insurance as required by this Agreement; and (2) any and all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work.

7.0 Utilities. Developer shall assume all costs for and shall provide utility services, including water, power, gas, and telephone service to serve each parcel, lot, or unit of land within the Property in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the regulations, schedules, and fees of the utilities or agencies providing such services. Except for commercial or industrial properties, Developer shall also provide cable television facilities to serve each parcel, lot, or unit of land in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the requirements of the cable company possessing a valid franchise with City to provide such service within City's jurisdictional limits. All utilities shall be installed underground, unless otherwise approved by the City Council or the Planning Commission of the City, or by any other state or federal laws or regulations.

8.0 Fees and Charges. Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of construction of the Public Improvements, including, but not limited to fees for the checking, filing, and processing of improvement plans and specifications and for inspecting the construction of the Public Improvements. These fees must be paid in full prior to approval of the final map and improvement plans. The fees referred to above are not necessarily the only City fees, charges, or other costs that have been or will be imposed on the subdivision and its development, and this Agreement shall in no way exonerate or relieve Developer from paying such other applicable fees, charges, and/or costs.

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

10.0 Acceptance of Improvements; As-Built or Record Drawings. If the Public Improvements are properly completed by Developer and approved by the City Engineer, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, the City Council shall be authorized to accept the Public Improvements. The City Council may, in its sole and absolute discretion, accept fully completed portions of the Public Improvements prior to such time as all of the Public Improvements are complete, which shall not release or modify Developer's obligation to complete the remainder of the Public Improvements within the time required by this Agreement. Upon the total or partial acceptance of the Public Improvements by City, the City Clerk shall file with the Recorder's Office of the County of San Bernardino, a notice of completion for the accepted Public Improvements in

accordance with California Civil Code Section 9204, at which time the accepted Public Improvements shall become the sole and exclusive property of City without payment therefor. Title to and ownership of the Public Improvements constructed under this Agreement shall vest absolutely in City upon completion and acceptance in writing of such Public Improvements by City. Issuance by City of occupancy permits for any buildings or structures located on the Property shall not be construed in any manner to constitute City's acceptance or approval of any Public Improvements. Notwithstanding the foregoing, City may not accept any Public Improvements unless and until Developer provides one (1) set of "as-built" or record drawings or plans to the City Engineer for all such Public Improvements. The drawings shall be certified and shall reflect the condition of the Public Improvements as constructed, with all changes incorporated therein.

11.0 Default; Notice; Remedies.

11.1 Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if City determines there is a violation of any federal, state, or local law, ordinance, regulation, code, standard, or other requirement, City may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation ("Notice"). Developer shall substantially commence the work required to remedy the default or violation within ten (10) days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City may provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon City's issuance of the Notice, Developer and its surety shall be liable to City for all costs of construction and installation of the Public Improvements and all other administrative costs and expenses.

11.2 Failure to Remedy; City Action. If the work required to remedy the noticed default or violation is not diligently prosecuted to a completion acceptable to City within the time frame contained in the Notice, City may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. City's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any, or none, of the required or agreed upon Public Improvements at the time of City's demand for performance. In the event City elects to complete or arrange for completion of the remaining work and improvements, City may require all work by Developer or its surety to cease in order to allow adequate coordination by City. Notwithstanding the foregoing, if conditions precedent for reversion to acreage can be met and if the interests of City will not be prejudiced thereby, City may also process a reversion to acreage and thereafter recover from Developer or its surety the full cost and expense incurred.

11.3 Notice of Violation; Stop Work Order. If City determines that there is a violation of applicable federal, state or local laws, ordinances, regulations or other requirements, or the terms and conditions of this Agreement, the City and/or City Engineer may issue a Notice of Violation and Demand for Compliance and/or a Stop Work Order. The City may declare the Developer to be in default or violation of this Agreement and make written demand upon

Developer or its surety, or both, to immediately remedy the default or violation. Developer shall comply with the Notice of Violation and/or Stop Work Order and shall substantially commence the work required to remedy the default or violation with the time specified in the Notice of Violation. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City and/or City Engineer may provide the Notice of Violation verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof.

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

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

12.0 Warranty and Guarantee. Developer hereby warrants and guarantees all Public Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of all landscaping within the Property in a vigorous and thriving condition reasonably acceptable to City, for a period of one (1) year following completion of the work and acceptance by City ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the Public Improvements, in accordance with the current ordinances, resolutions, regulations, codes, standards, or other requirements of City, and to the approval of the City Engineer. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost, expense, and liability of Developer and its surety. As to any Public Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following City's acceptance of the repaired, replaced, or reconstructed Public Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any Public Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

13.0 Security.

13.1 Prior to execution of this Agreement, Developer shall provide City with sufficient security in the amounts and under the terms set forth below ("Security"). Nothing in this Section is intended to prevent City, in its sole discretion, from requiring Developer to submit, or prevent Developer from submitting, security in a form other than bonds that may be allowed under California Government Code Section 66499, et seq. and the City's Municipal Code, and acceptable to City. The amount of the Security shall be based on the City Engineer's approximation of the actual cost to construct the Public Improvements, including the replacement cost for all public

landscaping ("Estimated Costs"). If City determines, in its sole and absolute discretion, that the Estimated Costs have changed, Developer shall adjust the Security in the amount requested by City. Developer's compliance with this Section shall in no way limit or modify Developer's indemnification obligation under this Agreement. Security shall be on forms approved by the City for the purposes and amounts as follows:

13.1.1 Performance Bond. To guarantee the faithful performance of the Public Improvements and all the provisions of this Agreement, to protect City if Developer is in default as set forth in this Agreement, and to secure Developer's one-year guarantee and warranty of the Public Improvements, including the maintenance of all landscaping in a vigorous and thriving condition, Developer shall provide City security in the amount of **ONE HUNDRED FIFTY SIX THOUSAND FOUR HUNDRED FIFTY ONE DOLLARS AND SIXTY SEVEN CENTS ($156,451.67)**, which sum shall be not less than one hundred percent (100%) of the Estimated Costs (Bonds attached in Exhibit "C" and Engineering Cost Estimate attached in Exhibit "B"). The City may, in its sole and absolute discretion, partially release a portion or portions of the security provided under this section as the Public Improvements are accepted by City, as provided herein, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Map, and the total remaining security is not less than twenty-five percent (25%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period (as defined above), or any extension thereof as provided in this Agreement, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Map.

13.1.2 Labor & Material Bond. To secure payment to the contractor and subcontractors, laborers, material men and other persons furnishing labor, materials, or equipment for performance of the Public Improvements and this Agreement, Developer shall provide City security in the amount of **ONE HUNDRED FIFTY SIX THOUSAND FOUR HUNDRED FIFTY ONE DOLLARS AND SIXTY SEVEN CENTS ($156,451.67)**, which sum shall not be less than one hundred percent (100%) of the Estimated Costs (Bonds attached in Exhibit "C" and Engineering Cost Estimate attached in Exhibit "B").. The security provided under this subsection may be released by written authorization of the City Engineer after one (1) year or within the time limits established in California Government Code section 66499.7 from the date City accepts the final Public Improvements at the discretion of City. The amount of such security shall be reduced by the total of all stop notice or mechanic's lien claims of which City is aware, plus an amount equal to twenty percent (20%) of such claims for reimbursement of City's anticipated administrative and legal expenses arising out of such claims.

13.1.3 Monument Security. To guarantee payment by the Developer to the engineer or surveyor whose certificate appears on the final map for the setting of all subdivision boundaries, lot corners and street centerline monuments, as well as the furnishing of all centerline tie notes to the City, prior to the City's execution of this Agreement, Developer shall deposit cash with the City in the amount of ONE THOUSAND DOLLARS ($1,000.00). Said cash deposit may be released after receipt by the City of the centerline tie notes and written acknowledgment of payment in full from the engineer or surveyor.

13.1.4 Warranty Bond. To provide in the amount of ten percent (10%) of the Estimated Costs of the Work to guarantee and warrant the Work, for a period of one year

following its completion and acceptance, against any defective work or labor done, or defective materials furnished, as required by California Government Code Section 66499.3(d). Any unused portion of the guarantee and warranty security shall be released one year after acceptance of the required improvements by the City Council.

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

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

14.0 Lien. To secure the timely performance of Developer's obligations under this Agreement, including those obligations for which security has been provided pursuant to this Agreement, Developer hereby creates in favor of City a lien against all portions of the Property not dedicated to City or some other governmental agency for a public purpose. As to Developer's default on those obligations for which security has been provided pursuant to this Agreement, City shall first attempt to collect against such security prior to exercising its rights as a contract lienholder under this Section.

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

16.0 Insurance.

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

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

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

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

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

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

16.3.1 Commercial General Liability: (1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Developer; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Developer shall provide endorsements in the form of ISO CG 20 10 10 01 and 20 37 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until

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

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

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

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

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

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

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

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

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

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

16.11 Additional Insurance Provisions

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

16.11.2 If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Developer.

16.11.3 The City may require the Developer to provide complete copies of all insurance policies in effect for the duration of the Project.

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

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

16.11.6 Developer shall report to the City, in addition to Developer's insurer, any and all insurance claims submitted by Developer in connection with this Agreement.

17.0 Signs and Advertising. Developer understands and agrees to City's ordinances, regulations, and requirements governing signs and advertising structures. Developer hereby agrees with and consents to the removal by City of all signs or other advertising structures erected, placed,

or situated in violation of any City ordinance, regulation, or other requirement. Removal shall be at the expense of Developer. Developer shall indemnify and hold City free and harmless from any claim or demand arising out of or incident to signs, advertising structures, or their removal.

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

19.0 General Provisions.

19.1 Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

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

19.3 Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Developer include all personnel, employees, agents, and contractors and subcontractors of Developer, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

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

CITY:
City of Ontario
Engineering Department
303 East "B" Street
Ontario, CA 91764
Attn: City Engineer

DEVELOPER:
LANDSEA HOMES OF CALIFORNIA
7525 IRVINE CENTER DRIVE STE 200
IRVINE, CA 92618
Attn: SAM GRABLE

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

19.6 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements, either written or oral, express or implied. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

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

19.8 Waiver. City's failure to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein, or City's waiver of any breach of this Agreement, shall not relieve Developer of any of its obligations under this Agreement, whether of the same or similar type. The foregoing shall be true whether City's actions are intentional or unintentional. Developer agrees to waive, as a defense, counterclaim or set off, any and all defects, irregularities or deficiencies in the authorization, execution or performance of the Public Improvements or this Agreement, as well as the laws, rules, regulations, ordinances or resolutions of City with regards to the authorization, execution, or performance of the Public Improvements or this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

19.16 Prevailing Wages. Developer has been alerted to the requirements of California Labor Code sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements if it is determined that this Agreement constitutes a public works contract. It shall be the sole responsibility of Developer to determine whether to pay prevailing wages for any or all work required by this Agreement. As a material part of this Agreement, Developer agrees to assume all risk of liability arising from any decision not to pay prevailing wages for work required by this Agreement.

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

[SIGNATURE PAGE FOLLOWS]

CITY OF ONTARIO

By: _____
Scott Ochoa, City Manager

Landsea Homes of California, LLC

By: _____
Signature

Sam Grable
Print Name

Assistant Secretary
Title

ATTEST:

By: _____
Sheila Mautz, City Clerk

By: _____
Signature

_____
Print Name

_____
Title

APPROVED AS TO FORM:

By: _____
Best Best & Krieger, City Attorney

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

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF Orange)

On April 17, 2025 before me, Terri L. Piligian, Notary Public, personally appeared Sam Grable, 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.

TERRI L. PILIGIAN
Notary Public - California
Orange County
Commission # 2437606
My Comm. Expires Feb 9, 2027

Signature: Terri L. Piligian (seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature:_____ (seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

TRACT NO. 20659

Real property in the City of Ontario, County of San Bernardino, State of California, described as follows:

The West 10 feet of the East 1/2 of Lot 785, and All of the West 1/2 of Lot 785, in the City of Ontario,

According to the MAP OF ONTARIO, as per plat recorded in Book 11 of Maps, Page 6, records of said county.

Excepting therefrom the North 132 feet of the West 71.5 feet of the West 1/2 of Lot 785.

Also Excepting therefrom the North 132 feet of the West 10 feet of the East 1/2 of Lot 785.

Also Excepting therefrom the North 132 feet of the East 61.5 feet of the West 1/2 of Lot 785.

Also Excepting therefrom the South 203 feet of the West 10 feet of the East 1/2 of Lot 785.

Also Excepting therefrom the South 203 feet of the West 1/2 of Lot 785.

APN: 1008-551-12-0-000

EXHIBIT "B"

LIST OF PUBLIC IMPROVEMENTS

TRACT NO. 20659_____

Developer shall perform all work and furnish all materials necessary, in the opinion of the City Engineer and on his/her order, to complete the following Public Improvements in accordance with the plans and specifications on file with City or with any changes required or ordered by the City Engineer which, in his/her opinion, are necessary or required to complete this work.

Developer is required to perform the following Public Improvements under this Agreement:

[ENGINEERING COST ESTIMATE ATTACHED BEHIND THIS PAGE]

EXHIBIT "C"

SURETY BONDS AND OTHER SECURITY

TRACT NO. 20659

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

FAITHFUL PERFORMANCE BOND: **$156,451.67**

Surety: Philadelphia Indemnity Insurance Company
Attorney-in-fact: Sarah Campbell
Address: 1980 MacArthur Blvd Suite 1250
Irvine, CA 92618
Phone: 818-268-4560
Scampbell@lockton.com

PAYMENT BOND: **$156,451.67**

Surety: Philadelphia Indemnity Insurance Company
Attorney-in-fact: Sarah Campbell
Address: 1980 MacArthur Blvd Suite 1250
Irvine, CA 92618
Phone: 818-268-4560
Scampbell@lockton.com

GUARANTEE AND WARRANTY SECURITY BOND: **$15,645.17**

To be posted upon completion of the Public Improvements by Developer and approval and acceptance by the City.

CASH MONUMENT SECURITY: **$1,000.00**

Amount deposited per Cash Receipt No. _____
Date: _____

[BONDS ATTACHED BEHIND THIS PAGE]

BOND NO.: PB03010410635
PREMIUM: $782.00

CITY OF ONTARIO

FAITHFUL PERFORMANCE BOND FOR SUBDIVISION IMPROVEMENT AGREEMENT

PROJECT: TRACT NO. 20659

WHEREAS, the conditions placed on the tentative/parcel map for Parcel/Tract No. 20659 require that the City of Ontario, a municipal corporation of the State of California ("CITY"), by its City Council, and LANDSEA HOMES OF CALIFORNIA LLC ("PRINCIPAL") enter into an agreement ("Agreement") whereby the PRINCIPAL agrees to install and complete certain designated public improvements ("Public Improvements"); and

WHEREAS, the PRINCIPAL is required under the terms of the Agreement to furnish a bond, in a form and from a surety acceptable to the CITY, for the faithful performance of the Agreement.

NOW, THEREFORE, PRINCIPAL and PHILADELPHIA INDEMNITY INSURANCE COMPANY ("SURETY"), a corporation organized and existing under the laws of the State of PENNSYLVANIA, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto CITY in the sum of **ONE HUNDRED FIFTY SIX THOUSAND FOUR HUNDRED FIFTY ONE DOLLARS AND SIXTY SEVEN CENTS** DOLLARS (**$156,451.67**), said sum being not less than one hundred percent (100%) of the total cost of the Public Improvements as set forth in the Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such, that if PRINCIPAL, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, agreements, guarantees, and warranties in the Agreement and any alteration thereof made as therein provided, to be kept and performed at the time and in the manner therein specified and in all respects according to their intent and meaning, and to indemnify and save harmless CITY, its officers, employees, and agents, as stipulated in the Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

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

SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

This bond is executed and filed to comply with Section 66499, *et seq.*, of the Government Code of California and the CITY's Municipal Code as security for performance of the Agreement and security for the one-year guarantee and warranty of the Public Improvements.

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

IN WITNESS WHEREOF, this instrument has been duly executed by PRINCIPAL and SURETY above named, on APRIL 11TH, 20 25.

PHILADELPHIA INDEMNITY INSURANCE COMPANY
Name of Surety

283 S. LAKE AVENUE, SUITE 160
PASADENA, CA 91101
Mailing Address of Surety

(626) 639-1323
Telephone No. of Surety

By: _____
Attorney in Fact EDWARD C. SPECTOR

LANDSEA HOMES OF CALIFORNIA LLC
Principal

By: _____
Title: Assistant Secretary

and

By: _____
Title: _____

AH XV
RISK MANAGEMENT
DATE 4/21/25
SURETY APPROVED ONLY
INITIAL ES

POWER OF ATTORNEY REQUIRED. The Attorney-in-Fact (resident agent) who executes this bond on behalf of the surety company must attach a copy of his Power of Attorney as evidence of his authority. A notary shall acknowledge the power as of the date of the execution of the surety bond which it covers.

SEE ATTACHED CALIFORNIA SURETY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF Orange)

On April 15, 2025 before me, Terri L. Piligian, Notary Public, personally appeared Sam Grable, 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.

TERRI L. PILIGIAN
Notary Public - California
Orange County
Commission # 2437606
My Comm. Expires Feb 9, 2027

Signature: Terri L. Piligian (seal)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE §1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Los Angeles)

On APR 11 2025 before me, Ethan Spector, Notary Public

Date *Here Insert Name and Title of the Officer*

Personally appeared Edward C. Spector

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Signature of Notary Public

ETHAN SPECTOR
Notary Public - California
Los Angeles County
Commission # 2466163
My Comm. Expires Oct 11, 2027

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document _____ Document Date _____

Number of Pages _____ Signer(s) Other Than Named Above _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

☐ Corporate Officer—Title(s) _____
☐ Partner ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other _____

Signer Is Representing _____

Signer's Name _____

☐ Corporate Officer—Title(s) _____
☐ Partner ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other _____

Signer Is Representing _____

PHILADELPHIA INDEMNITY INSURANCE COMPANY
One Bala Plaza, Suite 100
Bala Cynwyd, PA 19004-0950

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS: That **PHILADELPHIA INDEMNITY INSURANCE COMPANY** (the Company), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, does hereby constitute and appoint **Jennifer Ochs, Charles R. Teter III, B. Aleman, Erin Brown, D. Garcia, Simone Gerhard, Edward C. Spector, Ethan Spector, Marina Tapia, KD Wapato, Sarah Campbell, Aidan Smock, Sandra Corona, MB Neely and Chase Seyforth of Lockton Companies Inc._** its true and lawful Attorney-in-fact with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business and to bind the Company thereby, in an amount not to exceed **$50,000,000.**

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PHILADELPHIA INDEMNITY INSURANCE COMPANY on the 14th of November 2016.

RESOLVED: That the Board of Directors hereby authorizes the President or any Vice President of the Company: (1) Appoint Attorney(s) in Fact and authorize the Attorney(s) in Fact to execute on behalf of the Company bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and to attach the seal of the Company thereto; and (2) to remove, at any time, any such Attorney-in-Fact and revoke the authority given. And, be it

FURTHER RESOLVED: That the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or certificate relating thereto by facsimile, and any such Power of Attorney so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN TESTIMONY WHEREOF, PHILADELPHIA INDEMNITY INSURANCE COMPANY HAS CAUSED THIS INSTRUMENT TO BE SIGNED AND ITS CORPORATE SEALTO BE AFFIXED BY ITS AUTHORIZED OFFICE THIS 5TH DAY OF OCTOBER 2024.

(Seal)

John Glomb, President & CEO
Philadelphia Indemnity Insurance Company

On this 5th day of October, 2024 before me came the individual who executed the preceding instrument, to me personally known, and being by me duly sworn said that he is the therein described and authorized officer of the **PHILADELPHIA INDEMNITY INSURANCE COMPANY**; that the seal affixed to said instrument is the Corporate seal of said Company; that the said Corporate Seal and his signature were duly affixed.

Notary Public: Vanessa McKenzie

Commonwealth of Pennsylvania - Notary Seal
Vanessa Mckenzie, Notary Public
Delaware County
My commission expires November 3, 2028
Commission number 1366394
Member, Pennsylvania Association of Notaries

residing at: Linwood, PA

My commission expires: November 3, 2028

I, Edward Sayago, Corporate Secretary of PHILADELPHIA INDEMNITY INSURANCE COMPANY, do hereby certify that the foregoing resolution of the Board of Directors and the Power of Attorney issued pursuant thereto on the 5th day October 2024 are true and correct and are still in full force and effect. I do further certify that John Glomb, who executed the Power of Attorney as President, was on the date of execution of the attached Power of Attorney the duly elected President of PHILADELPHIA INDEMNITY INSURANCE COMPANY.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 11TH day of APRIL, 2025.

Edward Sayago, Corporate Secretary
PHILADELPHIA INDEMNITY INSURANCE COMPANY

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature:_____ (seal)

Att 8V
RISK MANAGEMENT
DATE 4/21/25
SURETY APPROVED ONLY
INITIAL ES

BOND NO.: PB03010410635
PREMIUM: SEE PERFORMANCE BOND

CITY OF ONTARIO

LABOR & MATERIAL BOND FOR SUBDIVISION IMPROVEMENT AGREEMENT

PROJECT: TRACT NO. 20659

WHEREAS, the conditions placed on the tentative/parcel map for Parcel/Tract No. 20659 require that the City of Ontario, a municipal corporation of the State of California ("CITY"), by its City Council, and LANDSEA HOMES OF CALIFORNIA LLC ("PRINCIPAL") enter into an agreement ("Agreement") whereby the PRINCIPAL agrees to install and complete certain designated public improvements ("Public Improvements"); and

WHEREAS, under the terms of the Agreement, PRINCIPAL is required before entering upon the performance of the work, to file a good and sufficient payment bond with the CITY to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code of the State of California.

NOW, THEREFORE, PRINCIPAL and PHILADELPHIA INDEMNITY INSURANCE COMPANY ("SURETY"), a corporation organized and existing under the laws of the State of PENNSYLVANIA, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto CITY and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the Public Improvements, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to the Public Improvements to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid excepting the PRINCIPAL, the sum of **ONE HUNDRED FIFTY SIX THOUSAND FOUR HUNDRED FIFTY ONE DOLLARS AND SIXTY SEVEN CENTS** DOLLARS, (**$156,451.67**), said sum being not less than 100% of the total cost of the Public Improvements under the terms of the Improvement Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the PRINCIPAL, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Public Improvements, or for work or labor thereon of any kind, or fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all other applicable laws of the State of California and rules and regulations of its agencies, then said SURETY will pay the same in or to an amount not exceeding the sum specified herein.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's

fees, incurred by CITY in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

This bond is executed and filed to comply with Section 66499, et seq., of the California Government Code and the City's Municipal Code as security for payment to contractors, subcontractors, and persons furnishing labor, materials, or equipment for construction of the Public Improvements or performance of the Agreement. It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with section 9000) of Part 6 of Division 4 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by PRINCIPAL and SURETY above named, on APRIL 11TH, 20 25.

PHILADELPHIA INDEMNITY INSURANCE COMPANY
Name of Surety

283 S. LAKE AVENUE, SUITE 160
PASADENA, CA 91101
Mailing Address of Surety

(626) 639-1323
Telephone No. of Surety

By: _____
Attorney in Fact EDWARD C. SPECTOR

LANDSEA HOMES OF CALIFORNIA LLC
Principal

By: _____
Title: Assistant Secretary

and

By: _____
Title: _____

A++ XV
RISK MANAGEMENT
DATE 4/21/25
SURETY APPROVED ONLY
INITIAL ES

POWER OF ATTORNEY REQUIRED. The Attorney-in-Fact (resident agent) who executes this bond on behalf of the surety company must attach a copy of his Power of Attorney as evidence of his authority. A notary shall acknowledge the power as of the date of the execution of the surety bond which it covers.

SEE ATTACHED CALIFORNIA SURETY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange

On April 15, 2025 before me, Terri L. Piligian, Notary Public, personally appeared Sam Grable, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[SEAL]

TERRI L. PILIGIAN
Notary Public - California
Orange County
Commission # 2437606
My Comm. Expires Feb 9, 2027

Signature Terri L. Piligian

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Los Angeles)

On APR 11 2025 before me, Ethan Spector, Notary Public

Date *Here Insert Name and Title of the Officer*

Personally appeared Edward C. Spector

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by 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.

ETHAN SPECTOR
Notary Public - California
Los Angeles County
Commission # 2466163
My Comm. Expires Oct 11, 2027

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Signature of Notary Public

Place Notary Seal Above

---------- ***OPTIONAL*** ----------

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document _____ Document Date _____

Number of Pages _____ Signer(s) Other Than Named Above _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____	Signer's Name _____
☐ Corporate Officer—Title(s) _____	☐ Corporate Officer—Title(s) _____
☐ Partner ☐ Limited ☐ General	☐ Partner ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact	☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator	☐ Trustee ☐ Guardian or Conservator
☐ Other _____	☐ Other _____
Signer Is Representing _____	Signer Is Representing _____

PHILADELPHIA INDEMNITY INSURANCE COMPANY
One Bala Plaza, Suite 100
Bala Cynwyd, PA 19004-0950

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS: That **PHILADELPHIA INDEMNITY INSURANCE COMPANY** (the Company), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, does hereby constitute and appoint **Jennifer Ochs, Charles R. Teter III, B. Aleman, Erin Brown, D. Garcia, Simone Gerhard, Edward C. Spector, Ethan Spector, Marina Tapia, KD Wapato, Sarah Campbell, Aidan Smock, Sandra Corona, MB Neely and Chase Seyforth of Lockton Companies Inc.**_ its true and lawful Attorney-in-fact with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business and to bind the Company thereby, in an amount not to exceed **$50,000,000.**

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PHILADELPHIA INDEMNITY INSURANCE COMPANY on the 14th of November 2016.

RESOLVED: That the Board of Directors hereby authorizes the President or any Vice President of the Company: (1) Appoint Attorney(s) in Fact and authorize the Attorney(s) in Fact to execute on behalf of the Company bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and to attach the seal of the Company thereto; and (2) to remove, at any time, any such Attorney-in-Fact and revoke the authority given. And, be it

FURTHER RESOLVED: That the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or certificate relating thereto by facsimile, and any such Power of Attorney so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN TESTIMONY WHEREOF, PHILADELPHIA INDEMNITY INSURANCE COMPANY HAS CAUSED THIS INSTRUMENT TO BE SIGNED AND ITS CORPORATE SEALTO BE AFFIXED BY ITS AUTHORIZED OFFICE THIS 5TH DAY OF OCTOBER 2024.

(Seal)

John Glomb, President & CEO
Philadelphia Indemnity Insurance Company

On this 5th day of October, 2024 before me came the individual who executed the preceding instrument, to me personally known, and being by me duly sworn said that he is the therein described and authorized officer of the **PHILADELPHIA INDEMNITY INSURANCE COMPANY**; that the seal affixed to said instrument is the Corporate seal of said Company; that the said Corporate Seal and his signature were duly affixed.

Commonwealth of Pennsylvania - Notary Seal
Vanessa Mckenzie, Notary Public
Delaware County
My commission expires November 3, 2028
Commission number 1366394
Member, Pennsylvania Association of Notaries

Notary Public: Vanessa McKenzie

residing at: Linwood, PA

My commission expires: November 3, 2028

I, Edward Sayago, Corporate Secretary of PHILADELPHIA INDEMNITY INSURANCE COMPANY, do hereby certify that the foregoing resolution of the Board of Directors and the Power of Attorney issued pursuant thereto on the 5th day October 2024 are true and correct and are still in full force and effect. I do further certify that John Glomb, who executed the Power of Attorney as President, was on the date of execution of the attached Power of Attorney the duly elected President of PHILADELPHIA INDEMNITY INSURANCE COMPANY.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 11TH day of APRIL, 2025.

Edward Sayago, Corporate Secretary
PHILADELPHIA INDEMNITY INSURANCE COMPANY

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature:_____ (seal)

A++ XV
RISK MANAGEMENT
DATE 4/21/25
SURETY APPROVED ONLY
INITIAL ES

CITY OF ONTARIO

SUBDIVISION MAINTENANCE BOND
GUARANTEE AND WARRANTY SECURITY

PROJECT: TRACT NO. 20659

WHEREAS, the conditions placed on the tentative/parcel map for Parcel/Tract No. _____ require that the City Council of the City of Ontario, State of California, and _____ ("PRINCIPAL") enter into an agreement by which PRINCIPAL agrees to install and complete certain designated public improvements and to guarantee and warrant the work for a period of one year following its completion and acceptance ("Agreement"); and

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

NOW, THEREFORE, we, PRINCIPAL and _____ a _____, admitted and duly authorized to transact business under the laws of the State of California as surety ("SURETY"), are held and firmly bound unto the City of Ontario as obligee ("CITY"), in the penal sum of _____ ($_____) dollars lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

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

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

SURETY hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations of this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications. The surety waives all rights of subrogation against CITY or any person employed by CITY.

IN WITNESS WHEREOF, this instrument has been duly executed by PRINCIPAL and SURETY above named, on _____, 20___.

_____
Name of Surety

_____
Principal

By:_____
Title: _____

_____
Mailing Address of Surety

and

_____
Telephone No. of Surety

By:_____
Title: _____

By: _____
Attorney in Fact

POWER OF ATTORNEY REQUIRED. The Attorney-in-Fact (resident agent) who executes this bond on behalf of the surety company must attach a copy of his Power of Attorney as evidence of his authority. A notary shall acknowledge the power as of the date of the execution of the surety bond which it covers.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature:_____ (seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature:_____ (seal)

CITY OF ONTARIO *Agenda Report* **June 3, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Financial Services Prepared By: Cruz Torres Staff Member Presenting: Armen Harkalyan, Executive Director of Finance Reviewed By: Claudia Hernandez, Matthew Hernandez Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 6

SUBJECT: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 75 (SPRINGHILL)**

RECOMMENDATION: That the City Council adopt an Ordinance authorizing the levy of special taxes within City of Ontario Community Facilities District No. 75 (Springhill).

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

FISCAL IMPACT: The use of Mello-Roos financing in the Wildflower Acres residential development is projected to generate approximately $348,472 per year, at build-out, to fund administrative fees and municipal services; and approximately $9.8 million in bond proceeds to be used to fund a portion of the public infrastructure improvements needed to serve the project. Mello-Roos bonds are not a direct obligation of the City and are paid from special taxes levied on each taxable parcel in the District; therefore, there is no fiscal impact to the General Fund from the issuance of Mello-Roos bonds. City Council approval will be required to process annual special tax levies in future years.

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

At a public hearing conducted by the City Council on May 20, 2025, the City Council adopted a Resolution of Formation of Community Facilities District No. 75 (Springhill); authorized the levy of a special tax; established an appropriations limit of the Community Facilities District; and called a special election for the Community Facilities District. On that date, an election was held in which the

qualified electors of the Community Facilities District approved said proposition by more than the two-thirds vote required by the Act. Adoption of the proposed Ordinance to authorize the levy of special taxes within the Community Facilities District will conclude the formation process for the City of Ontario Community Facilities District No. 75 (Springhill).

The Springhill is a residential project development that is approximately 23.22 gross acres located north of Chino Avenue, west of Archibald Avenue, east of Colonial Avenue, and south of Riverside Drive. At build-out, the project is expected to include a total of 265 residential units within two product types, comprised of 139 detached units and 126 attached units.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING A SPECIAL TAX WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 75 (SPRINGHILL)

WHEREAS, on April 1, 2025, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Intention to Establish a Community Facilities District Proposed to be Named City of Ontario Community Facilities District No. 75 (Springhill) and to Authorize the Levy of a Special Tax Therein," stating its intention to establish City of Ontario Community Facilities District No. 75 (Springhill) (the "Community Facilities District") and to authorize the Community Facilities District to levy a special tax (the "Special Tax") within the Community Facilities District for the purpose of financing certain public facilities (the "Facilities") and services (the "Services"); and

WHEREAS, on May 20, 2025, the City Council held a noticed public hearing on the establishment of the Community Facilities District, as required by the Act; and

WHEREAS, subsequent to the close of said hearing, the City Council adopted resolutions entitled "A Resolution of the City Council of the City of Ontario, California, of Formation of City of Ontario Community Facilities District No. 75 (Springhill), Proposing that the Community Facilities District be Authorized to Levy a Special Tax and Proposing that an Appropriations Limit of the Community Facilities District be Established" (the "Resolution of Formation"), "A Resolution of the City Council of the City of Ontario, California, Deeming it Necessary for City of Ontario Community Facilities District No. 75 (Springhill) to Incur Bonded Indebtedness" and "A Resolution of the City Council of the City of Ontario, California, Calling Special Election for City of Ontario Community Facilities District No. 75 (Springhill)," which resolutions established the Community Facilities District, proposed that the Community Facilities District be authorized to levy the Special Tax within the Community Facilities District, proposed that an appropriations limit of the Community Facilities District be established and called a special election to submit to the qualified electors of the Community Facilities District the combined ballot proposition to authorize the Community Facilities District to incur bonded indebtedness, to authorize the Community Facilities District to levy the Special Tax and to establish the appropriations limit of the Community Facilities District; and

WHEREAS, on May 20, 2025, an election was held in which the qualified electors of the Community Facilities District approved said proposition by more than the two-thirds vote required by the Act; and

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

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

SECTION 1. The City Council hereby authorizes and levies the Special Tax within the Community Facilities District pursuant to Sections 53328 and 53340 of the Act, at the rate and in accordance with the method of apportionment set forth in Exhibit B to the Resolution of Formation (the "Rate and Method"). The Special Tax is hereby levied commencing in fiscal year 2025-26 and in each fiscal year thereafter until the last fiscal year in which the Special Tax is authorized to be levied pursuant to the Rate and Method.

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

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

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

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

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

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

PASSED, APPROVED, AND ADOPTED this 3th day of June, 2025.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held May 20, 2025 and adopted at the regular meeting held June 3, 2025 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held June 3, 2025 and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **June 3, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Management Services Prepared By: Jordan T Villwock Staff Member Presenting: Jordan Villwock, Deputy City Manager Reviewed By: Vanny Khu Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 7

SUBJECT: **AN AMENDMENT TO THE INLAND VALLEY HUMANE SOCIETY & SPCA CONTRACT AND APPROVAL TO ADMIT THE CITY OF CHINO HILLS AS A MEMBER AGENCY IN THE ANIMAL RESOURCE CENTER OF THE INLAND EMPIRE**

RECOMMENDATION: That the City Council take the following actions:

A. Authorize the City Manager, or designee, to execute Amendment No.1 to the Inland Valley Humane Society & SPCA contract; and
B. Approve the admission of the City of Chino Hills to the Animal Resource Center of the Inland Empire.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner
Pursue City's Goals and Objectives by Working with Other Governmental Agencies

FISCAL IMPACT: There is no direct fiscal impact associated with this action. If Chino Hills' admittance into the Animal Resource Center of the Inland Empire (ARC) is approved by the City Council, this would decrease the City of Ontario's capital cost fiscal responsibility to ARC in Fiscal Year 2025-26 and Fiscal Year 2026-27 from 58% to 53%. Starting in Fiscal Year 2027-28 and beyond, it would also decrease the operating cost to 53%.

BACKGROUND & ANALYSIS: On July 1, 2023, the City of Ontario's contract with Inland Valley Humane Society & SPCA (IVHS) was continued for an additional 2-year term, through June 30, 2025. During the contract term, on April 15, 2024, the City received a cancelation notice from IVHS for the standing contract, which goes into effect June 30, 2025. The proposed amendment would allow for the ARC to handle dog bite calls in the City of Ontario, starting on June 20, 2025, thus allowing ARC to quarantine dogs, if necessary, to avoid a budget prohibited cost of $10,000 per day fee that was proposed by IVHS for any animal that is housed by IVHS past July 1, 2025. Additionally, the amendment will allow for the transfer of animals to begin the week prior to the end of the contract to allow for appropriate intake and evaluation of the animals.

In July 2024, the City Council approved the original Joint Exercise of Powers (JPA) Agreement to establish the West End Animal Services Agency, now known as ARC, with the City of Chino. In the last year, several other jurisdictions have been involved in the conversation surrounding the establishment of a JPA to provide animal control and animal sheltering services. As such, the City of Chino Hills submitted a formal request to join the ARC. If approved, the JPA would grow to a five-member agency with the following breakdown of share of contributions and voting shares: Ontario 53%, Chino 20%, Chino Hills 15%, Montclair 8%, County of San Bernardino (West end unincorporated area) 4%. Per the JPA Agreement, new members may only be admitted with unanimous approval of the JPA Board of Directors and approval by each governing body of the current Member Agencies. The JPA Board of Directors unanimously approved the item at their regular meeting on May 6, 2025. City and ARC Staff have thoroughly collaborated with the City of Chino Hills and are recommending approval.

JOINT EXERCISE OF POWERS AGREEMENT
OF
THE WEST END ANIMAL SERVICES AGENCY

This JOINT EXERCISE OF POWERS AGREEMENT (the "Agreement") is dated this 16 day of July, 2024, for reference purposes only, and is entered into by and between the cities of Ontario and Chino, who may be referred to herein individually as a "Member Agency" or "Party" and collectively as "Member Agencies," "Members," or Parties."

RECITALS

A. The Member Agencies have the authority under California law to operate animal shelters and provide associated animal control programs within their respective jurisdictions.

B. Each Member Agency is a public agency authorized and empowered to contract with the other Member Agency for the joint exercise of powers under the Joint Exercise of Powers Act, Sections 6500, *et seq.*, of the California Government Code (the "Act").

C. Each Member Agency is a local public entity, and are municipalities in contiguous geographical proximity, having similar animal control and sheltering needs, and a history of coordination and cooperation between each other.

D. Each Member Agency presently contracts with the Inland Valley Humane Society for animal shelter and control services, but desires to transition to jointly providing and managing such services directly, in order to achieve cost savings and operational efficiencies for the benefit of the persons residing in the Member Agencies' respective service areas.

E. The Member Agencies desire to enter into this Agreement to create the West End Animal Services Agency as a joint powers agency for the purposes set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter stated, the Member Agencies agree as follows:

1. **Recitals.** The recitals above are true and correct, and are hereby incorporated into the terms of this Agreement as though fully set forth herein.

2. **Term.** The term of this Agreement shall commence as of August 1, 2024 or the date the Member Agencies have fully executed this Agreement, whichever is later, and continue until terminated pursuant to the terms of this Agreement.

3. **Definitions.** Except where the context otherwise clearly requires, the following words and phrases shall have the meanings specified below:

"Act" shall mean the Joint Exercise of Powers Act of the State of California, commencing with California Government Code Section 6500, as now existing or as may hereinafter be amended or supplemented.

"Agency" shall mean the West End Animal Services Agency, a joint powers authority created by this Agreement in accordance with the Act, made up of the Member Agencies.

"Agency Area" means that geographic area encompassing the total combined jurisdictional boundaries of the Member Agencies, as lawfully changed from time to time.

"Agreement" shall mean this Joint Exercise of Powers Agreement by and between the Member Agencies, as supplemented, amended, and/or restated from time to time.

"Board" or "Board of Directors" means the governing body of the Agency as established by this Agreement.

"Board Member" or "Director" means a member of the governing body of the Agency.

"Fiscal Year" means July 1 of one year through June 30 of the following year.

"Formation Date" means the date when this Agreement took effect pursuant to Section 2.

4. **Creation of Agency.**

4.1 Agency Created. The Agency is formed pursuant to the provisions of the Act, which authorizes two or more public agencies, by a joint powers agreement entered into respectively by them and authorized by their legislative or governing bodies, to exercise jointly any power or powers common to the member agencies. The Agency shall be a public entity separate from the Member Agencies and is responsible for the administration of this Agreement.

(a) Confirmation of Agency Name. The Agency is known as the "West End Animal Services Agency."

4.2 Notices. Within thirty (30) days after the Formation Date, the Agency shall cause a notice of its formation to be prepared and filed with the office of the California Secretary of State containing the information required by California Government Code § 6503.5. Within seventy (70) days after the Formation Date, the Agency shall cause a statement of information concerning the Agency, as required by California Government Code § 53051, to be filed with the office of the California Secretary of State and with the County Clerk, of any information as required by Government Code § 53051(a).

4.3 Agency Area. The geographic boundaries of the Agency ("Agency Area") shall be coextensive with those of the Member Agencies, as may be lawfully changed from time to time.

4.4 Bylaws. The Board may adopt bylaws and any other regulations, policies, or procedures for the operation of the Agency not inconsistent with State constitutional, statutory, or decisional case law, the California Code of Regulations, or this Agreement.

4.5 Purpose.

(a) The purpose of this Agreement is to jointly exercise animal control, animal shelter, and related services, and to facilitate cooperation among the Member Agencies with respect to issues related to the operation and management of an animal shelter and administrative oversight thereof, as well as provision of animal services within each Member Agency's jurisdiction and within the jurisdictions of such agencies as the Agency may contract with for such services. The purpose shall be accomplished in the manner set forth in this Agreement. The Member Agencies each possess the powers necessary or convenient for the accomplishment of such purposes.

(b) Through the Agency and its governing body, the Member Agencies shall collaborate, cooperate and seek to determine ways in which the Member Agencies, the citizens residing within the Agency Area, and other agencies who may contract with the Agency for animal control or shelter needs can benefit from joint services.

(c) The Member Agencies shall jointly benefit through the sharing of resources, which may include but is not limited to the sharing of executive and/or administrative staff. Among other public benefits, the Member Agencies and those with whom the Agency contracts shall receive reduced costs and more efficient services through the sharing of such resources.

(d) The purposes of this Agreement shall not be construed as limiting, and the Agency and its Board shall be authorized to further define the means by which the joint exercise of services may be accomplished.

(e) The Agency may, if approved pursuant to the provisions of this Agreement, accept new Parties to this Agreement, and the purposes of this Agreement shall include the provision of animal control, animal shelter, and related services within the territorial jurisdiction of any new Parties. The purposes of this Agreement shall apply to any new Parties.

5. **Powers of Agency.**

5.1 Generally. The Agency shall exercise the powers common to the Member Agencies, powers otherwise permitted under the Act, and powers necessary to accomplish the purposes of this Agreement.

5.2 Specific Powers. The Agency is hereby authorized, in its own name, to do all acts necessary, convenient and appropriate for the exercise of the foregoing powers for the purposes set forth in this Agreement and to do any or all of the following:

(a) Setting and adopting policies for the operation of the Agency.

(b) Adopting an annual budget.

(c) Employing personnel, consultants, advisors and independent contractors, setting parameters for labor negotiations, and ratifying labor agreements.

(d) Entering into contracts, leases and other agreements, which may include, but are not limited to, a contract for administrative and fiscal services and a contract with a Certified Public Accountant for annual audit services or contracts for service to other jurisdictions.

(e) Applying for, receiving and disbursing grants, loans or other aid from any private or public agency.

(f) Cooperate with other agencies, nonprofit groups and private entities as appropriate to participate in joint projects related to animal control or sheltering services, or any other purpose of the Agency set forth in this Agreement.

(g) Setting fees for service where permitted by law.

(h) Receiving, disbursing and investing funds.

(i) Purchasing and holding title to property, and obtaining leaseholds, licenses and other interests in property, including the authority to acquire, dispose of, construct, manage, maintain or operate any building, works or improvements.

(j) Issuing revenue bonds pursuant to California Government Code Section 6540, *et seq.*

(k) Obtaining in its own name all necessary permits, licenses, opinions and rulings.

(l) Expending funds of the Agency, only for the purpose of carrying out the provisions of this Agreement as they now exist or may hereafter be amended. Such powers shall be exercised in the manner provided in the Act subject only to such restrictions as set forth in this Agreement or other applicable law.

(m) Suing and being sued in its own name.

(n) Carrying out and enforcing all of the provisions of this Agreement.

(o) To incur debts, liabilities or obligations, which do not constitute a debt, liability or obligation of any Member Agency except as otherwise required by law.

(p) To receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations and governmental entities, provided that the Agency consents to such gifts, contributions and donations.

(q) To fix the compensation, if any, paid to the Board of Directors, Executive Director of Animal Services, Secretary, Treasurer, Controller and Attorney, in compliance with all applicable laws.

(r) To prescribe the duties, compensation and other terms and conditions of employment of other agents, officers and employees.

(s) To adopt reasonable rules and regulations for the conduct of the day-to-day operations of the Agency.

(t) To invest money in the treasury, pursuant to Government Code section 6505.5, that is not required for the immediate necessities of the Agency, as the Agency determines advisable, in the same manner and on the same conditions as local agencies, pursuant to Section 53601 of the Government Code.

(u) To exercise any and all powers which are provided for in the Act as they exist on the Formation Date or may hereafter be amended.

(v) Other powers and duties incidental to those enumerated herein.

5.3 Manner of Exercise of Common Powers. The powers of the Agency shall be limited only by the terms of this Agreement, the Act, and applicable law, as amended from time to time. The laws of the State of California applicable and common to general law cities shall govern the Agency in the manner of exercising its powers common between the cities, subject to such restrictions as are applicable to the City of Ontario in the manner of exercising such powers, as required by Government Code section 6509.

6. Governance.

6.1 Board of Directors. The Agency shall be governed by a Board of Directors ("Board") composed of Directors representing the Member Agencies (each a "Board Member" or "Director"). If there are two Member Agencies, the governing body of the City of Ontario shall appoint and designate in writing two regular Directors and the governing body of City of Chino shall appoint and designate in writing one regular Director. If there are three or more Parties to this Agreement, the governing body of each Member Agency shall appoint one regular Director. Each Director, and any alternate, shall be a member of the Member Agency's governing body. Each Member Agency will be entitled to representation on the Board in accordance with its financial contribution proportion (as set forth in Exhibit B to this Agreement) and as further described in Section 6.4(d), below. Each of the Board Members, and any alternates, shall be appointed as determined by the respective Member Agencies' governing bodies and any applicable local policies. Each Director and alternate serves at the pleasure of the appointing Member Agency's governing body and may be removed at any time, with or without cause, at the sole discretion of the appointing Member Agency's governing body. If a Director or alternate's membership on the appointing Member Agency's governing body ceases, his or her membership on the Board shall also cease. All the powers and rights of the Agency shall be exercised by the Board, subject to the rights reserved by the Member Agencies as set forth in this Agreement; provided, however, that the Board may delegate such powers and authority to committees, sub-committees, and others as the Board deems appropriate. The alternate appointed by each Member Agency shall have the authority to attend, participate in and vote at any meeting of the Board when the regular member is absent.

6.2 Compensation. Directors may receive such compensation from the Agency for services as may from time to time be established by the Board, subject to the limits of applicable

law. Directors shall be reimbursed for necessary and actual expenses incurred in the conduct of the Agency's official business as permitted by law and by policies adopted by the Board.

6.3 Board Officers. The role of Board Chair and Vice Chair shall be filled as follows:

(a) The Board of Directors shall, at its first meeting and periodically thereafter as may be specified in its Bylaws or otherwise agreed upon, elect a Chair and Vice-Chair by majority vote. The Chair and Vice-Chair shall coordinate with the Secretary to set meeting agendas and shall also have the duties set forth in any adopted Bylaws of the Agency. If either the Chair or Vice-Chair ceases to be a Director, the resulting vacancy will be filled at the next meeting of the Board.

(b) The Chair, or in the Chair's absence the Vice Chair, shall preside at and conduct all meetings of the Board and execute agreements and other official instruments on behalf of the Agency. In the absence or inability of the Chair to act, the Vice Chair shall act as Chair. In the absence of the Chair and the Vice Chair, the absent members may appoint a different member of the Board to serve as an alternate.

6.4 Meetings of the Board.

(a) *Annual Meeting.* The Board shall hold an annual meeting to review the services provided by the Agency and to consider approval of a budget, which shall be a regular meeting conducted in accordance with the provisions of the Ralph M. Brown Act, Sections 54950 *et seq.* of the California Government Code. The Board may hold additional regular meetings as determined by the Board and may adopt such procedures and resolutions for conducting such meetings and other business as the Board deems appropriate. Alternatively, the Board may establish an executive or other committee to hold regular meetings.

(b) *Conduct of Meetings.* All meetings of the Board including, without limitation, regular, adjourned regular, and special meetings shall be called, noticed and conducted in accordance with the provisions of the Ralph M. Brown Act, Sections 54950 *et seq.* of the California Government Code.

(c) *Quorum.* A simple majority of the Board that also represents at least 50% of the Agency's Voting Shares (defined below) shall constitute a quorum for the purpose of transacting business. In the absence of a quorum at any meeting of the Board, a majority of the Directors present, or the Chair in the absence of all Directors, or the Secretary may adjourn the meeting from time to time without further notice, but no other business may be transacted.

(d) *Voting.* Once a quorum has been established, in general, except when Special Voting is expressly required pursuant to subsection (i) below, the affirmative vote of a majority of the quorum that also represents at least 50% of the Agency's Voting Shares shall be required for the Agency to take any action. All votes taken pursuant to this section shall be referred to as a "Regular Vote." The consequence of a tie vote or a majority vote that does not represent at least 50% of the Agency's Voting Shares shall be "no action" taken.

(i) "Special Voting" requiring higher or different thresholds is required: (i) where different voting requirements are provided for by applicable law or this

Agreement; and (ii) approval of the annual budget and amendments, issuance of any bonds, exercise of eminent domain, incurrence of any debts, liabilities, obligations, certificates of participation or other evidence of indebtedness, and confirmation of the nominee for the position of Executive Director of Animal Services, each of which shall require an affirmative vote of the majority of the membership of the Board representing at least 50% of the Agency's Voting Shares and, in addition, an affirmative vote of Board Members representing at least two Member Agencies. This section shall not prohibit the Board from delegating the authority to purchase goods and services, including goods and services consistent with any adopted or applicable Agency purchasing policy, specified herein.

(ii) "Voting Shares" means the respective voting shares of each Member Agency as established in Exhibit B, as may be updated from time to time in the manner described therein. If the City of Ontario has two Directors on the Board, the Voting Shares attributable to the City of Ontario shall be divided equally between the Ontario Directors.

(e) *Location and Date.* The Board shall meet at the Agency's principal governance and business office as set forth in a resolution adopted by the Board, or at such other place as may be designated by the Board for its regular, adjourned regular, and special meetings consistent with this Agreement. The dates upon which, and the hour and place at which, any regular meeting shall be held shall be fixed by resolution of the Board and a copy of such resolution shall be provided to each Member Agency.

(f) *Agendas and Minutes.* The Board may select, appoint, or employ a Secretary to keep or cause to be kept, at the principal business office, the principal governance office, or such other place as the Board may order, a book or electronic copy of minutes of all meetings of the Board and its committees as required by law, with the time and place of holding, whether regular or special, the notice thereof given, the names of those present at the meetings, and the proceedings thereof. As soon as practicable after each meeting, the Secretary shall cause a copy of the minutes to be forwarded to each director of the Board, and to the Member Agencies. The Secretary need not be a director and shall serve at the pleasure of the Board.

6.5 Board Committees

(a) *Committees.* The Board may create any standing or ad hoc committees as it sees fit. The Board may delegate to any committee the authority to approve any action or transact any business of the Board. except for business that is required by this Agreement to be approved by the full Board.

(b) *Actions of Full Board.* Approval of budgets, issuance of any bonds, exercise of eminent domain, and incurrence of any debts, liabilities, obligations, certificates of participation or other evidence of indebtedness as may be set forth in the Agency's effective purchasing policy and any legislative actions as defined by State law shall require an action of the full Board and shall not be delegated to any Board committees.

(c) *Procedures.* Except for exempt ad hoc committees, all meetings of committees including, without limitation, regular, adjourned regular, and special meetings shall be called, noticed and conducted in accordance with the provisions of the Ralph M. Brown Act,

Sections 54950 *et seq.* of the California Government Code. Committees shall maintain minutes of their proceedings.

7. Executive Officers and Personnel

7.1 Executive Officers. The executive officers of the Agency shall include the Executive Director of Animal Services, Treasurer, Auditor/Controller, Secretary, and such other executive offices as created by the Board. All executive officers shall report to the Board.

(a) *Executive Director of Animal Services.* The Executive Director of Animal Services will be an officer nominated by a Nominating Committee composed of the City Manager of each Member Agency, or their designees, and subject to confirmation by the Board. The Nominating Committee may nominate one or more candidates for final consideration and appointment by the Board. The Executive Director of Animal Services shall carry out the decisions of the Board and act as the signatory for the Agency on all actions requiring approval of the Board unless otherwise required by law. The Executive Director of Animal Services shall be responsible for the proper and efficient day-to-day operation of the Agency as is or hereafter may be placed in his or her charge, or under his or her jurisdiction or control, pursuant to the provisions of this Agreement, or of any ordinance, resolution, bylaw or minute order of the Board. The Board shall confirm the nominee for the position of Executive Director of Animal Services (by an affirmative vote of the majority of the membership of the Board representing at least 50% of the Agency's Voting Shares and, in addition, an affirmative vote of Board Members representing at least two Member Agencies) and oversee the performance of the Executive Director of Animal Services. The Executive Director of Animal Services shall report to the Board on all of the following, in a manner prescribed by the Board:

(i) Plan, coordinate, supervise, and evaluate the Agency's operations, and conduct day-to-day operations of the Agency;

(ii) Supervise and manage Agency personnel;

(iii) Make recommendations to the Board on Agency operations;

(iv) Establish policies and procedures of the Agency to implement directives from the Board;

(v) In conjunction with the Treasurer, prepare an annual budget for submission to the Board.

The Executive Director of Animal Services shall be subject to dismissal by a majority vote of the Board representing at least 50% of the Voting Shares of the Agency.

(b) *Treasurer.* The Board shall appoint as the Agency Treasurer: (1) the Treasurer or Finance Director of one of the Member Agencies; (2) a certified public accountant; or (3) such other officer or employee of one of the Member Agencies as the Board shall deem qualified to act as the Agency Treasurer, so long as permitted by law. The Agency Treasurer shall perform such duties as are set forth in this Agreement and any other duties specified by the Board or as required by the Act, and shall perform the duties specified in Government Code

sections 6505 and 6505.5, as amended from time to time. The Agency Treasurer shall be the depositary of funds and shall have custody of all money of the Agency, from whatever source. The Board may at any time select, employ, or appoint a new or different Agency Treasurer meeting one or more of the above qualifications.

(c) *Auditor/Controller.* The initial Agency Auditor or Agency Controller shall be the same person serving as the Agency Treasurer. The Agency Auditor or Agency Controller shall perform such duties as are set forth in this Agreement and any other duties specified by the Board or as required by the Act. The Board may at any time select, employ, or appoint a new or different Agency Auditor or Agency Controller who shall be: (1) the auditor or controller of one of the Member Agencies; or (2) such other officer or employee of one of the Member Agencies as the Agency shall deem qualified to act as Agency Auditor or Agency Controller, so long as permitted by law.

(d) *Secretary.* The Board shall appoint a Secretary who shall serve at the pleasure of the Board. The Secretary shall be the official custodian of records for the Agency, make all filings requested by the Board and legally required, and be responsible for agendas and meeting minutes as provided in Section 6.4(f) of this Agreement.

7.2 Official Bond. Pursuant to Government Code section 6505.1, the public officer, officers or persons who have charge of, handle or have access to any property of the Agency shall file an official bond in an amount of $25,000, unless fixed by the Parties to this Agreement in a different amount by unanimous decision of the Board.

7.3 Other Officers and Staff

(a) *Attorney for Agency.* The Board of Directors may appoint a person, office, or firm to serve as Attorney for the Agency, who would attend all meetings of the Board of Directors; provided, however, that the absence of the Agency Attorney shall not affect the validity of any meeting. The Attorney shall perform such other duties as the Board of Directors specifies.

(b) *Officers and Professional Services.* The Board may select, appoint, or employ any other officers, or providers of professional and expert services, as may be necessary or appropriate to accomplish the purposes of this Agreement, including but not limited to, legal counsel, financial consultants, accountants, engineers, architects, contractors, appraisers and any other consultants and advisors, which may be a corporation, partnership, firm or individual. The Board may delegate to the Executive Director of Animal Services or to a committee the authority to hire officers and professional services.

(c) *Shared Resources.* The Board may contract with a Member Agency to provide necessary administrative services to the Agency as appropriate. All personnel employed by the individual Member Agencies shall remain employees of their respective Member Agency unless and until the Agency affirmatively employs such personnel pursuant to its powers. No express or implied employment contract between any Member Agency employee and the Agency exists as a result of this Agreement. The Board may designate a Member Agency to serve as Interim Administrator as further described in Exhibit A.

7.4 Interference Prohibited. The Board and the Member Agencies shall deal with the administrative services of the Agency (which includes the Agency's Treasurer, Auditor/Controller and Secretary) only through the executive officer of the Member Agency providing the administrative services (if provided by a Member Agency) or the Executive Director of Animal Services (if provided by an employee of the Agency), except for the purpose of inquiry. Neither the Board, the governing body of any Member Agency, nor any individual members of either shall give orders to any subordinate of the Executive Director of Animal Services.

7.5 Rules and Regulations. The Board shall forthwith adopt rules and regulations and perform all other acts necessary so that the Agency may hire personnel.

8. Equipment and Facilities.

8.1 Animal Shelter and Other Real Property.

(a) *Animal Shelter and Administrative Buildings.* The buildings that house the animal shelter and administration office operated by the Agency will be constructed by and owned by the Agency. The real property upon which the shelter building will be located is currently owned by the City of Ontario and is intended to be transferred to the Agency pursuant to a separate agreement. The original Member Agencies (the cities of Ontario, Chino, and any new Member Agencies who join the Agency pursuant to Section 14 of this Agreement by July 1, 2025) shall be the only entities with an ownership interest in the above-described real property following its transfer, and shall pay the Agency for their respective ownership interests in the property through their quarterly payments to the Agency over a period determined by the Agency and the original Member Agencies. New Member Agencies who join the Agency pursuant to Section 14 of this Agreement shall have an ownership interest in any other real property purchased by the Agency or construction pursuant to a construction contract awarded following the effective date of their inclusion in the Agency, and shall have the opportunity to assume the ownership interest of an original Member Agency should an original Member Agency withdraw from the Agency pursuant to Section 16 of this Agreement.

(b) *Member Agency Buildings and Structures*. Buildings and structures existing and owned by Member Agencies prior to the effective date of this Agreement may be utilized for the Agency's use, but shall remain the property of the respective Member Agency. Each Member Agency shall be responsible for the maintenance and insurance of Member Agency buildings. The Agency shall not directly own, maintain, or insure any existing building or structure other than those identified in subsection (a) above, unless the Agency and a Member Agency expressly agree in writing that the Agency accepts ownership, responsibility for maintenance, or responsibility to insure a particular building or structure. Any building constructed or owned by the Agency after the Formation Date shall be the property of the Agency, and in the event of dissolution of the Agency, shall be disposed of as provided in this Agreement.

(c) *Contributions of Real Property*. Any Member Agency may contribute real property to the Agency for the Agency's use. The Member Agency owning the interest in the real property shall continue to own said interest, unless the Member Agencies and Agency agree otherwise. The Board and the Member Agency owning the interest shall agree on the terms of the contribution.

(d) *Lease or Purchase of Additional Stations*. The Agency shall be authorized to lease, purchase, or obtain any other interest in real property for the Agency's uses.

8.2 Equipment and Other Personal Property.

(a) *Equipment Provided by Member Agencies*. As soon as reasonably practicable, the Agency shall inventory all equipment owned by the Member Agencies that is available for the Agency's use. All Member Agency equipment shall remain the property of that Member Agency, unless the Agency and that Member Agency otherwise agree. The Member Agency may contribute additional equipment for the Agency's use upon terms agreed between the Member Agencies and the Agency. The Agency may rent or borrow equipment from the Member Agencies for temporary use. All equipment owned by the Agency or subject to an equipment lease for financing purposes, shall remain the property of the Agency.

(b) *Acquisition of Equipment*. The Agency may acquire any equipment or other personal property for the Agency's use.

8.3 Separate Property of the Parties. Exhibit C, attached and incorporated by reference, establishes the property which is owned by a Member Agency and not the Agency, notwithstanding that the Agency may use that property.

9. **Financial Provisions.**

9.1 Administrative Services. Administrative services may be provided by the Member Agencies as described in Exhibit A, attached and incorporated by reference to this Agreement.

9.2 Operational and Capital Costs. All operational and capital improvements costs shall be allocated among the jurisdictions in accordance with the cost-sharing formula in Exhibit B, adopted by the Board and the governing bodies of the Member Agencies, and attached and incorporated by reference into this Agreement. Operational costs shall include costs for administrative services described in Exhibit A.

9.3 Billing of Members. Member Agencies will be billed quarterly by the Agency Treasurer, in accordance with the provisions of this Agreement Exhibit B. Member Agencies agree to pay the invoices on a quarterly basis.

9.4 Capital Purchases. Capital purchases that solely benefit a Member Agency shall be funded by that Member Agency. All other capital purchases shall be funded on terms established by the Board. The funding of capital purchases that are not budgeted shall be separately approved by the Board.

9.5 Budget.

(a) *Adoption.* The Board shall initially adopt a budget within 90 days of execution of this Agreement. The Board shall adopt a budget for operation and capital costs, and costs of special services and contract services, in time to allow review by the Member Agencies prior to April 30th of each fiscal year. The Agency's fiscal year shall be July 1 to June 30. No expenditures may be made by or on behalf of the Agency unless authorized by a budget or budget amendment approved by the Board.

(b) *Failure to Obtain Budget Approval.* In the event the Board does not adopt a budget prior to start of a fiscal year, the budgeted amounts of all expenses shall, except as required for debt payments or provided in multi-year agreements and other similar continuing legal obligations, remain the same as the amounts last approved by the Board in its most recently adopted budget; provided, however, that the amounts shall be increased by the Consumer Price Index ("CPI"). The CPI shall mean the Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers in the Riverside-San Bernardino-Ontario area (Riverside-San Bernardino-Ontario CPI-U) for the twelve (12) month period ending the January prior to the beginning of the fiscal year. This factor shall be applied to the budget until such time as a new budget is adopted by the Board. Any shortfall in available funds and other non-reserve funds shall be made up from available reserves dedicated by the Board for such purpose and, if insufficient to cover the shortfall, any available reserve funds which have not been designated by the Board for a particular purpose or otherwise legally restricted for other purposes. Reserves shall mean any available cash or investments. In the event that a shortfall in available funds exceeds available unrestricted reserves of the Agency, such resulting unfunded shortfall shall be carried forward into the subsequent fiscal year. Member Agencies shall have no obligation to cure such unfunded shortfall other than as may be provided in a separate agreement, including, but not limited to, a special services agreement under Exhibit B.

9.6 Invoicing. Upon completion of the initial budget, and thereafter at such other intervals as determined appropriate by the Board, the Agency shall determine the amount of the budget expenses payable during the ensuing period pursuant to each Member Agency's share of expenses required by this Agreement, and the budget approved by the Board. The Agency shall submit to each Member Agency an invoice showing the Member Agency's share for the applicable period together with a calculation of the Member Agency's share. Each Member Agency shall pay to the Agency the amount invoiced within 30 days after the date of the invoice. Any amount not paid within 60 days of the date of an invoice shall be delinquent.

9.7 Default and Delinquency. Any Member Agency which defaults in its obligation to pay or advance any amounts due pursuant to this Agreement after such amounts have become delinquent shall be deemed to have waived and relinquished any rights and benefits it may have under this Agreement. Any defaulting Member Agency shall be liable to the Agency for interest on the unpaid amount at the rate of 10% per annum, or the maximum rate allowed by law if it is less than 10% per annum, until the overdue invoice amount is paid in full. If the Agreement is terminated, then the defaulting Member Agency shall remain liable for payment of its share of debts, liabilities and obligations under this Agreement incurred prior to the date of termination, plus interest.

9.8 Accounting. The Agency shall maintain strict accountability of all funds, receipts and expenses, and shall keep and maintain appropriate records and accounts of all funds, receipts and expenses under this Agreement in accordance with generally accepted accounting practices for California public agencies and the requirements of the Act. The Agency shall allow any Member Agency, or any of its employees, accountants, attorneys or agents to review, inspect, copy and audit any such records and accounts.

9.9 Record of Contributions. The Agency shall maintain records of all equipment, property and assets contributed by each Member Agency and by the Agency, including any staff resources contributed to the Agency.

9.10 Audit. The records and accounts of the Agency shall be audited annually by an independent certified public accountant and copies of such audit reports shall be filed with the State and each Member Agency pursuant to the requirements of Section 6505 through 6505.6 of the Government Code. The audit shall conform to generally accepted auditing standards. Such report shall be filed within 12 months after the end of the fiscal year or years under examination, and no later than fifteen (15) days after receipt of such audit reports by the Agency.

9.11 Expenditures. The Board shall establish and comply with a system and procedure for the review and approval of Agency expenditures and claims and the drawing and signing of Agency warrants or checks. All expenditures shall be consistent with the approved budget, except as otherwise determined by the Board.

9.12 Commitment to Use of Agency Services. In order to ensure and maximize the financial success of the Agency, following the Agency's commencement of providing animal shelter and/or control services, the Member Agencies agree to direct all inquiries and needs for animal shelter and/or control services within their respective jurisdictions to the Agency.

10. **Debts, Liabilities, Obligations; Contracts with Public Retirement Systems.**

10.1 Subject to all applicable laws, including but not limited to Government Code section 6508.1, all debts, liabilities, and obligations of the Agency shall be those of the Agency, and do not constitute debts, liabilities, or obligations of any one or more of the Member Agencies. The responsibilities and obligations of each Member Agency to this Agreement shall be solely as provided in this Agreement, or as provided in supplemental agreements or amendments as shall be executed by the Member Agencies.

10.2 The Agency shall not contract with a "public retirement system," as defined in Government Code section 6508.1(b), unless this Agreement is amended to expressly authorize such a contract. If the Parties amend this Agreement to authorize such a contract, such amendment shall address the Parties' respective responsibilities for the Agency's retirement liabilities in the event of termination or withdrawal.

10.3 The debts, liabilities and obligations of each Member Agency in existence or accrued as of the full execution of this Agreement shall remain the debts, liabilities and obligations of that Member Agency and shall not be assumed by or transferred to the Agency. After the execution of this Agreement by both Member Agencies, however, any existing debt,

liability or obligation of the Member Agencies may be expressly approved or accepted by the Agency by a formal written action of the Board.

11. **Indemnity and Hold Harmless; Insurance.**

11.1 Indemnification of Member Agencies. The Agency shall indemnify, defend and hold harmless the Board of Directors, the individual Member Agencies, and their members, officers, directors, employees and agents from and against any and all liability, loss, damages, expenses, costs (including, without limitations, costs and fees of litigation or arbitration) of every nature, arising out of any Agency act or omission related to this Agreement, except such loss or damage which was caused by the willful misconduct of the Board of Directors, any individual Member Agency, or their members, officers, directors, employees and agents.

11.2 Indemnification for Prior/Separate Acts. Each Member Agency (Indemnifying Member Agency) shall defend, indemnify and hold harmless the Agency, each Director, the other Member Agency, and the Agency and each Member Agency's respective Council or governing body members, officers, agents and employees, from any and all claims, losses, damages, costs, injuries and liabilities of every kind, including attorney's fees and expert's fees, arising directly or indirectly from the Indemnifying Member Agency's acts or omissions occurring prior to the effective date of the Agency's initial Effective Date, or that otherwise occur outside the scope of this Agreement.

11.3 Insurance. The Agency shall acquire insurance protection as is necessary to protect the interests of the Agency and the Member Agencies. The premiums for insurance acquired by the Agency, as well as any anticipated funds necessary to pay for self-insured retentions and deductibles for insurance, shall be determined based upon actuarial studies and included in the budget. Any adjustments to the budget to pay for insurance premiums, self-insured retentions, and deductibles shall be prepared by staff for presentation to the Board of Directors for consideration and approval.

11.4 Survival. These defense, indemnification, and hold harmless obligations shall survive and continue in full force and effect after withdrawal of any Member Agency from this Agreement or termination of this Agreement for any reason with respect to any acts, errors or omissions that occurred before the date of such withdrawal or termination.

12. **Termination.**

12.1 Termination.

(a) If there are at any point only two Member Agencies in the Agency, either Member Agency may unilaterally terminate the Agreement with an effective termination date of June 30 of any Fiscal Year, provided that written notice is provided to, and received by, the Agency and the other Member Agency by the terminating Member Agency no later than June 30 of the prior Fiscal Year, as expressed by vote of the governing body of the terminating Member Agency. Any terminating Member Agency shall be obligated to pay that Member Agency's contributions for the Fiscal Year ending on the effective date of termination.

(b) The Member Agencies may all jointly agree by written consent to terminate the Agreement, as expressed by resolution of the governing boards of all Member Agencies (passed by vote of the membership of the governing body of each Member Agency). Such termination shall provide for adequate time to wind-up the affairs of the Agency and distribute any assets pursuant to this Agreement. The Member Agencies shall be obligated to pay their contributions until the effective date of termination.

12.2 Disposition of Member Agencies' Property Upon Termination. Any property that was acquired by a Member Agency prior to entering this Agreement, and that is required either by this Agreement or by any subsequent act or agreement to remain the property of the Member Agency, shall be returned to the Member Agency upon termination of this Agreement. Exhibit C lists the separate property of the Member Agencies, but a Member Agency may prove that it, and not the Agency, owns certain property by providing documentation establishing such ownership. If property is not listed in Exhibit C, and no documentation establishes ownership of that property, the property will be presumed to be owned by the Agency.

12.3 Disposition of Agency Property Upon Termination. Upon termination of this Agreement, the assets and property of the Agency shall be distributed as follows:

(a) First, if a Member Agency is in default of its obligation to pay or advance any amounts due to Agency pursuant to this Agreement, then any funds or assets of the defaulting Member Agency shall be applied to the Agency in satisfaction of any such delinquency.

(b) Second, any other funds on hand shall be used to liquidate and wind-up the affairs of the Agency.

(c) Third, any surplus funds on hand remaining after satisfaction of subsections (a) and (b) above shall then be returned to the Member Agencies in proportion to their proportional financial contributions made to the Agency.

(d) Fourth, any property acquired by a Member Agency prior to entering this Agreement shall be returned to the Member Agency which owned the property at the Formation Date; provided, however, that if any such property has been substantially improved, repaired or modified by Agency funds, it shall be distributed pursuant to subsection (e) below.

(e) Fifth, any property owned by the Agency in which the original Member Agencies or their successors hold an ownership interest pursuant to Section 8.1(a) shall be transferred or returned to such Member Agencies pursuant to a separate agreement of such Member Agencies entered into at that time. If such subsequent agreement is not successfully negotiated and agreed to within a reasonable period of time, then the Member Agency previously owning the property shall have the option, exercisable in its discretion, to purchase the property, in whole or in part, for fair market value at the time of the exercise of the option. Within 90 days notice of exercise of the option, or as soon as reasonably possible thereafter, the Agency shall notify the Member Agency previously owning the property of the Agency's reasonable determination of the amount of the purchase price of the property, including any improvements thereon. Upon mutual agreement on a purchase price determined under this section and payment

thereof, the Agency will sell, assign, transfer, convey and deliver to such Member Agency all of its right, title, and interest in the purchased assets, and Agency will pay the other original Member Agencies that had an interest in the property in proportion to their financial and equipment contributions made to the Agency during the operation of this Agreement and any ancillary agreements, including contributions specifically related to ownership interest in the subject property.

(f) Sixth, any remaining property and assets shall be divided and distributed amongst the Member Agencies pursuant to separate agreement of the Member Agencies entered into at that time. If such subsequent agreement is not successfully negotiated and agreed to within a reasonable period of time, then the remaining property and assets shall be sold and the net proceeds from any sale shall be distributed among the Member Agencies in proportion to their financial and equipment contributions made to the Agency during the operation of this Agreement and any ancillary agreements.

13. **Conflict Resolution.** The Member Agencies agree that any and all disputes, claims or controversies between the Member Agencies arising out of or relating to performance of this Agreement, shall be resolved pursuant to the conflict resolution provisions as follows:

13.1 The Member Agencies shall first meet and attempt in good faith to negotiate and resolve any dispute arising out of or relating to this Agreement, subject to subsequent approval of any such resolution by the respective governing boards. The Member Agencies may, in each Member Agency's respective discretion, appoint either an alternative representative of the governing body or an ad hoc committee constituting less than a quorum of the governing body to meet and attempt in good faith to negotiate and resolve any dispute arising out of or relating to this Agreement, subject to subsequent approval of any such resolution by the respective governing boards.

13.2 If the matter is not resolved by negotiation pursuant to Section 13.1 above, then the Member Agencies agree that the matter shall be submitted to mediation within a reasonable period of time after receipt of a written request from one Member Agency to the other Member Agency requesting such mediation. The Member Agencies shall cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. Should the Member Agencies be unable to agree upon a mediator, they shall agree upon a mediation service and shall have that service select a mediator for them. The Member Agencies agree that they shall participate in the mediation in good faith and that they will share equally in the costs of mediation. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Member Agencies, their agents, employees, experts and attorneys, and by the mediator or any employees of the mediator, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the Member Agencies, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

13.3 If the matter is not resolved by negotiation pursuant to Section 13.1 above, or by subsequent mediation pursuant to Section 13.2 above, then the Member Agencies may submit the matter to binding or non-binding arbitration, but only if both Member Agencies agree to

submit the particular controversy to arbitration. Neither Member Agency shall have a right to submit any controversy to arbitration without the other Member Agency's consent.

14. **New Members.**

14.1 Addition of New Members. The Board may set the terms and conditions for admitting new members (a "New Member Agency" or "New Member") that it deems appropriate either by amendment to this Agreement or reference to the Bylaws or other adopted resolution or policy of the Agency. New Members may only be admitted with unanimous approval of the Board and approval by each governing body of the Member Agencies. Approved New Members shall execute a copy of this Agreement, as amended, and shall thereafter be subject to all terms and conditions contained herein.

14.2 Construction. Except as otherwise expressly set forth herein, the terms of this Agreement shall be construed so as to apply to New Members the same as to the initial Member Agencies to the Agreement. New Members shall have the rights and obligations accorded to "Members" or "Member Agencies" (whether singular or plural) under this Agreement.

14.3 Cost Share. Prior to the acceptance of any New Member Agency, the proposed New Member Agency shall pay an amount, as determined by the Board, for the proposed New Member Agency's fair share of any start-up costs or other initial investments incurred by the Agency as consideration for admitting the New Member Agency.

14.4 Funding of Services. The Agency shall not provide any animal control, animal sheltering, or related services within a New Member Agency's geographic area unless and until the New Member Agency deposits sufficient funds to cover the estimated costs of services for a period of time as determined by the Board, to be not less than six (6) months.

15. **Contracting with Other Agencies.**

16.1 Authority to Contract for Services. In accordance with its statutory authority, the Agency may offer its services to nonmember public agencies upon such terms as may be mutually agreed upon by the parties.

16. **Withdrawal.** Notwithstanding any other provision of this Agreement, any Member Agency may withdraw from the Agency by providing the Agency with written notice of its intent to withdraw consistent with Section 12.1 of this Agreement, Termination. This includes providing written notice no later than June 30 of any Fiscal Year, a continuing obligation to pay that Member Agency's contributions for following Fiscal Year (the last date of which will be the effective date of termination), and following Section 12.1.b. for the procedure where the Members Agency may jointly agree by written consent on the withdrawal of a Member Agency. A withdrawal from the Agency constitutes a withdrawal of that Member Agency's representatives from the Board of Directors.

17. **Effect of Withdrawal.** The withdrawal of a Member Agency shall not terminate its responsibility to contribute its share of any obligation incurred by the Agency, including amounts determined by the Board for (1) liabilities and claims accrued during the time the agency was a Member Agency; or (2) budgeted expenses for the Fiscal Year in which notice of intent to

withdraw is effective. Except as the withdrawing Member Agency may agree, in writing, with the Board, the withdrawing Member Agency shall automatically relinquish all rights as a Member Agency under this Agreement, on the effective date of the withdrawal. Upon termination of this Agreement, a Member Agency that has withdrawn will be treated like all other Member Agencies for purposes of disbursement of Agency assets, unless otherwise agreed in writing and the remaining Member Agencies of the Agency can maintain the name "West End Animal Services Agency."

18. **Conflict of Interest Code**. The Agency shall adopt a Conflict of Interest Code consistent with the Fair Political Practices Commission's Model Conflict of Interest Code.

19. **General Provisions.**

19.1 Integration. This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this contract among the Member Agencies concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, either oral or written, that may be related to the subject matter of this Agreement, except those other documents that are expressly referenced in this Agreement.

19.2 Headings. The section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

19.3 Consents. Whenever any consent and/or approval is required under this Agreement from any Member Agency, said consent and/or approval shall not be unreasonably withheld.

19.4 Construction and Interpretation. It is agreed and acknowledged by the Member Agencies that this Agreement has been arrived at through negotiation, and that each Member Agency has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting Member Agency shall not apply in construing or interpreting this Agreement.

19.5 Waiver. The waiver at any time by any Member Agency of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.

19.6 Remedies Not Exclusive. The remedies provided in this Agreement are cumulative and not exclusive, and are in addition to any other remedies that may be provided by law or equity. The exercise by either Member Agency of any remedy under this Agreement shall be without prejudice to the enforcement of any other remedy.

19.7 Severability. The invalidity, illegality or unenforceability of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

19.8 Successors and Assigns. Except as otherwise provided by law, the rights and duties of the Member Agencies under this Agreement shall not be assigned or delegated without the prior written consent of the other Member Agency. Any attempt to assign or delegate such

rights or duties in contravention of this Agreement shall be null and void. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities and other obligations of the Agency then in effect, and may be subject to such additional reasonable conditions of approval imposed by the Member Agency approving the assignment or delegation.

19.9 No Third Member Agency Beneficiaries. This Agreement shall not be construed to create any third party beneficiaries. This Agreement is for the sole benefit of the Member Agencies, and their permitted successors, transferees and assignees, and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement or any of its terms.

19.10 Amendment. This Agreement may be modified or amended only by a subsequent written agreement approved by the governing board of each Member Agency and executed by both Member Agencies pursuant to the terms and conditions of this Agreement.

19.11 Governing Law and Venue. Except as otherwise required by law, this Agreement shall be interpreted, governed by, and construed under the laws of the State of California. The County of San Bernardino shall be the venue for any litigation concerning the enforcement or construction of this Agreement.

19.12 Attorney Fees. In the event any legal action is brought to enforce or construe this Agreement, the prevailing party shall be entitled to an award of reasonable attorney fees, expert witness and consulting fees, litigation costs and costs of suit.

19.13 Notice. Any notice, demand, invoice or other communication required or permitted to be given under this Agreement shall be in writing and either served personally or sent by prepaid, first class U.S. mail to the City Clerk and City Attorney of each Member Agency.

Any notice or other communication served by personal delivery shall be deemed received when actually delivered. Any notice or other communication shall be deemed as received three days after deposit in United States mail, postage prepaid, return receipt requested.

19.14 Counterparts. This Agreement may be executed by the Member Agencies 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.

[signature page follows]

IN WITNESS WHEREOF, the Member Agencies hereto have executed this Joint Exercise of Powers Agreement as of the date last executed as set forth below.

CITY OF ONTARIO

By _____
City Manager

Dated 7/24/24

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

CITY OF CHINO

By _____
Linda Reich, City Manager

Dated 7-16-24

ATTEST:

By _____
Natalie Gonzaga, City Clerk

APPROVED AS TO FORM:

_____
Fred Galante, City Attorney

SIGNATURE PAGE OF THE CITY OF MONTCLAIR AGREEING TO BECOME A PARTY TO THE ANIMAL RESOURCE CENTER OF THE INLAND EMPIRE POWER JOINT POWERS AGREEMENT

The City of Montclair, California hereby agrees to become a Party to the Animal Resource Center of the Inland Empire Joint Powers Agreement dated July 16, 2024, as amended on January 27, 2025 (previously known as the "West End Animal Service Agency Joint Powers Agreement"). pursuant to Section 14 of the Agreement.

CITY OF MONTCLAIR

By: _____
Name: Javier John Dutrey
Title: Mayor

Date: 2.18.2025

ATTEST:

By: _____
Name: Andrea M. Myrick
Title: City Clerk

APPROVED AS TO FORM:

By: _____
Name: Diane E. Robbins
Title: City Attorney

Note: The addition of the above-named entity as a Party to the Animal Resource Center of the Inland Empire Joint Powers Agreement is subject to satisfaction of the conditions set forth in Section 14 of the Agreement and such other conditions as previously adopted by resolution of the Animal Resource Center of the Inland Empire Board of Directors.

SIGNATURE PAGE OF THE COUNTY OF SAN BERNARDINO AGREEING TO BECOME A PARTY TO THE ANIMAL RESOURCE CENTER OF THE INLAND EMPIRE POWER JOINT POWERS AGREEMENT

The County of San Bernardino, California hereby agrees to become a Party to the Animal Resource Center of the Inland Empire Joint Powers Agreement dated July 16, 2024, as amended on January 27, 2025 (previously known as the "West End Animal Service Agency Joint Powers Agreement"), pursuant to Section 14 of the Agreement.

COUNTY OF SAN BERNARDINO

By: Dawn Rowe

Name: Dawn Rowe

Title: Chair, Board of Supervisors

Date: FEB 2 5 2025

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD.
LYNNA MONELL
Clerk of the Board of Supervisors
of San Bernardino County
By _____ Deputy

ATTEST:

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Name: Adam Ebright

Title: Deputy County Counsel

Date: 02/13/2025

Note: The addition of the above-named entity as a Party to the Animal Resource Center of the Inland Empire Joint Powers Agreement is subject to satisfaction of the conditions set forth in Section 14 of the Agreement and such other conditions as previously adopted by resolution of the Animal Resource Center of the Inland Empire Board of Directors. Without limiting the generality of the foregoing, County expressly acknowledges that services provided by the Animal Resource Center of the Inland Empire to the County under the Joint Powers Agreement will only be for those areas located in the "West End" of the County's unincorporated area, as described on Exhibit A of the Board of Directors resolution approving the County's admission as a Party to the Joint Powers Agreement.

EXHIBIT A
ADMINISTRATIVE SERVICES

Personnel: To be separately hired/controlled by Agency, and/or to be provided by Member Agencies by agreement as part of their overall contribution.

Specifically, the Agency will require the following services:

- Human Resources/Risk Management
- Dispatch Services
- Information Technology Management
- Fleet Management
- Procurement and Purchasing
- Legal Services
- Facilities Management (including janitorial)
- Finance/Budgeting

Provision by a Member Agency of any of the above services shall be compensated by the Agency as set forth in a separate written agreement or as described below for Interim Administrator(s). Compensation methods may include payment of a quarterly fee by the Agency to the Member Agency or recognition of the quarterly amount as an indirect contribution made by the respective agency to be deducted from the contributing Member Agency's proportional allocation of costs for the operation of the Agency.

Interim Administration:

Until the Agency directly employs personnel to provide administrative services for the Agency or enters into a separate written agreement for employees of a Member Agency to provide administrative services, the Board may identify one or more Member Agencies to provide specified services as the Agency's "Interim Administrator(s)" pursuant to the terms and conditions set forth below:

- In no event shall the term of Interim Administrator extend beyond July 1, 2025, without approval of the Board, and any extension shall not last more than one (1) year.

- As Interim Administrator, the Member Agency shall perform all services reasonably necessary for the management and administration of the Agency, including but not limited to identifying key staff that will provide services to the Board and the Agency, including staff who shall serve as Secretary and Treasurer/Auditor-Controller pursuant to Section 7.1(b)–(d) of the Agreement.

- Such key staff shall at all times remain under the exclusive direction and control of the Member Agency. The Member Agency shall be responsible for all compensation, supervision, and administrative costs relating to Member Agency staff providing services as the Interim Administrator.

- In order to compensate the Member Agency for the performance of services as Interim Administrator, the agreed value of the Member Agency's indirect contribution shall be set forth in a writing approved by the Board and the Member Agency's City Manager following the Formation Date, and may be revised as necessary in a writing approved by the Board and the Member Agency based on the Member Agency's projections of the cost to perform its services as Interim Administrator. The compensation may be provided by payment of a quarterly fee by the Agency to the Member Agency or recognition of the quarterly amount as an indirect contribution made by the respective agency to be deducted from the contributing Member Agency's proportional allocation of costs for the operation of the Agency.

- For Agency-budgeted expenses incurred by the Member Agency for contractors, consultants, and other outside services, materials, and supplies, the Member Agency shall draw upon and expend its own funds and the Agency shall reimburse the Member Agency from Agency funds upon receipt of a quarterly invoice from the Member Agency or be credited in its quarterly payments to the Agency. The Agency shall pay each invoice or recognize the credit within thirty (30) days of its receipt.

- Interim Administrator contributions and reimbursable expenditures by the Member Agency shall be subject to the Agency's adopted budget, unless such amounts and reimbursable expenditures have been previously approved by the Agency's Board.

- A representative of the Member Agency, which shall be an employee of the Member Agency that is not assigned to deliver services as Interim Administrator, shall serve as the main point of contact for the Agency. Any concerns regarding the Member Agency's performance as Interim Administrator, including staff identified to perform services required of the Interim Administrator, shall be relayed to the designated point of contact. The Agency shall not have the ability to direct how services are to be performed, specify the location where services are to be performed, or establish hours or days for the performance of services provided by Member Agency staff.

- The Agency shall not have any right to discharge or discipline any member of the Member Agency's staff. The Member Agency is retained as an independent contractor and is not an employee of Agency. No employee or agent of the Member Agency shall become an employee of the Agency pursuant to the Member Agency's role as Interim Administrator, and Member Agency employees or agents assigned to provide services under this Agreement shall remain under the exclusive control of the Member Agency.

- The Agency shall defend, indemnify, and hold harmless the Member Agency serving as Interim Administrator and its officials, officers, employees, contractors, agents, and authorized volunteers from any and all claims, demands, damages, liabilities, fines, expenses, and related costs and fees, including attorney's fees, arising from or related to the Member Agency's performance of services as the Interim Administrator.

EXHIBIT B
CONTRIBUTION FORMULA

From and after the Formation Date, each Member Agency shall pay for the ongoing costs of the Agency according to the following formula, to be initially calculated at the time of the formation of the Agency.

Initial Share of Contributions / Voting Shares

Ontario	58%
Chino	28%
Montclair	10%
County of San Bernardino	4% (West End unincorporated area only)

Determination of Future Share of Contributions / Voting Shares

Thereafter, each Member Agency's proportional share will be recalculated: (1) once every five years, and/or (2) upon a unanimous vote to authorize the induction of a New Member Agency pursuant to the Agreement. Expenses of the Agency are to be paid by each Member Agency in proportion to the services provided to each Member Agency. Determination of the proportion of services provided to each Member Agency shall be based upon actual or estimated number of calls for animal control service from each Member Agency, the number of animals sheltered from each Member Agency, and/or other factors reasonably bearing on the Agency's costs, as reasonably determined by the Board. For example, if Ontario receives 58% of the Agency's services and Chino receives 28%, Ontario's funding contribution would be 58%, Chino's would be 28%.

Every five years and upon a unanimous vote to authorize the induction of a New Member Agency, the Board shall adopt an addendum to this Exhibit B showing the updated Share of Contributions / Voting Shares, which shall be ministerially added to the Agreement.

Offsets

Each Member Agency may offset its financial contributions by licenses/fee revenues, and/or by making "in-kind" contributions such as personnel or meeting room space. Costs for such contributions shall be reasonable and as set forth in a written agreement between a Member Agency and the Agency.

Additional Costs for Special Services

If a Member Agency wants additional animal services in its jurisdictional area, the cost allocation for such additional service can be made upon action by the Board and reflected in a written "special services" agreement with the Member Agency. Full cost of "special services" should be borne by the requesting Member Agency.

Services to Other Agencies

Other public agencies who contract with the Agency for services in their jurisdiction but who do not qualify or wish to be inducted as Member Agencies will be responsible for paying their actual costs pursuant to a written "contract services" agreement with the Agency, plus any startup or entry costs deemed appropriate by the Board. Such public agency will be considered only a "contracting agency" and not a Member Agency with voting power or other rights of membership for purposes of this Agreement.

FIRST AMENDMENT TO THE WEST END ANIMAL SERVICES AGENCY JOINT EXERCISE OF POWERS AGREEMENT

This First Amendment to the Joint Exercise of Powers Agreement of the West End Animal Services Agency ("First Amendment") is made and entered into by and between those certain public agencies, hereinafter referred to as the "Parties" or "Member Agencies," which have duly executed the Joint Exercise of Powers Agreement for the West End Animal Services Agency ("Agency"). This First Amendment is effective as of the last date of execution of the First Amendment by the Parties.

RECITALS

WHEREAS, the Joint Exercise of Powers Agreement for the West End Animal Services Agency ("Agreement") between the City of Ontario and City of Chino was executed as of July 16, 2024, and effective as of August 1, 2024, for the purposes of providing animal control, animal shelter, and related animal services within the jurisdiction of the Member Agencies and such agencies as the Agency may contract with for such services; and

WHEREAS, Section 19.10 of the Agreement provides that the Agreement may be modified or amended by a subsequent written agreement approved by the governing body of each Member Agency and executed by the Member Agencies; and

WHEREAS, on January 16, 2025, the Agency's Board of Directors voted to request that the Member Agencies approve an amendment to the Agreement changing the Agency's name from "West End Animal Services Agency" to "Animal Resource Center of the Inland Empire".

AGREEMENT

NOW, THEREFORE, it is mutually agreed by and between the Parties to amend the Agreement, as follows:

1. Recitals. The Recitals set forth above are true and correct and are incorporated into the body of this First Amendment as though expressly set forth herein.

2. Amendment of Agreement to Change Agency Name. The Agreement is hereby amended to change the name of the Agency to "Animal Resource Center of the Inland Empire." All references to "West End Animal Services Agency," including but not limited to the references set out in the title of the Agreement, Section 4.1(a) (Confirmation of Agency Name), and in all other places throughout the Agreement, shall be changed to "Animal Resource Center of the Inland Empire."

3. Full Force. Except as specifically amended herein, the Agreement shall remain in full force and effect.

4. Effect of Amendment. Except as expressly set forth in this Amendment, all other sections, provisions, exhibits and commitments of the Agreement remain unchanged and in full force and effect.

5. Counterparts. This Amendment may be executed in one or more counterparts, including facsimile counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the date of the last signature below.

CITY OF ONTARIO

Name: Scott Ochoa
Title: City Manager
Date: 1-27-25

CITY OF CHINO

Name: Dr. Linda Reich
Title: City Manager
Date: 1-22-25

ATTEST:

Claudia Isbell, Assistant City Clerk

ATTEST:

Natalie Gonzaga, City Clerk

APPROVED AS TO FORM:

for Ruben Duran, City Attorney

APPROVED AS TO FORM:

Fred Galante, City Attorney

NOTE:

Upon the Effective Date of the admission of the City of Chino Hills to the Animal Resource Center of the Inland Empire, the attached addendum reflecting updated Initial Share of Contributions / Voting Shares will be ministerially added as Exhibit B of the Joint Powers Agreement.

EXHIBIT B
CONTRIBUTION FORMULA

From and after the Formation Date, each Member Agency shall pay for the ongoing costs of the Agency according to the following formula, to be initially calculated at the time of the formation of the Agency.

Initial Share of Contributions / Voting Shares

Ontario	53%
Chino	20%
Chino Hills	15%
Montclair	8%
County of San Bernardino	4% (West End unincorporated area only)

Note: As further described in the Board's resolution admitting Chino Hills and setting terms and conditions for its admission, Chino Hills will not receive animal control and sheltering services from the Agency until FY 2027-2028, unless otherwise mutually agreed by the Parties. Notwithstanding the preceding sentence, (1) Chino Hills will pay for its share of capital costs beginning in FY 2025-2026, which may include but not be limited to its share of ownership interests in the permanent shelter property and permanent shelter design, pre-construction, construction, and similar costs; and (2) in lieu of FY 2024-2025 contributions to the Agency's budget for startup costs, Chino Hills will pay for, contribute to a fund for, or reimburse the Agency for, a truck and horse trailer to be owned by the Agency, in an amount not to exceed $150,000. Chino Hills' share of capital costs in FY 2025-2026 and 2026-2027, and share of all costs in FY 2027-2028 and beyond shall be consistent with the above shares.

Determination of Future Share of Contributions / Voting Shares

Thereafter, each Member Agency's proportional share will be recalculated: (1) once every five years, and/or (2) upon a unanimous vote to authorize the induction of a New Member Agency pursuant to the Agreement. Expenses of the Agency are to be paid by each Member Agency in proportion to the services provided to each Member Agency. Determination of the proportion of services provided to each Member Agency shall be based upon actual or estimated number of calls for animal control service from each Member Agency, the number of animals sheltered from each Member Agency, and/or other factors reasonably bearing on the Agency's costs, as reasonably determined by the Board. For example, if Ontario receives 53% of the Agency's services and Chino receives 20%, Ontario's funding contribution would be 53%, Chino's would be 20%.

Every five years and upon a unanimous vote to authorize the induction of a New Member Agency, the Board shall adopt an addendum to this Exhibit B showing the updated Share of Contributions / Voting Shares, which shall be ministerially added to the Agreement.

Offsets

Each Member Agency may offset its financial contributions by licenses/fee revenues, and/or by making "in-kind" contributions such as personnel or meeting room space. Costs for such contributions shall be reasonable and as set forth in a written agreement between a Member Agency and the Agency.

Additional Costs for Special Services

If a Member Agency wants additional animal services in its jurisdictional area, the cost allocation for such additional service can be made upon action by the Board and reflected in a written "special services" agreement with the Member Agency. Full cost of "special services" should be borne by the requesting Member Agency.

Services to Other Agencies

Other public agencies who contract with the Agency for services in their jurisdiction but who do not qualify or wish to be inducted as Member Agencies will be responsible for paying their actual costs pursuant to a written "contract services" agreement with the Agency, plus any startup or entry costs deemed appropriate by the Board. Such public agency will be considered only a "contracting agency" and not a Member Agency with voting power or other rights of membership for purposes of this Agreement.

SIGNATURE PAGE OF THE CITY OF CHINO HILLS AGREEING TO BECOME A PARTY TO THE ANIMAL RESOURCE CENTER OF THE INLAND EMPIRE POWER JOINT POWERS AGREEMENT

The City of Chino Hills, California hereby agrees to become a Party to the Animal Resource Center of the Inland Empire Joint Powers Agreement dated July 16, 2024, as amended on January 27, 2025 (previously known as the "West End Animal Service Agency Joint Powers Agreement"), pursuant to Section 14 of the Agreement.

CITY OF CHINO HILLS

By: _____
Name: _____
Title: _____

Date: _____

ATTEST:

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____

Note: The addition of the above-named entity as a Party to the Animal Resource Center of the Inland Empire Joint Powers Agreement is subject to satisfaction of the conditions set forth in Section 14 of the Agreement and such other conditions as previously adopted by resolution of the Animal Resource Center of the Inland Empire Board of Directors.

RESOLUTION NO. ARC-011

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE ANIMAL RESOURCE CENTER OF THE INLAND EMPIRE, AUTHORIZING THE ADDITION OF THE CITY OF CHINO HILLS AS A MEMBER OF THE AGENCY.

WHEREAS, the Animal Resource Center of the Inland Empire ("Agency") is a joint powers agency established pursuant to the Joint Exercise of Powers Act (Gov. Code § 6500 *et seq.*) and a Joint Exercise of Powers Agreement ("JPA Agreement") effective August 1, 2024; and

WHEREAS, Section 14.1 of the JPA Agreement provides that Agency's Board of Directors ("Board") may set the terms and conditions for admitting new members (a "New Member Agency" or "New Member") that it deems appropriate either by amendment to the JPA Agreement or reference to the Bylaws or other adopted resolution or policy of the Agency; and

WHEREAS, Section 14.1 of the JPA Agreement further provides that New Members may only be admitted with unanimous approval of the Board and approval by each governing body of the Member Agencies; and

WHEREAS, Section 14.1 of the JPA Agreement further provides that approved New Members shall execute a copy of the JPA Agreement and shall thereafter be subject to all terms and conditions contained therein; and

WHEREAS, Section 14.2 of the JPA Agreement provides that, except as otherwise expressly set forth therein, the terms of the JPA Agreement shall be construed so as to apply to New Members the same as to the initial Member Agencies to the JPA Agreement and that New Members shall have the rights and obligations accorded to "Members" or "Member Agencies" (whether singular or plural) under the JPA Agreement; and

WHEREAS, Section 14.3 of the JPA Agreement provides that prior to the acceptance of any New Member Agency, the proposed New Member Agency shall pay an amount, as determined by the Board, for the proposed New Member Agency's fair share of any start-up costs or other initial investments incurred by the Agency as consideration for admitting the New Member Agency; and

WHEREAS, Section 14.4 of the JPA Agreement provides that the Agency shall not provide any animal control, animal sheltering, or related services within a New Member Agency's geographic area unless and until the New Member Agency deposits sufficient funds to cover the estimated costs of services for a period of time as determined by the Board, to be not less than six (6) months; and

WHEREAS, Section 8.1 of the JPA Agreement provides that original Member Agencies (the cities of Ontario, Chino, and any new Member Agencies who join the Agency pursuant to Section 14 of the JPA Agreement by July 1, 2025) shall have an ownership interest in the real property described in Section 8.1 of the JPA Agreement

following its transfer by the City of Ontario to the Agency, and shall pay the Agency for their respective ownership interests in the property through their quarterly payments to the Agency over a period determined by the Agency and the original Member Agencies; and

WHEREAS, on May 6, 2025, the Board of Directors of the Agency considered the membership of the City of Chino Hills.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the Animal Resource Center of the Inland Empire:

1. The above recitals are true and correct and are incorporated herein.

2. The Board hereby unanimously approves the inclusion of the City of Chino Hills as a Party to the JPA Agreement and member of the Animal Resource Center of the Inland Empire, subject to the following conditions:

   a. Approval by each governing body of the existing Member Agencies;

   b. The City will not receive animal control and sheltering services from the Agency until FY 2027-2028, unless otherwise mutually agreed by the Parties. Notwithstanding the preceding sentence: (1) the City will pay for its share of capital costs beginning in FY 2025-2026, which may include but not be limited to its share of ownership interests in the property described in subsection (c) below and permanent shelter design, pre-construction, construction, and similar costs; and (2) in lieu of FY 2024-2025 contributions to the Agency's budget for startup costs, the City agrees to pay for, contribute to a fund for, or reimburse the Agency for, a truck and horse trailer to be owned by the Agency, in an amount not to exceed $150,000. The City and Agency shall agree to further details relating to the truck/trailer purchase and payment.

   c. The City agrees to pay for its share of costs for its respective ownership interests in the property described in Section 8.1 of the JPA Agreement. The City's share of costs will be billed quarterly by the Agency for a period of 12 years.

   d. The City shall execute and deliver a copy of the JPA Agreement to the Board Secretary and other Member Agencies.

3. For City's share of capital costs in FY 2025-2026 and 2026-2027, and City's share of all costs in FY 2027-2028 and beyond, the City's Initial Share of Contributions / Voting Shares pursuant to Exhibit B of the JPA Agreement shall be 15% with the City of Ontario at 53%, the City of Chino at 20%, the City of Montclair at 8%, and the County of San Bernardino at 4%. Upon the effective date of the City's admission to the Agency, an addendum reflecting this updated Initial Share of Contributions / Voting Shares shall be ministerially added to Exhibit B of the JPA Agreement.

4. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Board of Directors hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

5. The City's admission as a Party to the JPA Agreement and Member Agency shall be deemed to occur on the date when all of the conditions in Section 2(a) and (d) have been satisfied. If any of the conditions in Section 2(a) and (d) have not occurred by July 1, 2025, this Resolution shall be deemed to no longer have any force or effect. Except as otherwise expressly set forth herein, this Resolution shall take effect immediately upon its adoption.

The Secretary of the Animal Resource Center of the Inland Empire shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 6th day of May 2025.

PAUL S. LEON, CHAIR

ATTEST:

CLAUDIA Y. ISBELL, SECRETARY

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
BOARD ATTORNEY

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

I, Claudia Y. Isbell, Secretary of the Animal Resource Center of the Inland Empire, DO HEREBY CERTIFY that foregoing Resolution No. ARC-011 was duly passed and adopted by the Board of Directors of the Animal Resource Center of the Inland Empire at its regular meeting held May 6, 2025, by the following roll call vote, to wit:

AYES:	CHAIR/DIRECTORS:	LEON, DUTREY, HAGMAN AND ULLOA
NOES:	DIRECTORS:	NONE
ABSENT:	DIRECTORS:	BURTON

CLAUDIA Y. ISBELL, SECRETARY

(SEAL)

The foregoing is the original of Resolution No. ARC-011 duly passed and adopted by the Board of Directors of the Animal Resource Center of the Inland Empire at its regular meeting held May 6, 2025.

CLAUDIA Y. ISBELL, SECRETARY

(SEAL)

FIRST AMENDMENT TO ANIMAL SHELTER AND ANIMAL CONTROL SERVICES AGREEMENT

THIS FIRST AMENDMENT ("**Amendment**") is entered into effective as of _____, 2025 ("**Amendment Effective Date**"), by and between the CITY OF ONTARIO, a municipal corporation ("**City**") and THE HUMANE SOCIETY OF POMONA VALLEY, INC. dba INLAND VALLEY HUMANE SOCIETY & S.P.C.A., a nonprofit corporation ("**Humane Society**"). City and Humane Society are sometimes individually referred to herein as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. The Parties entered into that certain Animal Shelter and Animal Control Services Agreement between City and Humane Society dated July 1, 2021 ("**Agreement**"), under which the City contracted with Humane Society for animal shelter and animal control services under the terms and conditions provided therein. Unless terminated, the Agreement automatically renewed for successive two (2) year Terms.

B. Section 13 of the Agreement provides in part as follows: (1) following the initial term of the Agreement, either Party may terminate the Agreement without cause upon at least 180 days' prior written notice of the intent to terminate; (2) in the event of termination, Humane Society shall be paid for all work performed under the Agreement through the date of termination; and (3) in the event of termination, Humane Society shall cooperate with City in transferring the animals sheltered and animal control services to any other consultant or provider chosen by City to perform animal shelter and animal control services.

C. In a notice dated April 15, 2024, and received by the City on April 22, 2024, Humane Society notified City of its intent to terminate the Agreement at the end of the current Term, effective June 30, 2025.

D. The Parties desire to amend the Agreement to effectuate a smooth transition of services from Humane Society to City's new provider, the Animal Resource Center of the Inland Empire ("**ARC**"), a joint powers agency with its temporary operations center located at 1630 Shearwater Street, Ontario, California.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by and between the Parties as follows:

1. **Amendments to Agreement.** The Parties hereby agree to amend the Agreement as follows:

   a. Early Transition of Dog Bite Calls and Related Services. Starting at midnight on June 20, 2025, Humane Society agrees that City's provider, ARC, will respond to dog bite reports, including but not limited to receiving and responding to requests

for service, coordination with the local health department on quarantine, sheltering and quarantining the dog(s), and investigation and further steps relating to dangerous and/or vicious dog bite cases.

b. Transition of Animals During Final Week of Service. The Parties agree to a phased, orderly transition of animals being sheltered by Humane Society that originated within the City during the final week of the Agreement term (June 23, 2025 through June 30, 2025). The City will facilitate receipt of such animals by ARC during this period during Humane Society's animal shelter hours. Humane Society will provide all records related to identification, sheltering, and medical records related to such animals concurrent with their transition to ARC with any related copy or transfer fees to be paid by the City. City reserves the right to verify that such animals originated within the City for up to 10 days following acquisition of an animal by ARC and receipt of related records, and if appropriate, City may return any animals that originated outside of the City, and Humane Society shall accept any such animals within 5 days thereafter. The City shall be responsible for all costs incurred by Humane Society in transitioning the animals, as set forth in Paragraph 13.

c. Indemnification During Transition. In addition to the provisions established in Section 9 of the Agreement, City agrees to indemnify, defend, and hold harmless Humane Society, its agents, officers, directors or employees, from and against any and all liabilities, losses, claims, demands, actions, causes of action, proceedings, suits, damages, judgments, costs and expenses of litigation, including reasonable attorneys' fees ("Claim") arising out of the intentional or negligent acts or errors or omissions of City, its elected or appointed officials, officers, agents, and employees or the ARC, including its elected or appointed officials, officers, agents, and employees, related to the early transition of dog bite reports and the transition of animals that originated from the City as set forth in Subsections (a) and (b) above. However, if the Claim arises out of intentional conduct or gross negligence by Humane Society or its agents, officers, directors, or employees, then Humane Society will indemnify, defend, and hold City harmless pursuant to Section 9 of the Agreement.

2. **Capitalized Terms**. Any capitalized terms not defined herein shall have the meanings set forth in the Agreement.

3. **Counterparts**. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. Electronic signatures and signatures provided by signature application shall be considered originals.

4. **Full Force**. Except as expressly set forth herein, the Agreement shall remain unmodified and in full force and effect.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have executed this First Amendment to the Animal Shelter and Animal Control Services Agreement between the City of Ontario and The Humane Society of Pomona Valley, Inc. dba Inland Valley Humane Society and SPCA as of the date first set forth above.

CITY, a Municipal Corporation

By : _____
City Manager
Date: _____

ATTEST:

_____
City Clerk
Date: _____

THE HUMANE SOCIETY OF POMONA VALLEY, INC. dba INLAND VALLEY HUMANE SOCIETY AND SPCA, a California Non-Profit Corporation

By : Nikole Bresciani
President/CEO
Date: 5/19/25

ATTEST:

Laura Vega
Secretary
Date: 5/19/25

APPROVED AS TO FORM:

_____
City Attorney
Date: _____

CITY OF ONTARIO *Agenda Report* **June 3, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Financial Services Prepared By: Cruz Torres Staff Member Presenting: Armen Harkalyan, Executive Director of Finance Reviewed By: Claudia Hernandez, Matthew Hernandez Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 8

SUBJECT: **ACCEPT A WRITTEN PETITION TO CREATE A COMMUNITY FACILITIES DISTRICT; ADOPT A RESOLUTION OF INTENTION TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 74 (REMINGTON APG LLC) AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES**

RECOMMENDATION: That the City Council consider and:

A. Accept a written petition (on file with the Records Management Department) from Remington APG LLC ("Landowners"), to create a Community Facilities District ("CFD") and to waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982; and
B. Adopt a Resolution of Intention to establish City of Ontario Community Facilities District No. 74 (Remington APG LLC), authorize the associated levy of special taxes therein; and set a public hearing for the formation of the CFD as part of the regularly scheduled City Council meeting on Tuesday, July 15, 2025.

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: Mello-Roos financing in the Remington APG LLC Industrial Services development is projected to generate approximately $50,021 per year, at build-out, to fund administrative fees and municipal services. City Council approval will be required to process annual special tax levies in future years.

BACKGROUND & ANALYSIS: The Mello-Roos Community Facilities Act of 1982 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, open space, flood and storm drain 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 tangible property with an estimated useful life of five or more years that is owned by the governmental entity. Under the Mello-Roos Act, the initial steps in the formation of a community facilities district to finance municipal services are to adopt a Resolution declaring the intention to establish a community facilities district and authorize the levy of special tax.

Remington APG LLC has provided a written petition to the City requesting the formation of a community facilities district, along with a deposit pursuant to a Deposit Agreement dated March 1, 2024, for the Remington APG LLC Industrial Services project. The project will be an industrial development of approximately 10.01 gross acres located south of Merrill Avenue, north of Remington Avenue, west of Archibald Avenue, and east of Carpenter Street. As proposed, the project is anticipated to include three industrial buildings totaling approximately 200,000 square feet at build-out.

Included, as part of the Resolution of Intention, 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 Remington APG LLC Industrial Services portion is consistent with the City Council's adopted Mello-Roos local goals and policies.

City Staff has discussed the proposed Rate and Method of Apportionment of Special Tax with the landowner. As proposed, the Resolution of Intention to establish the district and to levy special taxes will set a public hearing date on the formation of the community facilities district for the regularly scheduled City Council meeting on Tuesday, July 15, 2025.

RESOLUTION NO. _____

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. 74 (REMINGTON APG LLC SERVICES) AND TO AUTHORIZE THE LEVY OF A SPECIAL TAX THEREIN

WHEREAS, Section 53318 of the Mello-Roos Community Facilities Act of 1982 (the "Act") provides that proceedings for the establishment of a community facilities district shall be instituted by a legislative body of a local agency when a petition requesting the institution of the proceedings signed by the owners of not less than 10% of the area of land proposed to be included within the community facilities district and not proposed to be exempt from the special tax, describing the boundaries of the territory that is proposed for inclusion in the area and specifying the type or types of services to be financed by the community facilities district is filed with the clerk of the legislative body; and

WHEREAS, Section 53318 of the Act further provides that such a petition may not be acted upon until the payment of a fee in an amount that the legislative body determines, within 45 days of receiving such petition, is sufficient to compensate the legislative body for all costs incurred in conducting proceedings to create a community facilities district pursuant to the Act; and

WHEREAS, the City Council (the "City Council") of the City of Ontario (the "City") has received from Remington APG LLC (the "Landowner") a written petition (the "Petition"), requesting the City Council to institute proceedings pursuant to the Act to establish a community facilities district (the "Community Facilities District") and to authorize the Community Facilities District to levy a special tax within the Community Facilities District, describing the boundaries of the territory that is proposed for inclusion in the Community Facilities District and specifying the types of services to be financed by the Community Facilities District; and

WHEREAS, in connection with such request to institute proceedings to establish the Community Facilities District, the Landowner paid a fee in an amount that the City Council has determined is sufficient to compensate the City Council for all cost incurred in conducting proceedings to create the Community Facilities District pursuant to the Act; and

WHEREAS, the Landowner has represented and warranted to the City Council that the Landowner is the owner of 100% of the area of land proposed to be included within the Community Facilities District and not proposed to be exempt from the special tax;

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 hereby finds that the Petition is signed by the landowner owning the requisite area of land proposed to be included within the Community Facilities District and not proposed to be exempt from the Special Tax.

SECTION 3. The City Council proposes to establish the Community Facilities District under the terms of the Act. The boundaries of the territory proposed for inclusion in the Community Facilities District are described in the map showing the proposed Community Facilities District (the "Boundary Map") on file in the office of the City Clerk of the City (the "City Clerk"), a copy of which is attached hereto as Exhibit A, which boundaries are hereby preliminarily approved and to which map reference is hereby made for further particulars. The City Clerk is hereby directed to sign the original Boundary Map and record, or cause to be recorded, the Boundary Map with all proper endorsements thereon in the office of the San Bernardino County Recorder within 15 days of the date of adoption of this Resolution, all as required by Section 3111 of the California Streets and Highways Code.

SECTION 4. The name proposed for the Community Facilities District is "City of Ontario Community Facilities District No. 74 (Remington APG LLC Services)."

SECTION 5. 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 B hereto. The incidental expenses proposed to be incurred are identified under the caption "Incidental Expenses" on Exhibit B hereto. No facilities are proposed to be financed by the Community Facilities District.

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 C, 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 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 City Council hereby fixes Tuesday, July 15, 2025, at 6:30 p.m., or as soon thereafter as the City Council may reach the matter, at 303 East B Street, Ontario, California, as the time and place when and where the City Council will conduct a public hearing on the establishment of the Community Facilities District; provided, that, in the event the July 15, 2025 City Council meeting is held via teleconference and/or videoconference only, the means by which the public may observe such public hearing and offer public comment shall be prescribed in the notice and agenda for such City Council meeting.

SECTION 9. The City Clerk is hereby directed to publish, or cause to be published, a notice of said public hearing one time in a newspaper of general circulation published in the area of the proposed Community Facilities District. Publication of said notice shall be completed at least seven days prior to the date herein fixed for said public hearing. Said notice shall contain all of the information prescribed by Section 53322 of the Act.

SECTION 10. The authorization to levy the Special Tax shall be submitted to the qualified electors of the Community Facilities District at a special election. The proposed voting procedure shall be a vote by the landowners in the Community Facilities District conducted by mail or hand-delivered ballots, with each owner having one vote for each acre or portion of an acre such owner owns in the Community Facilities District.

SECTION 11. Each officer of the City who is or will be responsible for providing one or more of the proposed types of Services is hereby 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 the Services. Such officers are hereby also directed to estimate the fair and reasonable cost of the incidental expenses proposed to be paid. Such report shall be made a part of the record of said public hearing.

SECTION 12. 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 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 3rd day of June, 2025.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2025- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held June 3, 2025 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2025- duly passed and adopted by the Ontario City Council at their regular meeting held June 3, 2025.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

BOUNDARY MAP

EXHIBIT B

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 C

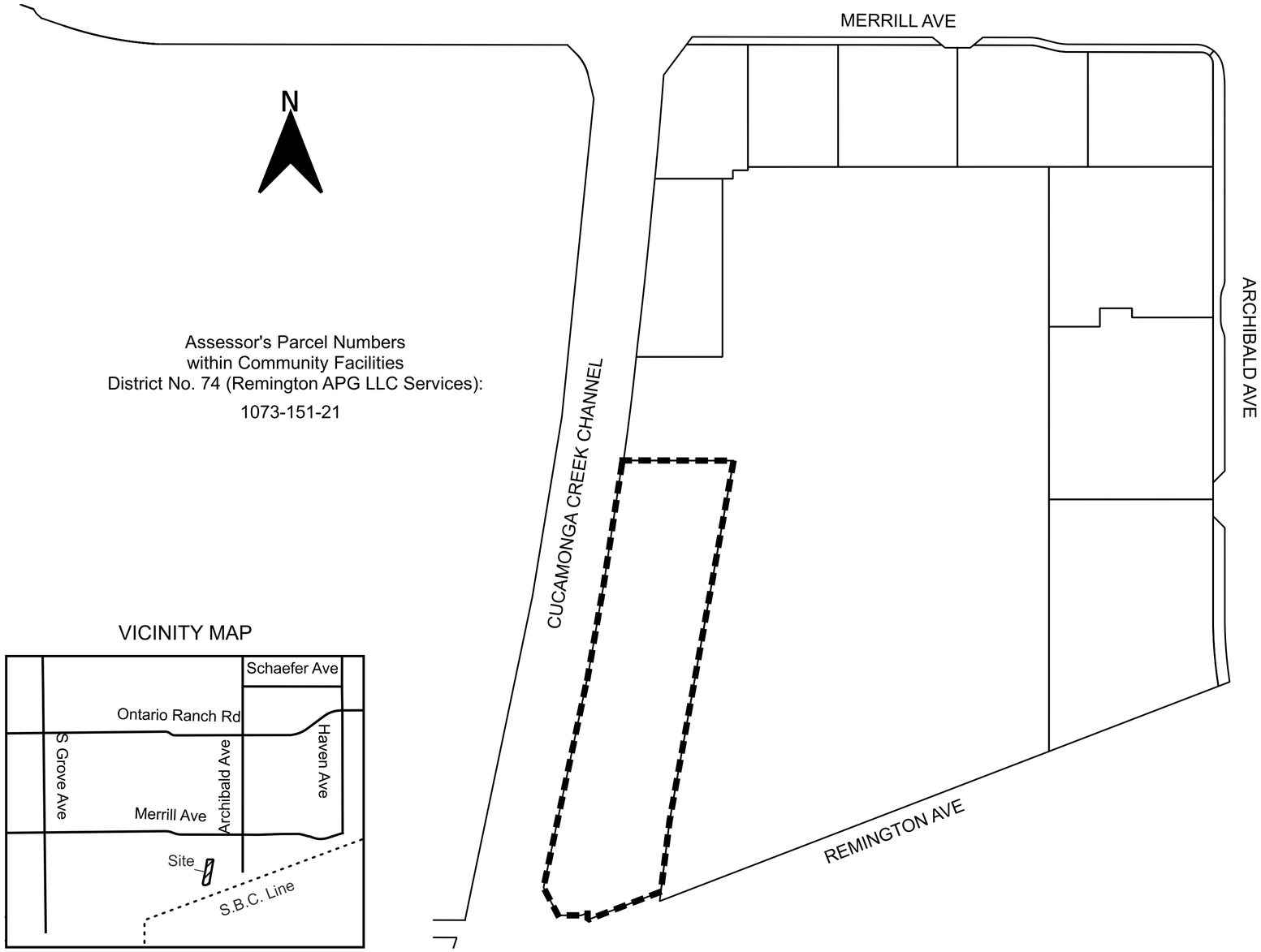
RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

SHEET 1 OF 1

PROPOSED BOUNDARIES OF

CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 74
(REMINGTON APG LLC SERVICES)

SAN BERNARDINO COUNTY, STATE OF CALIFORNIA



Assessor's Parcel Numbers
within Community Facilities
District No. 74 (Remington APG LLC Services):

1073-151-21

VICINITY MAP

LEGEND

City of Ontario Community Facilities District No. 74 (Remington APG LLC Services)

NOTE: Reference is hereby made to the Assessor Maps of the County of San Bernardino for a description of the lines and dimensions of any parcels shown hereon.

(1) Filed in the office of the Clerk of the City of Ontario this _____ day of_____, 2025.

_____
Sheila Mautz,
Clerk of the City of Ontario, California

(2) I hereby certify that the within map showing the proposed boundaries of City of Ontario Community Facilities District No. 74 (Remington APG LLC Services), San Bernardino County, State of California, was approved by the City Council of the City of Ontario at a regular meeting thereof, held on the _____ day of _____, 2025, by its Resolution No. _____.

_____
Sheila Mautz,
Clerk of the City of Ontario, California

CITY OF ONTARIO INCORPORATED DECEMBER 1891 CALIFORNIA

San Bernardino County Recorder's Certificate

This map has been filed under Document Number _____, this _____ day of _____, 2025, at _____.m, in Book _____ of Maps of Assessment and Community Facilities Districts at page _____, in the office of the County Recorder in San Bernardino County, State of California, at the request of the City of Ontario in the amount of $_____.

Josie Gonzales
Assessor-Recorder
San Bernardino County

By: _____
Deputy Recorder

GCG
GOODWIN CONSULTING GROUP

CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 74
(REMINGTON APG LLC 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. 74 (Remington APG LLC Services) ("CFD No. 74") 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. 74, 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. 74: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or CFD No. 74 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. 74 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. 74; and amounts estimated or advanced by the City or CFD No. 74 for any other administrative purposes of CFD No. 74, 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. 74" means City of Ontario Community Facilities District No. 74 (Remington APG LLC 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. 74.

"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. 74 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, 2024, 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. 74 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. 74 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, 2024, 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. 74, 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. 74 to be levied within the boundaries of CFD No. 74.

"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. 74, 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. 74 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. 74 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. 74 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. 74.

CITY OF ONTARIO *Agenda Report* **June 3, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Planning Prepared By: Thomas Grahn Staff Member Presenting: Rudy Zeledon, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 9

SUBJECT: **A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC., FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT FOR THE PROPOSED CITY'S CORPORATE YARD**

RECOMMENDATION: That the City Council authorize the City Manager to execute a Professional Services Agreement with Kimley-Horn and Associates, Inc., of Riverside, in the amount of $411,200, plus a 10% contingency of $41,120, for a total authorized expenditure of $452,320 to prepare an Environmental Impact Report (EIR) for the proposed City's Corporate Yard at 2200 E. Philadelphia Street.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Operate in a Businesslike Manner
Pursue City's Goals and Objectives by Working with Other Governmental Agencies

FISCAL IMPACT: Professional Services Agreement with Kimley-Horn and Associates, Inc., of Riverside, in the amount of $411,200, plus a 10% contingency of $41,120, for a total authorized expenditure of $452,320. If approved, appropriations will be included in future Annual Budgets to City Council for approval as needed.

BACKGROUND & ANALYSIS: The City of Ontario is proposing a new public works corporate yard, encompassing approximately 54 acres of land, located on the south side of Philadelphia Street, approximately 1,300 feet east of Vineyard Avenue. The project site includes a portion of the Whispering Lakes Golf Course and the Ontario Soccer Park.

The proposed project includes the development of an administration building, warehouse/shop buildings, storage area, fleet services, and solid waste transfer station for uses that support the City's Corporate Yard. The project will require a General Plan Amendment changing the land use designation from OS-NR (Open Space - Non-Recreation) and OS-R (Open Space - Parkland) to Industrial, and a Zone Change to change the existing zoning district from OS-R (Open Space Recreation) to the IG (General Industrial) zoning district.

In compliance with the California Environmental Quality Act (CEQA) Guidelines, City staff has

conducted an evaluation and concluded that the appropriate environmental analysis for this specific proposal would involve an Environmental Impact Report (EIR). The Community Development Agency's Pre-Qualified Consultant Eligibility List for Environmental Services was utilized to select Kimley-Horn and Associates, Inc., to prepare the environmental document.

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

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

PROFESSIONAL SERVICES AGREEMENT

BETWEEN

CITY OF ONTARIO

AND

KIMLEY-HORN AND ASSOCIATES, INC.

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 Kimley-Horn and Associates, Inc., a North Carolina Corporation, with its principal place of business at 3801 University Avenue, Suite 300, Riverside, California 92501 ("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 environmental/planning consulting services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional environmental consulting

services for the City of Ontario Corporate Yard 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 environmental/planning 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 June 4, 2025 to June 30, 2026, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The 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 four hundred eleven thousand two hundred dollars **($411,200)**, without written approval of the City Council or City Manager, as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

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

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

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

3.2.5 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: Kevin Thomas, Principal-in-Charge, Senior Associate, and Miles Eaton, Project Manager.

3.3.5 City's Representative. The City hereby designates Henry Noh, Planning Director, or his 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 designee.

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

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

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

3.3.9 Period of Performance.

3.3.9.1 Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in 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: Kimley-Horn and Associates, Inc
3801 University Avenue, Suite 300
Riverside, CA 92501

ATTN: Davie Cowan, Vice President

City: City of Ontario
303 East B Street
Ontario, CA 91764
ATTN: Henry Noh, Planning Director

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 KIMLEY-HORN AND ASSOCIATES, INC.

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

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

[INSERT NAME OF CONSULTANT]

By: _____

Its: Vice President

Printed Name: Davie Cowan

By: _____

Its: _____

Printed Name: _____

EXHIBIT "A"
SCOPE OF SERVICES

[***INSERT SCOPE***]

EXHIBIT "B"
SCHEDULE OF SERVICES

[***INSERT SCHEDULE***]

EXHIBIT "C"
COMPENSATION

[***INSERT RATES & AUTHORIZED REIMBURSABLE EXPENSES***]

Kimley»Horn

May 2, 2025

City of Ontario
Attn: Thomas Grahn
303 East B Street
Ontario, CA 91764

Re: REVISED-Proposal for Professional Environmental/Planning Consulting Services for the City of Ontario Corporate Yard located at 2200 E Philadelphia Street, Ontario, CA 91761.

Dear Mr. Grahn:

Kimley-Horn and Associates, Inc. ("Kimley-Horn") is pleased to submit this letter proposal to the City of Ontario ("City") for providing professional services related to the proposed project including the preparation of technical studies and CEQA clearance documents for the proposed development of an approximately 53.94-acre public works corporate yard generally located at 2200 E Philadelphia Street, Ontario, CA 91761 in the City of Ontario.

Project Understanding

This understanding of the Project is based on information provided by the City, review of records available online, and Kimley-Horn's understanding of land use, the California Environmental Quality Act (CEQA), and the project scope of work.

The City is proposing the development of an approximately 53.94-acre public works corporate yard with associated infrastructure. The site is currently developed with a golf course and multi-purpose sports fields and other associated infrastructure including parking lots. There are existing industrial developments to the north and east, a wastewater treatment plant to the south, and a hospital to the west. The existing Ontario Plan (TOP) designation for the Project site is Open Space-Non-Recreation and Open Space-Parkland and is zoned as Open Space-Recreation (OS-R).

The City is seeking a consultant to prepare the CEQA document and associated technical studies for the Project. The Scope was prepared based upon City's Request for Proposal email dated February 5, 2025. For the purposes of this proposal, Kimley-Horn assumes that the appropriate CEQA document will be a Environmental Impact Report (EIR). As discussed further below, Kimley-Horn proposes to conduct initial technical analyses and field work as part of the initial mobilization tasks. Based on the results of this initial technical analysis, Kimley-Horn and City staff can decide if an Initial Study/Mitigated Negative Declaration (IS/MND) or other CEQA document may be appropriate. If this occurs, the scope, fee and schedule would all be reduced, as an EIR is the most conservative (and legally defensible) approach.

Qualifications

Kimley-Horn qualifications are on file with the City, submitted as part of the On-call Environmental and Landscape Architecture Statement of Qualification (submitted by Kimley-Horn on October 29, 2024).

Kimley-Horn has extensive relevant experience for this Project, including successfully completing numerous CEQA document for the City, and multi-disciplinary experience with design and environmental compliance for municipal yards and fuel facilities, including CNG stations and parking structures. Additional Project team resumes, qualifications and references can be provided upon request.

SCOPE OF SERVICES

Task 1 – CEQA Compliance: Initial Tasks

Kimley-Horn will provide the Scope of Services specifically set forth below. The Scope assumes the baseline conditions, Project Description, and approach will not change once the City issues the Authorization to Proceed. The Scope also assumes the City will provide one reconciled set of reasonably acceptable comments for each deliverable, and that the comments will not raise new substantive issues requiring re-analysis.

Task 1.1 – Project Initiation and Kick-Off Meeting

Readily available reference data, with planning and policy documentation from the City, state and federal agencies, and other agencies that may be affected by the Project will be gathered and reviewed. Kimley-Horn will assess whether available information is adequate and complete. The City will be notified if additional information is needed. Data obtained through this task will be foundational to the environmental documentation and incorporated into the analysis, as appropriate. This Task allows for reconnaissance of the Project site and its surroundings, and a limited photographic recording of on- and off-site conditions. An entitlement schedule will be prepared for review with the City.

This Task includes a Kick-Off Meeting with the City to discuss the CEQA Project in greater detail. This initial meeting is a key milestone, which is vital to the Project's success and CEQA compliance. The primary objectives will be to confirm the City's expectations and Project goals and develop/refine the Project Description. The analysis' parameters, construction details, buildout conditions, scheduling, and overall communications protocol will also be established. Prior to the meeting, Kimley-Horn will distribute a Kick-Off Meeting Agenda.

This task assumes up to 28 hours of effort.

Task 1.2 – Project Description

The project description is a critical component because it is the basis for the environmental analysis. Based on information provided by the City, Kimley-Horn will prepare a Draft Project Description for City review and approval. The Project Description will detail the project's location, environmental setting, background and history, project characteristics, construction schedule/phasing, discretionary actions, and all other pertinent information required per CEQA Guidelines Section 15124. Figures will be prepared to depict the regional and site vicinity and key project components to support the environmental analyses. Kimley-Horn will respond to one reconciled set of reasonably acceptable comments on the Draft Project Description.

Kimley-Horn will prepare a Revised Project Description and submit to the City for approval prior to finalizing. This task assumes up to 24 hours of effort.

Task 1.3 – Initial Study / Notice of Preparation (IS/NOP)

Kimley-Horn will prepare a Draft IS/NOP for the Project. The NOP will assist in the preparation of the EIR by focusing on the effects determined to be potentially significant. Kimley-Horn will review responses to the NOP and use reasonable professional effort to establish that relevant concerns are addressed in the Draft EIR. Kimley-Horn will correspond with the City, and affected agencies, and use reasonable professional effort to establish that potentially significant regulatory or agency issues are addressed in the Draft EIR. This task assumes the City will provide all mailing and radius lists for the noticing. Kimley-Horn will review the NOP distribution list with the City. Kimley-Horn will distribute the NOP packet to Responsible Agencies and interested parties via Federal Express courier with record of delivery, including State Clearinghouse and the County Clerk as required by CEQA. Distribution of the NOP to the radius list will be completed via First-Class Mail. This scope assumes that a radius list, if required, is provided by the City, and that the City will be conducting AB 52 and SB 18 consultation. Kimley-Horn will also prepare the newspaper notice for City staff review. This task assumes that the City will be responsible for coordinating the notice with newspaper and will be responsible for the payment of any fees associated with notice.

If desired by the City, we could prepare an "expanded" NOP rather than an IS/NOP, which expedites the process, and avoids preparing the IS checklist prior to substantive conclusions and analysis within the technical studies. This task assumes up to 18 hours of effort.

Task 1.4 – Scoping Meeting

Kimley-Horn will work with City staff in arranging and conducting a public scoping meeting for the public and responsible agencies. Kimley-Horn assumes that City staff will provide and arrange for meeting locations. Kimley-Horn will prepare a public scoping meeting notice, assumed to be included with the NOP. Kimley-Horn will attend the public scoping meeting (to be facilitated by City staff), prepare a PowerPoint presentation about the topics that will be addressed in the EIR, and prepare a summary of issues identified at the scoping meeting. This task assumes up to 16 hours of effort.

Task 2 - Technical Studies/Assessments

Task 2.1 – Review of City-Prepared Technical Reports

Kimley-Horn will review City-prepared technical report, studies, and plans. These are assumed as the following:

- Geotechnical Feasibility Study/Geotechnical Analysis (if required/prepared)
- Project Related civil information including conceptual site plans, grading plans, utility plans, and tentative parcel maps (if sought by the City), and ALTAs (if prepared)
- Architectural Plans (including landscape)
- Fiscal Impact Assessment (if available)

Kimley-Horn will review technical studies/plans provided by the City for adequacy pursuant to CEQA review requirements and the City's CEQA procedures. Our review will focus on the appropriateness/ thoroughness of the methodology and analysis; whether the analysis' conclusions are supported by factual/credible evidence; consistency among reports and accurate representation of project-related information; and, whether the analysis meets the applicable CEQA provisions and the State CEQA Guidelines. Written comments on the technical studies will be provided. Kimley-Horn's Scope of Work assumes that the City's consultant team will complete all necessary and requested revisions and forward a revised technical document for each subject area in a timely fashion to maintain the review schedule as noted in this proposal. Upon receipt of the revised technical studies, Kimley-Horn will review the revised reports once and use reasonable professional effort to establish that reasonably necessary and required comments have been addressed and resolved. This task assumes up to 8 hours of effort.

Task 2.2 – Consultant-Prepared Technical Analyses and Engineering Reports

Kimley-Horn will prepare the Technical Studies and engineering analyses outlined below. This Scope assumes each Technical Study will undergo one City review cycle, unless otherwise noted. Additional City review cycles are excluded. Unless otherwise requested by the City, the following technical analyses will be incorporated directly into the CEQA document. Additional studies/analyses may be identified during conversations with the City. Additional reviews can be accommodated as an additional service with written authorization from the City and invoice at Kimley-Horn's then current hourly rate.

NOTE: Each technical study and/or applicable EIR section will address potential impacts associated with the proposed CNG facility, based on readily available information or information provided by the City.

Task 2.2.1 – Air Quality Analysis

Kimley-Horn will assess air quality emissions in accordance with the South Coast Air Quality Management District's (SCAQMD's) recommended methodologies set forth in the SCAQMD *CEQA Air Quality Handbook*. The analysis will be prepared in accordance with the California Environmental Quality Act (CEQA) criteria, standards, and provisions and will respond to the applicable checklist items within State CEQA Guidelines Appendix G. The following outlines our approach:

- **Construction Emissions.** Kimley-Horn will calculate construction emissions using the latest version of the California Emissions Estimator Model (CalEEMod). Emissions will be calculated based on the project's scope, construction schedule and equipment assumptions, and associated vehicle trips. Construction emissions will be compared to the SCAQMD regional thresholds of significance. Construction-related mitigation will be identified as reasonably required.
- **Operational Emissions.** Kimley-Horn will quantify the project's operational emissions (i.e., area, energy, and mobile source) related to area sources and local/regional vehicle miles traveled. The project's emissions will be compared to the SCAQMD thresholds of significance. Operational mitigation measures will be identified, as reasonably required.

- **Localized Impacts.** Localized impacts will be analyzed based upon the SCAQMD's Localized Significance Thresholds (LST) methodology. Odors will be evaluated qualitatively. Applicable mitigation will be identified, as reasonably required.
- **Plan Consistency.** The project will be evaluated for consistency with the SCAQMD's Air Quality Management Plans (AQMP). The determination of AQMP consistency is primarily concerned with the long-term influence of a project on air quality in the South Coast Air Basin.

This task assumes up to 61 hours of effort.

Task 2.2.2 – Noise Analysis

The noise analysis will quantify both construction and operational noise levels. The analysis will examine whether the project noise would generate a substantial temporary or permanent increase in ambient noise levels in the project's vicinity in excess of applicable standards. The following outlines our approach:

- **Existing Conditions and Regulatory Setting.** Noise standards regulating noise impacts will be discussed for land uses on and adjacent to the project site. A site visit will be conducted, and short-term noise level measurements will be taken along the project area. Up to six separate short-term (10-minute) noise measurements will be taken to establish baseline noise levels in the project area.
- **Construction Noise.** Construction noise will be analyzed based on the anticipated equipment to be used, length of a specific construction task, equipment power type (gasoline or diesel engine), horsepower, load factor, and percentage of time in use. The construction noise impacts will be evaluated in terms of maximum levels (L_{max}) and hourly equivalent continuous noise levels (L_{eq}) and the frequency of occurrence at adjacent sensitive locations.
- **Vibration.** The construction vibration impacts analysis will be based on the Federal Transit Administration's (FTA's) guidance. Impacts will be evaluated based on the sensitivity of the area, specific construction activities, and Noise Ordinance specifications. The analysis will examine whether the project would generate excessive groundborne vibration.
- **Operational Noise.** Kimley-Horn will analyze noise impacts from on-site noise to the adjacent uses. Project operational noise levels will be assessed against the applicable Land Use Noise and Compatibility Matrix and Interior/Exterior Noise Guidelines. Stationary noise sources will be quantitatively assessed. On- and off-site noise impacts from vehicular traffic will be assessed using the U.S. FHWA Traffic Noise Prediction Model (FHWA-RD-77-108). Modeled traffic noise levels and predicted increases for the modeled scenarios will be summarized in the analysis. Roadway traffic noise modeling will be based on roadway volumes and distribution included in the traffic impact analysis.

This task allows for direct reimbursable expenses up to $250 for expenses related to the preparation of the Noise Memorandum. These expenses include, but are not limited to, mileage, noise equipment/monitoring equipment fees, etc. This task assumes up to 66 hours of effort.

Task 2.2.3 – Greenhouse Gas Emissions Analysis

The analysis will evaluate the project's potential contribution to cumulative impacts environmental effects of climate change and whether the project would affect the State's ability to achieve established greenhouse gas (GHG) reduction goals. Kimley-Horn will calculate GHG emissions (i.e., nitrous oxide, methane, and carbon dioxide) from both direct (i.e., area and mobile sources) and indirect sources (i.e., energy/water consumption and wastewater/solid waste generation). Construction GHG emissions will be amortized into the total GHG emissions. GHG emissions will be quantified with CalEEMod.

Project-related GHG emissions will be assessed against the City's Climate Action Plan (CAP) screening tables and consistency with the Climate Action Plan policies, as well as other applicable regional/statewide GHG emissions reduction strategies such as the CARB Scoping Plan and the Regional Transportation Plan/Sustainable Community Strategy for the Southern California Association of Governments (SCAG) region. This task assumes up to 44 hours of effort.

Task 2.2.4 – Energy Analysis

Kimley-Horn will analyze the project's energy implications pursuant to State CEQA Guidelines Section 15126.2(b) and State CEQA Guidelines Appendix F. The analysis will describe, where relevant, the wasteful, inefficient, and unnecessary consumption of energy caused by a project. The analysis will evaluate energy consumption associated with short-term construction activities, long-term operations, buildings, and transportation-related energy during construction and operation. This task assumes up to 36 hours of effort.

Task 2.2.5 – Health Risk Assessment

A Health Risk Assessment (HRA) is recommended due to the proximity of sensitive receptors (i.e., the adjacent hospital and nearby residences). During construction, the primary TAC of concern would be diesel particulate matter (DPM) from on-site off-road equipment and heavy-duty trucks. TAC sources during operations would include trucks accessing the site. The quantitative impact analysis involves the following:

- Construction diesel particulate matter (DPM) emissions rates will be derived from on- and off-road emissions quantified in the Air Quality Assessment.
- Operational DPM sources will be quantified based on CARB's emissions factors and anticipated truck activity. DPM emissions will be based on the truck trip percentages and daily trip rates and fleet mix from the Transportation Impact Assessment.
- Pollutant concentrations will be projected at the nearest off-site sensitive receptors for construction and onsite sensitive receptors for operations using the American Meteorological Society (AMS)/U.S. Environmental Protection Agency (EPA) Regulatory Model (AERMOD), as required by the SCAQMD to conduct dispersion modeling.
- The modeled concentrations are then used to estimate the increased cancer risk and health hazard as described in the California Environmental Protection Agency's Office of Environmental

Health Hazard Assessment (OEHHA) *Air Toxics Hot Spots Program Risk Assessment Guidelines - The Air Toxics Hot Spot Program Guidance Manual for Preparation of Health Risk Assessment*.

The assessment will present background information on DPM and its health risks, the assumptions used for the modeling and modeling methodology and the results of the analysis. This task assumes up to 46 hours of effort.

Assumptions and Limitations for Tasks 2.2.1 through 2.2.5

- Kimley-Horn will be provided the following project detail to support the analysis:
  - Site plans and latest project narrative.
  - Project narrative identifying type of development, land use designations, stationary equipment, off-site improvements, and any other relevant project details.
  - Traffic data will include daily trip generation, vehicle miles traveled (VMT) data, and roadway segment Average Daily Traffic (ADT) volumes.
  - Construction phasing as well as demolition, grading, excavation, and paving quantities.
  - Energy/water conservation measures and sustainable project features that will be incorporated into the design.

Task 2.2.6 – Cultural and Paleontological Resources Assessment

Kimley-Horn will prepare a Cultural and Paleontological Resources Assessment for the Project pursuant to the California Environmental Quality Act (CEQA). The objective of these efforts is to determine whether the Project contains, or could reasonably contain, cultural or paleontological resources and if the Project would have a significant effect on the environment due to circumstances concerning these resources.

Research

Cultural resources management staff will conduct a records search at the South Central Coastal Information Center (SCCIC) and submit a record search request to the Native American Heritage Commission (NAHC) to ascertain if any previously recorded cultural resources or documented sacred lands files are located within the Project area or vicinity. Staff will also submit a paleontological record search to the Natural Historic Museum of Los Angeles County (NHMLAC) and review online databases at the UC Berkeley Museum of Paleontology to identify any paleontological resources within the project area or similar contexts. Staff will additionally research geomorphology and land use history of the project area through review of historic aerials, topographic maps, etc.

Fieldwork

Cultural resources management staff will conduct a pedestrian survey of the entirety of the project area, not to exceed 54 acres. Survey will be conducted via 15 meter transects and will be non-collective. All cultural resources will be recorded on site records, specifically CA DPR 523 series forms, and evaluated for potential eligibility for listing in the California Register of Historical Resources (CRHR).

Report

A Cultural and Paleontological Resources Assessment will be produced that will include sections for project description, project setting (environmental, cultural, and historical), methodology, significance evaluations, and recommendations. Applicable maps and all site records will be included within the report. This scope includes up to one (1) round of revision to the report based on review by the Lead Agency. The report will be submitted to the SCCIC once deemed acceptable and final by the Lead Agency.

This task allows for direct reimbursable expenses up to $1,000 to include mileage, meals, information center searches, and other expenses as required. This task assumes up to 52 hours of effort.

Task 2.2.7 – Phase I Environmental Site Assessment

Kimley-Horn will prepare a Phase I ESA for the Project. Kimley-Horn's scope of services for conducting the Phase I ESA consists of the sub-tasks set forth below. The following sub-tasks refer to only that information that is defined as reasonably ascertainable (ASTM E 1527-21, 3.2.72).

Records Review

This task will be conducted by Kimley-Horn consistent with ASTM E 1527-21, 8.0, and will consist of the following:

a. Record Search – An environmental database search will be prepared encompassing the minimum search distances listed in ASTM E1527-21, 8.1.2.1. This report will be reviewed for known and suspect contaminated sites. Where available, local environmental agency, and other local governmental authority files, as defined in ASTM E 1527-21, 8.2.3.1 may be reviewed, if the Environmental Professional determines the files to be reasonably ascertainable and relevant to the successful completion of the Phase I ESA. This scope of work assumes that searches can be completed utilizing existing online database research. Should additional research include review of paper files as regulatory agencies be required, the additional research shall be considered additional services.

b. IC/EC Registries – Kimley-Horn will review readily available databases on institutional and engineering (IC/EC) controls and Activity Use Limitations (AULs).

c. Title Search and Judicial Records – Kimley-Horn will review these documents as provided by the City.

d. Aerial Photograph Review – Kimley-Horn will retrieve and review readily available historical aerial photographs of the site and the surrounding vicinity. Aerial photographs will be researched to the earliest date that is reasonably obtainable.

e. Review of Local City Directories and Historical Maps – Kimley-Horn will obtain and review readily available historical city directories, fire insurance maps, and historical topographic maps.

f. Other Historical Sources - Should Kimley-Horn determine that other non-traditional sources may provide information relevant to the completion of the Phase I ESA; these sources will be reviewed and documented.

Site Reconnaissance

Kimley-Horn will conduct a site reconnaissance consistent with ASTM E 1527-21, 9.0. The Site Reconnaissance will be non-invasive. We will not collect and/or analyze any samples. The site reconnaissance will include, per City direction, observation of, or observation of the likelihood of, PCBs, septic tanks, and evidence of mold. We assume that we will be allowed appropriate access to all areas of the site and that the site reconnaissance will be conducted as a single event. At the time of site reconnaissance all existing buildings will be vacant. Should an additional site reconnaissance be required due to access limitations, the additional site reconnaissance shall be considered additional services.

Interviews

Consistent with ASTM E 1527-21, 10.5.2.3, Kimley-Horn will make a reasonable attempt to conduct the following interviews:

a. Kimley-Horn will attempt to interview current and past owners, operators and occupants of the property that have or are likely to have material information regarding uses, physical characteristics, and the potential for RECs at the subject property consistent with ASTM E 1527-21 sections 10.5.1, 10.5.2, 10.5.2.1, 10.5.2.2, and 10.5.4.

b. In the case of abandoned properties as defined in ASTM E 1527-21, 3.2.1, where there is evidence of uncontrolled access or unauthorized uses, Kimley-Horn will attempt to interview current neighboring or nearby property owners (ASTM E 1527-21, 10.5.5).

c. Kimley-Horn will attempt to interview one or more of the following state or local agencies as defined in ASTM 1527-21, 11:
    a. Local fire department
    b. State and/or local health agency
    c. State and/or local environmental regulatory agency

Vapor Evaluation

ASTM E1527-21 standardizes the terms “release” and “migration” to be consistent with those used in CERCLA and AAI, such that potentially harmful vapors must be evaluated during the completion of a Phase I ESA. Kimley-Horn will assess the potential for a Vapor Encroachment Condition (VEC) to exist in the subsurface of the subject property. A VEC is defined as the presence or likely presence of contaminants of concern (COC) vapors caused by the release of hazardous substances and/or petroleum products into soil and/or groundwater. ASTM E1527-21 does not identify any specific tools for evaluating vapor migration beyond the standard methodologies used for identifying releases or potential releases to subsurface media (i.e., compliance with ASTM E2600-22 is not required).

Report Preparation

Upon completion of the aforementioned sub-tasks, Kimley-Horn will prepare a summary report of the results of the Phase I ESA Update as outlined in Appendix X4 of ASTM E 1527-21. Kimley-Horn will provide the report to the City in electronic format (portable document format).

This task assumes up to 38 hours of effort.

Services Not Included

Any other services, including but not limited to the following, are not included in this Agreement:

- Physical observation of the roof, and building systems including, but are not limited to plumbing, electrical, fire sprinkler and mechanical systems.
- Hazardous building material survey including but are not limited to asbestos and lead based paint.
- Physical observation of occupied existing buildings.
- Phase II Environmental Site Assessment or other supplemental evaluations

Information Provided by Client

We shall be entitled to rely on the completeness and accuracy of all information provided by the City or the City's consultants or representatives. The City shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

- As-Built record drawings of any structures and site
- Site plan (electronic PDF format)
- Title Report
- Contact information for current and past owners
- 50-year chain of title
- Completed Phase I ESA User Questionnaire
- If the above information is not provided to Kimley-Horn, then the missing information will be listed as a limitation in the Phase I ESA as defined in ASTM E 1527-21.

This task allows for direct reimbursable expenses up to $450.

Task 2.2.8 – Biological Resources Assessment

Cadre Environmental (Cadre), a subconsultant of Kimley-Horn and Associates, Inc., shall perform the following scope of work:

Biological Resources Habitat Assessment

Prior to visiting the Project Site, Cadre will conduct a desktop analysis of the Project Site by reviewing aerial photography and querying relevant biological resource databases to prepare for the field survey. Databases to be reviewed include the California Natural Diversity Database (CNDDB), California Native Plant Society (CNPS) Electronic Inventory, United States Fish and Wildlife Service (USFWS) species' occurrence database, USFWS Information for Planning and Conservation (IPaC), National Hydrography Dataset (NDH)/National Wetlands Inventory (NWI) database, and Natural Resources Conservation Service (NRCS) soils maps. Following the initial research, the Cadre will conduct vegetation mapping at the Project Site and perform general surveys for plant and wildlife species. Cadre will also perform an assessment of the potential for the site to support special-status plants, animals, and/or habitats, including, but not limited to:

- federal/state listed sensitive plants
- Crotch's bumble bee
- Delhi sands flower-loving fly (including review of suitable soils)
- coastal California gnatcatcher
- least Bell's vireo
- southwestern willow flycatcher
- burrowing owl
- San Bernardino kangaroo rat

No focused or protocol surveys for special-status plants or animals will be conducted as part of this task, but the location of sensitive species, if observed, will be documented. Cadre will also conduct a reconnaissance-level aquatic resources assessment and the approximate boundaries of such areas will be mapped if present. Note that this cost includes constraints-level aquatic resource mapping for project planning purposes only; a formal wetland delineation per U.S. Army Corps of Engineers (Corps) protocol is not included in this scope and cost.

Documentation – Biological Resources Technical Report

Following the field survey, a biological resources technical report (BTR) summarizing the results of the vegetation mapping, general biological surveys, and the reconnaissance-level assessment for potentially jurisdictional aquatic resources (i.e., streambeds, wetlands, etc.) will be prepared. The report will include a discussion of the sensitivity of biological resources on site and the potential for special-status species to occur. The report will quantify and discuss the proposed impacts of the project based on the project impact footprint (provided to Cadre as a georeferenced CAD file). A discussion of potential impacts on biological resources, as well as potential state, and federal permitting issues, if applicable, will also be included in the report. The report will include sufficient detail to perform CEQA significance criteria analysis as well as recommended mitigation and avoidance measures for project impacts, if reasonably

required. One (1) round of revisions from the project team will be incorporated into a final version of the report following the initial draft submittal and review. Following editorial input from the project team, a final version will be submitted in PDF format. This scope and cost assume analysis of one project alignment/impact area (to be provided to Cadre as a single georeferenced CAD file). If project plans are changed after biological impact analysis is initiated, please note that additional work beyond the scope and cost outlined herein may be required. The report will also address biological elements of the following City guidelines, as warranted:

- The Ontario Plan 2050 – Environmental Resources Element
- City of Ontario Municipal Codes

This task specifically excludes efforts related to focused surveys, regulatory permitting, and mitigation site planning and design.

Task 2.2.9 – Crotch's Bumble Bee Focused Surveys

Cadre Environmental, a subconsultant of Kimley-Horn and Associates, Inc., shall perform the following scope of work should focused surveys be required resultant of the Biological Resources Assessment prepared as a part of Task 2.2.8:

If suitable foraging and nesting habitat for the Crotch's bumble bee is documented onsite, focused presence/absence surveys will be initiated based on the CDFW Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species Guidelines (June 6th, 2023). Focused surveys will be initiated during the colony active period and when floral resources are present for the species. Specifically, three (3) survey will be conducted with at least two (2) weeks between surveys from April to June. All regions within the Study Area where suitable floral resources are present will be surveyed by walking meandering transects at least one (1) hour after sunrise and/or at least two (2) hours before sunset (ideally between 9am and 1pm) on warm sunny days with winds below 8 mph.

Focused surveys would be conducted for a minimum of one person-hour of searching per three (3) acres of suitable habitat. Bumble bees will be captured with a net from blooms, avoiding destruction of the flower when possible. Each bee will be carefully transferred into a sterile vial and moved to a cooler with only one bee per vial to avoid disease spread. The bee will be kept in the vial for no more than 10 minutes in ambient temperature before being placed in a cooler as they have a tendency to over-heat (the amount of time will be decreased on hotter days). The vial will be placed in a cooler at a temperature above 25 degrees F, as lower temperatures could freeze and kill the bee.

The results of the focused surveys will be summarized in a letter report including graphics and recommendations, if detected.

Task 2.2.10 – Traffic Scoping Agreement

- Obtain a copy of the project site plan for the proposed project, including building square footages and uses, site layout, site driveways, parking supply, and any other site features that will affect the traffic analysis.
- Develop project trip generation estimates for the proposed project using trip rates based the Institute of Transportation Engineers (ITE) Trip Generation Manual (11th Edition). The trip generation estimates will include appropriate trip credits for pass-by trips.
- Develop trip distribution assumptions for the project traffic, based on likely origins and destinations of employees and customers, and current traffic patterns in the area.
- Run initial VMT screening per City of Ontario VMT requirements and the SBCTA Guidelines. Kimley-Horn will coordinate with the lead agency regarding their planned approach to establishing thresholds and methodologies for the VMT analysis. This task does not include a quantitative VMT analysis (modeling required). If the City requires a quantitative VMT analysis, Task 2.2.12 would be required.
- Prepare and submit a Traffic Study Scoping Agreement, identifying the project description, project trips, trip distribution, study scenarios, and proposed study intersections. If, after consultation with the City, the Scoping Agreement requires additional study locations or analysis tasks, this scope and fee will be adjusted accordingly. We will address up to one (1) round of consolidated comments from the City.
- If City staff determines a Traffic Impact Analysis (TIA) is not required after review of the Traffic Study Scoping Agreement, Task 2.2.11 could be reduced in scope/budget for only the information necessary for the air quality, GHG, HRA and noise studies.

This task assumes up to 20 hours of effort.

Task 2.2.11 – Traffic Impact Analysis

- Collect morning (7:00am – 9:00am) and evening (4:00pm – 6:00pm) peak period turning movement volumes at the study intersections. Traffic counts will be conducted on a typical weekday (Tuesday through Thursday). For budgeting purposes, this scope assumes up to fifteen (15) study intersections.
- Collect 24-hour roadway segment counts on one (1) typical weekday at up to ten (10) roadways segments.
- Project traffic will be distributed through the study intersections, and the project traffic contribution to each intersection will be identified.
- Obtain a list of approved and pending projects from City staff to develop traffic forecasts for cumulative conditions.
- Summarize operating conditions at the study intersections for the following scenarios:

- Existing Conditions
- Opening Year (Existing + Ambient Growth + Cumulative Projects)
- Opening Year Plus Project
- 2050 Horizon Year Without Project
- 2050 Future Build-Out With Project

- Develop Horizon Year forecast volumes based on SBTAM model plots and B-turns methodology.
- Identify project impacts, and any mitigation measures, as reasonably required.
- The TIA will include a brief evaluation of site access and site circulation.
- Prepare a stand-alone TIA per City of Ontario guidelines summarizing our analysis and findings for submittal to the City for review and comment. We will address up to two (2) rounds of consolidated comments from the City.
- Attendance at meetings are not included in the scope. If requested, attendance at meetings with team members, City staff, or at public meetings and public hearings will be billed in accordance with our then-current hourly billing rate schedule.

This task assumes up to 180 hours of effort. This task allows for direct reimbursable expenses up to $3,900 to be allocated for traffic count collection.

Task 2.2.12 – Vehicle Miles Traveled Assessment

Based on the intended use of the proposed project site, the fact it serves a largely existing employee base, and its local-serving nature, it is assumed the project would screen out of quantitative VMT analysis. However, in the event quantitative VMT analysis is required, Kimley-Horn will provide the following as part of this task:

- Kimley-Horn will code land use information into the project's representative Traffic Analysis Zone (TAZ) within the SBTAM travel demand model (TDM). The SBTAM TDM uses the SCAG TransCad model. The resultant VMT output and interim model files will be used to determine the Home-based VMT per service population for the proposed project. Note that this will require deconstructing the model output sufficiently so that both the trip purposes and trip lengths for each contributing part of the project's VMT from other sources can be completed. The process undertaken will be consistent with OPR guidance.
- Identify applicable mitigation measures for reducing VMT impacts determined to be potentially significant, consistent with City guidelines.
- Prepare a VMT Analysis Memorandum summarizing the results of the quantitative VMT analysis.
- Revise the VMT Analysis Memorandum to respond to one (1) round of City review comments, to the extent that the revisions are within the approved scope of services and that no new data collection or additional analysis is required.

This task assumes up to 76 hours of effort.

Assumptions and Limitations – Task 2

- This scope accommodates revisions based on one consolidated set of comments to the extent that the revisions are within the approved scope of services and that no new modeling or additional analysis is required. Additional comments can be addressed on a time and materials basis.
- This scope assumes the baseline conditions, project description, and approach will not change once City issues the Authorization to Proceed (ATP). Revisions or changes to the project that require re-analysis are excluded.
- Deliverables will be provided as expeditiously as practicable with the goal of approximately 8 weeks of receipt of the requested data.
- Deliverables will be provided electronically.

Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

1. Phase II Environmental Site Assessment
2. Alta and other survey services
3. Engineering Services
4. FAA Form 7460-1
5. Additional biological sensitive resources focused/protocol surveys
6. Biological or Archaeological construction monitoring
7. Any other services not expressly included above.

Task 3 – Environmental Impact Report

It is currently assumed that an Environmental Impact Report will be the required document for the Project. If based on the results of the initial technical studies the City, as the Lead Agency, believes that the Project could be adequately addressed and analyzed in a Mitigated Negative Declaration (MND), this scope and fee can be modified down to accommodate this.

Kimley-Horn proposes to initiate the Notice of Preparation (NOP) process concurrently with the preparation of technical studies to assist in the scoping of the EIR and in the determination of the adequate environmental documentation required.

Task 3.1 – Prepare the Administrative Draft EIR

This task includes preparation of the preliminary Administrative Draft EIR (ADEIR). The ADEIR will be prepared according to the State CEQA Guidelines and City CEQA procedures. The EIR will also incorporate City-supplied reports and studies noted above and in the RFP. This proposal assumes that any information related to site civil engineering or entitlement applications is provided by the City, including on-site and off-site water, wastewater, drainage and dry utility improvements, as well as site grading, landscaping and lighting. Kimley-Horn assumes that the City's technical team will be available to respond to data requests in support of applicable EIR technical studies and associated EIR sections, during Draft EIR and Final EIR preparation, and will attend Project and public meetings as determined appropriate by City staff.

The Administrative Draft will address issues summarized below. For the Alternatives analysis, Kimley-Horn assumes that these are qualitative analysis or utilize readily available quantitative data from the technical studies. Up to five alternatives are assumed to be analyzed, including the required No Project (No Development) alternative. Other alternatives assumed include the Alternative Site and Environmentally Superior Alternative. Other alternatives to be analyzed shall be determined through coordination with the City and as a part of Task 1. The alternatives will be refined and discussed with City staff as part of the EIR preparation, to focus on avoiding or reducing any of the Project's unavoidable significant environmental impacts.

- Executive Summary
- Introduction and Purpose
- Project Description
    - Summary
    - Project Location (Regional and Local Vicinity)
    - Surrounding Land Uses
    - Project Setting
    - Project Characteristics
    - Project Objectives
    - Project Application and Discretionary Actions
    - Intended Use of the EIR
- Environmental Setting, Impacts, and Mitigation Measures (the following analysis chapters are assumed to be included)
    - Aesthetics/Light & Glare
    - Agricultural Resources
    - Air Quality
    - Biological Resources
    - Cultural Resources
    - Energy
    - Geology and Soils
    - Public Services
    - Greenhouse Gases
    - Hazards and Hazardous Materials
    - Hydrology and Water Quality
    - Land Use Planning
    - Mineral Resources
    - Noise
    - Population and Housing
    - Recreation

- Transportation/Traffic
- Tribal Cultural Resources
- Utilities and Service Systems
- Wildfire Hazards
- Cumulative Impacts
- Additional CEQA Considerations (including Significant Irreversible Environmental Changes, Growth-inducing Impacts)
- Effects Found not to be Significant
- EIR Consultation and Preparation
- References

This task assumes up to 370 hours of effort.

Task 3.2 – Preparation of Draft EIR

Kimley-Horn will respond to two (2) rounds of consolidated comments from the City. Kimley-Horn will prepare two (2) rounds of revisions to the ADEIR and prepare a Draft EIR for final review by City staff prior to public circulation. This task assumes that City comments will be limited to review/comment on adequacy of addressing prior round comments, that revisions will be relatively minor, comments will not raise new substantive issues, and that no new technical analysis will be required. Once the City staff conducts their final review of the Administrative Draft EIR, Kimley-Horn will print the Draft EIR for public circulation and review. Kimley-Horn will produce five (5) print copies of the Draft EIR with technical appendices provided on a USB thumb drive.

Kimley-Horn will produce the Draft EIR for the required 45-day public review period. Kimley-Horn will prepare a Notice of Availability (NOA) for the proposed project. This scope assumes that the City will be responsible for the coordination and the payment of fees required for the publishing of all public noticing in the newspaper. Kimley-Horn will also prepare a Notice of Completion (NOC) and State Clearinghouse Summary Form for submittal to the Office of Planning and Research (OPR). Kimley-Horn may upload the documents to the State Clearinghouse on the City's behalf, if requested, otherwise, this task assumes that the City will be responsible for the uploading of documents to the State Clearinghouse. This task assumes that Kimley-Horn will be responsible for mailing and posting of notices associated with the Draft EIR, unless otherwise previously noted. Kimley-Horn will distribute the NOA to agencies, Tribal governments, and the interest list via Federal Express with record of delivery, distribution to the radius list will be completed via First-Class Mail or other acceptable method providing a record of delivery. This task assumes that the City will provide all mailing and radius lists for the noticing.This task assumes up to 214 hours of effort. This task allows for direct reimbursable expenses up to $6,500 to account for printing of up to 5 copies of the Draft EIR, shipping, mailing and distribution of notices, etc.

Task 3.3 – Preparation of Final EIR

Final EIR

The Final EIR is assumed to consist of the "Comments and Responses" section, Draft EIR Errata, and Appendices. Kimley-Horn will prepare and post the Notice of Determination for the Project.

Task 3.3.1 – Response to Comments

Kimley-Horn will respond to written comments received on the Draft EIR during the 45-day public review period. The Draft Responses to Comments will be prepared for review by the City staff. This proposal allows for forty (40) hours of technical team support on responses to comments (authors of technical studies or peer review noted in Task 2).

Following review of the Draft Responses to Comments, Kimley-Horn will finalize this section for inclusion in the Final EIR. Kimley-Horn will distribute the Response to Comments packet to Responsible Agencies, as required by CEQA. An initial estimate of 100 hours has been provided for budgeting and scheduling purposes. When Kimley-Horn reaches 80% of the budgeted fee, we will communicate the budget status and estimate to completion. This task assumes up to 135 hours of effort.

Task 3.3.2 – Errata and Preparation of the Final EIR

Kimley-Horn will prepare an Errata section for inclusion with the Responses to Comments document, identifying proposed changes to the Draft EIR, based on public comments or staff-initiated technical corrections. This task assumes 20 hours of effort.

Kimley-Horn will assemble the Comments and Responses section, Draft EIR Errata, and all appendices into the Final EIR document for City final review prior to circulation as part of the Planning Commission Staff Report and Agenda Packet. This task assumes that review will be minor and consist of grammatical and typographical corrections. This task assumes up to 20 hours of effort.

Task 3.3.3 – Notice of Determination

Following the City's certification of the EIR and approval of the Project, Kimley-Horn will prepare and file the Notice of Determination (NOD) with the County Clerk of the Board of Supervisors. The NOD will be filed within five (5) business days of Project approval, as required by the CEQA guidelines. Kimley-Horn assumes that all filing fees are to be provided by the City. All filing fees at the County Clerk of the Board of Supervisors are required to be made by cash or check. Checks must be paid to the order of the "County Clerk of the Board of Supervisors." If requested by the City, Kimley-Horn may pay the filing fees and the filing fees will be invoiced as a direct reimbursable expense and subject to a 15% surcharge. Kimley-Horn does not guarantee Project approval by the appropriate deliberative body. This task assumes up to 5 hours of effort.

Task 3.3.4 – Mitigation Monitoring and Reporting Program

In compliance with CEQA Guidelines Section 21081.6, Kimley-Horn will prepare a Mitigation Monitoring and Reporting Program (MMRP) to be defined through coordination with City staff. The Mitigation Monitoring and Compliance Program will incorporate all mitigation measures from the EIR. Kimley-Horn will prepare a Draft Mitigation Monitoring and Reporting Program that will be submitted to City for review. Kimley-Horn will respond to one set of City comments on the Draft Mitigation Monitoring and Reporting Program. This document will be attached to the City's staff report and resolution for Project approval, and provided to the City staff in electronic format (staff report to be prepared by City staff or others). This task assumes up to 18 hours of effort.

Task 3.3.5 – Findings and Statement of Overriding Considerations

Kimley-Horn will prepare a Statement of Facts and Findings to be defined through working with City staff. Kimley- Horn will also assist staff in preparing a draft Statement of Overriding Considerations, if required pursuant to the findings of the EIR, for use by City staff in the Resolution. The Findings will address relevant environmental issue areas. This task assumes up to 38 hours of effort.

Task 4 – Project Meetings and Coordination

Task 4.1 – Project Meetings and Management

Kimley-Horn will provide project meetings and coordination **on a Time and Materials basis,** as required by the City and provide coordination and assistance through the CEQA process as defined below:

- Project Management: Kimley-Horn will coordinate with the City staff, technical staff, and support staff, toward the timely completion of the EIR. Kimley-Horn will also consult with the Project Team on a regular basis and provide updates to the schedule, consisting of informal weekly updates and formal monthly status reports. The Project Management task is based on a 10-month schedule, assuming 6 hours per month of management related activity for a total of 60 hours.
- Subconsultant Management: Kimley-Horn will coordinate with subconsultant staff. Efforts related to subconsultant management include preparation of subconsultant agreements, processing and payment of subconsultant invoices, review of subconsultant deliverables, and coordination with subconsultants. This task includes up to 10 hours of effort.
- Project Team Meetings: It is the goal of Kimley-Horn to serve as an extension of City staff throughout the duration of the Project. Kimley-Horn will be available to meet with City staff to discuss particular Project parameters. This task allows for a maximum of 25 total meetings via telephone or video conferencing. Additional meetings or in person meetings can be attended on a time and materials basis. This scope assumes one (1) hour per meeting for two (2) Kimley-Horn staff to account for preparation, meeting attendance, and follow-up coordination. This task allows for up to 50 hours.

The Project Manager will participate in project meetings/conference calls, including the kickoff meeting, and public hearings (preparation and attendance). Participation in and attendance at additional meetings

and/or the need for additional management efforts exceeding the budget allocation will require an amendment or would be billed on a **time-and-materials basis**.

Task 4.2 – Public Hearings Attendance

Kimley-Horn will provide public hearing attendance **on a Time and Materials basis,** as required by the City as defined below:

- Project Hearings: Kimley-Horn will attend public hearings held for the proposed Project. These hearings may include the Planning Commission hearing on the Draft EIR and City Council Hearing pertaining to the approval of the proposed Project. This task assumes up to two (2) hearings. This task includes a budget of up to 24 hours total for the attendance at hearings by two (2) technical staff (staff who prepared technical studies as a part of Task 2) at each hearing. This task assumes attendance by the Project Manager and Project Director at each hearing, assuming 6 hours per hearing for a total of 24 hours and a combined total of 48 hours.
- Additional meetings can be attended on a time and materials basis. This task assumes that City staff will provide any required public hearing notice(s), if not already provided in the Draft EIR NOA. This task assumes that City staff will be responsible for the preparation of any staff presentations during all public hearings.

Additional Services

Any services not specifically provided for in the above Scope, if requested by the City, will be billed as additional services and performed at our then-current hourly rates.

Information Provided by Client

We shall be entitled to rely on the completeness and accuracy of all information provided by the City or the City's consultants, Architects, Engineers, or representatives. The City shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

- Proposed Project Plans (high resolution);
- City-Prepared Studies;
- Completed Construction Questionnaire (provided to City by Kimley-Horn);
- Preliminary Title Report;
- Existing easement documentation;
- Access to the Site; and
- Site plan, elevations, landscape plans, etc. necessary to complete the Project submittal.

Kimley»Horn

Schedule

Refer to Attachment A.

Fee and Expenses

Refer to Attachment B.

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Kimley-Horn" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to City of Ontario.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

____ Please email all invoices to_____

____ Please copy_____

To proceed with the services, please have an authorized person sign this Agreement below and return to us. We will commence services only after we have received a fully executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

To ensure proper setup of your projects so that we can get started, please provide an executed Professional Services Consulting Agreement reflecting the above scope and fee and complete the attached Request for Information. Failure to supply this information could result in delay in starting work on your project.

We appreciate the opportunity to provide these services to you. Please contact me at miles.eaton@kimley-horn.com if you have any questions.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

Miles Eaton, PE
Project Manager

Kevin Thomas, CEP
Principal-in-Charge, Senior Associate

Davie Cowan, PE
Vice President
CA PE No: 86803

City of Ontario

SIGNED: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

Client's Federal Tax ID: _____ Client's Street Address: _____
Client's Business License No.: _____ _____

Attachment – Example Project Schedule
Attachment – Fees and Expenses Table
Attachment – Request for Information
Attachment – Standard Provisions

Request for Information

Please return this information with your signed contract; failure to provide this information could result in delay in starting your project.

Client Identification

Full, Legal Name of Client						
Mailing Address for Invoices						
Contact for Billing Inquiries						
Contact's Phone and e-mail						
Client is (check one)	Owner		Agent for Owner		Unrelated to Owner	

Property Identification

	Parcel 1	Parcel 2	Parcel 3	Parcel 4
Street Address				
County in which Property is Located				
Tax Assessor's Number(s)				

Property Owner Identification

	Owner 1	Owner 2	Owner 3	Owner 4
Owner(s) Name				
Owner(s) Mailing Address				
Owner's Phone No.				
Owner of Which Parcel #?				

Project Funding Identification – List Funding Sources for the Project

Attach additional sheets if there are more than 4 parcels or more than 4 owners.

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

1) **Kimley-Horn's Scope of Services and Additional Services.** Kimley-Horn will perform only the services specifically described in this Agreement ("Services"). Any services that are not set forth in the scope of Services described herein will constitute additional services ("Additional Services"). If requested by the Client and agreed to by Kimley-Horn, Kimley-Horn will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay Kimley-Horn for any Additional Services an amount based upon Kimley-Horn's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.

2) **Client's Responsibilities**. In addition to other responsibilities herein or imposed by law, the Client shall:
   a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
   b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
   c. Provide Kimley-Horn all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which Kimley-Horn may rely upon.
   d. Arrange for access to the site and other property as required for Kimley-Horn to provide its services.
   e. Review all documents or reports presented by Kimley-Horn and communicate decisions pertaining thereto within a reasonable time so as not to delay Kimley-Horn.
   f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
   g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
   h. Give prompt written notice to Kimley-Horn whenever the Client becomes aware of any development that affects Kimley-Horn's services or any defect or noncompliance in any aspect of the project.

3) **Period of Services**. Unless otherwise stated herein, Kimley-Horn will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that Kimley-Horn does not control. If such delay or suspension extends for more than six months, Kimley-Horn's compensation shall be renegotiated.

4) **Method of Payment.** Client shall pay Kimley-Horn as follows:
   a. Invoices will be submitted periodically for services performed and expenses incurred. Invoices are due and payable upon presentation. Client shall pay Kimley-Horn a time price differential of one and one-half percent (1.5%) of the outstanding amount of each invoice that is overdue for more than 30 days. The Client shall also pay any applicable sales tax. All retainers will be held by Kimley-Horn and applied against the final invoice. If the Client fails to make any payment due under this or any other agreement within 30 days after presentation, Kimley-Horn may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid, and may commence legal proceedings including filing liens to secure payment.
   b. The Client will remit all payments electronically to:
      Account Name: KIMLEY-HORN AND ASSOCIATES, INC.
      Bank Name and Address: WELLS FARGO BANK, N.A., SAN FRANCISCO, CA 94104
      Account Number: 2073089159554
      ABA#: 121000248
   c. The Client will send the project number, invoice number, and other remittance information by e-mail to payments@kimley-horn.com at the time of payment.
   d. If the Client relies on payment or proceeds from a third party to pay Kimley-Horn and Client does not pay Kimley-Horn's invoice within 60 days of receipt, Kimley-Horn may communicate directly with such third party to secure payment.
   e. If the Client objects to an invoice, it must advise Kimley-Horn in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.

f. If Kimley-Horn initiates legal proceedings to collect payment, it shall recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at Kimley-Horn's normal hourly billing rates, of the time devoted to such proceedings by its employees.
g. The Client agrees that the payment to Kimley-Horn is not subject to any contingency or condition. Kimley-Horn may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of Kimley-Horn to collect additional amounts from the Client.

5) **Use of Deliverables.** All documents, data, and other deliverables prepared by Kimley-Horn are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of Kimley-Horn's deliverables, or any reuse of the deliverables without written authorization by Kimley-Horn will be at the Client's sole risk and without liability to Kimley-Horn, and the Client shall indemnify, defend and hold Kimley-Horn harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Kimley-Horn's electronic files and source code remain the property of Kimley-Horn and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the deliverables prepared by Kimley-Horn, the hardcopy shall govern.

6) **Intellectual Property.** Kimley-Horn may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Kimley-Horn or its affiliates ("Intellectual Property") in the performance of this Agreement. Intellectual Property, for purposes of this section, does not include deliverables specifically created for Client pursuant to the Agreement and use of such deliverables is governed by section 5 of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Kimley-Horn maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Kimley-Horn and its affiliates. If Kimley-Horn's services include providing Client with access to or a license for Kimley-Horn's (or its affiliates') proprietary software or technology, Client agrees to the terms of the Software License Agreement set forth at https://www.kimley-horn.com/khts-software-license-agreement ("the License Agreement") which terms are incorporated herein by reference.

7) **Opinions of Cost.** Because Kimley-Horn does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. Kimley-Horn cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Kimley-Horn's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. Kimley-Horn shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by Kimley-Horn as a result of such termination.

9) **Standard of Care.** The standard of care applicable to Kimley-Horn's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by Kimley-Horn's performance of services, and it is agreed that Kimley-Horn is not a fiduciary with respect to the Client.

10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and Kimley-Horn, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of Kimley-Horn and Kimley-Horn's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs, attorneys' fees, or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of Kimley-Horn or Kimley-Horn's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by Kimley-Horn under this Agreement or $50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify Kimley-Horn.

11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.

12) **Construction Costs.** Under no circumstances shall Kimley-Horn be liable for extra costs or other consequences due to changed or unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Kimley-Horn shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before Kimley-Horn has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.

13) **Certifications.** All requests for Kimley-Horn to execute certificates, lender consents, or other third-party reliance letters must be submitted to Kimley-Horn at least 14 days prior to the requested date of execution. Kimley-Horn shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which Kimley-Horn does not have actual knowledge, or that would cause Kimley-Horn to violate applicable rules of professional responsibility.

14) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

15) **Hazardous Substances and Conditions.** Kimley-Horn shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Kimley-Horn's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. Kimley-Horn will notify the Client of unanticipated hazardous substances or conditions of which Kimley-Horn actually becomes aware. Kimley-Horn may stop affected portions of its services until the hazardous substance or condition is eliminated.

16) **Construction Phase Services.**
   a. If Kimley-Horn prepares construction documents and Kimley-Horn is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against Kimley-Horn in any way connected thereto.
   b. Kimley-Horn shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall Kimley-Horn have any authority or responsibility to stop or direct the work of any contractor. Kimley-Horn's visits will be for the purpose of observing construction and reporting to the Client whether the contractors' work generally conforms to the construction documents prepared by Kimley-Horn. Kimley-Horn neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
   c. Kimley-Horn is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and Kimley-Horn for all claims and liability arising out of job site accidents; and that the Client and Kimley-Horn shall be made additional insureds under the contractor's general liability insurance policy.

17) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and Kimley-Horn, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and Kimley-Horn. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Kimley-Horn, without the written consent of Kimley-Horn. Kimley-Horn reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If Kimley-Horn exercises this right, Kimley-Horn will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

18) **Confidentiality.** The Client consents to the use and dissemination by Kimley-Horn of photographs of the project and to the use by Kimley-Horn of facts, data and information obtained by Kimley-Horn in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, Kimley-Horn shall use reasonable care to maintain the confidentiality of that material.

19) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of California. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by Kimley-Horn. If Client requires Kimley-Horn to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Kimley-Horn or this Agreement. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

Kimley»Horn

ATTACHMENT A **Example Project Schedule for the City of Ontario Corporate Yard located at 2200 E Philadelphia Street, Ontario, CA 91761**

Schedule

We will provide our services once Kimley-Horn has received written approval of this Agreement and as expeditiously as practicable to meet our mutually agreed upon schedule as prepared in Task 1.1. A sample schedule, subject to change, is provided below:

NTP	Week 0
Project Kick-Off	Week 1
Kimley-Horn Prepares NOP	Week 2
Kimley-Horn Prepares Project Description	Week 2
City Reviews Administrative Draft NOP	Week 3
Kimley-Horn Prepares Check Copy NOP	Week 4
City Approves Check Copy NOP	Week 5
Kimley-Horn Completes/Publishes IS/NOP	Week 5
30-Day NOP Public Review	Weeks 6 - 9
Scoping Meeting	Week 8
Kimley-Horn Prepares Technical Studies	Weeks 1-12
City Review of Kimley-Horn Technical Studies	Weeks 13-16
Kimley-Horn Prepares Administrative Draft EIR	Weeks 1-18
City Reviews Administrative Draft EIR	Weeks 19-21
Kimley-Horn Prepares Check Copy Draft EIR	Weeks 22-24
City Approves Check Copy Draft EIR	Week 25
Kimley-Horn Completes/Publishes Draft EIR	Week 26
45-Day Draft EIR Public Review	Weeks 27-33
Kimley-Horn Prepares Administrative Draft Final EIR	Weeks 33-35
City Reviews Administrative Draft Final EIR	Weeks 36-37
Kimley-Horn Prepares Check Copy Final EIR	Week 38
City Approves Check Copy Final EIR	Week 39
Kimley-Horn Completes/Publishes Final EIR	Week 40
Planning Commission Hearing	TBD
Certification Hearing	TBD

Kimley»Horn

ATTACHMENT B **Fees and Expenses for the City of Ontario Corporate Yard located at 2200 E Philadelphia Street, Ontario, CA 91761**

Fee and Expenses

Kimley-Horn will perform the services on a lump sum basis and on a labor fee plus expense basis with the maximum labor fee as shown below. Kimley-Horn will not exceed the total maximum labor fee shown without authorization from the Client. However, Kimley-Horn reserves the right to reallocate amounts among tasks as necessary. Lump sum labor fees will be invoiced monthly based upon the overall percentage of service performed.

Direct reimbursable expenses such as express delivery services, fees, and other direct expenses will be billed at 1.15 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses such as telecommunications, in-house reproduction, postage, supplies, project-related computer time, and local mileage. Administrative time related to the project will be billed hourly. All permitting, application, and similar project fees will be paid directly by the Client. Should the Client request Consultant to advance any such project fees on the Client's behalf, a separate invoice for such fees, with a fifteen percent (15%) markup, will be expeditiously issued to and paid by the Client.

Payment will be due within 30 days of your receipt of the invoice and should include the invoice number and Consultant project number.

FEE AND EXPENSES TABLE

	TASK	FEE TYPE	FEE ESTIMATE
Task 1 – CEQA Compliance: Initial Tasks			
1.1	Project Initiation and Kick-Off Meeting	Hourly, NTE	$7,400
1.2	Project Description	Hourly, NTE	$5,900
1.3	Initial Study / Notice of Preparation	Hourly, NTE	$4,900
1.4	Scoping Meeting	Hourly, NTE	$4,500
		Total Task 1 Fee	**$22,700**
Task 2 – Technical Studies/Assessment			
2.1	Review of Technical Studies	Hourly, NTE	$2,000
2.2.1	Air Quality Analysis	Hourly, NTE	$11,500
2.2.2	Noise Analysis	Hourly, NTE	$12,600
2.2.3	Greenhouse Gas Emissions Analysis	Hourly, NTE	$8,700
2.2.4	Energy Analysis	Hourly, NTE	$6,700
2.2.5	Health Risk Assessment	Hourly, NTE	$12,200
2.2.6	Cultural and Paleontological Resources Assessment	Hourly, NTE	$12,600
2.2.7	Phase I Environmental Site Assessment	Hourly, NTE	$8,700
2.2.8	Biological Resources Assessment*	Lump Sum	$5,500
2.2.9	Crotch's Bumble Bee Focused Surveys*	Lump Sum	$5,300
2.2.10	Traffic Scoping Agreement	Hourly, NTE	$4,800
2.2.11	Traffic Impact Analysis	Hourly, NTE	$34,400
2.2.12	Vehicle Miles Traveled Assessment	Hourly, NTE	$16,000
		Total Task 2 Fee	**$141,00**
Task 3 – Environmental Impact Report			
3.1	Administrative Draft EIR	Hourly, NTE	$84,200
3.2	Draft EIR	Hourly, NTE	$48,200

	TASK	FEE TYPE	FEE ESTIMATE
3.3.1	Response to Comments	Hourly, NTE	$33,600
3.3.2	Errata and Final EIR	Hourly, NTE	$4,900
3.3.3	Notice of Determination	Hourly, NTE	$1,000
3.3.4	Mitigation Monitoring and Reporting Program	Hourly, NTE	$4,400
3.3.5	Findings and Statement of Overriding Considerations	Hourly, NTE	$8,400
		Total Task 3 Fee	**$184,700**
Task 4 – Project Meetings and Coordination			
4.1	Project Meetings and Management	Hourly, NTE	$34,200
4.2	Public Hearings Attendance	Hourly, NTE	$16,500
		Total Task 4 Fee	**$50,700**
		TOTAL LUMP SUM LABOR FEE	$10,800
		TOTAL HOURLY LABOR FEE	$388,300
		TOTAL ESTIMATED FEE	**$399,100**
		Task 2.2.2 Expenses	$250
		Task 2.2.6 Expenses	$1,000
		Task 2.2.7 Expenses	$450
		Task 2.2.11 Expenses	$3,900
		Task 3.2 Expenses	$6,500
		TOTAL ESTIMATED EXPENSES	**$12,100**
		TOTAL FEE PLUS EXPENSES GRAND TOTAL	**$411,200**

**Denotes Subconsultant to Kimley-Horn and Associates, Inc.*

CITY OF ONTARIO *Agenda Report* **June 3, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Broadband Operations Prepared By: Vanny Khu Department: Management Services Prepared By: Vanny Khu Staff Member Presenting: Jimmy Chang, Broadband General Manager Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 10

SUBJECT: AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT WITH RONALD IVIE FOR BROADBAND STRATEGY, DEVELOPMENT, AND OPERATIONS SUPPORT CONSULTING SERVICES

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute Amendment No. 2 to the Professional Services Agreement with Ronald Ivie to increase the authorized contract amount by $180,000, for a revised total not-to-exceed amount of $1,260,000.

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

FISCAL IMPACT: The proposed Amendment No. 2 increases the authorized contract amount of $1,080,000 by $180,000, for a revised total not-to-exceed amount of $1,260,000. If approved, appropriations in the Broadband fund will be included in future Annual Budgets to City Council for approval as needed for broadband design, engineering, project management, and inspection services.

BACKGROUND & ANALYSIS: On July 19, 2022, the City Council approved a Professional Services Agreement with Ronald Ivie for broadband strategy, development, and operations support consulting services, in an amount not-to-exceed $900,000. On September 17, 2024, the City Council approved Amendment No. 1 to the Agreement, increasing the total not-to-exceed amount to $1,080,000.

Ronald Ivie has served as the City's broadband advisor for more than two decades and authored the City's Fiber Optic Master Plan adopted in 2013. During the initial term of the Agreement, significant expenditures were required to support external network engineering to extend the fiber-optic network over 250 miles, covering Ontario Ranch and other City areas and facilities.

As the City advances toward the full implementation of OntarioNet, a municipally operated community internet service provider, additional project management, engineering services, and operational support are required. Amendment No. 2 will increase the not-to-exceed compensation amount to $1,260,000 to ensure continuity of services critical to the launch and ongoing operations of OntarioNet.

CITY OF ONTARIO
303 EAST B STREET | ONTARIO, CALIFORNIA 91764
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PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT (CITY FIBER OPTICS NETWORK)
BETWEEN THE CITY OF ONTARIO AND RONALD IVIE

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 Ronald Ivie, a sole proprietorship ("Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

2. Recitals.

2.1 Agreement. The City and Consultant have entered into an agreement entitled "Professional Services Agreement (City Fiber Optics Network)" dated July 19, 2022 ("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement to increase the not-to-exceed compensation amount by **One Hundred Eighty Thousand Dollars ($180,000)**, for a new total not-to-exceed amount of **One Million Two Hundred Sixty Thousand Dollars ($1,260,000)**. The Parties have heretofore entered into Amendment No. 1 dated September 17, 2024.

2.3 Amendment Authority. This Amendment No. 2 is authorized pursuant to Section 3.7.14 of the Agreement.

3. Terms.

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

> "3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit C to the original Agreement. The total

compensation shall not exceed **One Million Two Hundred Sixty Thousand Dollars ($1,260,000)** without the prior 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 in the 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 PROFESSIONAL SERVICES AGREEMENT (CITY FIBER OPTICS NETWORK) BETWEEN THE CITY OF ONTARIO AND RONALD IVIE

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

RONALD IVIE

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

CITY OF ONTARIO *Agenda Report* **June 3, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Community Improvement Prepared By: Douglas J Sorel Staff Member Presenting: Rudy Zeledon, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 11

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

RECOMMENDATION: That the City Council authorize Change Order #2 to the construction agreement with SLS Property Solutions Inc. of Santa Ana, CA for emergency board ups and abatements, extending the term of the agreement by one (1) additional year and increasing the total not-to-exceed amount to $550,000 for the term of the agreement; and authorize the City Manager, or his designee, to execute said Agreement and future change orders within authorization limits.

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

FISCAL IMPACT: Proposed Change Order No. 2 increases agreement by $150,000 for a revised total not-to-exceed of $550,000. If approved, appropriations will be included in future Annual Budgets to City Council for approval as needed in the General Fund and Housing Authority Fund for emergency on-call board ups and abatements.

BACKGROUND & ANALYSIS: On June 21, 2022, the City Council approved a Construction Agreement with SLS Property Solutions, Inc. of Santa Ana, CA, to perform emergency board up services and abatements. Various City Departments utilize their services to board-up public and private buildings damaged by fire, burglary, vandalism, and other causes, and to abate nuisance conditions on vacant lots identified through the Weed Abatement Program. Change Order No. 1 was approved on April 24, 2024, to address an increase in demand for both board-up services and vacant lot abatement by increasing the not-to-exceed amount of the Agreement from $100,000 to $150,000 for Fiscal Years 2023-24 and 2024-25 and increases the total not-to-exceed amount from $300,000 to $400,000. The proposed Change Order No. 2 extends the term of the agreement by one (1) additional year and increases the total not-to-exceed amount from $400,000 to $550,000.

CITY OF ONTARIO

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CITY TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
CHANGE ORDER

Project: EMERGENCY ON-CALL BOARD-UPS AND ABATEMENTS

Change Order Number: 2

Change Order Date:

Contract Date: **July 1, 2022**

To: SLS Property Solutions, 919 E Santa Ana Blvd, Santa Ana, CA 92701

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

The Contract is changed as follows:

Remove Section 3.16.2 Performance Bond. If specifically requested by the City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Performance Bond in an amount required by the City and in a form in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

Modify Exhibit "C" to read as follows: Special Conditions
Article 1. Bonds
Concurrently with this Contract, the Contractor shall deliver to the City four identical counterparts of the Payment Bond on the forms supplied by the City and included as Exhibit "F" to the Contract. The surety supplying the bond must be an admitted surety insurer, as defined in the Code of Civil Procedure Section 995.120, authorized to do business as such in State of California and satisfactory to the City.

The Contractor shall agrees to provide a Payment Bond for $100,000.00 on a yearly basis for the term of the Agreement.

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

NOT VALID UNTIL SIGNED BY OWNER

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

The original Contract Price was	$300,000
Net change by previously authorized Change Orders	$100,000
The Contract Price prior to this Change Order was	$400,000
The Contract Price will be changed by this Change Order in the amount of	$150,000
The new Contract Price including this Change Order will be	$550,000

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

The Contract Time will be: increased ☒ decreased ☐ unchanged ☐ by	1 Fiscal Year
The Contract Time prior to this Change Order was	3 Fiscal Years
The new Contract Time including this Change Order will be	4 Fiscal Years

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

Accepted:

_____ _____
Sarah L Strader, President Date

Approved:

_____ _____
Rudy Zeledon, Executive Director Community Development Date

Approved:

_____ _____
Scott Ochoa, City Manager Date

Pursuant to Section 1, Procedures, of the City of Ontario's Purchasing Policies and Procedures Manual, "Construction change orders up to 75% of the City Council approved contingency amount shall be approved by the Agency Head. Change orders that exceed 75% of the approved contingency shall be signed by the City Manager."

If your Change Order is less than 75% of the City Council approved contingency amount, then indicate "N/A" on the line where the City Manager would sign and have your Agency Head sign only.

CITY OF ONTARIO *Agenda Report* **June 3, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Planning Prepared By: Thomas Grahn Department: Prepared By: Thomas Grahn Staff Member Presenting: Rudy Zeledon, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 12

SUBJECT: **A PROFESSIONAL SERVICES AGREEMENT WITH PLACEWORKS, INC., TO PROVIDE PLANNING AND ENVIRONMENTAL CONSULTING SERVICES FOR A GENERAL PLAN AMENDMENT (TECHNICAL AMENDMENT) TO THE ONTARIO PLAN**

RECOMMENDATION: That the City Council authorize the City Manager to execute a Professional Services Agreement with PlaceWorks, Inc., of Santa Ana, in the amount of $183,740, plus an 8% contingency of $14,699, for a total authorized expenditure of $198,439 to prepare a technical amendment to The Ontario Plan Policy Plan (General Plan) and an Addendum to The Ontario Plan (2050) Supplemental Environmental Impact Report (SEIR) to streamline future development and comply with legislative mandates.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Operate in a Businesslike Manner
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch

FISCAL IMPACT: Any potential long-term fiscal impact and projected expenditures to the City will be offset by revenue sources such as development impact fees and property and sales tax revenues generated by future developments. If approved, appropriations will be included in future Annual Budgets to City Council for approval as needed.

BACKGROUND & ANALYSIS: On August 16, 2022, the City adopted The Ontario Plan (TOP) 2050 Policy Plan (General Plan) update and certified the accompanying Supplemental Environmental Impact Report (EIR). Recent changes in state law prompt the City to propose a technical amendment to TOP to address the following legislation:

- AB 98 - Requires cities to identify and plan for truck routes to improve goods movement, minimize impacts on sensitive land uses, and support state freight goals.
- AB 747 - Focuses on emergency evacuation planning and requires cities to identify evacuation

routes and assess whether development may impair those routes.
- SB 1425 - Encourages climate adaptation and regional collaboration by requiring cities to consider climate-related risks in their General Plans.
- SB 2684 - Amends General Plan requirements related to hazard mitigation, especially regarding vulnerable populations and environmental justice.

In addition to these new regulations, the provisions of SB 1000 must be evaluated when two or more elements of TOP are amended. Because new state laws will necessitate changes to TOP's Mobility and Safety Elements, the City must evaluate changes in conditions and its environmental justice policies.

In compliance with the California Environmental Quality Act (CEQA) Guidelines, City staff has conducted an evaluation and concluded that the appropriate environmental analysis for this specific proposal would involve an Addendum to the adopted TOP 2050 Supplemental Environmental Impact Report (SEIR). To facilitate this undertaking, the City intends to retain the services of PlaceWorks, Inc.

CITY OF ONTARIO
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PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF ONTARIO

AND

PLACEWORKS, INC.

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 PlaceWorks, Inc., a California Corporation, with its principal place of business at 3 MacArthur Place, Suite 1100, Santa Ana, CA 92707 ("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 environmental/planning consulting services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional services for The Ontario

Plan Technical Amendment 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 environmental/planning 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 June 4, 2025 to June 30, 2026, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines. The 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 eighty-three thousand seven hundred forty dollars **($183,740)** without written approval of the City Council or City Manager, as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

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

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

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

3.2.5 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: Colin Drukker, Principal-in-Charge, and Halley Grundy, Project Manager.

3.3.5 City's Representative. The City hereby designates Henry Noh, Planning Director, or his 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 designee.

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

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

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

3.3.9 Period of Performance.

3.3.9.1 Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in 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: PlaceWorks, Inc.
3 MacArthur Place, Suite 1100
Santa Ana, CA 92707

ATTN: Colin Drukker, Principal

City: City of Ontario
303 East B Street
Ontario, CA 91764
ATTN: Henry Noh, Planning Director

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 PLACEWORKS, INC.

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

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

PLACEWORKS, INC

By: _____

Its: Principal

Printed Name: Colin Drukker

By: _____

Its: Chief Executive Officer

Printed Name: Brian Judd

EXHIBIT “A”
SCOPE OF SERVICES

[***INSERT SCOPE***]

EXHIBIT “B”
SCHEDULE OF SERVICES

[***INSERT SCHEDULE***]

EXHIBIT "C"
COMPENSATION

[***INSERT RATES & AUTHORIZED REIMBURSABLE EXPENSES***]

May 2, 2025

Thomas Grahn
Senior Planner
City of Ontario
Planning Department
303 East B Street
Ontario, CA 91764

Subject: Proposal for TOP 2050 Technical Update

Transmitted via Email: TGrahn@ontarioca.gov

Dear Mr. Grahn:

PlaceWorks is happy to assist the City of Ontario in its long-term planning efforts. The following proposal outlines our recommended approach, a range of potential tasks, and associated budget and schedule estimates, including a task for CEQA processing via an Addendum. As always, we are happy to coordinate with the City in advance and during the process to adjust the scope, budget, and schedule as needed to best serve the City.

TOP 2050 POLICY PLAN TECHNICAL UPDATES

The Ontario Plan (TOP), which includes the City's General Plan, must be updated to address new state laws including AB 98, AB 747, SB 1425, and SB 2684. AB 98 requires that the City update its Mobility Element no later than January 1, 2026 to reflect changes in truck routes. It is suggested that the City also address requirements of other state laws through the same update process to streamline changes, minimize staff time, and ensure The Ontario Plan is in compliance with state law. The other laws that must be addressed include AB 747, which requires the City to incorporate its 2023 evacuation plan into the Safety Element; SB 1425 which requires the city to consider the co-benefits of open space with environmental justice policies, the Safety Element, and rewilding opportunities; and SB 2684 which requires the City to address the issue of extreme heat in the Safety Element. In addition to the new regulations, the provisions of SB 1000 must be evaluated when two or more elements of TOP are updated. Because new state laws will necessitate changes to the Mobility and Safety Elements, the City must evaluate changes in conditions and its environmental justice policies.

ENVIRONMENTAL REVIEW

This scope assumes that the level of CEQA needed will be addressed via an Addendum, as described under task 3.

The scope assumes that the City will address the required tribal consultation. PlaceWorks will be available to advise on this City-led item and other environmental considerations as described in task 1.5.

ADDRESSING UNKNOWN FACTORS

While we have outlined the anticipated work effort, there are a number of tasks that are subject to change or additional work based on external parties. For example, more extensive coordination may be required

with stakeholder groups. If the City adds a contingency in addition to the attached fee schedule, funds would be spent only upon the direction and approval of the City.

Scope of Work

TASK 1. TOP 2050 POLICY PLAN TECHNICAL UPDATES

Task 1.1 Mobility Element Updates

Truck Routes. State law, enacted by AB 98, requires that the City's established truck routes be evaluated and revised to minimize exposure to sensitive receptors by January 1, 2026. Furthermore, AB 98 requires the City to provide opportunities for civic engagement and make a diligent effort to engage all economic segments of the community about the proposed changes. The public outreach tasks identified in Task 2 are recommended to fulfill these requirements within an extremely short timeline.

Deliverables

- Policy and figure compliance evaluation
- Draft and final figure, including one admin draft and up to two rounds of revisions to figures M-02 and M-04 (PDF)
- Draft and final policy edits, if determined necessary, including one admin draft and up to two rounds of revisions (Word)

Task 1.2 Safety Element Updates

Update to hazard maps. As the FEMA flood maps covering the city have been updated in the past year, PlaceWorks will update Figure S-03 to reflect updated mapping, and review the flood mitigation policies and actions to ensure policies are responsive to the new maps.

Incorporate LHMP and Evacuation Annex. Assessment by reference. PlaceWorks will update the Safety Element to incorporate the City's updated LHMP and the AB 747 analysis by reference and recommend related policy revisions, actions, map updates.

SB 1425 consultation. PlaceWorks will review the City's open space policies to identify revisions required to comply with state law enacted through SB 1425, which requires that the Policy Plan address the co-benefits of open space correlated to the Safety Element by January 1, 2026. (Note: this complements the scope to review SB 1425 compliance under task 1.3)

SB 2684 updates. SB 2684 requires that the safety element be amended to address extreme heat when one or more elements are updated on or after Jan 1, 2028. While addressing this law is legally optional at this time, it is recommended for efficiency. PlaceWorks will review the City's policies related to extreme heat against the best available science and guidance available at the time of review to identify potential revisions required to comply with SB 2684.

Deliverables

- Policy and figure compliance evaluation

- One admin draft and up to one round of revisions to figure S-03 (PDF)
- One admin draft and up to one round of revision to other maps that need to be updated (if any) per the review of the LHMP and Evacuation Annex. Assessment (PDF)
- Draft and final policy edits, if determined necessary, including one admin draft and up to two rounds of revisions (Word)

Task 1.3 Environmental Justice

Two state laws require a review and assessment of the City's Environmental Justice policies through the Policy Plan Amendment process.

- SB 1425 requires cities to include plans and an action program to address access to open space for all residents in a manner that considers social, economic, and racial equity, correlated with environmental justice policies by January 1, 2026.
- SB 1000 requires cities to address environmental justice issues when two or more elements are updated or revised concurrently on or after January 1, 2018. The current TOP already incorporates policies addressing the environmental justice issues outlined in SB 1000, but the conditions and policies must be assessed at this time because the City is updating at least two elements.

PlaceWorks will review the current open space and environmental justice policies and provide recommendations for updates required to comply with SB 1425, SB 1000, and revisions needed due to new information.

Deliverables

- Policy and figure compliance evaluation
- Draft and final policy and figure edits, if determined necessary, including one admin draft and up to two rounds of revisions (Word)

Task 1.4 GIS

PlaceWorks will process map and GIS materials related to TOP amendments and zoning consistency to produce final PDFs, final packaged GIS files, and updates to the City's online web maps, including coordination with the IT department to evaluate automating processes to publish updated map products to City's online map library. Note: This task assumes that updates to web maps will be uploaded by PlaceWorks to the City's AGOL account; It does not include coordination with IT staff to automate map publishing through the City's enterprise system.

Deliverables:

- Draft and final PDF map documents as needed to support other tasks
- Packaged map documents compatible with ESRI systems for each map created or updated to be delivered after adoption
- Updated web maps to be published to the City's online map library after adoption (using the City AGOL platform)

Task 1.5 Project Management and Meetings

PlaceWorks Planning staff will coordinate TOP amendments and zoning with the Environmental team, other technical subcontractors, and City staff. This time includes attendance at meetings with City staff,

troubleshooting, internal coordination to help ensure timelines are met, and coordination with concurrent planning efforts. Attendance by up to two PlaceWorks staff members at up to four public hearings. In addition, up to 12 hours of consultation by PlaceWorks CEQA staff is included to provide high-level direction on tribal consultation and other issues that may arise in addition to preparing the Addendum as described in task 3.

TASK 2. PUBLIC OUTREACH

PlaceWorks will collaborate with City staff to develop a Community Engagement strategy that meets the requirements of SB 1000 and AB 98, while aligning with the project timeframe. At this time, the anticipated outreach strategy will involve two primary efforts to address the requirements of state law and ensure effective outreach for the public and City of Ontario.

Public Open House. PlaceWorks will work with City staff to design a public open house event to raise awareness about the project and provide an opportunity for community members to be included in the decision-making process, consistent with SB 1000 and City policy. It is anticipated that the open house event would focus on the proposed land use changes and highlight SB 1000 issues that could impact environmental justice areas identified in Figure ER-01.

Survey & Pop-up support. PlaceWorks will advise on content, host, and provide language access support in English, Spanish, and Mandarin for an online public survey drafted by City Staff. PlaceWorks will provide one staff member or up to two interpreters (contracted by an interpretation firm) fluent in Mandarin to support City Staff at one pop-up event in Southern Ontario.

Public Story Map or website. PlaceWorks will work with City staff to design a public-facing story map or website that describes the proposed changes to the Policy Plan to raise awareness about the project. It is anticipated that the story map or website will focus on SB 1000 issues that could impact environmental justice areas identified in Figure ER-01. The story map or website will be available in English, Spanish, and Simplified Chinese.

NOTE: Professional interpretation, professional translation of written materials, and printing costs are covered by the reimbursable budget

Deliverables

- Draft and final strategy (one-page memo in Word)
- Draft and final open house materials in English and Spanish, additional fees may apply if materials are needed in Simplified Chinese (PDF, PowerPoint)
- Draft and final promotional materials in English and Spanish, including an event flyer and up to 4 social media posts for the City to distribute and post. The scope includes copies of promotional materials in simplified Chinese for up to one event in Southern Ontario (pdf, jpg)
- Attendance by the PIC, PM, and one additional PlaceWorks staff member, additional fees may apply for attendance by staff fluent in Mandarin.
- Draft and final story map English, Spanish, and Simplified Chinese including one round of revisions.

TASK 3 CEQA PROCESSING

To reduce emissions and enhance health, AB 98 will increase regulatory requirements on warehousing and trucking activity in California. The warehouse siting, development and operational requirements are all designed to reduce adverse environmental impacts to communities. The legislation also requires local agencies to update their General Plan Circulation Elements to accommodate increased truck traffic related to logistics operations and to designate specific truck routes that avoid sensitive areas. The General Plan update is a discretionary project with the potential for environmental impacts, and therefore, subject to the California Environmental Quality Act (CEQA). Substantiated by the discussion below, the logical CEQA document and process to support the City's discretionary decision for the technical update is the preparation of an Addendum to the 2022 The Ontario Plan Supplemental Environmental Impact Report (Certified EIR). Based on our understanding of the potential Circulation Element amendment and truck route designations would not result in significant environmental impacts and minor modifications to the Environmental Justice and Safety Element policies. An EIR Addendum would be the most legally defensible, and time/cost efficient process for CEQA compliance and achieve the timeline identified in AB 98 for cities within the warehouse concentrated region.

Task 3.1 Draft Addendum

The updates to the City's Circulation Element and safety and environmental justice policies will not involve any changes to land use designations or related unincorporated buildout projections on which the SEIR was based. For purposes of this scope, the assumption is made that truck traffic projections and distribution will not materially change from those used for the Certified EIR.

As baseline conditions for an Addendum are defined as the conditions upon project implementation of the original project (e.g. buildout of TOP 2050 [2050]), the focus of the Addendum analysis will be to determine the potential increase in impacts, particularly to sensitive receptors, that could result in implementation of the proposed, designated truck routes. The potential impact would be the 'net' increase in comparison to the baseline, buildout conditions of TOP 2050.

As the objective of AB 98 and the designated routes is to reduce community impacts, our scope assumes that designated truck routes would minimize/reduce truck traffic proximate to sensitive resources for most routes. Our evaluation will be based on the truck volumes to be provided by Fehr& Peers. A screening analysis will be applied to determine whether any increase would result in a significant impact. Even if an increase occurs, since the TOP 2050 concluded that implementation of the proposed project could result in significant impacts to air quality and health risk increase due to the truck route designations would not be significant unless the net increase (over 2050 buildout) was a substantial increase in the severity of the impact. Unless that occurred, the project would still be eligible for the Addendum and not require an SEIR. Although not anticipated, there is no guarantee that changes in truck volumes along routes could result in more severe, significant environmental impacts. If this occurs, an SEIR would be required. Note that if an SEIR is required, it would not be possible to meet the State's January 1, 2026 deadline for adoption of the updated Circulation Element.

PlaceWorks will prepare a draft Addendum that focuses on potential changes in environmental impacts for air quality, noise, transportation, and hazards (i.e., for the revised flood maps). The analysis will be based on the screening analysis identified above and will not include any modeling of health risk along local truck routes. An Addendum does not require circulation with the public or trigger Assembly Bill (AB) 52

Consultation; however, the technical update will require tribal consultation under Senate Bill (SB) 18. The SB 18 consultation period is likely to be a critical path item for adoption if not initiated in a timely manner.

Task 3.2 Final Addendum

PlaceWorks will revise the draft Addendum per City review comments. A Notice of Determination will be filed following adoption of the Technical Update.

Task 3.3 CEQA Project Management and Meetings

Our estimated budget assumes that PlaceWorks CEQA PM and Assistant PM (APM) will attend up to three meetings with City staff during the course of the environmental review process, including the kickoff meeting. This task includes hearing attendance for the CEQA PM at up to 2 hearings.

Deliverables

- Draft and Final Addendum (electronic)
- NOD (CEQAnet and County Clerk + County Clerk Filing Fee)

Estimated Schedule and Budget

PlaceWorks will work with the City to draft a detailed schedule and anticipates commencing work in May 2025. Based on discussions with City staff, we anticipate providing admin draft materials by August 2025 and going to public hearings in fall 2025. Public outreach tasks would likely take place between May and July. The proposed budget is included on a separate page.

Acknowledgment

This proposal shall remain valid for a period of 90 days from the time of submittal. As a Principal, I am authorized to bind the team to the contents of this submittal and to negotiate contracts on behalf of PlaceWorks. If you have any questions, please do not hesitate to contact me at 714.966.9220 x3207 or cdrukker@placeworks.com.

We appreciate the opportunity to continue working with the City to bring about the successful completion of this effort.

Respectfully submitted,

PLACEWORKS



Colin Drukker
Principal

Estimated Schedule

PlaceWorks will work with the City to draft a detailed schedule and anticipates commencing work in May 2025. Based on discussions with City staff, we anticipate providing admin draft materials by August 2025 and going to public hearings in fall 2025. Public outreach tasks would likely take place between May and July.

TOP 2050 Policy Plan Technical Update

COST PROPOSAL

Task	Description	PLACEWORKS														PlaceWorks Hours	PlaceWorks Labor Total	TOTAL TASK BUDGET
		Colin Drukker	Halley Grundy	Emily Fan-Michaelson	Nicole Vermilion	Emma Haines	Tammy Seale	Jacqueline Protsman-Rohr	Chris Shields	John Vang	Associate	Rob Mazur	Leo DiPierro	Gina Froelich	Laura Munoz			
		PIC	PM	Public Engagement	CEQA	SEIR APM	Safety	Safety	Noise	AQ/GHG/HRA	Planning	GIS	GIS					
		Principal	Senior Associate	Associate Principal	Principal	Associate	Principal	Senior Associate	Senior Associate	Senior Associate	Associate	GIS Manager	GIS	Senior Editor	WP/ Clerical			
	Hourly Rate:	**$275**	**$225**	**$235**	**$275**	**$165**	**$275**	**$220**	**$245**	**$245**	**$165**	**$255**	**$180**	**$160**	**$140**			
TASK 1. TOP 2050 Policy Plan Amendment																		
1.1	Mobility Element	8	12													**20**	**$4,900**	**$4,900**
1.2	Safety Element	6	6				20	52								**84**	**$19,940**	**$19,940**
1.3	Environmental Justice	20	16								40					**76**	**$15,700**	**$15,700**
1.4	GIS	6	10									8	40			**64**	**$13,140**	**$13,140**
1.5	Project Management and Meetings	44	48		12		8	6								**118**	**$29,720**	**$29,720**
	Task 1. Subtotal	**84**	**92**	**0**	**12**	**0**	**28**	**58**	**0**	**0**	**40**	**8**	**40**	**0**	**0**	**362**	**$83,400**	**$83,400**
TASK 2. Public Engagement																		
2.1	Public Engagement	40	50	40							90		20			**240**	**$50,100**	**$50,100**
	Task 2. Subtotal	**40**	**50**	**40**	**0**	**0**	**0**	**0**	**0**	**0**	**90**	**0**	**20**	**0**	**0**	**240**	**$50,100**	**$50,100**
TASK 3. CEQA COMPLIANCE																		
3.1	Draft CWP EIR Addendum				20	40			10	10		8		8	4	**100**	**$20,880**	**$20,880**
3.2	Final Addendum				8	12			3	3		2		4	4	**36**	**$7,360**	**$7,360**
3.3	Project Management and Coordination				28	8			2	2						**40**	**$10,000**	**$10,000**
	Task 3. Subtotal	**0**	**0**	**0**	**56**	**60**	**0**	**0**	**15**	**15**	**0**	**10**	**0**	**12**	**8**	**176**	**$38,240**	**$38,240**
	Labor Hours Total	**124**	**142**	**40**	**68**	**60**	**28**	**58**	**15**	**15**	**130**	**18**	**60**	**12**	**8**	**778**		**$171,740**
	Labor Dollars Total	**$34,100**	**$31,950**	**$9,400**	**$18,700**	**9900**	**$7,700**	**$12,760**	**3675**	**3675**	**$21,450**	**$4,590**	**$10,800**	**1920**	**$1,120**		**$133,500**	
	PlaceWorks Percent of Total Labor	15.9%	18.3%	0	8.7%	0	3.6%	7.5%	0	0	16.7%	0	0	0	1.0%	100.0%		

Subconsultants Reimbursable Expenses	**0**
PlaceWorks Reimbursable Expenses	**$12,000**
REIMBURSABLE EXPENSES TOTAL	**$12,000**
TOTAL without Contingency	**$183,740**
8% Contingency	**$14,699**
GRAND TOTAL with Contingency	**$198,439**

NOTES:
Subconsultant costs are billed at cost plus 10%.
Reimbursable expenses are billed at our current rates.
Mileage is billed at the current IRS-approved rate.

CITY OF ONTARIO *Agenda Report* **June 3, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Planning Prepared By: Thomas Grahn Department: Prepared By: Thomas Grahn Staff Member Presenting: Rudy Zeledon, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 13

SUBJECT: **A PROFESSIONAL SERVICES AGREEMENT WITH PLACEWORKS, INC., TO PROVIDE PLANNING AND ENVIRONMENTAL CONSULTING SERVICES FOR A GENERAL PLAN AMENDMENT (POLICY PLAN AMENDMENT) TO THE ONTARIO PLAN**

RECOMMENDATION: That the City Council authorize the City Manager to execute a Professional Services Agreement with PlaceWorks, Inc., of Santa Ana, in the amount of $1,083,809, plus a 10% contingency of $108,381, for a total authorized expenditure of $1,192,190 to prepare an amendment to The Ontario Plan Policy Plan (General Plan) and a Supplemental Environmental Impact Report (EIR) to streamline future development and comply with legislative mandates.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Operate in a Businesslike Manner
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch

FISCAL IMPACT: Professional Services Agreement with PlaceWorks, Inc., of Santa Ana, in the amount of $1,083,809, plus a 10% contingency of $108,381, for a total authorized expenditure of $1,192,190 to prepare an amendment to The Ontario Plan Policy Plan (General Plan) and a Supplemental Environmental Impact Report (EIR). If approved, appropriations will be included in future Annual Budgets to City Council for approval as needed.

BACKGROUND & ANALYSIS: On August 16, 2022, the City adopted The Ontario Plan (TOP) 2050 Policy Plan (General Plan) update and certified the accompanying Supplemental Environmental Impact Report (SEIR). As a result of recent property owner inquiries, the City is processing proposed land use changes to TOP's Land Use Plan, evaluating associated changes required by state law, and evaluating potential environmental impacts. In addition to the land use plan, several other portions of the Policy Plan and related documents must also be amended. State law requires that substantive changes to the Housing Element be confirmed by the State, and other elements be

updated to maintain internal consistency with the proposed land use changes. Based on proposed updates to two elements (Land Use and Housing), the City must also evaluate potential impacts to the environmental justice component of TOP.

In compliance with the California Environmental Quality Act (CEQA) Guidelines, City staff has conducted an evaluation and concluded that the appropriate environmental analysis for this specific proposal would involve a Supplemental Environmental Impact Report (SEIR) to the adopted TOP 2050 SEIR. To facilitate this undertaking, the City intends to retain the services of PlaceWorks, Inc.

CITY OF ONTARIO
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PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF ONTARIO

AND

PLACEWORKS, INC.

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 PlaceWorks, Inc., a California Corporation, with its principal place of business at 3 MacArthur Place, Suite 1100, Santa Ana, CA 92707 ("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 environmental/planning consulting services to public clients, is licensed in the State of California, and is familiar with the plans of the City.

2.2 Project.

City desires to engage Consultant to render such professional services for The Ontario

Plan Policy Plan Amendment 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 environmental/planning 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 June 4, 2025 to June 30, 2026, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than three (3) 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 million eighty three thousand eight hundred nine dollars **($1,083,809)** without written approval of the City Council or City Manager, as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

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

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

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

from the City.

3.2.5 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: Colin Drukker, Principal-in-Charge, and Halley Grundy, Project Manager.

3.3.5 City's Representative. The City hereby designates Henry Noh, Planning Director, or his 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 designee.

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

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

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

3.3.9 Period of Performance.

3.3.9.1 Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in 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: PlaceWorks, Inc.
3 MacArthur Place, Suite 1100
Santa Ana, CA 92707

ATTN: Colin Drukker, Principal

City: City of Ontario
303 East B Street
Ontario, CA 91764
ATTN: Henry Noh, Planning Director

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 PLACEWORKS, INC.

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

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

PLACEWORKS, INC

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

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

EXHIBIT “A”
SCOPE OF SERVICES

[***INSERT SCOPE***]

EXHIBIT "B"
SCHEDULE OF SERVICES

[***INSERT SCHEDULE***]

EXHIBIT "C"
COMPENSATION

[***INSERT RATES & AUTHORIZED REIMBURSABLE EXPENSES***]

May 2, 2025

Thomas Grahn
Senior Planner
City of Ontario
Planning Department
303 East B Street
Ontario, CA 91764

Subject: Proposal for TOP 2050 Policy Plan Amendments and CEQA evaluation

Transmitted via Email: TGrahn@ontarioca.gov

Dear Mr. Grahn:

PlaceWorks is happy to assist the City of Ontario in its long-term planning efforts. The following proposal outlines our recommended approach, a range of potential tasks, and associated budget and schedule estimates. As always, we are happy to coordinate with the City in advance and during the process to adjust the scope, budget, and schedule as needed to best serve the City. At the request of the City, our proposal has been structured to accommodate an expedited timeline for processing the General Plan Amendment and Specific Plan to allow for a May 2026 hearing date.

Understanding of the Project

TOP 2050 POLICY PLAN AMENDMENTS

The City of Ontario is processing proposed changes to The Ontario Plan, evaluating associated changes required by state law, and evaluating potential environmental impacts. The City received numerous requests from property owners and developers to modify land use designations that would alter the allowable type or intensity of use throughout the city but primarily focused on portions of southern Ontario. Additional land use changes are under consideration for greater land use compatibility with adjacent uses, including the Chino airport safety zone, and to position the southwest portion of the city as a central business center that complements current and proposed development projects. The proposed land use changes also trigger requirements to rezone other land to comply with state housing law (enacted through SB 330 and SB 166). In total, nearly 1,000 acres would be considered for land use change.

In addition to the land use plan, several other portions of the Policy Plan and related documents must be amended. State law requires that substantive changes to the Housing Element be confirmed by the State, and other elements be updated to maintain internal consistency with the proposed land use changes. Based on the City's updates to two elements (Housing and Land Use), the City must also evaluate potential updates to the environmental justice component of The Ontario Plan.

This scope assumes that a separate technical update addressing new state laws will precede this work, and such laws will only be evaluated for changes incurred by the proposed land use changes as described in this scope. It is further anticipated that documents that rely on the estimated future buildout of TOP 2050, such

as the Community Climate Adaptation Plan (CCAP), will be updated to account for a new future land use pattern after the adoption of the proposed land use changes.

Recognizing the complexity and potential cumulative effects of the requested changes, the City has made a strategic decision to process these land use changes collectively as a single set of amendments addressed by one programmatic environmental document. This approach allows for a thoughtful and holistic evaluation of land use modifications, ensuring consistency with the overarching purpose and intent of the Policy Plan. By consolidating these requests, the City aims to:

1. Uphold long-term planning goals and the overall vision for the City's development
2. Plan for a cohesive and compatible pattern of land use
3. Comply with state law while adapting to evolving land use needs
4. Update related documents as necessary
5. Comprehensively assess the impacts of all proposed changes and coordinate environmental review through a new program-level Supplemental Environmental Impact Report (SEIR).

PROPOSED SPECIFIC PLAN

In addition to the tasks associated with the TOP 2050 amendments, it is our understanding that the City has been in discussions with the applicant for a Specific Plan project on Eucalyptus Avenue between Campus Avenue and Walker Avenue in the southern portion of the city. Given the magnitude of concurrent land use changes pursuant to State housing law that would be required to offset the loss of housing capacity (SB 330) and maintain the City's inventory of sites suitable for affordable housing (SB 166), the City has identified the possibility of incorporating and processing the project-level CEQA analysis for the Specific Plan within the programmatic SEIR for the Policy Plan amendments.

This approach enables the City to ensure appropriate cost-sharing while maintaining a desirable schedule for evaluating all proposed amendments and the Specific Plan. This is consistent with approaches taken in similar efforts elsewhere in California, where both programmatic and project-level components require analysis. This scope assumes that the City and the Specific Plan will determine each entity's fair share of costs based on the proportion of land affected by the proposed changes as described under Schedule and Budget.

ADDRESSING UNKNOWN FACTORS

While we have outlined the anticipated work effort, there are a number of tasks that are subject to change or additional work based on external parties. For example, more extensive coordination may be required with multiple property owners (especially on the specific plan) and the State Department of Housing and Community Development (HCD). As another example, additional public outreach activities or materials may be desirable. To account for these unknown factors and ensure project activities can continue with as little delay as possible, a ten percent contingency is recommended. This contingency fee would be in addition to the attached fee schedule, and funds would only be spent upon the direction and approval of the City.

Scope of Work

TASK 1. TOP 2050 POLICY PLAN AMENDMENT

Task 1.1 Land Use Planning.

Land Use Plan. PlaceWorks will advise the City on the development of a Proposed Land Use Plan. The proposed land use plan will incorporate land use changes requested by property owners and developers, changes necessary to foster cohesive and compatible development with requested changes, and changes required to address no-net-loss provisions of state law enacted by SB 330[1] and SB 166[2]. City staff have already done considerable work to identify land use changes and inventory SB 330 and SB 166 losses and gains. This scope assumes that City staff will continue to lead this effort until a draft land plan is stabilized. PlaceWorks will review the GIS shapefiles and excel tables prepared by staff to confirm land use changes, check GIS data, confirm SB 330 and SB 166 calculations, and update Figures LU-01 and LU-04. The scope includes one draft and up to two rounds of revisions to Figures LU-01 and LU-04 after PlaceWorks begins the review process.

Land Use Designations. PlaceWorks will evaluate and update land use designations consistent with the proposed land use plan. It is anticipated that mixed-use designations may need revisions to reflect the proposed land plan. Specifically, a new designation may need to be developed for a new district-scale mixed-use area south of Chino Ave (adjacent to the sports park), potential minor revisions to the Mixed-Use Great Park designation may be needed to reflect the altered land use pattern, and the Mixed-Use Eucalyptus / Chino Airport Overlay designation will need to be removed. The scope allows for one draft and up to two rounds of revisions to Table LU-02. Final versions will include track changes relative to the current plan and a clean version with changes accepted.

Future Buildout Table. PlaceWorks will estimate future buildout of the proposed plan and update the Future Buildout Table as follows:

- Buildout Assumptions. Buildout will be calculated consistently with the assumptions identified in Table LU-03. PlaceWorks will develop new assumptions for density, intensity, and mix of uses for all new land use designations and confirm assumptions for revised land use designations before modeling future buildout. The scope allows for one draft of updated and revised assumptions and up to two rounds of revision before future buildout modeling is calculated.

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1 SB 330 requires that the City maintain its current housing capacity, so any requested change that would rezone land from a use the allows housing (like mixed use or residential) to a use that would not allow for housing (like business park or open space) must be offset the loss of housing that could have been developed by concurrently upzoning another property in the city. Because the requested changes include projects that would reduce amount of housing that could be built, the amendments under consideration includes additional land use changes to upzone land and offset reductions in housing capacity.

2 SB 166 requires that the City maintain enough sites that are appropriately zoned to accommodate the City's fair share of lower and moderate income units, per the regional housing needs assessment (RHNA) and consistent with the City's certified housing element. Some of the changes requested are located on properties that are used to meet the City's lower-income RHNA requirement. When these properties are rezoned, new sites suitable to lower-income housing must be identified on the land use plan.

- Excel buildout model. PlaceWorks will update the excel buildout model to include new and revised assumptions and the proposed land use changes. The revised model will be shared with the City upon completion of the task.

- Table LU-03. PlaceWorks will use the Excel buildout model to estimate buildout of the proposed amendments and update Table LU-03 to reflect the revised TOP land use plan. The scope allows for one admin draft and up to two rounds of revisions to Table LU-03. Final versions will include track changes relative to the current plan and a clean version with changes accepted.

Deliverables

» One admin draft and up to two rounds of revisions to figures LU-01, 02, 03, and 04 (word/PDF)
» Updated LU-03 buildout tracking model (excel)

Task 1.2 Housing Element Update

PlaceWorks will provide technical support to process changes to the sites inventory and other portions of the Housing Element as deemed necessary to maintain consistency with state housing law by HCD. This task will focus on early coordination with HCD to confirm the exact approach and changes, which may expand or contract this task's scope and budget. For example, HCD may allow for an approach that qualitatively evaluates the fair housing implications of the changes to the sites inventory. Alternatively, HCD may require the City to rewrite the fair housing section extensively, using latest available data, and even consider alternative sites.

Deliverables:

» Coordination with HCD to confirm approach and required revisions
» One admin draft and up to one round of revision to the sites inventory map and table showing revision to the sites inventory, suitable for use as appendix B
» Appendix or redlined version of the housing element including an evaluation of proposed new sites, updated AFFH evaluation, removal to sites that are no longer suitable for lower income housing, updated maps and tables
» One round of HCD submittal and letter of continued compliance

Task 1.3 Mobility Element Updates

Multipurpose Trails and Bikeways. Because the proposed land use changes fundamentally change the pattern of land use in southwestern Ontario, minor updates to the City's trails and bikeways may be necessary to ensure the active transportation plan is appropriately aligned with future land uses. PlaceWorks will evaluate the current multipurpose trail and bikeway network relative to the proposed plan and recommend revisions for City staff consideration. Particular focus will be given to the relationship between trails and bikeways and revisions to the City's truck routes.

Truck Routes. The proposed land use changes introduce business park uses, where warehousing facilities could develop in areas not currently served by a truck route. State law, enacted by AB 98, requires that new warehousing have direct access to a truck route. To ensure future planned development is served, while also minimizing the impacts of truck trips on residential areas, PlaceWorks will work with Fehr and Peers

(see task 3.4.3) to provide recommendations for the potential location of new truck routes as well as policy direction to ensure truck routes are followed and enforced.

Deliverables

- Policy and figure compliance evaluation
- Draft and final figures, including one admin draft and up to two rounds of revisions to figures M-02 and M-04 (PDF)
- Draft and final policy edits, if determined necessary, including one admin draft and up to two rounds of revisions (Word)

Task 1.4 Community Design Element Updates

Place Type Updates. The proposed land use changes include alterations to the mixed-use areas within the city. Because all mixed-use areas are also governed by a mixed-use place type, the figures describing the characteristics and intent of place types must be revised to reflect proposed land use changes, as follows:

- Place Types. PlaceWorks will update Figure CD-01 to reflect the updated land use plan and updated place type boundaries.
- Place Type Categories. PlaceWorks will update Figure CD-02 to reflect revisions to place type categories. It is anticipated that a new district-level Place Type may be needed for the mixed-use area proposed along Chino Avenue adjacent to the sports park, minor revisions to the South Euclid District may be required, and the South Employment Place Type District should be removed.
- South Euclid District Place Type. PlaceWorks will update CD-06, including revisions to the vision, land use, and intended outcomes to ensure consistency with the proposed land plan and revisions identified for the Mixed-Use Grand Park land use designation in task 1.1.
- South Employment District Place Type. PlaceWorks will remove Figure CD-07.
- East Holt Corridor Place Type. PlaceWorks will update figure CD-08.1, including revisions to land use, vision, and intended outcomes to ensure consistency with the proposed land plan.
- Neighborhood Center – South of Riverside Drive. PlaceWorks will update CD-9.2, including revisions land use, vision, and intended outcomes to ensure consistency with the proposed land plan.
- NEW- Mixed Use Sports Park. If it is determined that the mixed-use area along Chino Avenue adjacent to the sports park should be treated as a mixed-use district, PlaceWorks will create a new figure including a vision, land use, and intended outcomes for the new place type.

Deliverables

- One admin draft and up to two rounds of revisions to figures CD-01, C-02, CD-06, CD-07, CD-08.1, CD-09.2, and up to one new place type figure (PDF)

Task 1.5 Environmental Justice

While the City is required to evaluate environmental justice, content based upon the updating of two or more elements (Land Use, Housing, Mobility, Community Design), PlaceWorks will also review the environmental justice policies and provide recommendations for updates required to comply with SB 1000 due to proposed changes in the land use plan.

Deliverables

- Policy and figure compliance evaluation with recommended changes
- Draft and final policy edits, if determined necessary, including one admin draft and up to two rounds of revisions (Word)

Task 1.6 Zoning Consistency

PlaceWorks will assist the City in reviewing the current zoning map and development code and make recommendations for adjustments. PlaceWorks will rely upon the City to provide project details that will serve as the basis for our review of and recommendations for development regulations and conditions of approval. Specific Plan updates (other than the Specific Plan project) are anticipated to be processed outside this effort.

Deliverables:

- Proposed Zoning map, including zoning changes required to implement the GPA (this includes the affordable housing overlay, but excludes areas where the zoning is regulated by a Specific Plan), (up to two rounds of revisions).
- Draft & final recommendations for development code changes required to implement the GPA (this includes the affordable housing overlay, but excludes areas where the zoning is regulated by a Specific Plan), (Draft includes one round of revisions, final will incorporate revisions from adoption hearings).

Task 1.7 GIS

PlaceWorks will process map and GIS materials related to TOP amendments and zoning consistency to produce final PDFs, final packaged GIS files, and updates to the City's online web maps, including coordination with the IT department to evaluate automating processes to publish updated map products to City's online map library.

Deliverables:

- Draft and final PDF map documents as needed to support other tasks
- Packaged map documents compatible with ESRI systems for each map created or updated to be delivered after adoption

- Up to 20 hours to assist in evaluating if automating online publishing is worth the time investment for the City, and assistance with outlining steps necessary for the City write scripts required to publish those maps identified as candidates for automated processing
- Updated web maps to be published to the City's online map library after adoption

Task 1.8A Project Management and Meetings

PlaceWorks Planning staff will coordinate TOP amendments and zoning with the Environmental team, other technical subcontractors, and City staff. This time includes attendance at meetings with City staff, troubleshooting, internal coordination to help ensure timelines are met, and coordination with the Specific Plan team.

Task 1.8B Coordination with the Specific Plan team

This task accounts for the ongoing operational and coordination activities that are essential to coordinate with the Specific Plan Team and keep the project on schedule. This task includes activities such as ongoing coordination, meetings, and additional time required to coordinate materials, deliverables, schedule, and review times with the Specific plan team.

TASK 2. PUBLIC ENGAGEMENT

To assist the city in effectively rolling out and communicating updates to the General Plan and zoning changes to the community consistent with the requirements of state law (enacted by SB 1000 and AB 98 and as directed by HCD), the public engagement scope includes the development of targeted messaging through content creation, public events, media coordination, and social messaging.

TASK 2.1 PUBLIC OUTREACH

Strategy. In coordination with the city's planning and communications teams, develop a public engagement strategy that outlines all the events, initiatives and tools to be used, aligned with current city practices.

It is anticipated that the strategy will include the following components:

Press Releases. In coordination with the City's planning and communications teams, PlaceWorks will develop up to 3 press releases promoting open house events, story map (or website) and/or scoping meeting. This scope assumes the City will handle direct media relations and distribution of the press releases.

Social Media. In coordination with the City's planning and communications teams, PlaceWorks will develop up a limited social media campaign, promoting the open house events, story map, scoping meeting, and key dates for public review of the SEIR. This scope assumes that the PlaceWorks will draft content for the social media posts and a schedule for posting for the City to post on their existing social media channels.

Public Open House (up to 2). PlaceWorks will collaborate with City staff to design up to two public open house events in addition to the scoping meeting (see Task 4.3, *Scoping Meeting*) that raise awareness about the project and provide an opportunity for community members to participate in the decision-making process, in accordance with SB 1000, AB 98, and City policy.

Public Story Map or Website & Survey. PlaceWorks will work with City staff to design a public-facing story map or website that describes the proposed changes to the Policy Plan and to raise awareness about the project. The Story map or website may be supplemented by survey questions that City staff will prepare. PlaceWorks will provide input on the survey questions, host/publish the survey online, and translate the web content (story map or website) as well as the survey questions into Spanish and Simplified Chinese.

Deliverables

- Draft and final Public Engagement Strategy (one-page memo in Word)
- Up to 3 draft and final press release documents (Word)
- Draft and final social media posting calendar (Word or Excel)
- Up to 2 social media posts and 1 flyer in English and Spanish for each of the following: Survey / Pop-up, Open House 1, Open House 2, Scoping Meeting, Public Review of environmental document. Translation into Simplified Chinese will be provided for up to 2 posts and 1 flyer. (pdf, jpg)
- Draft and final open house materials in English and Spanish (pdf, PowerPoint)
- Open house attendance by the PIC, PM, and one additional PlaceWorks staff member at up to 2 open house events.
- Draft and final story map or website in English, Spanish, and Simplified Chinese, including one round of revisions.
- 1 round of review of survey questions authored by City staff, web hosting of survey in an online survey tool accessible in English, Spanish and Simplified Chinese for up to 3 months.

NOTE: Professional translation of written materials is covered by the reimbursable budget.

TASK 3. TECHNICAL STUDIES

TASK 3.1 Air Quality, Energy, and GHG Emissions (PlaceWorks)

PlaceWorks will prepare an air quality, energy, and greenhouse gas (GHG) emissions analysis for the Policy Plan Amendment SEIR. The analysis will be based on the current methodology of the South Coast Air Quality Management District (South Coast AQMD) for projects in the South Coast Air Basin (SoCAB), and modeling files will be included as an appendix to the SEIR.

Consistency with GHG Reduction Plans

The SEIR will include a discussion of the GHG reduction targets of Assembly Bill 1279, which were adopted in September 2022, one month after the SEIR was Certified. Project consistency with the latest Southern California Association of Governments' (SCAG) Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) (Connect SoCal), will also be reviewed. Because the proposed project is an amendment to the current TOP, the proposed project cannot tier off the Community Climate Action Plan (CCAP) for its CEQA impact findings. Therefore, the SEIR would need to consider additional mitigation measures not identified in the Certified EIR, such as updating the CCAP, to reduce potentially significant impacts of the proposed project.

Updated Emissions Forecast

PlaceWorks will estimate the net increase in criteria air pollutant and GHG emissions for the Policy Plan Amendment project. Modeling will include emissions from the following sources: electricity, natural gas, water use/wastewater generation, and solid waste disposal; and vehicle miles (VMT) traveled by passenger vehicles and trucks identified in the traffic model (see Task 3.4).

Air Quality Management Plan Consistency

The SoCAB is designated a nonattainment of the National and/or California ambient air quality standards (AAQS) for ozone, nitrogen dioxide, and particulate matter (PM_{10} and $PM_{2.5}$). The project's regional emissions will be evaluated for consistency with South Coast AQMD's Air Quality Management Plan. The air quality impact analysis will also describe land uses in the City that have the potential to generate nuisance odors.

Operational Health Risk Assessment

PlaceWorks will prepare an operational health risk assessment (HRA) to evaluate the potential communitywide health risk impacts from toxic air contaminants (TAC) generated from trucking activities in the city (e.g., diesel particulate matter [DPM]). The analysis will be consistent with the current methodology of the South Coast Air Quality Management District (South Coast AQMD) and California Office of Environmental Health Hazard Assessment (OEHHA) guidance. The operational HRA will utilize the updated emissions inventory prepared under Task 3.1 to calculate pollutant concentrations and communitywide risks resulting from the addition of a new truck route along Eucalyptus Avenue and the envisioned increase in warehousing space, which would add new truck traffic to new and existing truck routes throughout the city. Air dispersion modeling will be performed using a South Coast AQMD-accepted computer-based model (e.g., AERMOD). Cancer and toxicity data published by the California Environmental Protection Agency will be used to estimate long-term (chronic) and short-term (acute) health risks for communitywide receptors from the additional truck travel along Eucalyptus Avenue and existing truck routes throughout the city facilitated by the proposed Policy Plan Amendments. Measures to reduce operation-related pollutant emissions will be considered in the SEIR.

Deliverables

- Air Quality, GHG, and Energy modeling for the Policy Plan Amendment as an appendix to the SEIR
- Operational HRA modeling data for the Policy Plan Amendment as an Appendix to the SEIR.

TASK 3.2 Noise and Vibration (PlaceWorks)

PlaceWorks will prepare the noise and vibration technical analyses to support the Policy Plan Amendment project. The SEIR will discuss relevant standards and criteria for noise exposure, including those in the Policy Plan Noise Element and Municipal Code. The noise analysis will include development of updated traffic noise contours. The results of this analysis will be summarized in the SEIR and modeling will be provided in an appendix.

Transportation Noise

PlaceWorks will model the buildout traffic noise levels using a version of the U.S. Federal Highway Administration (FHWA) Traffic Noise Prediction Model. PlaceWorks will develop noise contours based on

the future forecasts. The future noise contour map will identify areas along highway and roadway segments that would be exposed to noise levels above criteria included in the City's Policy Plan Noise Element. It is not anticipated that train noise would be different than that identified in the 2022 Certified SEIR. However, noise from aircraft overflights at the Ontario International Airport will also be updated, based on available information. No detailed modeling of airport noise or train noise is proposed.

Stationary Noise

Noise impacts from non-transportation sources will be evaluated on a programmatic level, qualitatively based on local noise standards. PlaceWorks will analyze noise impacts from non-transportation sources such as major commercial and industrial uses in terms of potential impacts to nearby noise-sensitive receptors and the noise limitations identified within the City's Municipal Code.

Construction Noise and Vibration

PlaceWorks will provide a qualitative analysis for potential construction impacts associated with buildout of the Policy Plan Amendment. Future noise and vibration effects from construction activities will be discussed in terms of accepted standards from the U.S. Federal Transit Administration (FTA). Feasible mitigation measures will be identified to minimize noise and vibration impacts associated with buildout of the Policy Plan Amendment.

Deliverables:

» Noise and Vibration Analysis for the Policy Plan Amendment as an appendix to the SEIR

TASK 3.3 Water Supply Evaluation (PlaceWorks + Cathy Fitzgerald)

PlaceWorks will prepare a Water Supply Evaluation (WSE) for the Policy Plan Amendment project. The report will rely on information provided in the City of Ontario's 2020 Urban Water Management Plan, TOP 2050, and water demand factors based on land use. The report will include the following information:

- The availability of water supplies over a historical record of at least 20 years. This includes an identification of any existing water supply entitlements, water rights, or water service contracts relevant to the identified water supply for buildout of the Policy Plan Amendment, and a description of the quantities of water received in prior years by the City.
- The quantification of existing and planned sources of water available to the City in 5-year increments for the 20-year projection.

- For groundwater supplies, the following additional information will be included:
  - » A description of the Chino Basin as contained in the 2020 Urban Water Management Plan.
  - » A detailed description and analysis of the amount and location of groundwater pumped by the City in the past five years.
  - » A detailed description and analysis of the amount and location of groundwater that is projected to be pumped by the City.
- A quantification of the City's past, current, and projected water demands.
- A quantification of the water demands for the Policy Plan Amendment. PlaceWorks will need to coordinate closely with whomever is preparing the Water Supply Assessment (WSA) for the concurrent Specific Plan because the Policy Plan Amendment will need to utilize similar water demand factors.
- A discussion as to whether the public water system's total projected water supplies available during normal, single dry, and multiple dry water years during a 20-year projection will meet the projected water demand of the proposed projects in addition to the public water system's existing and planned future uses. This will include the evaluation of drought impacts and consideration of variability in demand and supply based on hydrologic conditions.
- The applicability of the City's water shortage contingency analysis prepared pursuant to Section 10632 of the Water Code that includes actions to be undertaken by the public water system in response to water supply shortages.

Deliverables:

- » Water Supply Evaluation for the Policy Plan Amendment integrated within the Utilities and Service Systems section of the SEIR and modeling data included as an appendix.

TASK 3.4 Transportation (Fehr & Peers)

Task 3.4.1 Kick-Off Meeting/Scoping Session & Team Meetings

Kickoff Meeting

Fehr & Peers has budgeted for a half-day kick-off meeting and working session with the project team and City staff to finalize the project description. This meeting will establish a mutual understanding of the key issues and finalize the scope of work with the project team and City staff, including the following key elements of the scope of work:

- Reviewing the project description (specific type of warehousing) for the Specific Plan project and approach to trip generation, distribution, analysis scenarios, traffic forecasting, VMT modeling, truck data, and other project-level transportation study methodologies.
- Zoning that allows for warehousing can include industrial, manufacturing, or warehousing (cold storage, parcel sort, etc.).
- The allowable uses based on zoning allow for a wide range of potential trip generation for the site.

- We will need to verify with City staff a reasonable assumption for trip generation of the site and likely will need to work with the City on methods to ensure that the ultimate tenant fits within the assumptions of the assessment.
  - » Defining the approach to the Policy Plan Amendment at the program-level.
  - » Approach to address truck routes related to AB 98 requirements.
  - » Approach to the CEQA document and necessary transportation metrics.

Open House Scoping Meeting. Fehr & Peers will also attend an open-house style, public scoping meeting in-person at City Hall (see Task 4.3, *Scoping Meeting*). We will solicit additional input from the public which could influence final transportation study scope.

Transportation Scoping Memorandum Peer Review. Fehr & Peers will support the Specific Plan Team in the development of the transportation study scoping memorandum via peer review and development of the VMT analysis approach. Fehr & Peers will submit a list of data needs and will submit it for the Specific Plan Team's response.

In addition, Fehr & Peers will participate in weekly project management meetings with the team throughout the duration of the project.

Deliverables:

- » Attendance at project kick-off meeting/scoping session
- » Attendance at a public scoping meeting (see corresponding Task 4.3)
- » Peer Review Transportation Study Scoping Memorandum (Specific Plan)
- » Attendance at weekly, virtual project management meetings (up to 20 meetings)

Task 3.4.2 Vehicle Miles of Travel (VMT) Assessment

This task includes both Programmatic analysis and project-level analysis, budgeted as two tasks:

1. 3.4.2A - Programmatic analysis
2. 3.4.2B - Project-level analysis

The scope for each task is the same, as follows:

Fehr & Peers will conduct a VMT assessment consistent with requirements in CEQA, the City's adopted Transportation Impact Analysis Resolution (2020), and the Governor's Office of Land Use and Climate Innovation's Technical Advisory (2018). The final approach to the assessment will include the following:

- Approach the VMT assessment as a stand-alone land use project and conduct a project-level assessment where project Origin-Destination (OD) VMT and Boundary VMT forecasts are compared to City thresholds of significance.

- Approach the Policy Plan Amendment as an additional VMT assessment that compares the approved and the proposed GPA VMT using two metrics: 1) OD VMT per service population, and 2) Boundary VMT.

a. VMT Estimates

Fehr & Peers will utilize the latest San Bernardino Transportation Analysis Model (SBTAM+), consistent with Connect SoCal 2024 (The 2024 SCAG RTP/SCS), to develop traffic forecasts for the typical project uses. The traffic model updated for use in the Ontario Policy Plan Amendment SEIR traffic modeling (Approved Policy Plan Land Use Model with future year 2050) will be referenced to verify that the current version of SBTAM+ future land uses are consistent with assumptions identified in TOP. We will review the model and update the traffic analysis zone structure at the Specific Plan project site so we can isolate proposed uses at the Specific Plan project site.

VMT forecasts will be prepared for the following scenarios:

- Baseline No Project Conditions
- Baseline With Project Conditions
- Future Year Approved Project Conditions (i.e., TOP 2050)
- Future Year With Project Conditions

Consistent with City requirements, the OD Method will be utilized to develop project-level forecasts accounting for all VMT generated by the proposed project from the plan area to their ultimate destinations. The OD VMT will be shown as a rate per total employees and residents (e.g., service population). In addition, the Boundary Method will be utilized to measure the proposed project's effect on VMT measured in terms of absolute VMT generated within the project vicinity. Separate forecasts will be developed at the Specific Plan project-level and at the Citywide level to compare changes to the Policy Plan associated with the Policy Plan Amendments. Fehr & Peers will also prepare VMT per employee using the Production-Attraction (PA) Method that will exclude trips associated with heavy vehicles. This is consistent with the Office of Land Use and Climate Innovation's (LCI) Technical advisory and will be provided for informational purposes.

Finally, if the project includes additional roadway infrastructure that will be implemented with the project, we will work to identify any potential induced travel that could occur due to those roadway widenings or to determine if network gap closures have the potential to decrease VMT.

b. VMT Impact Assessment

Based on the results of VMT Estimates, Fehr & Peers will compare the proposed project's VMT forecasts (Policy Plan Amendment – Task 3.4.2A; and the Specific Plan – Task 3.4.2B) against the appropriate comparable thresholds or scenarios and disclose any potential transportation impacts related to VMT. Summary tables will be provided to document total VMT and VMT per service population (the summation of residents and employees) for each of the study scenarios.

c. Mitigations and Transportation Demand Management (TDM) Plan

Fehr & Peers will lead the development of the mitigation measures and quantification of VMT reductions for the Policy Plan Amendment. For the Specific Plan project, this scope of services assumes that the Specific Plan Team will lead the development of mitigation measures and quantification of VMT reductions. Fehr & Peers will provide peer review support in the development of mitigation measures and a TDM plan for the Specific Plan project.

d. Non-Automotive Assessment

As part of this assessment, Fehr & Peers will evaluate the proposed project's consistency with non-automotive modes. This will be completed by determining whether the project is consistent with existing and future infrastructure/policies supporting these modes (e.g., consistency of the project with existing or planned bikeway/transit/pedestrian facilities in the area).

e. Alternatives Evaluation

Fehr & Peers has budgeted 20 hours to evaluate up to four project alternatives for inclusion in the SEIR. This will include trip generation estimates and VMT forecasts.

f. SEIR Transportation Metrics

Fehr & Peers will provide modeling data to the PlaceWorks team for the Noise assessment. We have budgeted up to twelve hours to develop modeling outputs and assist in the postprocessing of the data for applicability in the assessment.

g. CEQA Guidelines Appendix G Questions

Fehr & Peers will prepare responses to the other three Appendix G questions in the VMT impact assessment documentation:

a) Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?

c) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

d) Result in inadequate emergency access?

This assessment will be qualitative in nature and does not include additional capacity assessment.

h. VMT Report

Fehr & Peers will prepare a draft transportation impact study report that summarizes the analysis methods, data, and the results of the VMT impact analysis and the non-automotive assessment.

The draft report will be submitted to the project team for review. We have included up to eight hours of staff time to respond to one round of consolidated comments from the project team on the draft report.

The updated report will be submitted to the City of Ontario for review. We have included up to an additional eight hours of staff time to respond to one round of consolidated comments from the City of Ontario on the updated draft report. The final report will be submitted to the project team.

Deliverables:

- Task 3.4.2A. Draft and final program-level VMT impact assessment
- Task 3.4.2B. Draft and final project-level VMT impact assessments

Task 3.4.3 Truck Routing and AB 98 Assessment

a. Assembly Bill 98 Assessment

While the City will update its truck routes through a separate technical effort and adhere to the January 1, 2026 deadline, Fehr & Peers will conduct a technical evaluation of The Ontario Plan, the City's Municipal Code, and proposed changes to ensure compliance with state law to inform and complement the planning work identified in task 1.3, Mobility Element Updates. As examples, Fehr & Peers will coordinate with the City to evaluate potential changes to access requirements and "good neighbor" policies. Fehr & Peers will use the municipal code checklist recently developed for SBCTA member agencies to identify updates to the City's Municipal Code that are required to comply with AB 98.

b. Existing Truck Route Review

Fehr & Peers will revisit truck routing pursuant to AB 98 requirements for designating truck routes throughout the City with an emphasis on revisiting truck access in the southern part of the City. The analysis will consider existing and planned "logistics uses" as defined in AB 98 to ensure they are accessible by a truck route. Truck routes will also be assessed pursuant to AB 98 requirements, such as avoiding routes that pass by sensitive receptors. Interjurisdictional truck access will also be considered.

c. Truck Route Analysis

Fehr & Peers will utilize recent truck trip data collected by the City along with big data (e.g., Geotab or Streetlight) to obtain information about the origins and destinations of trucks moving in, out, and through the City. This information will be useful for understanding truck access needs and for coordinating with neighboring jurisdictions, such as the Cities of Eastvale and Chino, on truck route designations, signage, and GIS mapping. Next, Fehr & Peers will assess the compatibility of land uses and zoning along the existing truck routes, and analyze roadway design compatibility for accommodating trucks. This information will be used to identify potential changes to truck routes. Alternative truck routes will be analyzed using the same information.

d. Proposed Truck Routes

Fehr & Peers will prepare proposed truck route maps and findings to share with adjacent cities that would be affected by the truck route changes. This scope of work includes 12 hours for meetings and discussions with other agencies, such as adjacent cities, SBCTA, and Caltrans. Pursuant to AB 98, the proposed truck route changes will be shared at public hearings.

e. AB 98 Documentation

Fehr & Peers will document the results of the AB 98 Municipal Code assessment and the truck routing analysis and recommendations in a consolidated technical report. The draft report will be submitted to the client for one round of consolidated comments. We have budgeted up to eight hours to respond to one round of comments and submit the final draft.

Deliverables (See Corresponding Task 1.3):

» Summary Truck Route findings/presentation materials

» Draft AB 98 Municipal Code Review & Truck Route Recommendations Technical Report
» Final AB 98 Municipal Code Review & Truck Route Recommendations Technical Report

Task 3.4.4 SEIR & Adoption Hearing Support

a. SEIR Chapter Review

Fehr & Peers has scoped up to four hours to review and provide comments on the environmental consultants SEIR Transportation Chapter.

b. FEIR Response to Comments

Fehr & Peers will assist the environmental team in preparing responses to transportation-related comments received on the Draft SEIR. Fehr & Peers has allocated 16 staff hours to respond to comments in the study budget. If additional time is needed due to the magnitude or complexity of the transportation-related comments, an additional scope and fee will be developed.

c. Public Hearings

Fehr & Peers has budgeted for in-person attendance at six public hearings, such as the planning commission hearing, city council hearing and/or study sessions.

Deliverables:
» Response to Comments Matrix
» Attendance at 6 Hearings

Task 3.5 Peer Review of the Specific Plan Technical Studies

PlaceWorks will conduct a review of the air quality, GHG, health risk assessments, and noise reports prepared for the Specific Plan project prior to incorporation in the Supplement EIR. We will review each study to determine whether it addresses the applicable CEQA checklist questions and ensure that conclusions are based on the appropriate level of analysis, findings are adequately substantiated, and mitigation is adequate and CEQA compliant. Review comments will be provided, and our cost estimate is based on a maximum of one round of comments/review for the technical review comments. Additional fee may be requested if additional reviews are required.

- Air Quality & Greenhouse Gas Emissions. John Vang, Senior Associate, will conduct a review of the air quality and GHG modeling and analysis for the Specific Plan project. John is up to date on the latest threshold methodology and case law for GHG emissions and has completed numerous GHG emissions analyses for CEQA projects. The review of the GHG analysis will confirm the appropriate use of accepted thresholds of significance considering the *Center for Biological Diversity v. California Department of Fish and Wildlife (Newhall Ranch)*, and *Golden Door Properties, LLC v. County of San Diego/Sierra Club, LLC v. County of San Diego (2018) 27 Cal.App.5th 892*. PlaceWorks will review that the technical modeling assumptions for construction and operational activities were conducted in accordance with the South Coast AQMD methodology, include an internal consistency evaluation of the modeling assumptions with the project description and traffic report, and evaluate recommended measures to reduce significant impacts of the project (if needed).

- Construction and Operational Health Risk Assessment. John Vang, Senior Associate, will conduct a third-party technical review of the health risk assessment and associated modeling prepared for the Specific Plan project. John is proficient in air dispersion modeling software, such as EPA's AERMOD. John is up to date on the latest South Coast Air Quality Management District (South Coast AQMD) threshold methodology and has completed numerous Health Risk Assessments (HRAs) for industrial developments and CEQA projects. The HRA review will include emissions estimates for Specific Plan project operation, technical air dispersion modeling assumptions, and health risk calculations for nearby sensitive receptors. PlaceWorks will summarize the findings in the matrix. South Coast AQMD is in the process of finalizing a new cumulative health risk threshold for land use development projects. John will review the cumulative health risk findings in light of recent CEQA caselaw and settlement agreements regarding cumulative health risk and the draft South Coast AQMD health risk threshold.

- Noise. Chris Shields, Senior Associate II – Noise and Vibration, will conduct a third-party technical review of the noise technical study and associated modeling prepared for the Specific Plan project. The review will confirm the use of accepted thresholds of significance, confirm that the technical modeling assumptions for construction and operational activities were conducted in accordance with industry standards and best practices evaluate internal consistency between the modeling assumptions and the Specific Plan project description and traffic report, and review recommended measures to reduce significant impacts of the project (if necessary). PlaceWorks will summarize the findings of the third-party technical evaluation in the matrix. The technical analysis for noise is assumed to be complete and contain all information necessary to adequately evaluate impacts associated with the proposed project.

- Transportation (Fehr & Peers). Fehr & Peers will conduct a third-party technical review of the Traffic Impact Analysis (TIA) for the Specific Plan project and associated traffic modeling. The review will include an evaluation of the following: quality of the data in the analysis (e.g., the apparent reasonableness of the existing conditions; baseline traffic count data, the accuracy of the existing and future lane configurations at analyzed intersections, etc.); accuracy of the technical analyses (LOS assessment, queueing calculations, signal warrant analysis, etc.); reasonableness of proposed recommendations; and the format, nature, and quality of the charts, figures, and other exhibits used to present the results of the study. Fehr & Peers has allocated up to 30 hours for this task.

  Deliverables:
  » Peer Review Matrix

TASK 4. CEQA COMPLIANCE

Policy Plan Amendment

The City of Ontario Certified a Supplemental Environmental Impact Report for The Ontario Plan 2050 in August of 2022 (State Clearinghouse Number 2021070364). It is our recommendation that a Supplemental EIR (SEIR) be prepared for this Policy Plan Amendment, in accordance with Section 15163 of the CEQA Guidelines.

The Policy Plan Amendment SEIR will analyze impacts at full buildout of the proposed project but the CEQA baseline for the SEIR would be the Approved Project (i.e., TOP 2050). The process for a SEIR is the same as for a Program EIR. All the same noticing and public review requirements apply. However, impacts will be compared to the approved plan and impacts identified in the 2022 Certified EIR rather than existing

environmental conditions. The Policy Plan Amendment SEIR would focus on the changes to the plan and environmental circumstances since the TOP 2050 SEIR was adopted (e.g., AB 1279). Since SEIRs only need to include information required to make the original EIR adequate for the revised project, project alternatives are not necessarily mandated. Alternatives will be required, however, to address any new, unavoidable significant impacts. To identify meaningful project alternatives, we recommend scheduling a separate meeting with the project team, including the Specific Plan Team, to identify alternatives. Our firm has a dedicated and experienced staff that have experience with program-level Policy Plan EIRs and SEIRs of this nature. We will work with the City to create an SEIR with high level of defensibility.

Specific Plan

To allow for a more streamlined review of the Specific Plan project, the City is recommending that the SEIR address both the program-level impacts of the Policy Plan Amendment as well as evaluate the project level impacts of the industrial specific plan within the SEIR. The additional cost to evaluate project-level impacts of the Specific Plan project are identified as 100% Specific Plan financial responsibility in the subtasks below. For this evaluation, it is assumed that the Specific Plan team's CEQA consultant will provide the project-level technical studies and evaluation that would be integrated into the SEIR, including the alternatives analysis.

For the purpose of this cost estimate, we have assumed that the following project-level technical studies to support the SEIR will be prepared by the Specific Plan Team's consultants and will be available to our team:

- Transportation Impact Analysis (LOS Study)
- Air Quality, Energy and GHG Emissions Technical Study*
- Construction Health Risk Assessment*
- Operational Health Risk Assessment*
- Noise and Vibration Technical Study*
- Phase I Environmental Assessment
- Biological Assessment
- Cultural and Paleontological Resource
- Geotechnical Study
- Water Supply Assessment
- Hydrology Report
- Water Quality Management Plan
- Utility Studies (wet and dry)
- PlaceWorks will conduct a formal peer review of the transportation impact analysis, air quality, energy, GHG emissions, and noise technical studies prior to integration into the SEIR. The remaining studies will be assessed for CEQA adequacy only and a formal peer review is not proposed.

TASK 4.1 CEQA Initiation

After the land use plan is finalized, PlaceWorks' environmental team will kick off the CEQA process and work with the Policy Plan Project Manager (GP PM) to develop a draft of the project description for use in the Notice of Preparation (NOP) and SEIR. Nicole Vermilion (CEQA PM) and Emma Haines (CEQA APM) will attend a CEQA initiation meeting, to discuss the schedule, critical path items, and environmental issues (see Task 4.9, *CEQA Project Management*).

Additionally, PlaceWorks will assist the City with the necessary letters for tribal consultation under Senate Bill (SB) 18 and Assembly Bill (AB 52). It is our understanding that the City has already contacted the Native American Heritage Commission (NAHC) to identify Tribes that have request consultation for SB 18 for the Technical update. It is assumed that the NAHC consultation for the Policy Plan Amendment will be the same as the Technical update. PlaceWorks will draft consultation letter templates for the City to distribute to Tribes on the City's AB 52 list and the NAHC SB 18 list.

Deliverables

- Project Description (electronic)
- SB 18 and AB 52 Tribal Consultation Letter Templates

TASK 4.2 Notice of Preparation

PlaceWorks will prepare a Notice of Preparation (NOP) for the Policy Plan Amendment and Specific Plan that provides a brief explanation of the preliminary scope of environmental issues to be included in the SEIR. The NOP will clearly identify the time, contact person, and address established for submitting responses. The NOP will also provide the time/date for the scoping meeting (see Task 4.3).

Distribution. Prior to City approval of the NOP, PlaceWorks will coordinate with the City to develop a distribution list. The NOP will be distributed electronically via email to applicable state and local agencies. In accordance with AB 819, PlaceWorks will also upload the NOP to the State Clearinghouse (SCH) website (CEQAnet) and the County Clerk for a 30-day public review. Our scope assumes that the City will publish the NOP in the local newspaper and post the NOP on the City's website.

PlaceWorks scope of work also includes direct costs for Spanish translation services for the CEQA notices (included within the reimbursable budget).

Deliverables

- Administrative and Public-Review NOP (electronic copies)
- Upload to CEQAnet
- County Clerk Posting
- Distribution of the NOP via email

TASK 4.3 Scoping Meeting

PlaceWorks will assist the City with organizing and conducting one public scoping meeting to present the major features of the Policy Plan Amendment and solicit comments about the scope and content of the SEIR. Based on our discussion with City staff, we anticipate that this would be conducted as an open house style scope meeting with participation from City staff, Specific Plan team, and Fehr & Peers (see Task 3.4.1). PlaceWorks CEQA PM will provide a presentation of the CEQA process. We will be prepared to discuss the

environmental review process and to answer questions, as desired by City staff. It is recommended that the scoping meeting be held as soon as possible after release of the NOP so that public concerns about environmental issues can be identified.

PlaceWorks scope of work also includes direct costs for Spanish interpretation services during the Scoping Meeting as well as Spanish translations of the PowerPoint slide deck (included within the reimbursable budget).

Deliverables

» Open House Style Scoping Meeting (Attendance by: GP PIC, GP PM, CEQA PM, CEQA APM)

TASK 4.4A Administrative Draft SEIR

A Program SEIR will be prepared with the following sections, in accordance with the CEQA Guidelines:

- Executive Summary
- Introduction
- Project Description
- Environmental Setting
- Discussion of Existing Conditions, Environmental Impacts, and Mitigation Measures
- Consideration of Significant Effects
- Project Alternatives
- Organizations and Persons Consulted
- Other CEQA-Mandated Sections

It is anticipated that the Program SEIR will address all 20 of the environmental topics in the CEQA Guidelines checklist in Appendix G:

- Aesthetics
- Agricultural Resources
- Air Quality (see Task 3.1)*
- Biological Resources
- Cultural Resources
- Energy (see Task 3.1)*
- Geology and Soils
- Greenhouse Gas Emissions (See Task 3.1)*
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Mineral Resources
- Noise (See Task 3.2)*
- Population and Housing
- Public Services
- Recreation
- Transportation (See Task 3.4)*
- Tribal Cultural Resources
- Utilities and Service Systems (see Task 3.3)
- Wildfire

Focused technical studies will be prepared for topics marked by asterisks (*). See Task 3, *Technical Studies*, for details. Policy Plan policies that reduce potential environmental impacts will be identified.

If the SEIR identifies new or an increase in magnitude of environmental impacts compared to the Certified EIR, the SEIR will need to include alternatives. As identified above, we are recommending a meeting with the City and Specific Plan Team to identify meaningful project alternatives. Additionally, for the Specific

Plan project, it is assumed that the alternative analysis for the SEIR will be provided by the Specific Plan Team.

Deliverables

» Administrative Draft SEIR (electronic copies)

Task 4.4B Admin Draft SEIR – Specific Plan Analysis

As identified above, to allow for a more streamlined review of the Specific Plan project, PlaceWorks will incorporate the environmental analysis for the project within the SEIR. To allow for this dual analysis, PlaceWorks will preformat the SEIR to have separate "Level 5" headings under each CEQA Guidelines Appendix G CEQA checklist question for the "General Plan Amendment" and the "Specific Plan". This would ensure that the SEIR provides a separate impact analysis for the Specific Plan and the program-level analysis for the Policy Plan Amendment for each of the CEQA Appendix G checklist questions. The SEIR would also include separate mitigation for the program-level analysis compared to that of the Specific Plan. It is anticipated that the Specific Plan would have several additional project-level mitigation measures and that some of the TOP 2050 (i.e., policy plan level) program level mitigation measures would not be applicable. Therefore, the Mitigation Measures would clearly identify which mitigation measures are applicable for the Specific Plan. PlaceWorks will need to work closely with both the City and the Specific Plan Team to develop the mitigation measures for the Policy Plan Amendment and Specific Plan.

We anticipate the need for up to two additional meetings during the Administrative Draft SEIR phase to ensure that PlaceWorks has the deliverables needed from the Specific Plan Team for the project-level analysis and that there is concurrence on the approach, including the outline, for the SEIR. A separate task has been identified for peer review of the Specific Plan technical studies (see Task O3.5) to ensure they are consistent with the assumptions used for the program-level Policy Plan Amendment technical studies.

TASK 4.5 Administrative Draft SEIR

4.5A Second Administrative Draft SEIR

PlaceWorks will revise the Draft SEIR based on City comments. The CEQA PM and CEQA Assistant PM will attend one review meeting (see Task 4.9, *CEQA Project Management*) to ensure concurrence with these revisions. It should be noted that additional administrative rounds of review would incur additional budget and would result in up to a one-month schedule delay for every additional round of administrative draft review.

Deliverables

» Second Administrative Draft SEIR (electronic copies)

4.5B Third Draft SEIR – Specific Plan Analysis

Because both the Specific Plan Team will likely want to conduct a detailed review of the Administrative Draft SEIR, we recommend preparation of a third Administrative Draft SEIR be prepared prior to the public review Draft SEIR. This would allow for an additional round of comments and edits from the City and the Specific Plan team on the SEIR to ensure legal defensibility. It should be noted that additional administrative

rounds of review would incur additional budget and would result in up to a one-month schedule delay for every additional round of administrative draft review.

Deliverables

» Third Administrative Draft SEIR (electronic copies)

TASK 4.6 Public Review Draft SEIR

PlaceWorks will revise the Draft SEIR based on City comments. PlaceWorks will prepare the NOA for City approval and signature. We will upload the Notice of Completion (NOC) and Draft SEIR to CEQAnet and distribute the NOA to the County Clerk. It is assumed that the City would publish the NOA to the local newspaper. PlaceWorks will also distribute the NOA electronically to applicable state and local agencies and interested parties on the list for a 45-day public review period. In accordance with AB 819, it is assumed that the City would be responsible for posting the NOC and Draft SEIR on the City's website.

PlaceWorks' scope of work also includes direct costs for Spanish translation services for the CEQA notices (fee is included in the reimbursable budget).

Deliverables

» Public Review Draft SEIR (email distribution)
» 5 Flash Drives
» Upload to CEQAnet (Notice of Completion, Draft SEIR and Appendices)
» County Clerk Posting
» NOA (up to 50 Certified Mailings)

TASK 4.7A FINAL SEIR

Responses to comments received on the Draft SEIR will be prepared in accordance with CEQA Guidelines Section 15089. Following receipt of all comments on the Draft SEIR, written responses will be prepared for each comment. A Response to Comments section will be created for the Final SEIR and will contain an introduction describing the public review process for the Draft EIR, copies of all comment letters, and written responses to all comments. Responses will focus on comments that address the adequacy of the Draft SEIR. Comments that do not address SEIR adequacy will be noted as such, and no further response will be provided unless deemed necessary by the City. Responses will be prepared by PlaceWorks with input from our technical specialists, as needed. The Final SEIR will also contain revisions to the Draft SEIR as necessary to respond to comments and/or correct inaccuracies identified subsequent to release of the SEIR as a public draft. In order to provide a conservative estimate a total of 60 hours professional staff time has been allocated for preparation of the Final SEIR. It should be noted that substantial public comments or comments that require technical responses may require additional budget and time to address that would affect our ability to meet the City's desired schedule.

The Final SEIR will be distributed to commenters on the Draft SEIR at least 10 days prior to certifying the SEIR (CEQA Guidelines Section 15088).

Deliverables

» Final SEIR (10 Overnight Mailings + 10 Flash Drives)

Task 4.7B FEIR Response to Comments – Specific Plan

If the SEIR includes both a program-level and project-level analysis, it is highly likely that there will be additional comments from agencies and the public on the project-level impacts of the Specific Plan. For the Final SEIR, PlaceWorks is assuming that this would be a joint-effort of PlaceWorks and the Specific Plan team, and that the Specific Plan Team would lead the responses for comments on the Specific Plan project-level analysis, including technical comments (except comments on the VMT Study, which would be addressed by Fehr & Peers).

Deliverables

» FEIR RTC – Specific Plan (electronic copies)

TASK 4.8 CERTIFICATION DOCUMENTS

Findings of Fact/Statement of Overriding Considerations

As described under Section 15163(e) of the CEQA Guidelines, the decision-making body shall consider the previous SEIR as revised by the supplemental EIR when decided whether to approve the project. However, a finding under Section 15091 shall be made for each significant effect shown in the previous SEIR as revised. Consequently, PlaceWorks will prepare findings and facts in support of findings, describing each of the significant impacts identified by the SEIR and the determination of whether those impacts would be reduced to below a level of significance by proposed mitigation measures.

Additionally, Section 15093 requires that when an agency approves a project that will have significant adverse environmental effects that are unavoidable, it must make a statement of its views on the ultimate balancing of the merits of approving the project despite the environmental consequences. PlaceWorks will coordinate with the City to draft the SOC for any unavoidable significant impacts that may be identified by the Final SEIR.

Mitigation Monitoring & Reporting Program

PlaceWorks will prepare the Mitigation Monitoring and Reporting Program (MMRP) pursuant to Section 15097 of the CEQA Guidelines. It will be presented in standard City format and will identify the significant impacts that would result from the proposed Policy Plan, proposed mitigation measures for each impact, the times at which the measures will need to be conducted, the entity responsible for implementing the mitigation measure, and the City department or other agency responsible for monitoring the mitigation effort and ensuring its success. Separate tables will be prepared for the Policy Plan Amendment and for the Specific Plan project.

NOD

If the project is approved by the lead agency, an NOD will be filed within five working days of approval of the Policy Plan Amendment (first NOD filing) and second reading (second NOD filing). PlaceWorks will be responsible for filing the NOD with the County Clerk as well as the State Clearinghouse. The county clerk filing fees are included in this proposal. However, since this is an SEIR, it is assumed that payment of the California Department of Fish and Wildlife (CDFW) mitigation fee is not warranted.

Deliverables

- MMRP (electronic copy)
- FOF/SOC (electronic copy)
- 2 NOD Filings (including County Clerk filing fees)

TASK 4.9 CEQA PROJECT MANAGEMENT

Task 4.9.1 CEQA Project Management

This task accounts for the ongoing operational and coordination activities that are essential for keeping a project on schedule and within budget. This task includes activities such as project start-up, minutes and agendas, budget and schedule tracking, ongoing coordination with the consultant team, and providing the daily point of contact with the City. The CEQA PM will oversee the project from beginning to end and provide the leadership at critical milestones during the approximately 14-month CEQA process. PlaceWorks will be responsible for coordinating with subconsultants, processing invoices, reviewing and managing deliverables, ensuring quality control, and adhering to the schedule.

Task 4.9.2 CEQA Meetings and Hearings

Our estimated budget assumes that PlaceWorks CEQA PM and Assistant PM (APM) will attend up to three meetings with City staff during the course of the environmental review process, including the kickoff meeting. On request, PlaceWorks and/or other members of our consultant team will attend additional meetings on a time-and-materials basis in accordance with the hourly rates for the personnel involved.

Our scope includes attendance by the CEQA PM and CEQA APM at up to two public hearings (one Planning Commission and one City Council hearing), concluding in adoption of the Policy Plan Amendment and certification of the Final SEIR. It is assumed that attendance at the second reading is not required. However, we will submit a second NOD for the second reading.

Task 4.9.3 Coordination with Specific Plan Team

This task accounts for the ongoing operational and coordination activities that are essential to coordinate with the Specific Plan Team and keep the project on schedule. This task includes activities such as ongoing coordination, meetings, and additional time required to coordinate materials, deliverables, schedule, and review times with the Specific plan team.

Deliverables

- Kick-off Meeting (CEQA PM and APM)
- 2 CEQA Meetings (CEQA PM and APM)
- 2 CEQA Public Hearings (CEQA PM and APM)

Estimated Schedule and Budget

PlaceWorks will work with the City to draft a detailed schedule and anticipates commencing work in April 2025. Based on discussions with City staff, we have outlined milestones with an expedited schedule that achieve a May 2026 City Council hearing date. Of special note is that early coordination with HCD is critical to maintaining the schedule. Additionally, close coordination with the Specific Plan team is required in order to meet the milestones for the CEQA analysis. Achieving the May 2026 hearing date is predicated upon the

following milestones and assumptions. Should any of these deviate, PlaceWorks may not be able to adhere to the desired schedule.

- Stable land use plan for the General Plan Amendment by April 2025
- Completion of the land use plan for the Specific Plan by May 2025
- Early acceptance from HCD on the approach for the SB 330
- The number of administrative Draft SEIR rounds of review is limited to no more than three.
- Completion of the administrative Draft Specific Plan by November 2025
- Completion of the public review Draft Specific Plan by January 2025
- Public comments on the Draft SEIR and coordination with state agencies or outside stakeholders can be defensibly addressed for inclusion in the FEIR in no more than two weeks

The proposed budget is included on a separate page.

Acknowledgment

This proposal shall remain valid for a period of 90 days from the time of submittal. As a Principal, I am authorized to bind the team to the contents of this submittal and to negotiate contracts on behalf of PlaceWorks. If you have any questions, please do not hesitate to contact me at 714.966.9220 x3207 or cdrukker@placeworks.com.

We appreciate the opportunity to continue working with the City to bring about the successful completion of this effort.

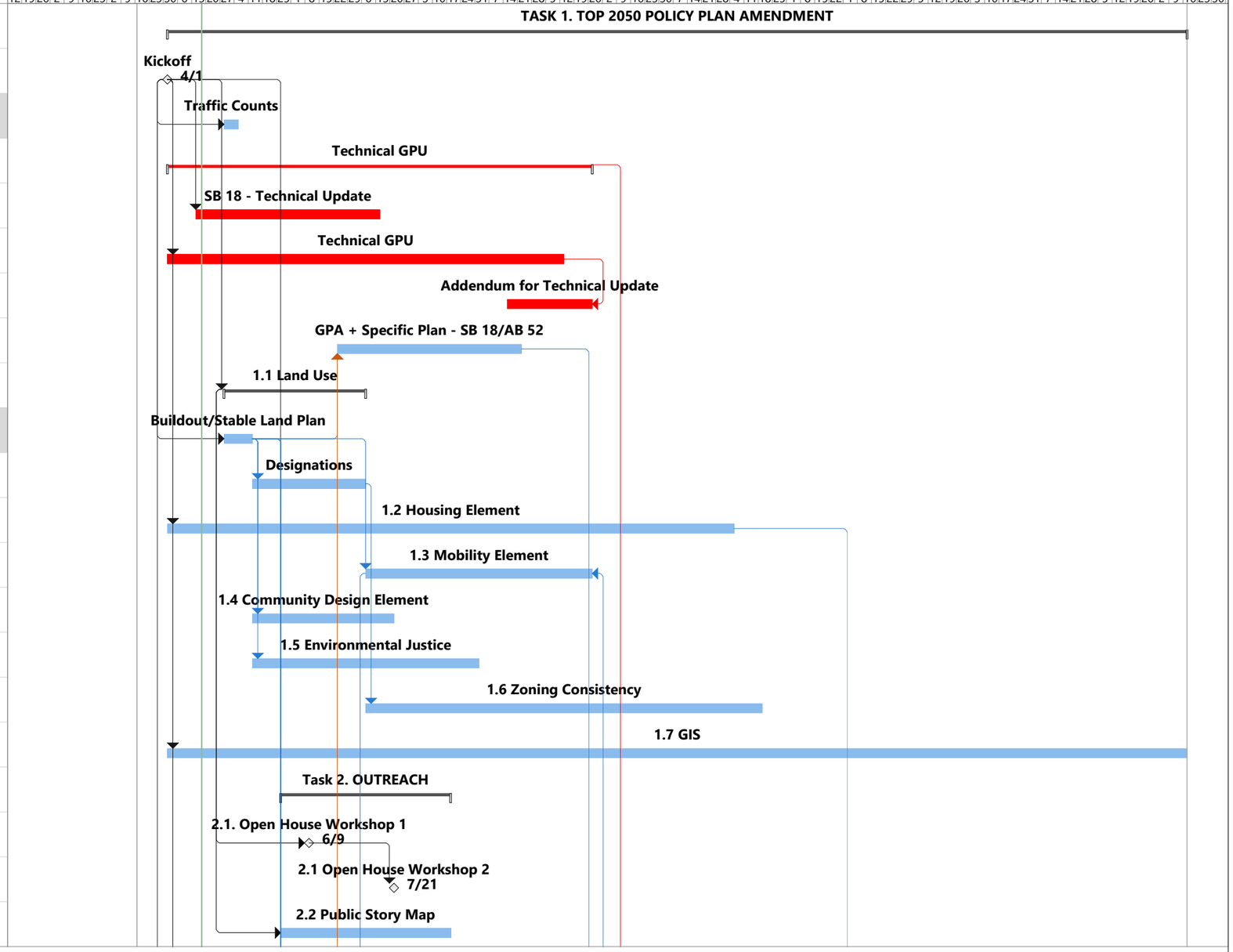
Respectfully submitted,

PLACEWORKS

Colin Drukker
Principal

Ontario General Plan Amendment + Specific Plan

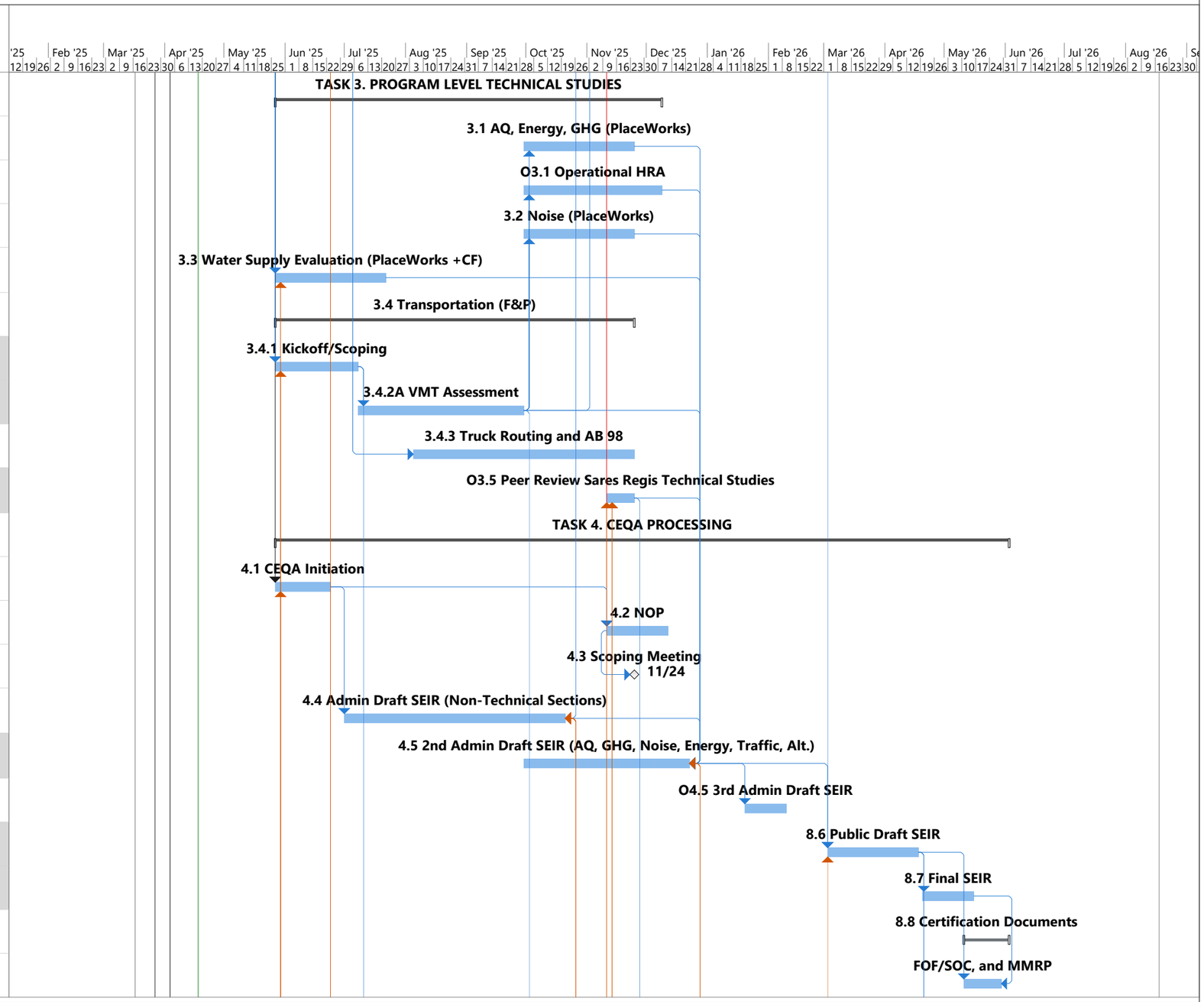
ID	Task Mode	Task Name	Duration	Start	Finish
1		**TASK 1. TOP 2050 POLICY PLAN AMENDMENT**	**360 days**	**Tue 4/1/25**	**Mon 8/17/26**
2		Kickoff	0 days	Tue 4/1/25	Tue 4/1/25
3		Traffic Counts	1 wk	Tue 4/29/25	Mon 5/5/25
4		**Technical GPU**	**150 days**	**Tue 4/1/25**	**Mon 10/27/25**
5		SB 18 - Technical Update	91 edays	Mon 4/14/25	Mon 7/14/25
6		Technical GPU	7 mons	Tue 4/1/25	Mon 10/13/25
7		Addendum for Technical Update	6 wks	Tue 9/16/25	Mon 10/27/25
8		GPA + Specific Plan - SB 18/AB 52	91 edays	Mon 6/23/25	Mon 9/22/25
9		1.1 Land Use	50 days	Tue 4/29/25	Mon 7/7/25
10		Buildout/Stable Land Plan	2 wks	Tue 4/29/25	Mon 5/12/25
11		Designations	8 wks	Tue 5/13/25	Mon 7/7/25
12		1.2 Housing Element	10 mons	Tue 4/1/25	Mon 1/5/26
13		1.3 Mobility Element	4 mons	Tue 7/8/25	Mon 10/27/25
14		1.4 Community Design Element	10 wks	Tue 5/13/25	Mon 7/21/25
15		1.5 Environmental Justice	4 mons	Tue 5/13/25	Mon 9/1/25
16		1.6 Zoning Consistency	7 mons	Tue 7/8/25	Mon 1/19/26
17		1.7 GIS	18 mons	Tue 4/1/25	Mon 8/17/26
18		**Task 2. OUTREACH**	**60 days**	**Tue 5/27/25**	**Mon 8/18/25**
19		2.1. Open House Workshop 1	0 days	Mon 6/9/25	Mon 6/9/25
20		2.1 Open House Workshop 2	0 days	Mon 7/21/25	Mon 7/21/25
21		2.2 Public Story Map	12 wks	Tue 5/27/25	Mon 8/18/25



Project: OntarioGPA_SP_Schedu
Date: Fri 4/18/25

Task	Project Summary	Manual Task	Start-only	Deadline
Split	Inactive Task	Duration-only	Finish-only	Progress
Milestone	Inactive Milestone	Manual Summary Rollup	External Tasks	Manual Progress
Summary	Inactive Summary	Manual Summary	External Milestone

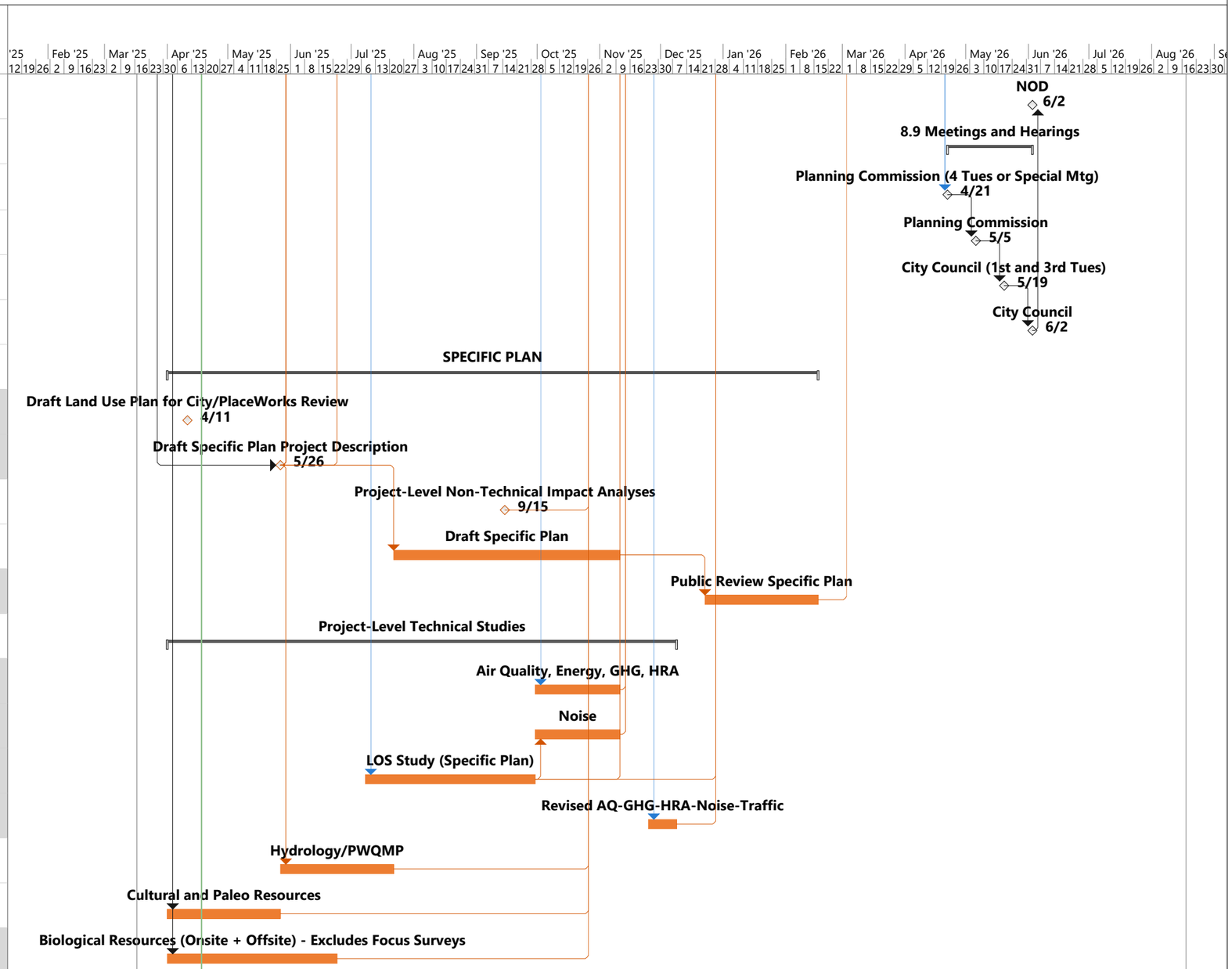
ID	Task Mode	Task Name	Duration	Start	Finish
22		**TASK 3. PROGRAM LEVEL TECHNICAL STUDIES**	**140 days**	**Tue 5/27/25**	**Mon 12/8/25**
23		3.1 AQ, Energy, GHG (PlaceWorks)	8 wks	Tue 9/30/25	Mon 11/24/25
24		O3.1 Operational HRA	10 wks	Tue 9/30/25	Mon 12/8/25
25		3.2 Noise (PlaceWorks)	8 wks	Tue 9/30/25	Mon 11/24/25
26		3.3 Water Supply Evaluation (PlaceWorks +CF)	8 wks	Tue 5/27/25	Mon 7/21/25
27		3.4 Transportation (F&P)	130 days	Tue 5/27/25	Mon 11/24/25
28		3.4.1 Kickoff/Scoping	6 wks	Tue 5/27/25	Mon 7/7/25
29		3.4.2A VMT Assessment	12 wks	Tue 7/8/25	Mon 9/29/25
30		3.4.3 Truck Routing and AB 98	16 wks	Tue 8/5/25	Mon 11/24/25
31		O3.5 Peer Review Sares Regis Technical Studies	2 wks	Tue 11/11/25	Mon 11/24/25
32		**TASK 4. CEQA PROCESSING**	**266 days**	**Tue 5/27/25**	**Tue 6/2/26**
33		4.1 CEQA Initiation	4 wks	Tue 5/27/25	Mon 6/23/25
34		4.2 NOP	31 edays	Mon 11/10/25	Thu 12/11/25
35		4.3 Scoping Meeting	0 days	Mon 11/24/25	Mon 11/24/25
36		4.4 Admin Draft SEIR (Non-Technical Sections)	4 mons	Tue 7/1/25	Mon 10/20/25
37		4.5 2nd Admin Draft SEIR (AQ, GHG, Noise, Energy, Traffic, Alt.)	3 mons	Tue 9/30/25	Mon 12/22/25
38		O4.5 3rd Admin Draft SEIR	3 wks	Tue 1/20/26	Mon 2/9/26
39		8.6 Public Draft SEIR	46 edays	Mon 3/2/26	Fri 4/17/26
40		8.7 Final SEIR	4 wks	Mon 4/20/26	Fri 5/15/26
41		8.8 Certification Documents	17 days	Mon 5/11/26	Tue 6/2/26
42		FOF/SOC, and MMRP	3 wks	Mon 5/11/26	Fri 5/29/26



Project: OntarioGPA_SP_Schedu
Date: Fri 4/18/25

Task	Project Summary	Manual Task	Start-only	Deadline
Split	Inactive Task	Duration-only	Finish-only	Progress
Milestone	Inactive Milestone	Manual Summary Rollup	External Tasks	Manual Progress
Summary	Inactive Summary	Manual Summary	External Milestone	

ID	Task Mode	Task Name	Duration	Start	Finish
43		NOD	0 days	Tue 6/2/26	Tue 6/2/26
44		**8.9 Meetings and Hearings**	**30 days**	**Tue 4/21/26**	**Tue 6/2/26**
45		Planning Commission (4 Tues or Special Mtg)	0 days	Tue 4/21/26	Tue 4/21/26
46		Planning Commission	0 days	Tue 5/5/26	Tue 5/5/26
47		City Council (1st and 3rd Tues)	0 days	Tue 5/19/26	Tue 5/19/26
48		City Council	0 days	Tue 6/2/26	Tue 6/2/26
49		**SPECIFIC PLAN**	**230 days**	**Tue 4/1/25**	**Mon 2/16/26**
50		Draft Land Use Plan for City/PlaceWorks Review	0 days	Fri 4/11/25	Fri 4/11/25
51		Draft Specific Plan Project Description	0 days	Mon 5/26/25	Mon 5/26/25
52		Project-Level Non-Technical Impact Analyses	0 days	Mon 9/15/25	Mon 9/15/25
53		Draft Specific Plan	4 mons	Tue 7/22/25	Mon 11/10/25
54		Public Review Specific Plan	2 mons	Tue 12/23/25	Mon 2/16/26
55		**Project-Level Technical Studies**	**180 days**	**Tue 4/1/25**	**Mon 12/8/25**
56		Air Quality, Energy, GHG, HRA	6 wks	Tue 9/30/25	Mon 11/10/25
57		Noise	6 wks	Tue 9/30/25	Mon 11/10/25
58		LOS Study (Specific Plan)	12 wks	Tue 7/8/25	Mon 9/29/25
59		**Revised AQ-GHG-HRA-Noise-Traffic**	**2 wks**	**Tue 11/25/25**	**Mon 12/8/25**
60		Hydrology/PWQMP	8 wks	Tue 5/27/25	Mon 7/21/25
61		Cultural and Paleo Resources	8 wks	Tue 4/1/25	Mon 5/26/25
62		Biological Resources (Onsite + Offsite) - Excludes Focus Surveys	12 wks	Tue 4/1/25	Mon 6/23/25



Project: OntarioGPA_SP_Schedu
Date: Fri 4/18/25

Task	Project Summary	Manual Task	Start-only	Deadline
Split	Inactive Task	Duration-only	Finish-only	Progress
Milestone	Inactive Milestone	Manual Summary Rollup	External Tasks	Manual Progress
Summary	Inactive Summary	Manual Summary	External Milestone	

TOP 2050 Policy Plan Amendments and CEQA Evaluation

COST PROPOSAL

Task	Description	PlaceWorks Hours	PlaceWorks Labor Total	Fehr & Peers Traffic	Fitzgerald Consulting Water Supply Evaluation	10% Subcons. Labor Total (incl. 10% mark-up)	TOTAL TASK BUDGET
	Standard Hourly Rate						
	Hourly Rate with 10% fee for expedited processing						
TASK 1. TOP 2050 Policy Plan Amendment							
1.1	Land Use	**110**	**$28,325**			**$0**	**$28,325**
1.2	Housing Element	**460**	**$108,240**			**$0**	**$108,240**
1.3	Mobility Element	**48**	**$12,210**			**$0**	**$12,210**
1.4	Community Design Element	**50**	**$11,605**			**$0**	**$11,605**
1.5	Environmental Justice	**48**	**$11,660**			**$0**	**$11,660**
1.6	Zoning Consistency	**80**	**$18,260**			**$0**	**$18,260**
1.7	GIS	**160**	**$34,320**			**$0**	**$34,320**
1.8	Project Management and Meetings	**242**	**$64,735**			**$0**	**$64,735**
	Task 1. Subtotal	**1198**	**$289,355**	**$0**	**$0**	**$0**	**$289,355**
TASK 2. Outreach							
2.1	Public Engagement	**352**	**$80,168**			**$0**	**$80,168**
	Task 2. Subtotal	**352**	**$80,168**	**$0**	**$0**	**$0**	**$80,168**
TASK 3. TECHNICAL STUDIES							
3.1	AQ, Energy, & GHG Emissions (PlaceWorks)	**182**	**$35,915**			**$0**	**$35,915**
3.1	Operational HRA - Cumulative Impacts	**76**	**$20,174**			**$0**	**$20,174**
3.2	Noise (PlaceWorks)	**74**	**$15,059**			**$0**	**$15,059**
3.3	Water Supply Evaluation (PlaceWorks)	**30**	**$7,271**		**$3,640**	**$4,004**	**$11,275**
3.4	Traffic (Fehr & Peers)	**16**	**$4,840**	**$90,300**	**$0**	**$99,330**	**$104,170**
3.4.1	*Kickoff Meeting/Scoping Session*	*0*	*$0*	***$20,160***	***$0***	*$22,176*	*$22,176*
a.	*Attendance at Kick-off and Scoping Meeting*	*0*	*$0*	*$7,205*		*$7,926*	*$7,926*
b.	*Support Transportation Study Scoping Memo*	*0*	*$0*	*$3,355*		*$3,691*	*$3,691*
c.	*Biweekly Virtual Meetings*	*0*	*$0*	*$9,600*		*$10,560*	*$10,560*
3.4.2A	*VMT Assessment (GPA)*	*8*	*$2,420*	***$26,960***	***$0***	***$29,656***	***$32,076***
a.	*VMT Estimates*	*0*	*$0*	*$6,865*		*$7,552*	*$7,552*
b.	*VMT Impact Assessment*	*0*	*$0*	*$2,800*		*$3,080*	*$3,080*
c.	*Mitigation and TDM Plan Peer Review*	*0*	*$0*	*$4,360*		*$4,796*	*$4,796*
d.	*Non-Automotive Assessment*	*0*	*$0*	*$3,085*		*$3,394*	*$3,394*
e.	*Alternatives Evaluation*	*0*	*$0*	*$2,180*		*$2,398*	*$2,398*
f.	*EIR Transportation Metrics*	*0*	*$0*	*$1,365*		*$1,502*	*$1,502*
g.	*Appendix G Questions*	*0*	*$0*	*$2,110*		*$2,321*	*$2,321*
h.	*VMT Report*	*8*	*$2,420*	*$4,195*		*$4,615*	*$7,035*
3.4.3	*Truck Routing and AB 98*	*8*	*$2,420*	***$30,860***	***$0***	***$33,946***	***$36,366***
a.	*AB 98 Assessment*	*0*	*$0*	*$5,850*		*$6,435*	*$6,435*
b.	*Existing Truck Route Review*	*0*	*$0*	*$5,315*		*$5,847*	*$5,847*
c.	*Truck Route Analysis*	*0*	*$0*	*$9,865*		*$10,852*	*$10,852*
d.	*Proposed Truck Routes*	*0*	*$0*	*$4,915*		*$5,407*	*$5,407*
e.	*AB 98 Documentation*	*8*	*$2,420*	*$4,915*		*$5,407*	*$7,827*
3.4.4	*EIR & Adopting Hearing Support*	*0*	*$0*	***$12,320***	***$0***	***$13,552***	***$13,552***
a,	*EIR Chapter Review*	*0*	*$0*	*$1,210*		*$1,331*	*$1,331*
b.	*FEIR RTC*	*0*	*$0*	*$6,000*		*$6,600*	*$6,600*
c.	*Public Hearings (6)*	*0*	*$0*	*$5,110*		*$5,621*	*$5,621*
	Task 3. Subtotal	**378**	**$83,259**	**$99,330**	**$4,004**	**$103,334**	**$186,593**

TOP 2050 Policy Plan Amendments and CEQA Evaluation

COST PROPOSAL

Task	Description Standard Hourly Rate Hourly Rate with 10% fee for expedited processing	PlaceWorks Hours	PlaceWorks Labor Total	Fehr & Peers Traffic	Fitzgerald Consulting Water Supply Evaluation	10% Subcons. Labor Total (incl. 10% mark-up)	TOTAL TASK BUDGET
TASK 4. CEQA COMPLIANCE							
4.1	CEQA Initiation	73	$16,143	$0	$0	$0	$16,143
4.2	NOP	30	$5,478	$0	$0	$0	$5,478
4.3	Scoping Meeting	36	$8,866			$0	$8,866
4.4A	Administrative Draft SEIR	759	$156,118	$0	$0	$0	$156,118
4.5A	2nd Administrative Draft SEIR	100	$21,384			$0	$21,384
4.6	Draft SEIR	62	$12,089			$0	$12,089
4.7A	Final SEIR	96	$21,604			$0	$21,604
4.8	Certification Documents	100	$17,496	$0	$0	$0	$17,496
4.9	CEQA Project Management	170	$44,407	$0	$0	$0	$44,407
4.9.1	CEQA PM	90	$25,047			$0	$25,047
4.9.2	Meetings and Hearings	80	$19,360	$0	$0	$0	$19,360
	Task 4. Subtotal	1426	$303,584	$0	$0	$0	$303,584
	Labor Hours Total	3,354		$99,330	$4,004	$103,334	$859,700
	Labor Dollars Total		$756,366				
	PlaceWorks Percent of Total Labor	100%					
REIMBURSABLE EXPENSES TOTAL							$26,220
GPA TOTAL (See next page for Grand Total with Project-Level CEQA and contingency)							$885,919

TOP 2050 Policy Plan Amendments and CEQA Evaluation

COST PROPOSAL

Task	Description	PlaceWorks Hours	PlaceWorks Labor Total	Fehr & Peers Traffic	Fitzgerald Consulting Water Supply Evaluation	10% Subcons. Labor Total (incl. 10% mark-up)	TOTAL TASK BUDGET
	Standard Hourly Rate						
	Hourly Rate with 10% fee for expedited processing						
SPECIFIC PLAN (PROJECT LEVEL) TASKS							
3.4	**Traffic (Fehr& Peers)**	**8**	**$2,420**	**$27,185**	**$0**	**$29,904**	**$32,324**
3.4.2B	*VMT Assessment (Specific Plan)*	*8*	*$2,420*	***$27,185***	***$0***	***$29,904***	***$32,324***
a.	*VMT Estimates*	*0*	*$0*	*$6,865*		*$7,552*	*$7,552*
b.	*VMT Impact Assessment*	*0*	*$0*	*$3,050*		*$3,355*	*$3,355*
c.	*Mitigation and TDM Plan Peer Review*	*0*	*$0*	*$3,355*		*$3,691*	*$3,691*
d.	*Non-Automotive Assessment*	*0*	*$0*	*$4,065*		*$4,472*	*$4,472*
e.	*Alternatives Evaluation*	*0*	*$0*	*$2,180*		*$2,398*	*$2,398*
f.	*EIR Transportation Metrics*	*0*	*$0*	*$1,365*		*$1,502*	*$1,502*
g.	*Appendix G Questions*	*0*	*$0*	*$2,110*		*$2,321*	*$2,321*
h.	*VMT Report*	*8*	*$2,420*	*$4,195*		*$4,615*	*$7,035*
3.5	**Peer Review of Specific Plan Tech Studies**	**34**	**$9,284**	**$7,065**		**$7,772**	**$17,056**
4.4B	**Admin Draft EIR Incremental Cost**	**206**	**$40,953**			**$0**	**$40,953**
4.5B	**3rd Administrative Draft SEIR**	**96**	**$20,152**			**$0**	**$20,152**
4.7B	**Final SEIR**	**44**	**$9,790**			**$0**	**$9,790**
4.9.3	**Additional CEQA PM - Specific Plan**	**144**	**$38,016**			**$0**	**$38,016**
1.8B	**Additional Planning PM - Specific Plan**	**144**	**$39,600**			**$0**	**$39,600**
	Project-Level EIR Subtotal:	**676**	**$160,215**	**$37,675**	**$0**	**$37,675**	**$197,890**

TOTAL WITH GPA & PROJECT-LEVEL CEQA REVIEW	**$1,083,809**
10% Contingency	**$108,381**
GRAND TOTAL WITH GPA & PROJECT-LEVEL CEQA REVIEW & CONTINGENCY	**$1,192,190**

NOTES:

Subconsultant costs are billed at cost plus 10%.

Reimbursable expenses are billed at our current rates.

Mileage is billed at the current IRS-approved rate.

CITY OF ONTARIO *Agenda Report* **June 3, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Lance Verdugo Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Bonnie Tam, Jacqueline Leon Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 14

SUBJECT: **AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT WITH CAL BUILDING SYSTEMS, INC. FOR SPRINKLER AND HOOD SUPPRESSION MAINTENANCE AND REPAIR SERVICES**

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute Amendment No. 3 to the Maintenance Services Agreement with Cal Building Systems, Inc., of Yorba Linda, California, for sprinkler and hood suppression maintenance and repair services in the amount of $40,000. This amendment increases the contract amount from $236,221 to $276,221 and raises the total authorized not-to-exceed amount from $266,221 to $306,221.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Maintain the Current High Level of Public Safety

FISCAL IMPACT: The recommended Amendment No. 3 with Cal Building Systems, Inc., increases the not-to-exceed contract amount by $40,000, for a total not-to-exceed contract amount of $276,221 plus a previously approved contingency of $30,000 increasing the total not-to-exceed amount from $266,221 to $306,221. The Fiscal Year 2024-25 Adopted Budget includes appropriations in the Facilities Maintenance Fund for sprinkler and hood suppression maintenance and repair services.

BACKGROUND & ANALYSIS: On July 1, 2024, Amendment No. 2 to the Maintenance Services Agreement with Cal Building Systems, Inc., for sprinkler and hood suppression maintenance and repair services was executed to exercise the right to use the second option year and increase the contract amount by $69,698 for a total not-to-exceed contract amount of $236,221. Amendment No. 3 increases the contract amount by $40,000 for a total contract amount of $276,221 plus a previously approved contingency of $30,000 for an overall not-to-exceed amount of $306,221.

The City has fire sprinkler and hood suppression systems at various locations throughout the City. The systems require scheduled inspections and testing to ensure proper detection, operation, and notification to prevent loss of life, maintain fire building code compliance, and minimize property damage in case of fire. As a result of these inspections, various citywide repairs have been identified. Staff recommends increasing the total authorized compensation to address these repairs and ensure uninterrupted services throughout the remainder of the current Fiscal Year.

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

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 3 TO THE MAINTENANCE SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND CAL BUILDING SYSTEMS, INC.

1. Parties and Date.

This Amendment No. 3 to the Agreement (as defined herein) is made and entered as of _____, by and between the City of Ontario ("City") and **Cal Building Systems, Inc**., a CORPORATION ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties."

2. Recitals.

2.1 Agreement. The City and Contractor have entered into an agreement entitled "Maintenance Services Agreement" for sprinkler and hood suppression maintenance and repair services dated July 1, 2020 ("Agreement").

2.2 Amendment Purpose. The City and Contractor desire to amend the Agreement to increase the compensation amount by **Forty Thousand Dollars ($40,000)** for a new total not-to-exceed contract amount of **Two Hundred Seventy-Six Thousand Two Hundred Twenty-One Dollars ($276,221)**. The Parties have heretofore entered into that Amendment No. 1 dated June 6, 2023, and Amendment No. 2 dated dated July 1, 2024.

2.3 Amendment Authority. This Amendment No. 3 is authorized pursuant to Section, 3.3.1, 3.5.9, and 3.5.18 of the Agreement.

3. Terms.

3.1 Amendment. Section 3.3.1 of the Agreement is hereby amended in its entirety to read as follows:

"3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement. The total compensation shall not exceed **Two Hundred Seventy-Six Thousand Two Hundred Twenty-One Dollars ($276,221)** without written approval of the City Manager**.** Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

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

3.3 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 3.

3.4 Severability. If any portion of this Amendment No. 3 is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

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

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR AMENDMENT NO. 3 TO THE MAINTENANCE SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND CAL BUILDING SYSTEMS, INC.

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 3 as of the day and year first above written.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

CAL BUILDING SYSTEMS, INC.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

CITY OF ONTARIO

Agenda Report
June 3, 2025

SECTION:
CONSENT CALENDAR

Department: Public Works
Prepared By: Tim Masot
Staff Member Presenting: Tito Haes, Executive Director Public Works
Reviewed By: Bonnie Tam, Jacqueline Leon
Approved By:

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 15

SUBJECT: **A CONSTRUCTION CONTRACT WITH CT&T CONCRETE PAVING, INC. FOR AMERICANS WITH DISABILITIES ACT (ADA) CONCRETE RAMP CONSTRUCTION SERVICES**

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute a one year Construction Contract with CT&T Concrete Paving, Inc., of Diamond Bar, California, for Americans with Disabilities Act (ADA) concrete ramp construction services for a total not-to-exceed contract amount of $175,000.

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 contract award to CT&T Concrete Paving, Inc. is for a total not-to-exceed amount of $175,000. If approved, appropriations will be included in future Annual Budgets to City Council for approval as needed in the Road Maintenance & Rehab Account (SB 1) Fund for ADA concrete ramp construction services.

BACKGROUND & ANALYSIS: The Public Works Agency is responsible for the maintenance and installation of ADA ramps citywide. Every year, an average of 25 to 30 new ADA ramps are installed throughout the City.

On March 25, 2025, the City solicited bids for Invitation No. 1890 for ADA concrete ramps construction services. The following 14 vendors responded:

VENDOR	LOCATION	BID AMOUNT (Per Unit)
Savi Construction, Inc.	Chino, CA	$13,138.50
CT&T Concrete Paving, Inc.	Diamond Bar, CA	$13,255
MAJ Engineering, LLC	Chino Hills, CA	$13,805.45
CJ Concrete Construction, Inc.	Santa Fe Springs, CA	$15,641

TVR Construction Engineering, LLC	Riverside, CA	$17,920
Towo Enterprise, Inc.	Fullerton, CA	$18,643
Pub Construction, Inc.	Diamond Bar, CA	$19,389
Gentry General Engineering, Inc.	Colton, CA	$24,097.30
Horizon Underground, Inc.	Norco, CA	$24,316
KNC Construction, Inc.	Apple Valley, CA	$24,619.35
Permo Construction, Inc.	Irvine, CA	$24,748
Hardy & Harper, Inc.	Lake Forest, CA	$31,996
JT Construction Group, Inc.	Duarte, CA	$61,886
Estate Design and Construction	Los Angeles, CA	$160,000

Savi Construction, Inc. did not submit bid bonds prior to the bid closing date, which marks them as non-responsive bidders. Based on their favorable references and their submission of the lowest responsible and responsive bid, Staff recommends awarding a Construction Contract to CT&T Concrete Paving, Inc.

CITY OF ONTARIO
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MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 - CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. SM 2526-7 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 **CT&T Concrete Paving, 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:

ADA Concrete Ramps Construction SM 2526-7

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 **365** calendar days from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **One Hundred Seventy-Five Thousand Dollars $175,000**. 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.

Consistent with Public Contract Code Section 7102, Contractor will be compensated for damages incurred due to delays for which the City is responsible. The parties agree that determining Contractor's exact delay damages is and will continue to be impracticable and extremely difficult. As such, for each calendar day in excess of the Contract Time, the City shall pay to the Contractor **$250** per day as Reverse Liquidated Damages and not as a penalty or forfeiture. Such amount shall constitute the only payment allowed for any City caused delays and shall necessarily include all overhead, all profits, all administrative costs, all bond costs, all labor, materials, equipment and rental costs and any other costs, expenses and fees incurred or sustained as a result of such delays. Notice of requests for delay damages and additional days shall be provided to the City within five (5) Days from the discovery of the circumstances giving rise to any delay or three (3) Days from the discovery of any latent or subsurface conditions giving rise to a delay.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Information Required of Bidders
Non-Collusion Declaration Form
Iran Contracting Act Certification
Fleet Compliance Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
Special Conditions
Specifications

Addenda
Construction Plans and Drawings
Standard Specifications for Public Works Construction “Greenbook”, latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Any other documents contained in or incorporated into the Contract

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

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

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

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

ARTICLE 8. PREVAILING WAGES.

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

ARTICLE 9. FALSE CLAIMS.

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

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

CT&T Concrete Paving, Inc

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

END OF CONTRACT

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

SECTION 00610 – BOND FORMS

Performance Bond

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, (hereinafter referred to as the "City") has awarded to _____, (hereinafter referred to as the "Contractor") an agreement for **Contract No.**_____, (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of _____ DOLLARS, ($_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officials, officers, employees, and authorized volunteers, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by the City in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by the City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure Section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

i. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

ii. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

iii. Permit the City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20___.

(Corporate Seal)

_____
Contractor/ Principal

By_____

Title_____

(Corporate Seal)

_____
Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title_____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges is $_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____
_____
_____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____
_____
_____

(Telephone number of Surety and Agent or Representative for service of process in California) _____

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of Attorney to local representatives of the bonding company must also be attached.

END OF PERFORMANCE BOND

Payment Bond (Labor and Materials).

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of Ontario , with its principal place of business at 303 East "B" Street, Ontario, CA 91764 (hereinafter designated as the "City"), by action taken or a resolution passed _____ , 20_____, has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows: **Contract No.**_____ (the "Project"); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the City in the penal sum of _____ Dollars ($_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Civil Code Section 9100, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Revenue and Taxation Code Section 18663, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of

any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or the City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Civil Code Section 9100, and has not been paid the full amount of his claim.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract, including but not limited to, the provisions of Sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

_____
Contractor/ Principal

By_____

Title_____

(Corporate Seal)

_____
Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title_____

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

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Signer is representing:
Name Of Person(s) Or Entity(ies)

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Number of Pages

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Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

END OF PAYMENT BOND

SECTION 00700 – GENERAL CONDITIONS

ARTICLE 1 -TERMS; DEFINITIONS

1.1 Defined Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. Holiday – Holidays occur on:

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

New Year's Eve – December 31

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Terminology.

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

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

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

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

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

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

ARTICLE 2 -PRELIMINARY MATTERS

2.1 Delivery of Contract Documents

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

2.2 Bonds

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

2.3 Evidence of Insurance

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

2.4 Execution of the Contract

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

2.5 Contractor's Failure to Perform

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

2.6 Commencement of Contract Times; Notice to Proceed

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

2.7 Copies of Documents

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

2.8 Substitution Requests, Schedule of Submittals, and Schedule

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

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

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

2.9 Preconstruction Conference; Designation of Authorized Representatives.

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

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

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

2.10 Subcontractor Mobilization Meeting.

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

2.11 Authority of Council; Engineer

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

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

1. quantities;

2. acceptability of material, equipment, or work;

3. execution, progress or sequence of work;

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

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

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

2.12 Mobilization

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

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

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

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

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

4. Establishing fire protection system, as applicable.

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

6. Providing and maintaining the field office trailers for the Contractor, if necessary, and the Engineer (if specified), complete, with all specified furnishings and utility services.

7. Providing on-site sanitary facilities and potable water facilities as specified per Cal-OSHA and these Contract Documents.

8. Furnishing, installing, and maintaining all storage buildings or sheds required for temporary storage of products, equipment, or materials that have not yet been installed in the Work. All such storage shall meet manufacturer's specified storage requirements, and the specific provisions of the specifications, including temperature and humidity control, if recommended by the manufacturer, and for all security.

9. Arranging for and erection of Contractor's work and storage yard.

10. Posting all OSHA required notices and establishment of safety programs per Cal-OSHA.

11. Full-time presence of Contractor's superintendent at the job Site as required herein.

12. Submittal of construction schedule as required by the Contract Documents.

ARTICLE 3 -CONTRACT DOCUMENTS; INTENT

3.1 Examination of Drawings, Specifications, and Site of Work

A. Examination of Contract Documents; Site. Before commencing any portion of the Work, Contractor shall again carefully examine all applicable Contract Documents, the Project Site, and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify the Engineer of any potential error, inconsistency, ambiguity, conflict, or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall the Contractor or any Subcontractor proceed with Work if uncertain as to the applicable requirements.

B. Additional Instructions. After notification of any error, inconsistency, ambiguity, conflict, or lack of detail or explanation, the Engineer will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.

C. Quality of Parts, Construction and Finish. All parts of the Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish.

D. Contractor's Variation from Contract Document Requirements. If it is found that the Contractor has varied from the requirements of the Contract Documents including the requirement to comply with all Applicable Laws, the Engineer may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by the Contractor at the Contractor's expense.

3.2 Intent of Contract Documents

A. The Contract Documents are complementary; what is required by any one will be binding as if required by all. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to the City.

B. The Contractor shall furnish, unless otherwise provided in the Contract Documents, all materials, implements, machinery, equipment, tools, supplies and labor necessary to the prosecution and completion of the Project.

C. Clarifications and interpretations of the Contract Documents shall be issued by the Engineer as provided in these General Conditions.

D. If utilities to equipment/fixtures are not shown but are necessary to operate the equipment/fixtures, the utilities service installation is considered to be part of the Work. The implied Work will conform to the appropriate sections of the Contract Documents.

E. Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Contractor in dividing Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

3.3 Reference Standards.

A. Standards, Specifications, Codes, Laws, and Regulations.

1. Reference to federal specifications, federal standards, other standards, specifications, manuals, or codes of any technical society, organization, or association, or to Applicable Laws, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Applicable Laws in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of the City, Contractor, or any of their Subcontractors, consultants, agents, or

employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to the City, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.4 Reporting and Resolving Discrepancies; Order of Precedence.

A. Reporting Discrepancies.

1. The Contract Documents are intended to be fully cooperative and complementary. Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to the City any conflict, error, ambiguity, or discrepancy which Contractor discovers, should have discovered, or has actual knowledge of, and shall obtain a written interpretation or clarification from the City before proceeding with any Work affected thereby. If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (i) any Applicable Law, (ii) any standard, specification, manual, or code, or (iii) any instruction of any Supplier, then Contractor shall promptly submit a written Request for Information (RFI) to the City. Contractor shall not proceed with the Work affected thereby (except in an emergency) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in the Contract Documents, and any Work performed by Contractor before receipt of an amendment or supplement shall be at Contractor's own risk.

B. Order of Precedence.

1. In case of conflicts between the Contract Documents, the order of precedence shall be as follows:

   a. Permits from other agencies as may be required by law

   b. Change Orders, most recent first

   c. Contract

   d. Addenda, most recent first

   e. Special Conditions

   f. Specifications

   g. Construction Plans and Drawings(Contract Drawings)

   h. General Conditions

   i. Instructions to Bidders

   j. Notice Inviting Bids

k. Contractor's Bid (Bid Forms)

l. Standard Specifications for Public Works Construction "Greenbook" latest edition (Sections 1-9 Excluded)

m. Applicable Local Agency Standards and Specifications

n. Standard Drawings

o. Reference Documents

2. With reference to the Drawings the order of precedence shall be as follows:

a. Figures govern over scaled dimensions

b. Detail drawings govern over general drawings

c. Addenda/Change Order drawings govern over Drawings

d. Contract Drawings govern over Standard Drawings

e. Contract Drawings govern over Shop Drawings

3. Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality and most expensive shall always apply.

3.5 Amending and Supplementing Contract Documents.

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof only by Change Order or written amendment to the Contract duly executed by the parties.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized at no cost to the City, by one or more of the following ways:

1. The City's review of a Submittal, Shop Drawing, Sample or substitution request without exception (subject to the provisions of the Contract Documents); or

2. The City's issuance of a response to an RFI.

C. However, no review or RFI response will reduce or modify the Contractor's obligation to fully satisfy and comply with the requirements of the Contract Documents.

3.6 Reuse of Documents.

A. Contractor and any Subcontractor or Supplier shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer of Record or its consultants, including electronic media editions; or

2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of the City and Engineer of Record and specific written verification or adaptation by Engineer of Record.

B. The prohibitions of this Article will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 -INDEMNIFICATION; INSURANCE

4.1 Indemnification

A. To the fullest extent permitted by law, Contractor shall immediately defend (with counsel of the City's choosing), indemnify and hold harmless the City, its officials, officers, agents, employees, and representatives, and each of them from and against:

1. Any and all claims, demands, causes of action, costs, expenses, injuries, losses or liabilities, in law or in equity, of every kind or nature whatsoever, but not limited to, injury to or death, including wrongful death, of any person, and damages to or destruction of property of any person, arising out of, related to, or in any manner directly or indirectly connected with the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses, however caused, regardless of whether the allegations are false, fraudulent, or groundless, and regardless of any negligence of the City or its officers, employees, or authorized volunteers (including passive negligence), except the sole negligence or willful misconduct or active negligence of the City or its officials, officers, employees, or authorized volunteers.

2. Contractor's defense and indemnity obligation herein includes, but is not limited to damages, fines, penalties, attorney's fees and costs arising from claims under the Americans with Disabilities Act (ADA) or other federal or state disability access or discrimination laws arising from Contractor's Work during the course of construction of the improvements or after the Work is complete, as the result of defects or negligence in Contractor's construction of the improvements.

3. Any and all actions, proceedings, damages, costs, expenses, fines, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Contractor;

4. Any and all losses, expenses, damages (including damages to the Work itself), attorney's fees, and other costs, including all costs of defense which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the Work and all of Contractor's obligations under Contract. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

B. Contractor shall immediately defend, at Contractor's own cost, expense and risk, with the counsel of the City choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its officials, officers, agents, employees and representatives. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the City, its officials, officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse the City, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782.

C. The provisions of this Article shall survive the termination of this Contract howsoever caused, and no payment, partial payment, or acceptance of occupancy in whole or part of the Work shall waive or release any of the provisions of this Article.

4.2 Insurance

The Contractor shall obtain, and at all times during performance of the Work of Contract, maintain all of the insurance described in this Article. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required hereunder. Contractor shall not allow any Subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this Article. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause. Contractor shall furnish the City with original certificates of insurance and endorsements effective coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms acceptable to the City. All certificates and endorsements must be received and approved by the City before Work commences.

A. **Additional Insureds; Waiver of Subrogation**. The City, its officials, officers, employees, agents and authorized volunteers shall be named as Additional Insureds on Contractor's All Risk policy and on Contractor's and its subcontractors' policies of Commercial General Liability and Automobile Liability insurance using, for Contractor's policy/ies of Commercial General Liability insurance, ISO CG forms 20 10 and 20 37 (or endorsements providing the exact same coverage, including completed operations), and, for subcontractors' policies of Commercial General Liability insurance, ISO CG form 20 38 (or endorsements providing the exact same coverage). Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, all available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as Additional Insureds hereunder. All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against the City, its officers, officials**,** agents, employees or volunteers or shall specifically allow Contractor - or others providing insurance evidence in compliance with these specifications - to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against the City, and shall require similar written express waivers and insurance clauses from each of its subcontractors. Copies of these waivers shall be submitted to the City prior to commencement of work.

B. **Workers' Compensation Insurance**. The Contractor shall provide workers' compensation insurance for all of the employees engaged in Work under this Contract, on or at the Site, and, in case of any sublet Work, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the Site, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor is required to secure payment of compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. The Contractor shall file with the City certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to the City, if in the form and coverage as set forth in the Contract Documents.

C. **Employer's Liability Insurance**. Contractor shall provide Employer's Liability Insurance, including Occupational Disease, in the amount of at least one million dollars ($1,000,000.00) per person per accident. Contractor shall provide the City with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of the City.

D. **Commercial General Liability Insurance**. Contractor shall provide "occurrence" form Commercial General Liability insurance coverage at least as broad as the most current ISO CGL Form 00 01, including but not limited to, premises liability, contractual liability, products/completed operations, personal and advertising injury which may arise from or out of Contractor's operations, use, and management of the Site, or the performance of its obligations hereunder. The policy shall not contain any exclusion contrary to this Contract including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 39); or (2) cross-liability for claims or suits against one insured against another. Policy limits shall not be less than $3,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be paid in addition to the limits.

1. Such policy shall comply with all the requirements of this Article. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to the City, and shall not preclude the City from taking such other actions available to the City under other provisions of the Contract Documents or law.

2. All general liability policies provided pursuant to the provisions of this Article shall comply with the provisions of the Contract Documents.

3. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in these General Conditions relating to liability for injury to or death of persons and damage to property.

4. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, the City may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Contract Documents.

5. All policies of general liability insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

E. **Automobile Liability Insurance**. Contractor shall provide Automobile Liability Insurance at least as broad as ISO CA 00 01 (Any Auto) in the amount of, at least, one million dollars ($2,000,000) per accident for bodily injury and property damage. Such insurance shall provide coverage with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible, in a form and with insurance companies acceptable to the City. All policies of automobile insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

F. **Builder's Risk ["All Risk"]**

1. It is the Contractor's responsibility to maintain or cause to be maintained Builder's Risk ["All Risk"] extended coverage insurance on all work, material, equipment, appliances, tools, and structures that are or will become part of the Work and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. The City accepts no responsibility for the Work until the Work is formally accepted by the City. The Contractor shall provide a certificate evidencing this coverage before commencing performance of the Work.

2. The named insureds shall be Contractor, all Subcontractors of any tier (excluding those solely responsible for design work), suppliers, and the City, its elected officials, officers, employees, agents and authorized volunteers, as their interests may appear. Contractor shall not be required to maintain property insurance for any portion of the Work following acceptance by the City.

3. Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to the City to ensure adequacy and sublimit.

4. In addition, the policy shall meet the following requirements:

a. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.

b. Coverage shall include all materials stored on site and in transit.

c. Coverage shall include Contractor's tools and equipment.

d. Insurance shall include boiler, machinery and material hoist coverage.

G. **Contractor's Pollution Liability Coverage**. Contractor shall provide pollution liability insurance in an amount not less than $1,000,000 per occurrence and $2,000,000 aggregate.

H. Contractor shall require all tiers of Subcontractors working under this Contract to provide the insurance required under this Article unless otherwise agreed to in writing by the City. Contractor shall make certain that any and all Subcontractors hired by Contractor are insured in accordance with this Contract. If any Subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold the City harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by the City as a result thereof.

I. Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, if Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

J. **Form and Proof of Carriage of Insurance**

1. Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by the City's Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VII. Insurance deductibles or self-insured retentions must be declared by the Contractor. At the election of the City the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related

investigations, claims administration, and defense costs and expenses. If umbrella or excess liability coverage is used to meet any required limit(s) specified herein, the Contractor shall provide a "follow form" endorsement satisfactory to the City indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.

2. Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or cancelled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, officers, agents, employees, and volunteers.

3. The Certificates(s) and policies of insurance shall contain or shall be endorsed to contain the covenant of the insurance carrier(s) that it shall provide no less than thirty (30) days written notice be given to the City prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, the City may terminate the Contract or stop the Work in accordance with the Contract Documents, unless the City receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. Contractor shall not take possession, or use the Site, or commence operations under this Contract until the City has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Article. The original endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.

4. The Certificate(s) of Insurance, policies and endorsements shall so covenant and shall be construed as primary, and the City's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

5. The City reserves the right to adjust the monetary limits and types of insurance coverages during the term of this Contract including any extension thereof if, in the City's reasonable judgment, the amount or type of insurance carried by the Contractor becomes inadequate.

6. Contractor shall report to the City, in addition to the Contractor's insurer, any and all insurance claims submitted by the Contractor in connection with the Work under this Contract.

7. Products/completed operations coverage shall extend a minimum of three years after the project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the policy must include work performed "by or on behalf" of the insured. Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on

the part of the insurer. The City, its officers, officials, agents employees, and volunteers shall be included as insureds under the policy.

ARTICLE 5 -CONTRACTOR RESPONSIBILITIES; REGULATORY REQUIREMENTS

5.1 Applicable Laws

A. Contractor shall give all notices required by and shall comply with all Applicable Laws applicable to the performance of the Work. Except where otherwise expressly required by Applicable Laws, neither the City nor the City's Representative shall be responsible for monitoring Contractor's compliance with any Applicable Laws. If Contractor performs any Work knowing or having reason to know that it is contrary to Applicable Laws, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

5.2 Permits and Licenses

A. Permits and licenses necessary for prosecution of the Work shall be secured and paid for by Contractor, including, but not limited to, excavation permit, for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under jurisdiction of public agencies other than the City, unless otherwise specified in the Contract Documents.

B. The Contractor shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the specifications, drawings, or by governing authorities, except for such off-site inspections delineated as the City's responsibility pursuant to the Contract Documents.

C. Before acceptance of the Work, the Contractor shall submit all licenses, permits, certificates of inspection and required approvals to the City.

5.3 Taxes

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid in accordance with the Applicable Laws of the place of the Project which are applicable during the performance of the Work. In accordance with Revenue and Taxation Code section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Contractor will be responsible.

5.4 Traffic Control

A. Traffic control plans, if required, shall be prepared at Contractor's expense. Traffic control shall be performed at Contractor's expense in accordance with the requirements of the City and/or the local agency with jurisdiction. Costs for traffic control plans, implementation of traffic control, or traffic signal services required by the City shall be included in the Contractor's Bid.

B. All warning signs and safety devices used by the Contractor to perform the Work shall conform to the requirements contained in the State of California, Department of Transportation's current edition of "Manual of Traffic Controls for Construction and Maintenance Work Zones" or to the requirements of the local agency. The Contractor shall also be responsible for all traffic control required by the agency having jurisdiction over the Project on the intersecting streets. Contractor must submit a traffic control plan to the agency having jurisdiction over the Project for approval prior to starting Work.

C. The Contractor's representative on the site responsible for traffic control shall produce evidence that he/she has completed training acceptable to the California Department of Transportation for safety through construction zones. All of the streets in which the Work will occur shall remain open to traffic and one lane of traffic maintained at all times unless otherwise directed by the agency of jurisdiction. Businesses and residences adjacent to the Work shall be notified forty-eight (48) hours in advance of closing of driveways. The Contractor shall make every effort to minimize the amount of public parking temporarily eliminated due to construction in areas fronting businesses. No stockpiles of pipe or other material will be allowed in traveled right-of-ways after working hours unless otherwise approved by the Engineer.

5.5 Safety

A. Contractor shall be solely responsible for all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety laws. Contractor shall comply with all Applicable Laws relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

B. The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 *et seq*.), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4. The Contractor shall ensure the availability of emergency medical services for its employees in accordance with California Code of Regulations, Title 8, Section 1512. The Contractor shall submit an Illness and Injury Prevention Program and a Project Site specific safety program to the City prior to beginning Work. Contractor shall maintain a confined space program that meets or exceeds the City's standards. Contractor needs to make themselves aware of the City's safety policies and procedures, and shall meet or exceed all City standards in areas where the City must enter to perform inspections.

C. Hazard Communication Programs. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Applicable Laws.

5.6 Hazardous Materials

A. The City shall not be responsible for any Hazardous Waste brought to the site by the Contractor. If the Contractor: (i) introduces and/or discharges a Hazardous Waste onto the site in a manner not specified by the Contract Documents; and/or (ii) disturbs a Hazardous Material identified in the Contract Documents, the Contractor shall hire a qualified remediation contractor at Contractor's sole cost to eliminate the condition as soon as possible. Under no circumstance shall the Contractor perform Work for which it is not qualified. The City, in its sole discretion, may require the Contractor to retain at Contractor's cost an independent testing laboratory.

B. If the Contractor encounters a Hazardous Waste which may cause foreseeable injury or damage, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such material or substance (except in an emergency situation); and (iii) notify the City (and promptly thereafter confirm such notice in writing).

C. Subject to Contractor's compliance with this Article 5.6(B), the City shall verify the presence or absence of the Hazardous Waste reported by the Contractor, except as qualified under Article 5.6(A) and Article 5.6(B) in the event such material or substance is found to be present, verify that the levels of the hazardous material are below OSHA Permissible Exposure Levels and below levels which would classify the material as a state of California or federal hazardous waste. When the material falls below such levels, Work in the affected area shall resume upon direction by the City.

D. Contractor shall indemnify and hold harmless the City from and against claims, damages, losses and expenses, arising from a Hazardous Waste on the Project Site, if such Hazardous Waste exceeded OSHA Permissible Exposure Levels or levels which would classify the material as a state of California or federal hazardous waste, and was either i) shown on the Contract Documents or information available to bidders; or (ii) brought to the site by Contractor. Nothing in this paragraph shall obligate the Contractor to indemnify the City in the event of the sole or active negligence or willful misconduct of the City, its officers, agents, or employees.

5.7 Sanitary Facilities.

A. Contractor shall provide sanitary temporary toilet buildings and hand washing facilities for the use of all workers. All toilets and hand washing facilities shall comply with local codes and ordinances. Toilets shall be placed inside sealed secondary containment devices installed on a flat, level surface. Accumulated liquids in the secondary containment devices shall be properly removed and legally disposed without spillage onto the ground. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets and hand washing facilities shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by Cal/OSHA regulations. The toilets and hand washing facilities shall be maintained in a sanitary condition at all times. Use of toilet and hand washing facilities in the Work under construction shall not be permitted. Any other sanitary facilities required by Cal/OSHA shall be the responsibility of the Contractor.

5.8 Dust Control

A. Contractor, at its expense, shall maintain all excavations, embankments, haul roads, permanent access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry accepted methods of dust control suitable for the area involved, such as sprinkling, chemical treatment, light bituminous treatment or similar methods, will be permitted.

5.9 Air Pollution Control

A. Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.

B. Without limiting the foregoing, Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the Air Quality Management District with jurisdiction over the Project and/or California Air Resources Board (CARB). Contractor shall specifically be aware of the application of these limits and requirements to "portable equipment", which definition includes any item of equipment with a fuel-powered engine. Contractor shall indemnify the City against any fines or penalties imposed by the air quality management district, CARB, or any other governmental or regulatory agency for its violations of Applicable Laws as well as those of its subcontractors or others for whom Contractor is responsible under its indemnity obligations provided for in the Contract Documents.

5.10 Water Quality Management and Compliance

A. Storm, surface, ground, nuisance, or other waters may be encountered at various times during construction of the Work. The Contractor hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.

B. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions regulating discharges of storm water; the Federal Water Pollution Control Act (33 U.S.C. § 13000 et seq.); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. These include, but are not limited to California State Water Resources Control Board (“State Water Board”) Order Number 2009-0009-DWQ (NPDES Permit No. CAS000002), as amended by Order Numbers 2010-0014-DWQ, 2012-0006-DWQ, 2022-0057-DWQ, and any subsequent amendment to or renewal thereof, State Water Resources Control Board Order No. 2013-0001-DWQ (NPDES Order No. CAS000004), Santa Ana Regional Water Quality Control Board No. R8-2010-0036 (NPDES No. CAS618036), and any amendment or renewal thereof.

C. Contractor shall comply with all conditions of the State Water Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity ("Construction General Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. Contractor shall comply with the lawful requirements of the City, and any other applicable municipality, drainage district, or other local agency with jurisdiction over the location where the Work is to be conducted, regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

D. Unless otherwise specified in the Special Conditions or other portion of the Contract Documents, the City has not prepared a Storm Water Pollution Prevention Plan ("SWPPP") or other storm water compliance plan for the Project Site. A SWPPP must be prepared and Best Management Practices (BMP) must be implemented for the Project Site. A qualified SWPP Developer ("QSD") and a Qualified SWPPP Practitioner ("QSP") for the project is required to prepare and implement the SWPPP for the Project Site, including condition and documenting weekly inspections of the project, pre- and post-storm event inspections and inspections every 24 hours, for annual reporting and proper site management. The Contractor shall retain personnel serving as QSD(s) that shall have an active and current certification. Engineering and/or geology work performed for the site shall be conducted by a California licensed professional.

   Contractor shall be responsible for filing the Notice of Intent ("NOI") and for obtaining coverage under the Construction General Permit. This includes filing all necessary documentation including the Permit Registration Documents ("PRDs") through the Stormwater Multiple Applications and Report Tracking System ("SMARTS"); preparing and implementing a SWPPP for the Work site; implementing all other provisions, and monitoring and reporting requirements required by the Construction General Permit; and providing a Qualified SWPPP Developer ("QSD") and Qualified SWPPP Practitioner ("QSP"), as necessary for all Work site activities, including but not limited to preparation and submittal of all reports, plans, inspections, and monitoring information in compliance with the Construction General Permit. All submittals shall be coordinated with the City's Legally Responsible Person and Authorized Signatory as those terms are defined in the Construction General Permit. Before any NOI, PRD, SWPPP, or other Construction General Permit-related document may be submitted to the State Water Board or implemented on the Project site, it must first be reviewed and approved by the City and/or City's designee. Contractor shall include all costs of compliance with specified requirements in the Contract Price.

E. The City retains the right to develop its own documentation for the Project site, including but not limited to the SWPPP, and in the alternative may require Contractor to adopt and implement portions of the City developed SWPPP. The City expressly reserves the right to procure coverage under the Construction General Permit for the Work site if Contractor fails to draft satisfactory PRDs or SWPPP or otherwise fails to proceed in a manner that complies with the requirements of the Construction General Permit. The City additionally reserves the right to hire additional contractors to maintain compliance at the Work site. Whether Contractor has adequately

maintained compliance with the Construction General Permit shall be the City's sole determination. Any costs incurred by the City in procuring coverage under the Construction General Permit, or drafting and/or implementing a SWPPP for the Work site shall be paid by Contractor.

F. Notwithstanding the above, for those Work sites where construction activity results in the disturbance of less than one acre of total land area and/or do not need coverage under the Construction General Permit, the Contractor shall be responsible for preparing and implementing an Erosion and Sediment Control Plan in accordance with State Water Resources Control Board Order No. 2013-0001-DWQ (NPDES Order No. CAS000004) and any amendment to or renewal thereof.

G. Failure to comply with the Construction General Permit, laws, regulations, and ordinances listed in this Article is a violation of federal and state law. Notwithstanding any other indemnity contained in these Contract Documents, Contractor agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, fees, costs, expenses, or losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit, laws, regulations, and ordinances listed above, arising out of or in connection with the Work, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

H. The City reserves the right to defend any enforcement action or civil action brought against the City for Contractor's failure to comply with any applicable water quality law, regulation, or policy. Contractor hereby agrees to be bound by, and to reimburse the City for the costs associated with, any settlement reached between the City and any relevant enforcement entity.

5.11 Environmental Quality Protection

A. The Contractor shall comply with all requirements of applicable federal, state, and local environmental rules and regulations. Any infractions of said rules and regulations by the Contractor during the term of the Contract, which result in penalties, will be the responsibility of the Contractor. The City operates under a number of environmental permits issued by various agencies. If due to an action, inaction, or negligence by the Contractor, the City becomes subject to non-compliance penalties, the cost of such penalties shall be borne by the Contractor.

B. The Contractor shall exercise care to preserve the natural landscape and vegetation, and shall conduct operations so as to prevent unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the Work. Movement of crews and equipment within the rights-of-way and over routes provided for access to the Work shall be performed in a manner to prevent damage to property. When no longer required, construction roads shall be restored to original contours. Upon completion of the Work, and following removal of construction facilities and required cleanup, land used for construction purposes and not required for the completed installation shall be scarified and regraded, as required, so that all surfaces are left in a condition that will facilitate natural revegetation, provide for proper drainage, and prevent erosion.

C. If, in the performance of the Work, evidence of the possible occurrence of any Federally listed threatened or endangered plant or animal is discovered, the Contractor shall notify the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to City within two (2) Days. The Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the endangered plant or animal. If directed by the City Representative, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Any City directed changes to the Work as a result of a siting will be pursuant to the Contract Documents. Any costs or delays incurred by City or the Contractor due to unreasonable or false notification of an endangered plant or animal will be borne by the Contractor.

D. If, in the performance of the Work, Contractor should unearth cultural resources (for example, human remains, animal bones, stone tools, artifacts and/or midden deposits) through excavation, grading, watering or other means, the Contractor shall notify the construction/archeological monitor and/or the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to the construction/archeological monitor and/or City within two (2) Days. The Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the cultural resource. If directed by the City Representative, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or re-sequence and/or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Should the presence of cultural resources be confirmed, the Contractor will assist the City Representative and the construction/archeological monitor in the preparation and implementation of a data recovery plan. The Contractor shall provide such cooperation and assistance as may be necessary to preserve the cultural resources for removal or other disposition. Any City directed changes to the Work as a result of the cultural resource will be pursuant to the Contract Documents. Should Contractor, without permission, injure, destroy, excavate, appropriate, or remove any cultural resource on or adjacent to the Site, it will be subject to disciplinary action, arrest and penalty under applicable law. The Contractor shall be principally responsible for all costs of mitigation and/or restoration of cultural resources related to the unauthorized actions identified above. Contractor shall be required to pay for unauthorized damage and mitigation costs to cultural resources (historical and archeological resources) as a result of unauthorized activities that damage cultural resources and shall indemnify City pursuant to the Contract Documents.

5.12 Excessive Noise

A. Contractor shall use only such equipment on the Work and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by Cal/OSHA. Contractor shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements.

B. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the Contractor.

5.13 Diversion of Recyclable Waste Material

A. In compliance with the applicable City's waste reduction and recycling efforts, Contractor shall divert all Recyclable Waste Materials to appropriate recycling centers as required for compliance with the local jurisdiction's waste diversion ordinances. Contractor will be required to submit weight tickets and written proof of diversion with its monthly progress payment requests. Contractor shall complete and execute any certification forms required by the City or other applicable agencies to document Contractor's compliance with these diversion requirements. All costs incurred for these waste diversion efforts shall be the responsibility of the Contractor.

5.14 Inspector's Field Office.

A. If required by the City, the Contractor shall be responsible for providing the inspector's field office. The office shall be a substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Door shall have a key type lock or padlock clasp. The office shall have heating and air conditioning and shall be equipped with a telephone, a telephone answering machine, an ability to connect to the internet, and a fax machine at Contractor's expense. The field office shall be provided within 20 Days of the Notice to Proceed.

B. A table satisfactory for the study of plans and two chairs shall be provided by Contractor. Contractor shall provide and pay for adequate electric lights, local telephone service, and adequate heat and air conditioning for the field office until authorized removal.

5.15 Contractor's Supervision.

A. Contractor shall continuously keep at the Project site, a competent and experienced full-time Project superintendent acceptable to the City. Superintendent must be able to proficiently speak, read and write in English and shall have the authority to make decisions on behalf of the Contractor. Contractor shall continuously provide efficient supervision of the Project.

5.16 Workers.

A. Contractor shall at all times enforce strict discipline and good order among its employees. Contractor shall not employ on the Project any unfit person or any one not skilled in the Work assigned to him or her.

B. Any person in the employ of the Contractor whom the City may deem incompetent or unfit shall be dismissed from the Work and shall not be employed on this Project.

5.17 Independent Contractors.

A. Contractor shall be an independent contractor for the City and not an employee. Contractor understands and agrees that it and all of its employees shall not be considered officers, employees, or agents of the City and are not entitled to benefits of any kind normally provided employees of the City, including but not limited to, state unemployment compensation or workers' compensation. Contractor assumes full responsibility for the acts and omissions of its employees or agents related to the Work.

5.18 Verification of Employment Eligibility.

A. By executing the Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subcontractors, sub-subcontractors and consultants to comply with the same. Each person executing this Contract on behalf of Contractor verifies that he or she is a duly authorized officer of Contractor and that any of the following shall be grounds for the City to terminate the Contract for cause: (1) failure of the Contractor or its Subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in this Article; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Work any person found not to be in compliance with such requirements.

5.19 Labor.

A. Hours of Work

1. As provided in Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Contractor stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract is limited and restricted to eight (8) hours during any one calendar day and 40 hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and 40 hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

2. The Contractor and every Subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the City and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

3. The Contractor shall pay to the City a penalty of twenty-five dollars ($25.00) for each worker employed in the execution of this Contract by the Contractor or by

any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and 40 hours in any one calendar week in violation of the provisions of Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code.

4. Any work necessary to be performed after regular working hours, or on Saturdays and Sundays or other holidays, shall be performed without additional expense to the City.

5. If Contractor gives notice of an inspection pursuant to the Contract Documents, the City will provide inspection during normal working hours from 7:00 a.m. to 3:30 p.m. Monday through Friday. Requested inspections before or after this time will be charged to the Contractor as reimbursable inspection time. Inspections on weekends requires two (2) Days' notice for review and approval. Upon written request and approval the 8.5 hour working day may be changed to other limits subject to city/county ordinance.

6. It shall be unlawful for any person to operate, permit, use, or cause to operate any of the following at the Project Site, other than between the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, with no Work allowed on City-observed Holidays, unless otherwise approved by the City:

a. Powered Vehicles

b. Construction Equipment

c. Loading and Unloading Vehicles

d. Domestic Power Tools

B. Payroll Records; Labor Compliance

1. Pursuant to Labor Code section 1776, Contractor and all subcontractors shall maintain weekly certified payroll records, showing the names, addresses, Social Security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by them in connection with the Work under this Contract. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require Subcontractor(s) to certify weekly payroll records under penalty of perjury.

2. In accordance with Labor Code section 1771.4, the Contractor and each Subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on the specified interval and format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3. Any stop orders issued by the DIR against Contractor or any Subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Contractor or any Subcontractor.

4. The payroll records described herein shall be certified and submitted by the Contractor at a time designated by the City. The Contractor shall also provide the following:

a. A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.

b. A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.

5. Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.

6. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, the City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or performing the Contract shall not be marked or obliterated.

7. In the event of noncompliance with the requirements of this Article, the Contractor shall have ten (10) Days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Article. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of one hundred dollars ($100.00) to the City for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.

8. The responsibility for compliance with this Article shall rest upon the Contractor.

C. Prevailing Rates of Wages

1. The Contractor is aware of the requirements of Labor Code sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total

compensation is $1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov. In the alternative, the Contractor may view a copy of the prevailing rate of per diem wages which are on file at the City's Administration Office and shall be made available to interested parties upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws.

2. The Contractor shall forfeit as a penalty to the City not more than Two Hundred Dollars ($200.00), pursuant to Labor Code section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the Director of the DIR for such work or craft in which such worker is employed for any public work done under the Contract by it or by any Subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

3. Contractor shall post, at appropriate conspicuous points on the Project Site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

D. Public Works Contractor Registration

1. Pursuant to Labor Code sections 1725.5 and 1771.1, the Contractor and its Subcontractors must be registered with the DIR prior to the execution of a contract to perform public works. By entering into this Contract, Contractor represents that it is aware of the registration requirement and is currently registered with the DIR. Contractor shall maintain a current registration for the duration of the Project. Contractor shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any subcontract and ensure that all Subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Project. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

E. Employment of Apprentices

1. Contractor and all Subcontractors shall comply with the requirements of Labor Code sections 1777.5 and 1777.6 in the employment of apprentices.

2. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio

the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

3. Knowing violations of Labor Code section 1777.5 will result in forfeiture not to exceed one hundred dollars ($100.00) for each calendar day of non-compliance pursuant to Labor Code section 1777.7.

F. Nondiscrimination/Equal Employment Opportunity

1. Pursuant to Labor Code section 1735 and other applicable provisions of law, the Contractor and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law on this Project. The Contractor will take affirmative action to insure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law.

G. Debarment of Contractors and Subcontractors

1. Contractors or Subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the City. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

5.20 Subcontracts.

A. Contractor agrees to bind every Subcontractor to the terms of the Contract Documents as far as such terms are applicable to Subcontractor's portion of the Work. Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in these Contract Documents shall create any contractual relationship between any subcontractor and the City.

B. The City reserves the right to accept all subcontractors. The City's acceptance of any Subcontractor under this Contract shall not in any way relieve Contractor of its obligations in the Contract Documents.

C. Prior to substituting any Subcontractor listed in the Bid Forms, Contractor must comply with the requirements of the Subletting and Subcontracting Fair Practices Act pursuant to California Public Contract Code section 4100 et seq.

5.21 Progress Meetings

A. The Contractor shall schedule and hold regular progress meetings at least weekly and at other times as requested by Engineer or as required by progress of the Work. The Contractor, City, and all Subcontractors active on the Site shall attend each meeting. Contractor may at its discretion request attendance by representatives of its Suppliers, manufacturers, and other Subcontractors. The City will preside at the progress meetings and will arrange for keeping and distributing the minutes. The purpose of the meetings is to review the progress of the Work, maintain coordination of efforts, discuss changes in scheduling, and resolve other problems which may develop. During each meeting, the Contractor shall present any issues which may impact its progress with a view to resolve these issues expeditiously.

5.22 Submittals

A. Schedule of Submittals. Within five (5) Days after the Notice to Proceed (unless otherwise specified in the Contract Documents), Contractor will prepare and deliver a Schedule of Submittals to the City that has been fully integrated with the progress schedule and identifies each Submittal required by the Contract Documents as well as the date on which Contractor will deliver each Submittal to the City. Each Submittal must be delivered to the City at least thirty (30) Days prior to the date the material or equipment is scheduled to be incorporated into the Work. The Contractor is responsible for any schedule delays resulting from the Submittal process.

B. Submittal Procedures.

1. Contractor will follow the following procedures for each Submittal, Shop Drawing and Sample required by the Contract Documents:

   a. Submittals must be transmitted electronically.

   b. Transmittals will be sequentially numbered. Contractor to mark revised Submittals with original number and sequential alphabetic suffix.

   c. Each Submittal will identify the Project, Contractor, Subcontractor and Supplier, pertinent Drawing and detail number, and Specification Section number appropriate to Submittal.

   d. By transmitting a Submittal, Contractor certifies it has reviewed and approved each Submittal, verified products required, field dimensions, adjacent construction Work, and that coordination of information is according to requirements of the Work and Contract Documents.

   e. Identify variations in Contract Documents and product or system limitations that may differ and/or be detrimental to successful performance of completed Work.

   f. When Submittal is revised for resubmission, Contractor shall promptly address the City's comments and resubmit. Contractor shall identify changes made since previous submission.

g. The City's review of Shop Drawings shall not relieve Contractor from responsibility for deviations from the Contract Documents unless Contractor has, in writing, called the City's attention to such deviations at time of submission and the City has taken no exception to the deviation. The City's review of Shop Drawings shall not relieve Contractor from responsibility for errors in Shop Drawings.

h. Submittals not required by the Contract Documents or requested by the City will not be acknowledged or processed.

i. Incomplete Submittals will not be reviewed by the City. Delays resulting from incomplete Submittals are not the responsibility of the City.

j. Contractor shall not be entitled to any extension of the Contract Times as a result of the Submittal process.

k. Contractor shall allow a minimum of 20 working days for review of Submittals unless otherwise specified in the Contract Documents.

2. Where a Submittal, Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to the City review and approval of the pertinent submittal will be performed at the sole risk and expense and responsibility of Contractor.

C. Schedule Milestone for Submittals. Contractor must submit all Submittals required by the Contract Documents in accordance with the Schedule of Submittals. If Contractor fails to submit the Submittals in accordance with the Schedule of Submittals, Contractor will be solely liable for any delays or impacts caused by the delayed Submittal, whether direct or indirect. Contractor will be liable for the time calculated from the date the Submittal is due until the date a compliant Submittal is made. A compliant Submittal will be one that is complete and satisfies the requirements of the Contract Documents.

5.23 Shop Drawings and Sample Submittal Procedures.

A. Before submitting each Shop Drawing or Sample, Contractor shall have:

1. Reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

2. Determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

3. Determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

4. Determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

B. With each Submittal, Contractor shall give the City specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample Submittal and, in addition, a specific notation made on each Shop Drawing or Sample submitted to the City for review and approval of each such variation.

C. Shop Drawings.

1. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show the City the services, materials, and equipment Contractor proposes to provide and to enable the City to review the information for assessing conformance with information given and design concept expressed in Contract Documents.

2. When required by individual Specification sections, provide Shop Drawings signed and sealed by a professional engineer responsible for designing components shown on Shop Drawings. Shop Drawings must include signed and sealed calculations to support design in a form suitable for submission to and approval by authorities having jurisdiction.

3. Shop Drawings for steel structures shall consist of shop details, erection and other working Drawings showing details, dimensions, sizes of members and other information necessary for the complete fabrication and erection of the metal work.

4. Shop Drawings of concrete structures shall consist of such detailed drawings as may reasonably be required for the successful prosecution of the Work and which are not included in the Drawings furnished by the Engineer. These may include drawings for false work, bracing, centering and form work, masonry layout diagrams, and diagrams for bent reinforcement.

5. Contractor shall make revisions and provide additional information when required by authorities having jurisdiction.

D. Samples. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as required to enable the City to review the submittal for assessing conformance with information given and design concept expressed in Contract Documents. Samples should be of appropriate size and detail to assess functional, aesthetic, color, texture, patterns and finish selection.

E. City's Review.

1. The City will review Shop Drawings and Samples in accordance with the Schedule of Submittals. The City's review and acceptance will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible

with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. The City review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. The City's review and acceptance shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless the City has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample.

F. Resubmittal Procedures. Contractor shall make corrections required by the City and shall return corrected Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by the City on previous Submittals.

5.24 Record ("As-Built") Drawings.

A. The Contractor shall maintain one record set of Contract Documents at the Site or digitally in an acceptable format. On these, it shall mark all Project conditions, locations, configurations, and any other changes or deviations which may vary from the information represented in the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Special attention shall be given to recording the horizontal and vertical location of all buried utilities that differ from the locations indicated, or which were not indicated on the Drawings. For all Projects involving the installation of any pipeline, Contractor shall survey and record the top of the pipe at a minimum of every 100 linear feet, and at each bend, recording both the horizontal and vertical locations. Said Drawings shall be supplemented by any detailed sketches as necessary or directed to fully indicate the Work as actually constructed. Any required as-built drawings of civil engineering elements of the Work shall be prepared by a registered civil engineer.

B. These master Record Drawings of the as-built conditions, including all revisions made necessary by Addenda and Change Orders, shall be maintained up-to-date during the progress of the Project. Red ink shall be used for alterations and notes. Notes shall identify relevant Change Orders by number and date. Record Drawings shall be accessible to the Engineer at all times during the construction period. Failure on the Contractor's part to keep Record Drawings current could result in withholding partial payment.

C. Upon completion of the Project and as a condition of final acceptance, the Contractor shall finalize and deliver a complete set of Record Drawings to the Engineers. The information submitted by the Contractor will be assumed to be correct, and the Contractor shall be responsible for, and liable to the City, for the accuracy of such information, and for any errors or omissions which may or may not appear on the Record Drawings.

D. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete the Record Drawings shall be included in Contractor's bid and distributed in the Bid Schedule. No additional compensation shall be made to the Contractor for this Work.

5.25 Layout and Field Engineering.

A. The Contractor shall utilize a properly licensed surveyor to perform all layout surveys required for the control and completion of the Work, and all necessary surveys to compute quantities of Work performed.

5.26 Separate Contracts and Cooperation.

A. Separate Contracts. The City reserves the right to let other contracts in connection with this Work or on the Project site. Contractor shall permit other contractors reasonable access and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs. To ensure proper execution of its subsequent Work, Contractor shall immediately inspect work already in place and shall at once report to the Engineer any problems with the Work in place or discrepancies with the Contract Documents.

B. Cooperation. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by the City in prosecution of the Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, the Engineer shall decide which Contractor shall cease Work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. The City shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Project Site.

5.27 Work Site.

A. Limitation of Use of Site and Other Areas. Rights-of-way, easements, or rights-of-entry for the Work will be provided by the City. Unless otherwise specified in the Special Provisions, the Contractor shall make arrangements, pay for, and assume all responsibility for acquiring, using, and disposing of additional work areas and facilities temporarily required. The Contractor shall indemnify and hold the City harmless from all claims for damages caused by such actions. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Applicable Laws, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to City or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

B. Site Maintenance. During the progress of the Work, Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to Applicable Laws. The Contractor shall furnish trash bins for all debris from construction. All debris shall be placed in trash bins daily. Forms and false-work that are to be re-used shall be stacked neatly concurrently with their removal. Forms and false-work that are not to be re-used shall be disposed of concurrently with their removal.

C. Cleaning. Prior to Completion of the Work, Contractor shall clean the Site and make it ready for utilization by the City. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

5.28 Utility Usage.

A. All temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by Contractor. Contractor shall provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on the Work where the utility is needed. Upon completion of the Work, Contractor shall remove all temporary distribution systems. Contractor shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Work, including but not limited to startup and testing required in the Contract Documents. All permanent meters installed shall be listed in the Contractor's name until the Work is accepted. For Work to be performed in existing City facilities, Contractor may use the City's existing utilities, provided such use is reasonable under the circumstances. If Contractor uses the City utilities, it will not need to compensate the City for reasonably consumption of utilities, but Contractor will be responsible for any excessive, unreasonable or wasteful utility usage. Amounts due the City under this section may be deducted from progress payments.

5.29 Protection of Work and Property.

A. The Contractor shall digitally record video and take photographs of the Project site and adjacent improvements in a manner and quality that clearly depicts the existing condition of the Project Site and adjacent improvements immediately prior to the start of Work (minimum 1080p video and 4MP photo). All videos and photographs shall be date and time stamped. The Contractor shall submit the video and photos in digital format on a memory stick before the commencement of Work, along with a map outlining the route and locations of the videos and/or photographs. The Contractor shall be responsible for all damages to persons or property that occur as a result of the Work. Contractor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final acceptance by the City. All Work shall be solely at the Contractor's risk.

B. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Contractor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Project site where Work is being performed. Contractor shall erect and

properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction.

C. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.

D. Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures, and to avoid damage thereto, and Contractor shall repair any damage thereto caused by the Work operations. Contractor shall:

1. Enclose the working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to the public.

2. Provide substantial barricades around any shrubs or trees indicated to be preserved.

3. Deliver materials to the Site over a route designated by the City.

4. Provide any and all dust control required and follow the applicable air quality regulations as appropriate. If the Contractor does not comply immediately with a notice from the City or a public agency responsible for air quality, the City shall have the authority to provide dust control and deduct the cost from payments to the Contractor.

5. Confine Contractor's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or directions of the City. Contractor shall not unreasonably encumber the Site with its materials.

6. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by a civil engineer or land surveyor acceptable to the City, at no cost to the City.

7. Ensure that existing facilities, fences and other structures are all adequately protected and that, upon completion of all Work, all facilities that may have been damaged are restored to a condition acceptable to the City.

8. Preserve and protect from injury all buildings, pole lines and all directional, warning and mileage signs that have been placed within the right-of-way.

9. At the completion of work each day, leave the Work and the Site in a clean, safe condition.

10. Comply with any stage construction and/or traffic handling plans. Access to residences and businesses shall be maintained at all times, except with the City's written approval. Any request for approval to reduce or restrict access to

residences and business must be submitted to the City at least seven (7) Days in advance, and the City may issue or withhold approval in its sole discretion.

E. These precautionary measures will apply continuously and not be limited to normal working hours. Full compensation for the work involved in the protection and preservation of life, safety and property as above specified shall be considered as included in the prices paid for the various contract items of Work, and no additional allowance will be made therefor.

F. Should damage to persons or property occur as a result of the Work, Contractor shall promptly notify the City, in writing. Contractor shall be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. The City shall be entitled to inspect and copy any such documentation, video, or photographs.

G. Contractor shall maintain all investigation documentation including video and/or photographs for a minimum of four (4) years following completion of the Project.

5.30 Emergencies.

A. In emergencies affecting the safety or protection of persons or the Work or Property at the Site or adjacent thereto, the Contractor, without special instruction or authorization from the City or the Engineer, is obligated to act to prevent threatened damage, injury or loss. The Contractor shall give the Engineer prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby.

ARTICLE 6 -MATERIALS; INSPECTION

6.1 Access to Work.

A. The City, Engineer, their consultants and other representatives and personnel, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs.

6.2 Materials.

A. Except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities whatsoever necessary to execute and complete this Contract within the Contract Time. Unless otherwise specified, all materials, parts, and equipment furnished by the Contractor in the Work shall be new, the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality.

B. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other

agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all work to deliver the Project, to the City free from any claims, liens, or charges.

C. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work. Materials shall be stored on the Project Site in such manner so as not to interfere with any operations of the City or any independent contractor.

D. Contractor shall verify all measurements, dimensions, elevations, and quantities before ordering any materials or performing any Work, and the City shall not be liable for Contractor's failure to so. Except for an adjustment to Unit Price Work for item overruns and underruns in accordance with the Contract Documents, no additional compensation, over and above payment for the actual quantities at the prices set out in the Bid Schedule, will be allowed because of differences between actual measurements, dimension, elevations and quantities and those indicated on the Plans and in the Specifications. Any difference therein shall be submitted to the Engineer for consideration before proceeding with the Work.

6.3 Test and Inspections.

A. Inspection and Testing of Work and Materials

1. If the Contract Documents, the Engineer, or any instructions, laws, ordinances, or public authority requires any part of the Work to be tested or approved, Contractor shall provide the Engineer at least two (2) working days' notice of its readiness for observation or inspection. If inspection is by a public authority other than the City, Contractor shall promptly inform the City of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Contractor. Costs for City testing and inspection shall be paid by the City. Costs of tests for Work found not to be in compliance shall be paid by the Contractor.

2. The Contractor shall pay for the cost of any minimum "show up" costs of a materials testing technician that was called for by the Contractor but ultimately the Contractor work was not ready for the inspection. Any such costs shall be deducted from any amounts due to the Contractor.

3. If any Work is done or covered up without the required testing or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor's cost in compliance with the Contract Documents.

4. Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by the City, and not by Contractor. Unless otherwise stated and as provided by the Contract Documents, the City shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents. All tests

or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.

5. Reexamination of Work may be ordered by the City. If so ordered, Work must be uncovered or deconstructed by Contractor. If Work is found to be in accordance with the Contract Documents, the City shall pay the costs of reexamination and reconstruction. If such work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.

B. Testing of Materials

1. In advance of manufacture of materials to be supplied by Contractor which must be tested or inspected, Contractor shall notify the City so that the City may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into the Work.

2. If the manufacture of materials to be inspected or tested will occur in a plant or location greater than sixty (60) miles from the City, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.

3. Unless otherwise specified in the Special Provisions, all initial testing and a reasonable amount of retesting will be performed under the direction of the Engineer, and at no expense to the Contractor. The Contractor shall notify the Engineer in writing, at least 15 days in advance, of its intention to use materials for which tests are specified, to allow sufficient time to perform the tests. The notice shall name the proposed supplier and source of material. If the notice of intent to use is sent before the materials are available for testing or inspection, or is sent so far in advance that the materials on hand at the time will not last but will be replaced by a new lot prior to use on the Work, it will be the Contractor's responsibility to re-notify the Engineer when samples which are representative may be obtained.

4. A Certificate of Compliance shall be furnished to the Engineer prior to the use of any material or assembled material for which these Specifications so require or if so required by the Engineer. The Engineer may waive the materials testing requirements and accept a Certificate of Compliance. Material test data may be required by the Engineer to be included with the submittal. Materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The submission of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material into the Work which conforms to the requirements of the Contract Documents, and any material not conforming to the requirements will be subject to rejection by the Engineer whether in place or not.

5. Copies of mill certificates of composition and quality of all component materials (reinforcing steel, structural steel, lumber, etc.) incorporated in the construction of the Work shall be provided to the City at the time of delivery. City shall retain the right to reject any raw material not provided with a mill certificate at the time of delivery.

6. If, after incorporating such materials into the Work, it is found that sources of supply that have been approved do not furnish a uniform product, or if the product from

any source proves unacceptable at any time, the Contractor shall furnish approved material from other approved sources. If any product proves unacceptable after improper storage, handling or for any other reason it shall be rejected, not incorporated into the Work, and shall be removed from the Project Site all at the Contractor's expense.

6.4 Requests for Substitutions.

A. For the purposes of this provision, the term "substitution" shall mean the substitution of any material, method or service substantially equal to or better in every respect to that indicated in the Standard Specifications or otherwise referenced herein.

B. Pursuant to Public Contract Code section 3400(b), the City may make a finding that is described in the Notice Inviting Bids that designates certain products, things, or services by specific brand or trade name.

C. Unless specifically designated in the Special Conditions, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer for substitution any material, process, or article which may be substantially equal to or better in every respect to that so indicated or specified in the Contract Documents. However, the City has adopted uniform standards for certain materials, processes, and articles.

D. The Contractor shall submit substitution requests, together with substantiating data, for substitution of any "or equal" material, process, or article no later than thirty-five (35) calendar days after award of Contract. Provisions regarding submission of substitution requests shall not in any way authorize an extension of time for the performance of this Contract. If a substitution request is rejected by the City, the Contractor shall provide the material, method or service specified herein. The City shall not be responsible for any costs incurred by the Contractor associated with substitution requests. The burden of proof as to the equality of any material, process, or article shall rest with the Contractor. The Engineer has the complete and sole discretion to determine if a material, process, or article is substantially equal to or better than that specified and to approve or reject all substitution requests.

E. Substantiating data as described above shall include, at a minimum, the following information:

1. A signed affidavit from the Contractor stating that the material, process, or article proposed as a substitution is substantially equal to or better than that specified in every way except as may be listed on the affidavit.

2. Illustrations, specifications, catalog cut sheets, and any other relevant data required to prove that the material, process, or article is substantially equal to or better than that specified.

3. A statement of the cost implications of the substitution being requested, indicating whether and why the proposed substitution will reduce or increase the amount of the contract.

4. Information detailing the durability and lifecycle costs of the proposed substitution.

F. Failure to submit all the required substantiating data detailed above in a timely manner so that the substitution request can be adequately reviewed may result in rejection of the substitution request. The Engineer is not obligated to review multiple submittals related the same substitution request resulting from the Contractor's failure to initially submit a complete package.

G. Time limitations within this Article shall be strictly complied with and in no case will an extension of time for completion of the contract be granted because of Contractor's failure to provide substitution requests at the time and in the manner described herein.

H. The Contractor shall bear the costs of all the City work associated with the review of substitution requests.

I. If substitution requests approved by the Engineer require that Contractor furnish materials, methods or services more expensive than that specified, the increased costs shall be borne by Contractor.

ARTICLE 7 -SUBSURFACE AND PHYSICAL CONDITIONS; UTILITIES

7.1 Soils Investigations.

A. When a soils investigation report for the Site is available, such report is provided for informational purposes only. Any information obtained from such report as to subsurface soil condition, or to elevations of existing grades or elevations of underlying rock, is approximate only and is not guaranteed. Contractor acknowledges that any soils investigation report (including any borings) was prepared for purposes of design only and Contractor is required to examine the Site before submitting its Bid and must make whatever tests it deems appropriate to determine the condition of the so

7.2 Ownership of Site Materials Found.

A. The title to water, soil, rock, gravel, sand, minerals, timber and any other materials developed or obtained in the excavation or other operations of Contractor or any of its Subcontractors in the performance of the Contract, and the right to use said items in carrying out the Contract, or to dispose of same, is hereby expressly reserved by the City. Neither Contractor nor any of its Subcontractors nor any of their representatives or employees shall have any right, title, or interest in said materials, nor shall they assert or make any claim thereto. Contractor will, as determined by the City's Representative, be permitted to use in the Work without charge, any such materials which meet the requirements of the Contract Documents, provided the City shall have the right to use or consume these materials without payment to a third party.

7.3 Existence of Utilities at the Work Site.

A. Existing Utilities

1. The location of known existing utilities and pipelines are shown on the Plans in their approximate locations. However, nothing herein shall be deemed to require the City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the project can be inferred from the presence of other visible facilities, such as buildings, cleanouts, meter and junction boxes, on or adjacent to the Site of the Project.

2. The City will assume the responsibility for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Project site if such utilities are not identified by the City in the Contract Documents or which cannot reasonably be inferred from the presence of other visible facilities.

B. Utility Location

1. It shall be the Contractor's responsibility to determine the exact location and depth of all utilities, including service connections, which have been marked by the respective utility owners and which the Contractor believes may affect or be affected by the Contractor's operations. The Contractor shall not be entitled to additional compensation nor time extensions for work necessary to avoid interferences nor for repair to damaged utilities if the Contractor does not expose all such existing utilities as required by this Article.

2. The locating of utilities shall be in conformance with Government Code Section 4216 et seq. except for the City's utilities located on the City's property and not on public right-of-way.

3. A "High Priority Subsurface Installation" is defined in Government Code Section 4216 (j) as "high-pressure natural gas pipelines with normal operating pressures greater than 415kPA gauge (60psig) or greater than six inches nominal pipe diameter, petroleum pipelines, pressurized sewage pipelines, high-voltage electric supply lines, conductors, or cables that have a potential to ground of greater than or equal to 60kv, or hazardous materials pipelines that are potentially hazardous to workers or the public if damaged."

4. A "Subsurface Installation" is defined in Government Code Section 4216 (s) as "any underground pipeline, conduit, duct, wire, or other structure, except nonpressurized sewer lines, nonpressurized storm drains, or other nonpressurized drain lines."

5. Pursuant to Government Code Section 4216.2 the Contractor shall contact the appropriate regional notification center at least two (2) working days but not more than 14 Days before performing any excavation. The date of the notification shall not count as part of the two-working-day notice. Before notifying the appropriate regional notification center, the Contractor shall delineate the area to be excavated. The Contractor shall request that the utility owners conduct a utility survey and mark or otherwise indicate the location of their service. The Contractor

shall furnish to the Engineer written documentation of its contact(s) with the regional notification center prior to commencing excavation at such locations.

6. After the utility survey is completed, the Contractor shall commence "potholing" or hand digging to determine the actual location of the pipe, duct, or conduit and in accordance with Government Code Section 4216.4 if the excavation within the "tolerance zone" of a subsurface installation. The Engineer shall be given notice prior to commencing potholing operations. The Contractor shall uncover all piping and conduits, to a point one (1) foot below the pipe, where crossings, interferences, or connections are shown on the Drawings, prior to trenching or excavating for any pipe or structures, to determine actual elevations. New pipelines shall be laid to such grade as to clear all existing facilities, which are to remain in service for any period subsequent to the construction of the run of pipe involved.

7. The Contractor's attention is directed to the requirements of Government Code Section 4216.2 (c) which provides: "When the excavation is proposed within 10 feet of a high priority subsurface installation, the operator of the high priority subsurface installation shall notify the excavator of the existence of the high priority subsurface installation to set up an onsite meeting prior to the legal excavation start date and time or at a mutually agreed upon time to determine actions or activities required to verify the location and prevent damage to the high priority subsurface installation. As part of the meeting, the excavator shall discuss with the operator the method and tools that will be used during the excavation and the information the operator will provide to assist in verifying the location of the subsurface installation. The excavator shall not begin excavating until after the completion of the onsite meeting." The Contractor shall notify the Engineer in advance of this meeting.

C. Utility Relocation and Repair

1. If interferences occur at locations other than those indicated in the Contract Documents with reasonable accuracy, the Contractor shall notify the Engineer in writing. The Engineer will supply a method for correcting said interferences in accordance with the responsibilities of this section and Government Code Section 4215. To the extent any delay is caused thereby, Contractor shall submit a notice of delay within five (5) Days of discovery of the circumstances giving rise to the delay in accordance with Article 9.1 Change Orders and Time Extensions.

2. Care shall be exercised by the Contractor to prevent damage to adjacent existing facilities and public or private works; where equipment will pass over these obstructions, suitable planking shall be placed. If high priority subsurface installations are damaged and the operator cannot be contacted, the Contractor shall call 911 emergency services.

3. The City will compensate the Contractor for the costs of locating and repairing damage not due to the failure of the Contractor to exercise reasonable care, and for removing or relocating such main or trunk line utility facilities not indicated in the Contract Documents with reasonable accuracy, and for the cost of equipment on the Project necessarily idled during such work. The payment for such costs will be made as provided in Article 9.1 Change Orders and Time Extensions. The Contractor shall not be assessed liquidated damages for delay in completion of the

Project, when such delay is caused by the failure of the City or utility company to provide for removal or relocation of such utility facilities. Requests for extensions of time arising out of utility relocation or repair delays shall be filed in accordance with Article 9.1 Change Orders and Time Extensions and Article 9.3 Time for Completion and Liquidated Damages.

4. The public utility, where it is the owner of the affected utility, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The right is reserved to the City and the owners of utilities or their authorized agents to enter upon the Work area for the purpose of making such changes as are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. The Contractor shall cooperate with forces engaged in such work and shall conduct its operations in such a manner as to avoid any unnecessary delay or hindrance to the work being performed by such forces and shall allow the respective utilities time to relocate their facility.

5. When the Contract Documents indicate that a utility is to be relocated, altered or constructed by others, the City will conduct all negotiations with the utility company and the work will be done at no cost to the Contractor, unless otherwise stipulated in the Contract Documents.

6. Temporary or permanent relocation or alteration of utilities desired by the Contractor for its own convenience shall be the Contractor's responsibility and it shall make arrangements and bear all costs for such work.

D. Construction at Existing Utilities

1. Where the Work to be performed crosses or otherwise interferes with water, sewer, gas, or oil pipelines; buried cable; or other public or private utilities, the Contractor shall perform construction in such a manner so that no damage will result to either public or private utilities. It shall be the responsibility of the Contractor to determine the actual locations of, and make accommodates to maintain, all utilities.

2. Before any utility is taken out of service, permission shall be obtained by the Contractor from the owner. The owner, any impacted resident or business owner and the City Representative will be advised of the nature and duration of the utility outage as well as the Contractor's plan for providing temporary utilities if required by the owner. The Contractor shall be liable for all damage which may result from its failure to maintain utilities during the progress of the Work, and the Contractor shall indemnify City as required by the Contract Documents from all claims arising out of or connected with damage to utilities encountered during construction; damages resulting from disruption of service; and injury to persons or damage to property resulting from the negligent, accidental, or intentional breaching of utilities.

3. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this work, shall be included in Contractor's bid and distributed in the schedule of pay Items. No additional compensation shall be made to the Contractor for this work.

7.4 Trenches

A. Trenches Five Feet or More in Depth.

1. Contractor shall submit to the Engineer at the preconstruction meeting, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from hazards of caving ground during the excavation of any trench or trenches five feet or more in depth. If such plan varies from shoring system standards established by the Construction Safety Orders of the California Code of Regulations, Department of Industrial Relations, the plan shall be prepared by a California registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations. The Contractor shall designate in writing the "competent person" as defined in Title 8, California Code of Regulations, who shall be present at the Work Site each day that trenching/excavation is in progress. The "competent person" shall prepare and provide daily trenching/excavation inspection reports to the Engineer. Contractor shall also submit a copy of its annual California Occupational Safety and Health Administration (Cal/OSHA) trench/excavation permit.

B. Excavations Deeper than Four Feet.

1. If the Work involves excavating trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly within three (3) Days, and before the excavation is further disturbed, notify the City in writing of any of the following conditions:

a. Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

b. Subsurface or latent physical conditions at the site differing from those indicated.

c. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract

2. The City shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described in Article 9.1 Change Orders and Time Extensions.

3. In the event that a dispute arises between the City and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

ARTICLE 8 -PROSECUTION OF THE WORK

8.1 Contractor's Means and Methods.

A. Contractor is solely responsible for the means and methods utilized to perform the Work. In no case shall the Contractor's means and methods deviate from commonly used industry standards.

8.2 Construction Schedule.

A. General Requirements. The schedule shall be prepared in a Critical Path Method ("CPM") format and in an electronic scheduling program acceptable to the City and as specified in the Contract Documents. Contractor shall deliver the schedule and all updates to the City in both paper and electronic form. The electronic versions shall be in the format and include all data used to prepare the schedule. Copies are not acceptable.

B. Schedule. The receipt or approval of any schedules by the City shall not in any way relieve the Contractor of its obligations under the Contract Documents. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project. Contractor's failure to incorporate all elements of Work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all Work required for a completed Project within the specified Contract Time. If the required schedule is not received by the time the first payment under the Contract is due, Contractor shall not be paid until the schedule is received, reviewed and accepted by the City.

C. Schedule Contents. The schedule shall allow enough time for inclement weather. The schedule shall indicate the beginning and completion dates of all phases of construction; critical path for all critical, sequential time related activities; and "float time" for all "slack" or "gaps" in the non-critical activities. The schedule shall include appropriate time allowances and constraints for submittals, items of interface with Work performed by others, and specified construction, start-up and performance tests. All float shall be owned by the Project. Schedules indicating early or late completion shall not modify or have any effect on the Contract Time, regardless of whether the schedules are reviewed and/or accepted by the City. For purposes of determining Liquidated Damages, the Contract Time shall control and may only be altered by a duly authorized Change Order.

D. Schedule Updates. Contractor shall continuously update its construction schedule. Contractor shall submit an updated and accurate construction schedule to the City: (1) prior to the start of construction, if there are any changes to the initial schedule; (2) with each progress payment request; and (3) whenever requested to do so by the City. The City may withhold progress payments or other amounts due under the Contract Documents if Contractor fails to submit an updated and accurate construction schedule. Upon the City's request, Contractor shall submit any schedules or updates to the City in the native electronic format of the software used to create the schedule. Contractor shall also submit schedules showing a two-week detailed look-ahead at weekly meetings conducted with the City. The two-week look-ahead schedule shall clearly identify all staffing and other resources which in the

Contractor's judgment are needed to complete the Work within the Contract Time, and it shall clearly state the number of staff to be used on each daily segment of the Work.

E. Acceptance. Acceptance of the schedules by the City will not impose on responsibility for accuracy, for sequencing, scheduling, or progress of the Work, or compliance with the Contract Documents. Acceptance will not interfere with or relieve Contractor from Contractor's full responsibility therefor.

F. Recovery Schedule.

1. Should any of the following conditions exist, City may require Contractor to prepare, at no extra cost to City, a plan of action and a recovery schedule for completing the Work and achieving all contractual milestones within the allotted Contract Time:

a. The Contractor's monthly progress report indicates delays that are, in the opinion of City, of sufficient magnitude that City questions the Contractor's ability to complete the Work;

b. The schedule shows the Contractor to be thirty (30) or more days behind the critical path at any time during construction;

c. The Contractor desires to make changes in the logic or the planned duration of future activities of the schedule which, in the opinion of City, are major in nature.

2. The recovery schedule shall include proposed revisions to the Construction Schedule, demonstrating how Contractor intends to achieve all contractual milestones including Contract completion within the allotted Contract Time. The submittal shall include a narrative describing the actions planned by the Contractor to recover the schedule.

3. Contractor shall submit the Recovery Schedule within seven (7) Days of City's request. If Contractor asserts that City is responsible for the delay, failure to submit the recovery schedule within seven (7) Days of City's request, will be considered a concurrent delay event attributable to Contractor, and Contractor shall only be entitled to non-compensable adjustments to Contract Times. If Contractor is responsible for the delay, this provision will not limit or affect Contractor's liability and failure to submit the recovery schedule with seven (7) Days of City's request may result in City withholding progress payments or other amounts due under the Contract Documents.

4. Contractor is responsible for all costs associated with the preparation and execution of the recovery schedule, including any necessary recovery actions, which may include, but are not limited to, assignment of additional labor, and/or equipment, shift or overtime work, expediting of submittals or deliveries, overlapping of activities or sequencing changes to increase activity concurrence. Regardless of whether City directs Contractor to prepare a recovery schedule pursuant to this Section, Contractor shall promptly undertake appropriate action at no additional cost to City to recover the schedule whenever the current construction schedule shows that the Contractor will not achieve a milestone and/or complete the Work within the allotted Contract Time.

8.3 Time for Completion and Liquidated Damages

A. Time for Completion. The time for completion set forth in Article 2 of the Contract for Construction shall commence: (1) on the date stated in the Notice to Proceed, or (2) if the Notice to Proceed does not specify a commencement date, then on the date of the Notice to Proceed and shall be completed by Contractor in the time specified in the Contract Documents. The City is under no obligation to consider early completion of the Project; and the Contract completion date shall not be amended by the City's receipt or acceptance of the Contractor's proposed earlier completion date. Any difference in time between the Contractor's early completion and the Contract Time shall be considered a part of the Project float. Contractor shall not be entitled to compensation, and the City will not compensate Contractor, for delays which impact early completion. Contractor shall not, under any circumstances, receive additional compensation from the City (including but not limited to indirect, general, administrative or other forms of overhead costs) for the period between the time of earlier completion proposed by the Contractor and the Contract completion date.

B. Liquidated Damages. If the Work is not completed within the Contract Time(s), it is understood that the City will suffer damage. In accordance with Government Code section 53069.85 and Public Contract Code section 7102, being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract for each calendar day of delay until the Work is fully completed. Contractor and its surety shall be liable for any liquidated damages. Any money due or to become due the Contractor may be retained to cover liquidated damages.

C. Inclement Weather. Contractor shall abide by the City's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the critical path of the Project schedule. Contractor shall not be entitled to reverse liquidated damages for time extensions resulting from inclement weather.

D. Extension of Time. Contractor's entitlement to an extension of the Contract Time is limited to a City-caused extension of the critical path, reduced by the Contractor's concurrent delays, and established by a proper time impact analysis. Contractor shall not be charged liquidated damages because of any delays in completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor (or its Subcontractors or Suppliers). The City shall ascertain the facts and extent of delay and grant extension of time for completing the Work when, in its judgment, the facts justify such an extension. Contractor shall not be entitled to an adjustment in the Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

E. Reverse Liquidated Damages. Consistent with Public Contract Code Section 7102, Contractor will be compensated for damages incurred due to unreasonable delays to the critical path for which the City is responsible. The parties agree that determining Contractor's exact delay damages are and will continue to be impracticable and extremely difficult. As such, for each calendar day in excess of

the time for completion set forth in Article 2 of the Contract for Construction, the City shall pay to the Contractor the sum stipulated in the Contract per day. Such amount shall constitute the only payment allowed for any City-caused delays and shall necessarily include all overhead, all profits, all administrative costs, all bond costs, all labor, materials, equipment and rental costs and any other costs, expenses and fees incurred or sustained as a result of such delays. Contractor shall not be entitled to reverse liquidated damages for any change in the Work in which Contractor is compensated for overhead and profit through a change in Unit Price Work or a Change Order resulting in a lump sum or allowed mark-up for the additional Work. The amount of reverse liquidated damages shall be reduced by Contractor's concurrent delays.

F. Force Majeure. In accordance with subparagraphs "D" and "E" above, the Contractor shall not be charged liquidated damages, and the City shall not be responsible, for any delays resulting from a Force Majeure Event. If a delay to the critical path results from a Force Majeure Event, the Contractor will be entitled to a time extension but will not receive an adjustment to the Contract Price or any other compensation. Such a non-compensable adjustment shall be Contractor's sole and exclusive remedy for such delays.

G. No Damages for Reasonable Delay. The City's liability to Contractor for delays for which the City is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall the City be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable City delay shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.

H. Procedure for Time Extensions and Delay Damages. Contractor shall not be entitled to any extension of time or any reverse liquidated damages unless Contractor properly notices the delay and adjustment to compensation and requests a Change Order in accordance with Article 9.1 Change Orders and Time Extensions. Contractor's failure to timely and fully comply with the Change Order procedures in the Contract Documents shall constitute a waiver of Contractor's right to a time extension or reverse liquidated damages.

8.4 Contractor's Responsibility for Work.

A. Until the acceptance of the Work by the Engineer as evidenced in writing, it shall be under the charge and care of the Contractor. The Contractor shall take every necessary precaution against injury or damage to any part thereof by the action of the elements or from any cause whether arising from the execution or non-execution of the Work. The Contractor shall rebuild, repair, restore and make good at its own expense all injuries or damages to any portion of the Work before its completion and acceptance. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the City will pay for repair or restoration to damaged Work in excess of 5% of the total Bid.

8.5 Occupancy.

A. The City reserves the right to occupy or utilize any portion of the Work at any time before completion, and such occupancy or use shall not constitute acceptance of any part of Work covered by this Contract. This use shall not relieve the Contractor of its responsibilities under the Contract.

8.6 Securities for Money Withheld

A. Pursuant to section 22300 of the Public Contract Code of the State of California, Contractor may request the City to make retention payments directly to an escrow agent or may substitute securities for any money withheld by the City to ensure performance under the contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City or with a state or federally chartered bank as the escrow agent who shall return such securities to Contractor upon satisfactory completion of the contract. Deposit of securities with an escrow agent shall be subject to a written agreement substantially in the form provided in section 22300 of the Public Contract Code.

8.7 The City's Right to Suspend/Terminate the Contract

A. Suspension of Work by the City

1. The City may, at its sole option, decide to suspend at any time the performance of all or any portion of the Work by notice in writing to Contractor. Such notice of suspension of Work will designate the amount and type of plant, labor, and equipment to be committed to the Project during the period of suspension. Contractor shall use its best efforts to utilize its plant, labor, and equipment in such a manner as to minimize costs associated with suspension.

2. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise:

a. Immediately discontinue Work on the date and to the extent specified in the notice;

b. Place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice;

c. Promptly make every reasonable effort to obtain suspension upon terms satisfactory to the City's Representative of all orders, subcontracts, and rental agreements to the extent they relate to performance of Work suspended; and

d. Continue to protect and maintain the Work including those portions on which Work has been suspended.

3. Except as provided by this Article, as full and complete compensation for such suspension, Contractor shall be granted an adjustment in the Contract Price based on a negotiated daily rate that reflects the Contractor's actual costs associated with the demobilized condition of the Site and an extension of the Contract Times equal to the number of days performance of Work is suspended; provided, however, that no adjustment of Contract Price or extension of Contract Times shall be granted if

the suspension results from Contractor's non-compliance with the requirements of the Contract.

B. Termination for Cause by the City:

1. In the sole estimation of the City, if the Contractor refuses or fails to prosecute the Work or any separable part thereof with such diligence as will insure its completion within the time specified by the Contract Documents, or any extension thereof, or fails to complete such Work within such time, or if the Contractor should be adjudged a bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its subcontractors should violate any of the provisions of this Contract, the City may serve written notice upon the Contractor and its surety of the City's intention to terminate this Contract. This notice of intent to terminate shall contain the reasons for such intention to terminate this Contract, and a statement to the effect that the Contractor's right to perform this Contract shall cease and terminate upon the expiration of ten (10) Days unless such violations have ceased and arrangements satisfactory to the City have been made for correction of said violations.

2. After expiration of the ten (10) Day period, the City may terminate the Contract by providing a Notice of Termination to the Contractor. The City may take over and complete the Work by any method it may deem appropriate, including enforcement of the Project performance bond. Contractor and its surety shall be liable to the City for any excess costs or other damages incurred by the City to complete the Work. If the City takes over the Work, the City may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to the Contractor as may be on the Site.

3. Upon termination, Contractor shall not be entitled to receive any further payment from the City, except for Work which was duly performed prior to the effective date of the Notice of Termination. Contractor shall submit an invoice for final payment within thirty (30) Days of the effective date of the Notice of Termination. The City may withhold from final payment up to 150% of any disputed amounts, including any amounts which may be necessary to repair defective Work, complete unfinished Work, or are otherwise occasioned by Contractor’s failure to perform its duties under the Contract.

C. Termination for Convenience by the City:

1. The City may terminate performance of the Work called for by the Contract Documents in whole or, from time to time, in part, upon ten (10) Days written notice if the City determines that a termination is in the City's interest.

2. The Contractor shall terminate all or any part of the Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience of the City, the extent of termination, and the effective date of such termination.

3. After receipt of Notice of Termination, and except as directed by the City's Representative, the Contractor shall, regardless of any delay in determining or

adjusting any amounts due under this termination for convenience clause, immediately proceed with the following obligations:

a. Stop Work as specified in the Notice.

b. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.

c. Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Document is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.

d. Terminate all subcontracts to the extent that they relate to the portions of the Work terminated.

e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Contract.

f. Submit to the City's Representative, within ten (10) Days from the effective date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the effective date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the City's exercise of its right to terminate this Contract pursuant to this clause, which costs the contractor is authorized under the Contract documents to incur, shall: (1) be submitted to and received by the Engineer no later than 30 Days after the effective date of the Notice of Termination; (2) describe the costs incurred with particularity; and (3) be conspicuously identified as "Termination Costs occasioned by the City's Termination for Convenience." If the City rejects any costs, Contractor shall be deemed to waive the rejected costs unless Contractor files a Claim within thirty (30) Days of the rejection pursuant to Article 9.2.

g. Contractor shall be entitled to receive only the amounts payable under this Article, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits. The provisions in this Article are in addition to and not in limitation of any other rights or remedies available to the City.

4. Termination of the Contract shall not relieve surety of its obligation for any just claims arising out of or relating to the Work performed.

5. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, the City may immediately order Contractor to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of the City or the Contract is terminated.

6. If the City terminates Contractor for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Contractor shall be entitled to receive only the amounts payable under this section,

and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

8.8 Completion and Acceptance of Work

A. Final Inspection. Upon written notice from Contractor that the entire Work is complete, the Engineer will promptly make a final inspection with the City and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

B. Final Acceptance. The acceptance of the Work on behalf of the City will be made by the Engineer. Such acceptance by the City shall not constitute a waiver of defects. After Contractor has, in the opinion of the Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, Record Documents, and other documents required by the Contract Documents, the City shall execute a Notice of Completion, constituting final acceptance and completion of the Project, except as may be expressly noted.

8.9 Warranty and Guaranty of Work.

A. Contractor hereby warrants that materials and Work shall be completed in conformance with the Contract Documents and that the materials and Work provided will fulfill the requirements of this Warranty. Contractor hereby agrees to repair or replace, at the discretion of the City, any or all Work that may prove to be defective in its workmanship, materials furnished, methods of installation or fail to conform to the Contract Document requirements together with any other Work which may be damaged or displaced by such defect(s) within a period of one (1) year (or as otherwise indicated in the Contract Documents or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) from the date of the Notice of Completion of the Project without any expense whatever to the City, ordinary wear and tear and unusual abuse and neglect excepted. Contractor shall be required to promptly repair or replace defective equipment or materials, at Contractor's option. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor.

B. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one (1) year period, commencing with the date of acceptance of such corrected Work. The reinstatement of the one (1) year warranty shall apply only to that portion of work that was corrected. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. In the event of Contractor's failure to comply with the above-mentioned conditions within ten (10) Days after being notified in writing of required repairs, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work

damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder immediately upon demand.

C. In addition to the warranty set forth in this Article, Contractor shall obtain for the City all warranties that would be given in normal commercial practice and assign to the City any and all manufacturer's or installer's warranties for equipment or materials not manufactured by Contractor and provided as part of the Work, to the extent that such third-party warranties are assignable and extend beyond the warranty period set forth in this Article. Contractor shall furnish the City with all warranty and guarantee documents prior to final acceptance of the Project by the City as required.

D. When specifically indicated in the Contract Documents or when directed by the Engineer, the City may furnish materials or products to the Contractor for installation. In the event any act or failure to act by Contractor shall cause a warranty applicable to any materials or products purchased by the City for installation by the Contractor to be voided or reduced, Contractor shall indemnify the City from and against any cost, expense, or other liability arising therefrom, and shall be responsible to the City for the cost of any repairs, replacement or other costs that would have been covered by the warranty but for such act or failure to act by Contractor.

E. The Contractor shall remedy at its expense any damage to City-owned or controlled real or personal property.

F. The City shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor shall within ten (10) Days after being notified commence and perform with due diligence all necessary Work. If the Contractor fails to promptly remedy any defect or damage, the City shall have the right to replace, repair or otherwise remedy the defect, or damage at the Contractor's expense.

G. In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of the Contractor not in accordance with the Contract requirements, the City may undertake at Contractor's expense, and without prior notice, all Work necessary to correct such condition.

H. Acceptance of Defective Work.

1. If, instead of requiring correction or removal and replacement of defective Work, the City prefers to accept it, the City may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to the City's evaluation of and determination to accept such defective Work and for the diminished value of the Work. If any acceptance of Defective Work occurs prior to release of the Project retention, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and the City shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work and all costs incurred by the City. If the acceptance of defective occurs after release of the Project retention, an appropriate amount will be paid by Contractor to the City.

I. The City May Correct Defective Work

1. If Contractor fails within a reasonable time after written notice from the City to correct Defective Work, or to remove and replace rejected Work as required by the City, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, the City may, after seven (7) Days written notice to Contractor, correct, or remedy any such deficiency.

2. In connection with such corrective or remedial action, the City may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which the City has paid Contractor but which are stored elsewhere. Contractor shall allow the City, and the agents, employees, other contractors, and consultants of each of them, access to the Site to enable the City to exercise the rights and remedies to correct the Defective Work.

3. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by the City correcting the Defective Work will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the City shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of defective Work.

4. If the Change Order is executed after all payments under the Contract have been paid by the City and the Project Retention is held in an escrow account as permitted by the Contract Documents, Contractor will promptly alert the escrow holder, in writing, of the amount of Retention to be paid to the City. If the Change Order is executed after release of the Project retention, an appropriate amount will be paid by Contractor to the City. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the City correcting Defective Work.

J. Nothing in the warranty or in the Contract Documents shall be construed to limit the rights and remedies available to the City at law or in equity, including, but not limited to, Code of Civil Procedure section 337.15.

ARTICLE 9 -CHANGE ORDERS; DISPUTE RESOLUTION

9.1 Change Orders and Time Extensions

All changes to the Contract, including compensation increases and time extensions, shall be through a written Change Order in accordance with this Article. The City, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, and Contractor's compensation and the time for completion shall be adjusted accordingly. Whenever

any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions, and provisions of the original Contract. Contractor shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. No dispute, disagreement, or failure of the parties to reach agreement on the terms of the Change Order shall relieve the Contractor from the obligation to proceed with performance of the Work, including Additional Work, promptly and expeditiously. Any alterations, extensions of time, Additional Work, or any other changes may be made without securing consent of the Contractor's surety or sureties.

A. Change in Contract Procedures

1. City Directive. The City may direct changes in the Work by delivering a written directive. To the extent the work directive results in a change to compensation or time, Contractor must timely request a Change Order and comply with all Change Order procedures in accordance with this Article. Notwithstanding issuance of a work directive, Contractor's failure to timely request a Change Order shall constitute a waiver by Contractor of any adjustment to compensation or time extension for Work performed under the directive. The City shall not be liable to Contractor for Work performed or omitted by Contractor in reliance on verbal orders.

2. Contractor's Notice of Change/Delay. If Contractor intends to initiate a Change Order Request, then Contractor shall provide the City with written notice of the underlying facts and circumstances that gave rise to the proposed change within the following times:

a. If due to unknown subsurface or latent physical conditions, within three (3) Days from the discovery date or prior to the alterations of the conditions, whichever is earlier.

b. If due to a Force Majeure Event, as soon as reasonably practicable under the conditions, which shall be no longer than three (3) Days from the date the Contractor discovers that the Force Majeure Event gives rise to a change, unless that the conditions are such that notice within three (3) Days is not possible or practicable.

c. If due to any other matter that may involve an adjustment to the Contract Time or the Contract Price, within seven (7) days from the discovery date.

To be considered valid and complete, the notice of change/delay shall include a general statement of the circumstances giving rise to the notice of change/delay and a reasonable order of magnitude estimate of the additional costs and/or time. If the circumstances give rise to both a cost adjustment and time extension, Contractor shall submit the notice of change and notice of delay concurrently.

3. Request for Change in Compensation and/or Extension of Time. Contractor shall submit a Change Order Request for any adjustment to Contractor's compensation and/or any extension of time. The Change Order Request shall be made prior to incurring any expense and within fourteen (14) Days from either Contractor's notice of change/delay or the City's directive ordering the change. The Change Order Request shall include all of the following information (unless inapplicable to the change):

a. A detailed description of the circumstances giving rise to the request;

b. A complete itemized cost proposal, including itemized pricing for first tier Subcontractors;

c. Supporting documentation for all costs;

d. A time impact analysis showing the impact of the delay to the critical path to completion;

e. If any added costs or information cannot be determined at the time of the Change Order Request, the reason the costs or information cannot be determined at the time; and

f. Certification to the accuracy of the Change Order Request under penalty of perjury.

The time impact analysis shall be in the critical path method format and shall show the sequencing of all critical and non-critical new activities and/or activity revisions affected by the delay, with logic ties to all affected existing activities noted on the schedule.

The City may demand, and Contractor shall provide, any additional information supporting the Change Order Request, including but not limited to native electronic format version of schedules and time impact analyses. Contractor shall provide the requested additional information within five (5) Days of the request.

For any costs or information that cannot be determined at the time Contractor submits the Change Order Request, Contractor shall submit to the City notice of the costs or information and all supporting documentation within five (5) Days of when the costs or other information become subject to determination.

4. City's Final Decision on Change Order; Ordered Changes. If the City denies the Change Order Request or disagrees with the proposal submitted by Contractor, it will notify the Contractor, and the City will provide its opinion of the appropriate price and/or time extension. If no agreement can be reached, the City shall have the right to order the Work performed on a time and materials basis or to issue a unilateral Change Order setting forth the City's determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. The City shall also have the right to order changes in the Work to be performed promptly by the Contractor on a time and materials basis or to issue a unilateral Change Order setting forth the City's determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. The City's determination shall become final and binding if the Contractor fails to submit a Claim in writing to the City within fourteen (14) Days of the issuance of the unilateral Change Order, disputing the terms of the unilateral Change Order and providing such supporting documentation for its position as the City may reasonably require.

5. Contractor's Waiver of Further Relief. **CONTRACTOR'S FAILURE TO PROVIDE A COMPLETE AND TIMELY NOTICE OF CHANGE/DELAY AND/OR CHANGE ORDER REQUEST, OR TO COMPLY WITH ANY OTHER REQUIREMENT OF THIS ARTICLE, SHALL CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO A CONTRACT ADJUSTMENT ON ACCOUNT OF SUCH**

CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE BY MEANS OF THE CLAIMS DISPUTE RESOLUTION PROCESS OR BY ANY OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.

Contractor recognizes and acknowledges that timely submission of a formal written notice of change/delay and Change Order Request, whether or not the circumstances of the change may be known to the City or available to the City through other means, is not a mere formality but is of crucial importance to the ability of the City to promptly identify, prioritize, evaluate and mitigate the potential effects of changes. Any form of informal notice, whether verbal or written (including, without limitation, statements in requests for information, statements in Submittals, statements at any job meeting or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of this Article, shall accordingly be insufficient.

6. Change Order Format

a. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in compensation or extension of time, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.

b. The City may designate the forms to be used for notices, requests, and Change Orders. If so designated, Contractor may only use such forms. Contractor shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the Change Order. No Claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The Contractor may not change or modify the City's Change Order form in an attempt to reserve additional rights.

B. Determining Adjustments to Compensation.

1. Limitation on Costs. Contractor shall not be entitled to any compensation for Work subject to a Change Order except as expressly set forth in this Article. The mark-up added in instances of Additional Work shall constitute the entire amount of profit, any mark-ups, any field or home office overhead costs, including personnel, equipment or office space, any materials, or any costs of equipment idle time for such Work.

2. Unit Price Change Orders. When the actual quantity of a Unit Price Work item varies from the Bid Schedule, compensation for the change in quantity will be calculated by multiplying the actual quantity by the unit price. This calculation may result in either an additive or deductive Change Order. Bid items included on the Bid Schedule may be deducted from the Work in their entirety without any negotiated extra costs. Because Unit Price Work includes overhead and profit as determined by Contractor at the time of its Bid submission, no mark up or deduction for overhead and profit will be allowed.

3. Lump Sum Change Orders. Whenever possible, any changes affecting compensation shall be in a lump sum mutually agreed by the Contractor and the City.

4. Time and Materials Change Orders. The City may direct the Contractor to proceed with the Additional Work with payment to be made on the basis of actual cost of the labor and materials required to complete the Additional Work. If the Project is federally funded, a time and materials Change Order shall only be issued after a determination that no other Change Order is suitable and the Change Order shall include a ceiling price that the Contractor exceeds at its own risk.

5. Federally Funded Projects. For any change in price to the Contract, general and administrative expenses shall be negotiated and must conform to the cost principles set forth under at 2 C.F.R. Part 200, subpart E, and profit shall be negotiated as a separate element of the cost. To establish a fair and reasonable profit, consideration must be given to the complexity of the Additional Work to be performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

6. Allowed Costs. Estimates for lump sum quotations and accounting for time-and-material work shall be limited to direct expenditures necessitated specifically by the change and shall be segregated as follows:

a. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the Additional Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the Additional Work cost will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

b. Materials. The cost of materials reported shall be at the lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery. Materials costs shall be based upon supplier or manufacturer’s invoice.

c. Tool and Equipment Use. Regardless of ownership, the rates to be used in determining equipment use shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the work is performed. The Contractor shall furnish cost data supporting the establishment of the rental rate. The rental rate to be applied for use of each items of equipment shall be the rate resulting in the least total cost to the City for the total period of use. The City shall the make the final determination as to an equitable rental rate for the equipment. No payment will be made for the use of small tools, which have a replacement value of $1,000 or less.

(i) The rental time to be paid for equipment shall be the time the equipment is in productive operation on the Additional Work being performed. Rental time will not be allowed while equipment is inoperative due to breakdowns.

(ii) All equipment shall, in the opinion of the City, be in good working condition and suitable for the purpose for which the equipment is to be used. Equipment with no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

(iii) Before construction equipment is used on any Additional Work, the Contractor shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the City, in duplicate, a description of the equipment and its identifying number.

(iv) When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be considered to be 1/2-hour of operation, and any part of an hour greater than 30 minutes will be considered one hour of operation. When daily rates are listed, any part of a day less than 4 hours operation shall be considered to be 1/2-day of operation.

d. Allowed Mark-up. The allowed mark-up for any and all overhead (including supervision and home and field office costs) and profit on work added to the Contract shall be determined in accordance with the following provisions:

(i) "Net Cost" is defined as the actual costs of labor, materials and tools and equipment only, excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the Contractor and Subcontractors at cost only, without mark-up. Contractor shall provide the City with documentation of the costs, including but not limited to payroll records, invoices, and such other information as the City may reasonably request.

(ii) For Work performed by the Contractor's forces the allowed mark-up shall not exceed fifteen (15%) percent of labor costs, ten percent (10%) of material costs, and ten percent (10%) of the cost of tools and equipment use.

(iii) For Work performed by a Subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the Subcontractor's Net Cost of the Work to which the Contractor may add up to five percent (5%) of the Subcontractor's Net Cost.

(iv) For Work performed by a sub-subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the sub-subcontractor's Net Cost for Work to which the Subcontractor and Contractor may each add up to an additional five percent (5%) of the Net Cost of the lower tier subcontractor.

(v) No additional mark-up will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by the City exceed twenty-five percent (25%) of the Net Cost as defined herein, of the party that performs the Work.

(vi) Calculation of the mark-up will be subject to the limitations above and to calculation as further detailed in (b)(B)(5) above.

e. Documentation of Time-and-Material Costs.

(i) T&M Daily Sheets. Contractor must submit timesheets, materials invoices, records of equipment hours, and records of rental equipment hours to the City's for an approval signature each day that Work is performed on a time-and-material basis. The Engineer's signature on time sheets only serves as verification that the Work was performed and is not indicative of the City's agreement to Contractor's entitlement to the cost.

(ii) T&M Summary Sheet. Contractor shall submit a T&M Summary Sheet, which shall include total actual costs, within five (5) Days following completion of Additional Work on a time-and-material basis. Contractor's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and any other costs, along with documentation supporting the costs. Contractor's failure to submit the T&M Summary Sheet within five (5) Days of completion of the Additional Work will result in Contractor's waiver for any reimbursement of any costs associated with the Additional Work.

f. Excluded Costs. The following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by the Contractor's mark-up, shall not be allowed costs and shall not be included in any lump sum proposals or time-and-materials invoices:

(i) Overhead Cost. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks, and other personnel employed by Contractor whether at the Site or in Contractor's principal office or any branch office, material yard, or shop for general administration of the Work;

(ii) Office Expenses. Expenses of Contractor's principal and branch offices;

(iii) Capital Expenses. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Additional Work and charges against Contractor for delinquent payments;

(iv) Negligence. Costs due to the negligence of Contractor or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;

(v) Small Tools. Cost of small tools valued at less than $1,000 and that remain the property of Contractor;

(vi) Administrative Costs. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;

(vii) Anticipated Lost Profits. Expenses of Contractor associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings, or unpaid retention;

(viii) Home Office Overhead. Costs derived from the computation of a "home office overhead" rate by application of the *Eichleay, Allegheny*, burden fluctuation, or other similar methods;

(ix) Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of Contractor, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work.

(x) Other. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in the Contract Documents; including but not limited to: submittals, drawings, field drawings, shop drawings, including submissions of drawings; field inspection; general superintendence; computer services; reproduction services; salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; janitorial services; small tools, incidentals and consumables; temporary on-site facilities (offices, telephones, high speed internet access, plumbing, electrical power, lighting; platforms, fencing, water); surveying; estimating; protection of work; handling and disposal fees; final cleanup; other incidental work; related warranties; insurance and bond premiums.

(xi) Compliance with Federal Cost Principles. If the Project is federally funded, any costs that are not allowable, reasonable and allocable to the Project, under generally accepted accounting principles and the applicable federal requirements.

9.2 Procedure for Resolving Claims.

Contractor shall timely comply with any and all requirement of the Contract Documents pertaining to notices and requests for changes to the Contract Time or Contract Price, including but not limited to all requirements of Article 9.1, as a prerequisite to filing any claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the time for completion or Contractor's compensation, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.

A. Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of $375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with all applicable law, including but not limited to these statutes.

B. Claims. For purposes of this Article, "Claim" means a separate demand by the Contractor for:

1. An adjustment to the time for completion including, without limitation, for relief from damages or penalties for delay assessed by the City;

2. Payment by the City of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled; or

3. An amount the payment of which is disputed by the City.

A "Claim" does not include any demand for payment for which the Contractor has failed to provide notice, request a Change Order, or otherwise failed to follow any procedures contained in the Contract Documents.

C. Filing Claims. Claims governed by this Article may not be filed unless and until the Contractor completes any and all requirements of the Contract Documents pertaining to notices and requests for changes to the Contract Time or Contract Price, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Article must be filed no later than thirty (30) Days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the City and shall include on its first page the following words in 16 point capital font: "THIS IS A CLAIM." The Claim shall include the all information and documents necessary to substantiate the Claim, including but not limited to those identified below. Nothing in this Article is intended to extend the time limit or supersede notice requirements otherwise provided by Contract Documents. Failure to follow such contractual requirements shall bar any Claims or subsequent proceedings for compensation or payment thereon.

D. **Documentation.** The Contractor shall submit all Claims in the following format:

1. Summary description of Claim including basis of entitlement, merit and amount of time or money requested, with specific reference to the Contract Document provisions pursuant to which the Claim is made

2. List of documents relating to Claim:

a. Specifications

b. Drawings

c. Clarifications (Requests for Information)

d. Schedules

e. Other

3. Chronology of events and correspondence

4. Narrative analysis of Claim merit

5. Analysis of Claim cost, including calculations and supporting documents

6. Time impact analysis in the form required by the Contract Documents or, if the Contract Documents do not require a particular format, CPM format, if an adjustment of the Contract Time is requested

E. City's Response. Upon receipt of a Claim pursuant to this Article, the City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 Days, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within 60 Days after the City issues its written statement.

1. If the City needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the City's governing body does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three (3) Days following the next duly publicly noticed meeting of the City's governing body after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

2. Within 30 Days of receipt of a Claim, the City may request in writing additional documentation supporting the Claim or relating to defenses or Claims the City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the Contractor. The City's written response to the Claim, as further documented, shall be submitted to the Contractor within 30 Days (if the Claim is less than $50,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

F. Meet and Confer. If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 Days of receipt of the City's response or within 15 Days of the City's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the City shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

G. Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 Days after the City issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The public entity and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing, unless the parties agree to select a mediator at a later time.

1. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

2. For purposes of this Article, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Article.

3. Unless otherwise agreed to by the City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

4. The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.

H. Procedures After Mediation. If following the mediation, the Claim or any portion remains in dispute, the Contractor must file a Claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a Claim must be filed shall be tolled from the time the Contractor submits his or her written Claim pursuant to subdivision (a) until the time the Claim is denied, including any period of time utilized by the meet and confer conference.

I. Civil Actions. The following procedures are established for all civil actions filed to resolve Claims of $375,000 or less:

1. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be

experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

J. Government Code Claim Procedures.

1. This Article does not apply to tort claims and nothing in this Article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commending with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.5 of Title 1 of the Government Code.

2. In addition to any and all requirements of the Contract Documents pertaining to notices of and requests for adjustment to the Contract Time, Contract Price, or compensation or payment for Additional Work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Section 900, et seq. prior to filing any lawsuit against the City.

3. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to adjustment of the Contract Time or Contract Price for Additional Work, disputed Work, construction claims, and/or changed conditions have been followed by Contractor. If Contractor does not comply with the Government Code claim procedure or the prerequisite contractual requirements, Contractor may not file any action against the City.

4. **A Government Code claim must be filed no earlier than the date the Work is completed or the date the Contractor last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved Claims known to Contractor or that should reasonably by known to Contractor excepting only new unrelated Claims that arise after the Government Code claim is submitted.**

K. Non-Waiver. The City's failure to respond to a Claim from the Contractor within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the Claim being deemed rejected in its entirety, and shall not constitute a waiver of any rights under this Article.

ARTICLE 10 - MEASUREMENT; PAYMENT

10.1 Cost Breakdown.

A. Lump Sum Work.

1. Contractor shall furnish on forms approved by the City within ten (10) Days of the Notice to Proceed, a schedule of values allocating the entire Contract Price to the various portions of the Work and prepared in such a form and supported by such data to substantiate its accuracy as the Engineer may require. This schedule of values, unless objected to by the Engineer, shall be used as a basis for reviewing

the Contractor's applications for payment. Contractor shall submit the schedule of values prior to submitting its first application for payment, and the City will not issue any payment until it receives and approves the schedule of values.

B. Unit Price Work.

1. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work multiplied by the estimated quantity of each item as indicated in the Contract. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and or profit for each separately identified item.

2. Unless otherwise specified, payment will be based on the actual quantities of Work as verified and approved by the Engineer, based on the price per unit as set forth in the Bid.

3. The City or Contractor may initiate a Change Order or Change Order Request to adjust the Contract Price in accordance with Contractor Documents based on actual quantities of Unit Price Work. The City or Contractor may make a claim for an adjustment in the Unit Price in accordance with the Contract Documents if:

a. the quantity of any item of Unit Price Work performed by Contractor differs by twenty-five percent (25%) or more from the estimated quantity of such item indicated in the Contract; and

b. there is no corresponding adjustment with respect to any other item of Work; and

c. Contractor believes that Contractor is entitled to an increase in unit price as a result of having incurred additional expense or the City believes that the City is entitled to a decrease in unit price and the parties are unable to agree as to the amount of any such increase or decrease.

10.2 Progress Estimates and Payment.

A. By the tenth (10th) Day of the following calendar month, Contractor shall submit to Engineer a payment request which shall set forth in detail the value of the Work done for the period beginning with the date Work was first commenced and ending on the end of the calendar month for which the payment request is prepared. Contractor shall include an adjusted list of actual quantities, verified by the Engineer, for unit price items listed, if any, in the Bid. Contractor shall include any amount earned for authorized Additional Work. Contractor shall certify under penalty of perjury, that all cost breakdowns and periodic estimates accurately reflect the Work on the Project.

B. From the total thus computed, a deduction shall be made in the amount of five percent (5%) for retention, except where the City has adopted a finding that the Work done under the Contract is substantially complex, and then the amount withheld as retention shall be the percentage specified in the Notice Inviting Bids. From the

remainder a further deduction may be made in accordance with Section C below. The amount computed, less the amount withheld for retention and any amounts withheld as set forth below, shall be the amount of the Contractor's payment request.

C. The City may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in its judgment may be necessary to cover:

1. Payments which may be past due and payable for just claims against Contractor or any Subcontractors for labor or materials furnished in and about the performance of work on the Project under this Contract.

2. Defective work not remedied.

3. Failure of Contractor to make proper payments to his Subcontractor or for material or labor.

4. Completion of the Contract if there is a reasonable doubt that the Work can be completed for balance then unpaid.

5. Damage to another contractor or a third party.

6. Amounts which may be due the Count for claims against Contractor.

7. Failure of Contractor to keep the Record Drawings up to date.

8. Failure to provide update on construction schedule as required herein.

9. Site cleanup.

10. Failure to comply with Contract Documents.

11. Liquidated damages.

12. Legally permitted penalties.

D. The City may apply such withheld amount or amounts to payment of such claims or obligations at its discretion with the exception of subsections (C)(1), (3), and (5) of this Article, which must be retained or applied in accordance with applicable law. In so doing, the City shall be deemed the agent of Contractor and any payment so made by the City shall be considered as a payment made under contract by the City to Contractor and the City shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. The City will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.

E. Upon receipt, the Engineer shall review the payment request to determine whether it is undisputed and suitable for payment. If the payment request is determined to be unsuitable for payment, it shall be returned to Contractor as soon as practicable but not later than seven (7) Days after receipt, accompanied by a document setting forth in writing the reasons why the payment request is not proper. The City shall make the progress payment within 30 Days after the receipt of an undisputed and

properly submitted payment request from Contractor, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code section 8132. The number of days available to the City to make a payment without incurring interest pursuant to this paragraph shall be reduced by the number of Days by which the Engineer exceeds the seven (7) Day requirement.

F. A payment request shall be considered properly executed if funds are available for payment of the payment request and payment is not delayed due to an audit inquiry by the financial officer of the City.

G. The City shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

10.3 Final Acceptance and Payment

A. Following the City's acceptance of the Work, the Contractor shall submit to the City a written statement of the final quantities of unit price items for inclusion in the final payment request. The City shall have the right to adjust any estimate of quantity and to correct any error made in any estimate for payment.

B. When the Work has been accepted there shall be paid to Contractor a sum equal to the Contract Price less any amounts previously paid Contractor and less any amounts withheld by the City from Contractor under the terms of the Contract. The final five percent (5%), or the percentage specified in the Notice Inviting Bids where the City has adopted a finding of substantially complete, shall not become due and payable until as required by Public Contract Code section 7107. If the Contractor has placed securities with the City as described herein, the Contractor shall be paid a sum equal to one hundred percent (100%) of the Contract Price less any amounts due the City under the terms of the Contract.

C. Unless Contractor advises the City in writing prior to acceptance of the final five percent (5%) or the percentage specified in the Notice Inviting Bids where the City has adopted a finding of completion, or the return of securities held as described herein, said acceptance shall operate as a release to the City of all claims and all liability to Contractor for all things done or furnished in connection with this Work and for every act of negligence of the City and for all other claims relating to or arising out of this Work. If Contractor advises the City in writing prior to acceptance of final payment or return of the securities that there is a dispute regarding the amount due the Contractor, the City may pay the undisputed amount contingent upon the Contractor furnishing a release of all undisputed claims against the City with the disputed claims in stated amounts being specifically excluded by Contractor from the operation of the release. No payments, however, final or otherwise, shall operate to release Contractor or its sureties from the Faithful Performance Bond, Labor and Material Payment Bond, or from any other obligation under this Contract.

D. In case of suspension of the Contract any unpaid balance shall be and become the sole and absolute property of the City to the extent necessary to repay the City any excess in the cost of the Work above the Contract Price.

E. Final payment shall be made no later than 60 Days after the date of acceptance of the Work by the City or the date of occupation, beneficial use and enjoyment of the

Work by the City including any operation only for testing, start-up or commissioning accompanied by cessation of labor on the Work, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code section 8136. In the event of a dispute between the City and the Contractor, the City may withhold from the final payment an amount not to exceed 150% of the disputed amount.

F. Within ten (10) Days from the time that all or any portion of the retention proceeds are received by Contractor, Contractor shall pay each of its Subcontractors from whom retention has been withheld each Subcontractor's share of the retention received. However, if a retention payment received by Contractor is specifically designated for a particular Subcontractor, payment of the retention shall be made to the designated Subcontractor if the payment is consistent with the terms of the subcontract.

ARTICLE 11 -MISCELLANEOUS

11.1 Patents.

A. Contractor shall hold and save the City, officials, officers, employees, and authorized volunteers harmless from liability of any nature or kind of claim therefrom including costs and expenses for or on account of any patented or unpatented invention, article or appliance manufactured, furnished or used by Contractor in the performance of this Contract.

11.2 Document Retention & Examination

A. In accordance with Government Code section 8546.7, records of both the City and the Contractor shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.

B. Contractor shall make available to the City any of the Contractor's other documents related to the Project immediately upon request of the City.

C. In addition to the State Auditor rights above, the City shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to the City, for a period of four (4) years after final payment.

11.3 Notice.

A. All notices shall be in writing and either served by personal delivery or mailed to the other party. Written notice to the Contractor shall be addressed to Contractor's principal place of business unless Contractor designates another address in writing for service of notice. Notice to the City shall be addressed to the City as designated in the Notice Inviting Bids unless the City designates another address in writing for service of notice. Notice shall be effective upon receipt or five (5) Days after being sent by first class mail, whichever is earlier. Notice given by facsimile shall not be effective unless acknowledged in writing by the receiving party.

11.4 Notice of Third Party Claims

A. Pursuant to Public Contract Code section 9201, the City shall provide the Contractor with timely notification of the receipt of any third-party claims relating to the Contract. The City is entitled to recover reasonable costs incurred in providing such notification.

11.5 State License Board Notice

A. Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

11.6 Assignment of Contract

A. Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the rights or title of interest of any or all of this contract without the prior written consent of the City. Any assignment or change of Contractor's name of legal entity without the written consent of the City shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

11.7 Change In Name And Nature Of Contractor's Legal Entity.

A. Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the City in order that proper steps may be taken to have the change reflected on the Contract and all related documents. No change of Contractor's name or nature will affect the City's rights under the Contract, including but not limited to the bonds.

11.8 Prohibited Interests

A. No City official or representative who is authorized in such capacity and on behalf of City to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the project, shall be or become directly or indirectly interested financially in the Contract.

11.9 Controlling Law

A. Notwithstanding any subcontract or other contract with any subcontractor, supplier, or other person or organization performing any part of the Work, this Contract shall

be governed by the law of the State of California excluding any choice of law provisions.

11.10 Jurisdiction; Venue

A. Contractor and any subcontractor, supplier, or other person or organization performing any part of the Work agrees that any action or suits at law or in equity arising out of or related to the bidding, award, or performance of the Work shall be maintained in the Superior Court of San Bernardino County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

11.11 Cumulative Remedies.

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Applicable Laws, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Article will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

11.12 Survival of Obligations.

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

11.13 Headings.

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

11.14 Assignment of Antitrust Actions

A. In accordance with §7103.5(b) of the California Public Contract Code, Contractor and Subcontractors must conform to the following requirements:

1. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or Subcontractor offer and agree to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under §4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract.

2. This assignment must be made and become effective at the time the awarding body tenders to Contractor, without further acknowledgment by the parties.

11.15 All Legal Provisions Included

A. Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified by their terms. References to specific laws, rules or regulations in this Contract are for reference purposes only, and shall not limit or affect the applicability of provisions not specifically mentioned. If Contractor observes that drawings and specifications are at variance therewith, he shall promptly notify City in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in Work. If Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to City, he shall bear all costs arising therefrom.

B. Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA laws, rules and regulations. Contractor shall comply with the Historic Building Code, including, but not limited to, as it relates to the ADA, whenever applicable.

C. Contractor acknowledges and understands that, pursuant to Public Contract Code section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code section 2717(b) in order to supply mined material for this Contract.

D. No City official or representative who is authorized in such capacity and on behalf of City to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Work, shall be or become directly or indirectly interested financially in the Contract.

E. Contractor shall comply, and shall ensure all subcontractors comply, with all applicable requirements of the most current version of the regulations imposed by California Air Resources Board ("CARB") including, without limitation, all applicable terms of Title 13, California Code of Regulations Division 3, Chapter 9 and all pending amendments ("Regulation").

   Throughout the Project, and for three (3) years thereafter, Contractor shall make available for inspection and copying any and all documents or information associated with Contractor's and its subcontractors' fleets including, without limitation, the Certificates of Reported Compliance ("CRCs"), fuel/refueling records, maintenance records, emissions records, and any other information the Contractor is required to produce, keep or maintain pursuant to the Regulation upon two (2) calendar days' notice from the City.

   Contractor shall be solely liable for any and all costs associated with compliance with the Regulation as well as for any and all penalties, fines, damages, or costs associated with any and all violations, or failures to comply with the Regulation. Contractor shall defend, indemnify and hold harmless the City, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Regulation

F. All provisions of law required to be inserted in the Contract or Contract Documents pursuant to any Applicable Laws shall be and are inserted herein. If through mistake, neglect, oversight, or otherwise, any such provision is not herein inserted or inserted in improper form, upon the application of either party, the Contract or Contract Documents shall be changed by City, at no increase in Contract Price or extension in Contract Times, so as to strictly comply with the Applicable Laws and without prejudice to the rights of either party hereunder.

CITY OF ONTARIO *Agenda Report* **June 3, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Tim Masot Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Bonnie Tam, Jacqueline Leon Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 16

SUBJECT: A MAINTENANCE SERVICES AGREEMENT WITH TOWO ENTERPRISE, INC. FOR CITYWIDE CONCRETE REPAIR AND MAINTENANCE SERVICES

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute a Maintenance Services Agreement with Towo Enterprise, Inc., of Fullerton, California, for citywide concrete repair and maintenance services. The agreement shall have an initial term of three (3) years, with a total amount not-to-exceed $4,065,000, and may include up to two (2) additional one-year extensions, for a total contract amount not-to-exceed $6,775,000 over a maximum term of five (5) years.

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 contract award to Towo Enterprise, Inc. is for a total not-to-exceed amount of $4,065,000 over a three-year term. Two (2) additional one-year extensions may be exercised at the City's sole discretion for an additional contract amount of $1,355,000 per year for a total not-to-exceed amount of $6,775,000 over the five-year term. If approved, appropriations will be included in future Annual Budgets to City Council for approval as needed for concrete repair and maintenance services.

BACKGROUND & ANALYSIS: The Public Works Right-of-Way Management Study outlines an inventory and maintenance plan for sidewalks, curbs, and gutters throughout the city. Based on this study, projects are scheduled to repair or replace damaged concrete sidewalks, driveway approaches, and curbs and gutters, or to install where they are missing.

On February 10, 2025, the City solicited bids for Invitation No. 1881 for citywide concrete repairs and maintenance services. The following 11 vendors responded:

VENDOR	LOCATION	BID AMOUNT
Towo Enterprise, Inc.	Fullerton, CA	$1,065,775

JT Construction Group, Inc.	Duarte, CA	$1,092,900
CT&T Concrete Paving, Inc.	Diamond Bar, CA	$1,153,155
DM Contracting, Inc.	Colton, CA	$1,262,500
CJ Concrete Construction, Inc.	Santa Fe Springs, CA	$1,366,700
Gentry General Engineering, Inc.	Colton, CA	$1,662,831.40
Hardy & Harper, Inc.	Lake Forest, CA	$2,087,100
Horizon Underground, Inc.	Norco, CA	$2,259,444
Aster Construction Services	Hollywood, CA	$2,176,325
G.M. Sager Construction Co., Inc.	Pomona, CA	$3,821,500
Pub Construction, Inc.	Diamond Bar, CA	$7,206,113

Based on their favorable references and their submission of the lowest responsible and responsive bid, Staff recommends awarding a Maintenance Services Agreement to Towo Enterprise, Inc.

CITY OF ONTARIO
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MAYOR

ALAN D. WAPNER
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JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
MAINTENANCE SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered as of _____, by and between the City of Ontario, a municipal corporation organized under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City") and **Towo Enterprise Inc**, a **CORPORATION**, with its principal place of business at **6 Fender Ave, Suite D, Fullerton, CA 92831 ("Contractor").** City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain maintenance services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing **Concrete Repairs and Maintenance** to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that is familiar with the plans of City.

2.2 Project.

City desires to engage Contractor to render such services for the **Concrete Repairs and Maintenance SM2526-1** project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

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

with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **July 1, 2025** to **June 30, 2028**, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than two additional one-year terms. Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Compensation.

3.2.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Four Million Sixty-Five Thousand ($4,065,000)** without written approval of City's **Manager**. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

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

3.2.3 Deductions. City may deduct or withhold, as applicable, from each progress payment an amount necessary to protect City from loss because of: (1) stop payment notices as allowed by state law; (2) unsatisfactory prosecution of the Services by Contractor; (3) sums representing expenses, losses, or damages as determined by the City, incurred by the City for which Contractor is liable under the Agreement; and (4) any other sums which the City is entitled to recover from Contractor under the terms of the Agreement or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the City to deduct any of these sums from a progress payment shall not constitute a waiver of the City's right to such sums.

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

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

3.2.6 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. Contractor shall provide the City with ACH payment details whereby the City shall initiate the ACH transfers to Contractor 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 Contractor is not entitled: (1) Contractor shall immediately notify the City and the financial institution; (2) Contractor shall not withdraw any of the funds which were erroneously deposited or to which Contractor is not entitled; and (3) Contractor 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 Contractor is not entitled.

3.3 Responsibilities of Contractor.

3.3.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

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

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

3.3.4 City's Representative. The City hereby designates **Tim Masot, Parks & Streets Maintenance Superintendent**, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement except for increasing compensation. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

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

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

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

3.3.8 Period of Performance and Liquidated Damages

3.3.8.1 Contractor shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Contractor shall perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be provided separately in writing to the Contractor. Contractor agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such completion schedule or Project milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the sum of **One Thousand Five hundred Sixteen Dollars ($1,516)** per day for each and every calendar day of delay beyond the Performance Time or beyond any completion schedule or Project milestones established pursuant to this Agreement.

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

protect the public health, welfare and safety, and other actions of a public agency applicable to the Services and Agreement.

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

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

3.3.10 Laws and Regulations; Employee/Labor Certifications.

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

3.3.10.2 Employment Eligibility; Contractor. By executing this Agreement, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Contractor shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some

other legally acceptable method. Contractor shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for in Section 3.3.10 or any of its sub-sections.

3.3.10.3 Employment Eligibility; Subcontractors, Sub-subcontractors and Consultants. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.3.10.1.

3.3.10.4 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Contractor verifies that they are a duly authorized officer of Contractor, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in Sections 3.3.10.1 or 3.3.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Contractor under Section 3.3.10.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

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

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

3.3.10.7 Water Quality.

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

regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

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

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

3.3.11 Insurance.

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

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

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

(B) Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability:* $2,000,000 per occurrence for bodily injury, personal

injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability:* $2,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability:* Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of $1,000,000 per accident for bodily injury or disease. Defense costs shall be paid in addition to the limits.

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

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

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

(A) General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37, or endorsements providing the exact same coverage, the City of Ontario, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Services or ongoing and complete operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of the City, before the City's own primary insurance, deductible, or self-insurance shall be called upon to protect it as a named insured. Any insurance, deductible, or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth in Section 3.3.11.2(B), any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 3.3.11.3(A).

(B) Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) the City, its directors, officials, officers,

employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance, deductible, or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way. Policy shall contain or be endorsed to contain such provisions. Notwithstanding the minimum limits set forth in Section 3.3.11.2(B), any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 3.3.11.3(B).

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

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

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

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

3.3.11.6 Subcontractor Insurance Requirements. Contractor shall not allow any subcontractors to commence work on any subcontract relating to the work under the

Agreement until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. If requested by Contractor, the City may approve different scopes or minimum limits of insurance for particular subcontractors. The Contractor and the City shall be named as additional insureds on all subcontractors' policies of Commercial General Liability using ISO form 20 38, or coverage at least as broad.

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

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

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

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

3.3.13 Bonds.

3.3.13.1 Performance Bond. If required by law or otherwise specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.3.13.2 Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.3.13.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

3.3.13.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.3.14 Work Site.

3.3.14.1 Inspection Of Site. Contractor shall visit sites where Services are to be performed and shall become acquainted with all conditions affecting the Services prior to commencing the Services. Contractor shall make such examinations as it deems necessary to determine the condition of the work sites, its accessibility to materials, workmen and equipment, and to determine Contractor's ability to protect existing surface and subsurface improvements. No claim for allowances–time or money–will be allowed as to such matters after commencement of the Services.

3.3.14.2 Field Measurements. Contractor shall make field measurements, verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents, including any plans, specifications, or scope of work before commencing Services. Errors, inconsistencies or omissions discovered shall be reported to the City immediately and prior to performing any Services or altering the condition.

3.3.15 Loss and Damage. Contractor shall be responsible for all loss and damage which may arise out of the nature of the Services agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Services until the same is fully completed and accepted by City.

3.3.16 Warranty. Contractor warrants all Services under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Contract or in any guarantee or

warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Services or non-conformance of the Services to the Contract, commence and prosecute with due diligence all Services necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the work (or work of other contractors) damaged by its defective Services or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor's obligation hereunder to correct defective work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

3.4 Labor Code Requirements.

3.4.1 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.4.2 Registration/DIR Compliance. If the Services are being performed as part of an applicable "public works" or "maintenance" project, and if the total compensation is $15,000 or more, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, as applicable.

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

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

3.5 Termination of Agreement.

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

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

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

3.6 Indemnification.

3.6.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, employees, agents and volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs,

expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's Services, the Project or this Agreement, including without limitation the payment of all expert witness fees, attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to such loss or damage which is caused by the sole or active negligence or willful misconduct of the City.

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

3.7 General Provisions.

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

3.7.2 Independent Contractors and Subcontracting.

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

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

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

Contractor:

Towo Enterprise, Inc.
2536 Fender Ave, Suite D
Fullerton, CA 92831
Attn: Jason Lee, Project Manager

City: City of Ontario
303 East "B" Street
Ontario, CA 91764
Attn: Tim Masot, Parks & Streets Maintenance Superintendent

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

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

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

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

3.7.7 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project.

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

3.7.9 Assignment or Transfer. Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.7.10 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

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

3.7.12 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.7.13 No Third Party Beneficiaries. Except to the extent expressly provided for in Section 3.5.7, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

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

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

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

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

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

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

SIGNATURES NEXT PAGE

SIGNATURE PAGE FOR MAINTENANCE SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND TOWO ENTERPRISE, INC.

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

CITY OF ONTARIO	**TOWO ENTERPRISE, INC.**
Approved By:	
_____	By: _____
Scott Ochoa City Manager	Its: _____
Approved as to Form:	Printed Name: _____
_____	By: _____
Best Best & Krieger LLP City Attorney	Its: _____
	Printed Name: _____
Attested By:	
_____	_____
City Clerk	Contractor's License Number and Classification
	_____
	DIR Registration Number

EXHIBIT "A"

SCOPE OF SERVICES

ITEM No. 1: CONSTRUCTION SURVEYING, REESTABLISH MONUMENTS AND CENTERLINE TIES

This item includes, but is not limited to, surveying, construction staking in order to provide vertical and horizontal control necessary for this project and the reestablishment of monuments and centerline ties. The Contractor shall hire a California licensed Land Surveyor in good standing to inspect the project limits and identify all survey monuments found. The project shall be inspected following the City's Notice to Proceed for Procurement of Submittals and Permits and prior to beginning construction. The Contractor's surveyor shall submit to the City a letter report documenting that a reasonable and diligent field search was conducted and submit a list the monuments found. The letter report shall be submitted to the City prior to construction.

Construction Staking

Contractor shall perform construction staking for the project improvements, as required on this project. All work shall be done by or under the direction of a Professional Land Surveyor or a Registered Civil Engineer licensed to practice land surveying in California. Construction stakes or marks shall be set and maintained as necessary to achieve the required accuracy set forth on the Plans and Specifications. Stakes (blue tops) for subgrade and base shall be at 50-foot intervals, maximum. The Contractor shall set and maintain sufficient stakes at each cross section to match plan cross-sections, achieve the required accuracy, and to support the method of field operations. Contractor shall set and maintain stakes as necessary to establish horizontal and vertical position along intersecting road radii, vertical and horizontal curves, and curve transitions.

All Survey Cut Sheets shall be submitted to the Engineer prior to the start of work.

The Contractor shall assist the Engineer for final elevation checks, if necessary. Such checks shall be made at randomly selected points.

Any questionable grade, elevation, location or design shall be brought to the immediate attention of the Engineer in writing for clarification prior to construction. Any additional survey required to correct such construction shall be at the sole expense of the Contractor, and no additional compensation will be made therefor.

Monumentation

The City reserves the right to verify all staking and monumentation for horizontal and vertical accuracy. Any staking, property line monuments, centerline monuments, benchmarks, or reference points (property corners/centerline ties) found to exceed allowable error shall be reset at the sole expense of the Contractor, and no additional compensation will be made therefor. All work shall be done by or under the direction of a Professional Land Surveyor or a Registered Civil Engineer licensed to practice land surveying in California. Copies of all grade sheets, record of surveys, or corner records shall be provided to the Engineer prior to filing to the County.

EXHIBIT "B"

SCHEDULE OF SERVICES

Concrete Repairs and Maintenance SM2526-1

TERM: July 1, 2025- June 30, 2028

1st Year of Contract FY 2025/2026	$1,355,000
2nd Year of Contract FY 2026/2027	$1,355,000
3rd Year of Contract FY 2027/2028	$1,355,000
Three-Year Total Cost	$4,065,000

OPTION YEARS

4th Year of Contract	$1,355,000
5th Year of Contract	$1,355,000

EXHIBIT "C"

COMPENSATION

NTE $4,065,000

EXHIBIT C

BASE PRICING

BID ITEM	DESCRIPTION	EST QUANTITY	UNIT	UNIT PRICE	LINE ITEM COST
Bid Schedule A: 1st Year (2025-2026)					
1	Remove/Replace PCC sidewalks and driveways at 4" thick (includes root removal)	10,000	SF	$10.50	$105,000.00
2	Remove/Replace PCC sidewalks at drive approaches at 6" thick (includes root removal)	1,000	SF	$11.50	$11,500.00
3	Remove/Replace PCC residential drive approaches at 6" thick (includes root removal/asphalt and asphalt patching at 1')	1,000	SF	$15.00	$15,000.00
4	Remove/Replace PCC commercial drive approaches at 8" thick (includes root removal/asphalt and asphalt patching at 1')	1,000	SF	$16.00	$16,000.00
5	Remove/Replace PCC Type "A" curb (includes root removal/asphalt and asphalt patching at 1')	1,000	LF	$54.50	$54,500.00
6	Remove/Replace PCC type "V" curb (includes root removal/asphalt and asphalt patching at 1')	1,000	LF	$36.50	$36,500.00
7	Remove/Replace PCC type "B" curb and gutter (includes root removal/asphalt and asphalt patching at 1')	1,000	LF	$66.50	$66,500.00
8	Remove/Replace Rock curb (includes root removal/asphalt and asphalt patching at 1')	100	LF	$54.50	$5,450.00
9	Remove Rock Curb and replace with "A" curb (includes root removal/asphalt and asphalt patching at 1')	100	LF	$54.50	$5,450.00
10	Remove Rock Curb and replace with "B" curb (includes root removal/asphalt and asphalt patching at 1')	100	LF	$54.50	$5,450.00
11	Remove/Replace spandrel at 8" thick (includes root removal/asphalt and asphalt patching at 1')	500	SF	$18.00	$9,000.00
12	Remove/Replace cross gutter at 8" Thick (includes root removal/asphalt and asphalt patching at 1')	500	SF	$18.00	$9,000.00
13	Construction Surveying, Reestablish Monuments and Centerline Ties	1	LS	$650.00	$650.00
14	ADA Ramps per City Standards from ECR to BCR (turnkey) (includes root removal/asphalt and asphalt patching at 1')	1	LOT	$6,500.00	$6,500.00

BID ITEM	DESCRIPTION	EST QUANTITY	UNIT	UNIT PRICE	LINE ITEM COST
Bid Schedule B: 2nd Year (2026-2027)					
1	Remove/Replace PCC sidewalks and driveways at 4" thick (includes root removal)	10,000	SF	$11.00	$110,000.00
2	Remove/Replace PCC sidewalks at drive approaches at 6" thick (includes root removal)	1,000	SF	$12.00	$12,000.00
3	Remove/Replace PCC residential drive approaches at 6" thick (includes root removal/asphalt and asphalt patching at 1')	1,000	SF	$15.50	$15,500.00
4	Remove/Replace PCC commercial drive approaches at 8" thick (includes root removal/asphalt and asphalt patching at 1')	1,000	SF	$16.50	$16,500.00
5	Remove/Replace PCC Type "A" curb (includes root removal/asphalt and asphalt patching at 1')	1,000	LF	$55.00	$55,000.00
6	Remove/Replace PCC type "V" curb (includes root removal/asphalt and asphalt patching at 1')	1,000	LF	$37.00	$37,000.00
7	Remove/Replace PCC type "B" curb and gutter (includes root removal/asphalt and asphalt patching at 1')	1,000	LF	$67.00	$67,000.00
8	Remove/Replace Rock curb (includes root removal/asphalt and asphalt patching at 1')	100	LF	$55.00	$5,500.00
9	Remove Rock Curb and replace with "A" curb (includes root removal/asphalt and asphalt patching at 1')	100	LF	$55.00	$5,500.00
10	Remove Rock Curb and replace with "B" curb (includes root removal/asphalt and asphalt patching at 1')	100	LF	$55.00	$5,500.00
11	Remove/Replace spandrel at 8" thick (includes root removal/asphalt and asphalt patching at 1')	500	SF	$18.50	$9,250.00
12	Remove/Replace cross gutter at 8" Thick (includes root removal/asphalt and asphalt patching at 1')	500	SF	$18.50	$9,250.00
13	Construction Surveying, Reestablish Monuments and Centerline Ties	1	LS	$650.00	$650.00
14	ADA Ramps per City Standards from ECR to BCR (turnkey) (includes root removal/asphalt and asphalt patching at 1')	1	LOT	$6,600.00	$6,600.00

EXHIBIT C

BID ITEM	DESCRIPTION	EST QUANTITY	UNIT	UNIT PRICE	LINE ITEM COST
Bid Schedule C: 3rd Year (2027-2028)					
1	Remove/Replace PCC sidewalks and driveways at 4" thick (includes root removal)	10,000	SF	$11.50	$115,000.00
2	Remove/Replace PCC sidewalks at drive approaches at 6" thick (includes root removal)	1,000	SF	$12.50	$12,500.00
3	Remove/Replace PCC residential drive approaches at 6" thick (includes root removal/asphalt and asphalt patching at 1')	1,000	SF	$16.00	$16,000.00
4	Remove/Replace PCC commercial drive approaches at 8" thick (includes root removal/asphalt and asphalt patching at 1')	1,000	SF	$17.00	$17,000.00
5	Remove/Replace PCC Type "A" curb (includes root removal/asphalt and asphalt patching at 1')	1,000	LF	$55.50	$55,500.00
6	Remove/Replace PCC type "V" curb (includes root removal/asphalt and asphalt patching at 1')	1,000	LF	$37.50	$37,500.00
7	Remove/Replace PCC type "B" curb and gutter (includes root removal/asphalt and asphalt patching at 1')	1,000	LF	$67.50	$67,500.00
8	Remove/Replace Rock curb (includes root removal/asphalt and asphalt patching at 1')	100	LF	$55.50	$5,550.00
9	Remove Rock Curb and replace with "A" curb (includes root removal/asphalt and asphalt patching at 1')	100	LF	$55.50	$5,550.00
10	Remove Rock Curb and replace with "B" curb (includes root removal/asphalt and asphalt patching at 1')	100	LF	$55.50	$5,550.00
11	Remove/Replace spandrel at 8" thick (includes root removal/asphalt and asphalt patching at 1')	500	SF	$19.00	$9,500.00
12	Remove/Replace cross gutter at 8" Thick (includes root removal/asphalt and asphalt patching at 1')	500	SF	$19.00	$9,500.00
13	Construction Surveying, Reestablish Monuments and Centerline Ties	1	LS	$675.00	$675.00
14	ADA Ramps per City Standards from ECR to BCR (turnkey) (includes root removal/asphalt and asphalt patching at 1')	1	LOT	$6,700.00	$6,700.00

BID ITEM	DESCRIPTION	EST QUANTITY	UNIT	UNIT PRICE	LINE ITEM COST
Bid Schedule D: Optional 4th Year (2028-2029)					
1	Remove/Replace PCC sidewalks and driveways at 4" thick (includes root removal)	10,000	SF	$12.00	$120,000.00
2	Remove/Replace PCC sidewalks at drive approaches at 6" thick (includes root removal)	1,000	SF	$13.00	$13,000.00
3	Remove/Replace PCC residential drive approaches at 6" thick (includes root removal/asphalt and asphalt patching at 1')	1,000	SF	$16.50	$16,500.00
4	Remove/Replace PCC commercial drive approaches at 8" thick (includes root removal/asphalt and asphalt patching at 1')	1,000	SF	$17.50	$17,500.00
5	Remove/Replace PCC Type "A" curb (includes root removal/asphalt and asphalt patching at 1')	1,000	LF	$56.00	$56,000.00
6	Remove/Replace PCC type "V" curb (includes root removal/asphalt and asphalt patching at 1')	1,000	LF	$38.00	$38,000.00
7	Remove/Replace PCC type "B" curb and gutter (includes root removal/asphalt and asphalt patching at 1')	1,000	LF	$68.00	$68,000.00
8	Remove/Replace Rock curb (includes root removal/asphalt and asphalt patching at 1')	100	LF	$56.00	$5,600.00
9	Remove Rock Curb and replace with "A" curb (includes root removal/asphalt and asphalt patching at 1')	100	LF	$56.00	$5,600.00
10	Remove Rock Curb and replace with "B" curb (includes root removal/asphalt and asphalt patching at 1')	100	LF	$56.00	$5,600.00
11	Remove/Replace spandrel at 8" thick (includes root removal/asphalt and asphalt patching at 1')	500	SF	$19.50	$9,750.00
12	Remove/Replace cross gutter at 8" Thick (includes root removal/asphalt and asphalt patching at 1')	500	SF	$19.50	$9,750.00
13	Construction Surveying, Reestablish Monuments and Centerline Ties	1	LS	$675.00	$675.00
14	ADA Ramps per City Standards from ECR to BCR (turnkey) (includes root removal/asphalt and asphalt patching at 1')	1	LOT	$6,800.00	$6,800.00

EXHIBIT C

BID ITEM	DESCRIPTION	EST QUANTITY	UNIT	UNIT PRICE	LINE ITEM COST
Bid Schedule E: Optional 5th Year (2029-2030)					
1	Remove/Replace PCC sidewalks and driveways at 4" thick (includes root removal)	10,000	SF	$12.50	$125,000.00
2	Remove/Replace PCC sidewalks at drive approaches at 6" thick (includes root removal)	1,000	SF	$13.50	$13,500.00
3	Remove/Replace PCC residential drive approaches at 6" thick (includes root removal/asphalt and asphalt patching at 1')	1,000	SF	$17.00	$17,000.00
4	Remove/Replace PCC commercial drive approaches at 8" thick (includes root removal/asphalt and asphalt patching at 1')	1,000	SF	$18.00	$18,000.00
5	Remove/Replace PCC Type "A" curb (includes root removal/asphalt and asphalt patching at 1')	1,000	LF	$56.50	$56,500.00
6	Remove/Replace PCC type "V" curb (includes root removal/asphalt and asphalt patching at 1')	1,000	LF	$38.50	$38,500.00
7	Remove/Replace PCC type "B" curb and gutter (includes root removal/asphalt and asphalt patching at 1')	1,000	LF	$68.50	$68,500.00
8	Remove/Replace Rock curb (includes root removal/asphalt and asphalt patching at 1')	100	LF	$56.50	$5,650.00
9	Remove Rock Curb and replace with "A" curb (includes root removal/asphalt and asphalt patching at 1')	100	LF	$56.50	$5,650.00
10	Remove Rock Curb and replace with "B" curb (includes root removal/asphalt and asphalt patching at 1')	100	LF	$56.50	$5,650.00
11	Remove/Replace spandrel at 8" thick (includes root removal/asphalt and asphalt patching at 1')	500	SF	$20.00	$10,000.00
12	Remove/Replace cross gutter at 8" Thick (includes root removal/asphalt and asphalt patching at 1')	500	SF	$20.00	$10,000.00
13	Construction Surveying, Reestablish Monuments and Centerline Ties	1	LS	$700.00	$700.00
14	ADA Ramps per City Standards from ECR to BCR (turnkey) (includes root removal/asphalt and asphalt patching at 1')	1	LOT	$6,900.00	$6,900.00

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Ontario (hereinafter referred to as "City") has awarded to _____, (hereinafter referred to as the "Contractor") _____ an agreement for _____ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of _____ DOLLARS, ($_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship, Surety shall undertake and faithfully fulfill all such obligations. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

(1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

(2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

(3) Permit the City to complete the Project in any manner consistent with local, California and federal law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__).

(Corporate Seal)

_____
Contractor/ Principal

By_____

Title_____

(Corporate Seal)

_____
Surety

By_____
Attorney-in-Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

(Attach Attorney-in-Fact Certificate) Title_____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, $_____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

_____

_____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____

_____

_____

(Telephone number of Surety and Agent or Representative for service of process in California) _____

_____

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____
On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of Ontario (hereinafter designated as the "City"), has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows:

_____ (the "Project"); and

WHEREAS, the work to be performed by the Principal is more particularly set forth in the Contract Documents for the Project dated _____ ("Contract Documents"), the terms and conditions of which are expressly incorporated by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the City in the penal sum of _____ _____ Dollars ($_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or

attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)_____

Contractor/ Principal

By_____

Title_____

_____

(Corporate Seal) Surety

By_____

Attorney-in-Fact

Title_____

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so much be attached hereto.

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____
On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

CITY OF ONTARIO *Agenda Report* **June 3, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Management Services Prepared By: Vanny Khu Department: Prepared By: Vanny Khu Staff Member Presenting: Jordan Villwock, Deputy City Manager Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 17

SUBJECT: AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT WITH CAN/AM TECHNOLOGIES, INC. FOR CASHIERING SERVICES-ARC CHAMELEON TELLER INTEGRATION

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute Amendment No. 2 to the Professional Services Agreement with Can/Am Technologies, Inc., to provide enterprise cashiering software, licensing, and support services for the integration of the Animal Resource Center of the Inland Empire (ARC) Chameleon Teller system in the amount of $23,530 increasing the not-to-exceed contract amount to $570,680 and extend the agreement term by one year.

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

FISCAL IMPACT: The Animal Resource Center of the Inland Empire Fiscal Year 2024-25 and 2025-26 Adopted Budgets include appropriations for the enterprise cashiering software, licensing, and support services for the integration of the Animal Resource Center of the Inland Empire (ARC) Chameleon Teller system. The proposed Amendment No. 2 to the Professional Services Agreement with Can/Am Technologies, Inc. is $23,530 increasing the not-to-exceed contract amount to $570,680 and extend the agreement term by one year.

BACKGROUND & ANALYSIS: On July 7, 2020, the City entered into a Professional Services Agreement with Can/Am Technologies, Inc. to provide enterprise cashiering software, licensing, and support services. On September 17, 2024, the City executed Amendment No. 1 to adjust pricing and align annual service terms.

Since that time, the Animal Resource Center of the Inland Empire (ARC) has implemented the Chameleon Teller system to manage point-of-sale transactions. To streamline reconciliation, eliminate duplicate data entry, and ensure system interoperability, staff recommends integrating

Chameleon Teller with the City's cashiering platform maintained by Can/Am.

Can/Am controls the cashiering software's code and security, so another vendor would have to build a new interface; the full bid-to-implementation cycle would take too long and run past ARC's July 1, 2025 start date, leaving the shelter without a payment system. Amendment No. 2 authorizes this integration, including implementation, configuration, testing, and training services. The amendment also extends the contract term through July 8, 2026.

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

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT (CASHIERING SERVICES) BETWEEN THE CITY OF ONTARIO AND CAN/AM TECHNOLOGIES, INC.

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 Can/Am Technologies, Inc., ("Consultant"), a company incorporated under the laws of Colorado, with its principal place of business at 1726 Cole Boulevard, Suite 210, Lakewood, CO 80401. City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

2. Recitals.

2.1 Agreement. The City and Consultant have entered into an agreement entitled "Professional Services Agreement (Cashiering Services)" dated July 7, 2020 ("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement to: (i) extend the term of the Agreement by one (1) year, from July 8, 2025 to July 8, 2026; (ii) authorize the integration of the ARC Chameleon Teller system into the City's cashiering infrastructure, including configuration, implementation, testing, and training; and (iii) increase the not-to-exceed compensation amount to **Five Hundred Seventy Thousand Six Hundred Eighty Dollars ($570,680)**. The Parties have heretofore entered into Amendment No. 1, dated September 17, 2024.

2.3 Amendment Authority. This Amendment No. 2 is authorized pursuant to Section 15.2 of the Agreement.

3. Terms.

3.1 Amendment.

Section 3.1 (Scope of Services) of the Agreement is hereby amended in its entirety to read as follows:

"Consultant shall provide additional services related to the integration of the ARC Chameleon Teller system into the City's cashiering infrastructure. These services shall be performed in accordance with the specifications and pricing outlined in Attachment A, titled 'Change Order Request 2025-1,' dated April 29, 2025."

3.2 Exhibit Revision.

Exhibit A of the Agreement is hereby deleted in its entirety and replaced with **Attachment A**, attached hereto and incorporated herein by reference.

3.3 Continuing Effect of Agreement.

Except as amended by this Amendment No. 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.

3.4 Adequate Consideration.

The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 2.

3.5 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.

3.6 Integration.

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

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR AMENDMENT NO. 2 TO PROFESSIONAL SERVICES AGREEMENT (CASHIERING SERVICES) BETWEEN THE CITY OF ONTARIO AND CAN/AM TECHNOLOGIES, INC.

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 2 as of the day and year first above written.

CITY OF ONTARIO

Approved By:

_____

Scott Ochoa City Manager

Approved as to Form:

_____

Best Best & Krieger LLP City Attorney

Attested By:

_____

City Clerk

CAN/AM TECHNOLOGIES, INC.

By: _____

Printed Name: _____

By: _____

Printed Name: _____

ATTACHMENTS

The following attachment is hereby incorporated into this Amendment No. 2 by reference and made a part hereof:

Attachment A – Change Order Request 2025-1: ARC Chameleon Teller Integration, dated April 29, 2025

Docusign Envelope ID: D70422AF-DB2E-4928-AA14-ACAAEBF21BA2

CAN/AM TECHNOLOGIES

Change Request 2025-1

City of Ontario, CA

Teller Implementation Project

Requestor:
William Quan
WQuan@ontarioca.gov
909-395-2723

Date Requested: **04/24/2025**

Priority: **High**

Docusign Envelope ID: D70422AF-DB2E-4928-AA14-ACAAEBF21BA2

Change Description

The City of Ontario, CA is expanding the scope of the Teller project to include an import integration with Chameleon in service of the Animal Resource Center of the Inland Empire ("ARC"). This import must be imported into Teller and passed through to the city's Workday tenant, to allow the revenue and deposits to map to the ARC bank account.

Implementation Services

Change	Change Scope	Acceptance Criteria	Invoice Amount
Change Execution	50% of services fees upon Change Request execution.	Execution of Change Request.	$10,810
Teller-Chameleon Import Integration	Teller integration to ingest and categorize revenue and deposits from Chameleon.	CanAm has demonstrated working integration in the Test environment, and the City has reviewed and either accepted or approved the milestone.	$4,000
Teller-Workday Configuration	Modify the Teller-Workday configuration to support the separation of Chameleon revenue and deposits for ARC.	CanAm has demonstrated working configuration in the Test environment, and the City has reviewed and either accepted or approved this change.	$3,000
Additional Internal Testing and UAT Support	Additional CanAm Internal Testing and User Acceptance Testing support for the items outlined in CR 2025-1	CanAm has completed additional internal testing and UAT support for the CR 2025-1 changes.	$3,810
		Total Services	**$21,620**

Docusign Envelope ID: D70422AF-DB2E-4928-AA14-ACAAEBF21BA2

Licensing (SaaS)

License	Description	Quantity	Monthly Base Amount
Teller Import Integration for Chameleon	Integration with Chameleon for the ingestion of revenue and deposit data.	1	$159.14
Monthly Total	This will be billed annually in addition to the existing annual SaaS pricing.		**$159.14**

Note that Teller services are one-time, deliverable-based payments, whereas the Licensing/SaaS costs will be prorated and billed to the current contract year upon Change Request execution and incorporated into the Annual SaaS renewal fees going forward. For this Change Request, it is understood that invoicing for these SaaS fees will be broken out and sent as separate invoices, as they will ultimately be passed on to ARC.

Docusign Envelope ID: D70422AF-DB2E-4928-AA14-ACAAEBF21BA2

Change Acceptance

This change request comprises the scope of the change required for Change Request 2025-1 for the Teller implementation. No other understandings or agreements, verbal or otherwise, exist for the delivery of the change request. Can/Am Technologies, Inc. and Client agree not to change this agreement except by written agreement.

Can/Am Technologies, Inc.	**City of Ontario, CA**
DocuSigned by: Noah Ardron FEF31B48102242A...	Doreen Nunes
Signature	Signature
Noah Ardron	Doreen Nunes
Name	Name
Director of Implementations	Assistant Finance Director
Title	Title
4/29/2025	4/28/2025
Date	Date

CITY OF ONTARIO *Agenda Report* **June 3, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Tim Masot Department: Prepared By: Tim Masot Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Bonnie Tam, Jacqueline Leon Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 18

SUBJECT: A CONSTRUCTION CONTRACT WITH PAVEMENT RECYCLING SYSTEMS FOR CITYWIDE ASPHALT GRINDING SERVICES

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute a Construction Contract with Pavement Recycling Systems, of Jurupa Valley, California, for citywide asphalt grinding services for a total contract amount not-to-exceed $1,233,000 for five (5) years.

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 contract award to Pavement Recycling Systems is for a total not-to-exceed amount of $1,233,000 over the five-year term. If approved, appropriations will be included in future Annual Budgets to City Council for approval as needed.

BACKGROUND & ANALYSIS: The City is responsible for the maintenance of streets citywide. On average, approximately 40 street sections are repaved each fiscal year. The selection of streets for asphalt overlay is based on the Pavement Condition Index (PCI), as assessed by the Engineering Department. Streets with a PCI rating of 65 to 55 are prioritized for maintenance and are typically treated with a 1-inch asphalt overlay. This type of maintenance is appropriate when asphalt surfaces show signs of cracking but are not yet deteriorated to the point of requiring full reconstruction.

On March 10, 2025, the City solicited bids for Invitation No. 1903 for citywide asphalt grinding services. The following two (2) vendors responded:

VENDOR	LOCATION	BID AMOUNT
Pavement Recycling Systems	Jurupa Valley, CA	$1,233,000
All American Asphalt	Corona, CA	$3,475,500

Based on their favorable references and their submission of the lowest responsible and responsive bid, Staff recommends awarding a Construction Contract to Pavement Recycling Systems.

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

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

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

Asphalt Grinding Services SM 2526-03

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 **1825** 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 Two Hundred Thirty-Three Thousand Dollars ($1,233,000)**. 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 **$50** 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
Fleet Compliance Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
Special Conditions
Specifications
Addenda
Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Any other documents contained in or incorporated into the Contract

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

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

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

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

ARTICLE 8. PREVAILING WAGES.

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

ARTICLE 9. FALSE CLAIMS.

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

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Pavement Recycling Systems, Inc.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

END OF CONTRACT

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

SECTION 00610 – BOND FORMS

Performance Bond

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, (hereinafter referred to as the "City") has awarded to _____, (hereinafter referred to as the "Contractor") an agreement for **Contract No.**_____, (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of _____ DOLLARS, ($_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officials, officers, employees, and authorized volunteers, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by the City in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by the City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure Section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

i. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

ii. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

iii. Permit the City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20___.

(Corporate Seal)

_____
Contractor/ Principal

By_____

Title_____

(Corporate Seal)

_____
Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title_____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges is $_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____
_____
_____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____
_____
_____

(Telephone number of Surety and Agent or Representative for service of process in California) _____

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Notary Acknowledgment

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STATE OF CALIFORNIA
COUNTY OF _____

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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

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CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of Attorney to local representatives of the bonding company must also be attached.

END OF PERFORMANCE BOND

Payment Bond (Labor and Materials).

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of Ontario , with its principal place of business at 303 East "B" Street, Ontario, CA 91764 (hereinafter designated as the "City"), by action taken or a resolution passed _____ , 20_____, has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows: **Contract No.**_____ (the "Project"); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the City in the penal sum of _____ Dollars ($_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Civil Code Section 9100, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Revenue and Taxation Code Section 18663, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of

any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or the City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Civil Code Section 9100, and has not been paid the full amount of his claim.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract, including but not limited to, the provisions of Sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

_____
Contractor/ Principal

By_____

Title_____

(Corporate Seal)

_____
Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title_____

Notary Acknowledgment

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STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

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COUNTY OF _____

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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.

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☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

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Number of Pages

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Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

END OF PAYMENT BOND

SECTION 00700 – GENERAL CONDITIONS

ARTICLE 1 -TERMS; DEFINITIONS

1.1 Defined Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. Holiday – Holidays occur on:

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

New Year's Eve – December 31

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Terminology.

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

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

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

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

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

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

ARTICLE 2 -PRELIMINARY MATTERS

2.1 Delivery of Contract Documents

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

2.2 Bonds

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

2.3 Evidence of Insurance

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

2.4 Execution of the Contract

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

2.5 Contractor's Failure to Perform

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

2.6 Commencement of Contract Times; Notice to Proceed

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

2.7 Copies of Documents

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

2.8 Substitution Requests, Schedule of Submittals, and Schedule

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

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

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

2.9 Preconstruction Conference; Designation of Authorized Representatives.

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

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

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

2.10 Subcontractor Mobilization Meeting.

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

2.11 Authority of Council; Engineer

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

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

1. quantities;

2. acceptability of material, equipment, or work;

3. execution, progress or sequence of work;

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

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

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

2.12 Mobilization

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

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

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

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

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

4. Establishing fire protection system, as applicable.

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

6. Providing and maintaining the field office trailers for the Contractor, if necessary, and the Engineer (if specified), complete, with all specified furnishings and utility services.

7. Providing on-site sanitary facilities and potable water facilities as specified per Cal-OSHA and these Contract Documents.

8. Furnishing, installing, and maintaining all storage buildings or sheds required for temporary storage of products, equipment, or materials that have not yet been installed in the Work. All such storage shall meet manufacturer's specified storage requirements, and the specific provisions of the specifications, including temperature and humidity control, if recommended by the manufacturer, and for all security.

9. Arranging for and erection of Contractor's work and storage yard.

10. Posting all OSHA required notices and establishment of safety programs per Cal-OSHA.

11. Full-time presence of Contractor's superintendent at the job Site as required herein.

12. Submittal of construction schedule as required by the Contract Documents.

ARTICLE 3 -CONTRACT DOCUMENTS; INTENT

3.1 Examination of Drawings, Specifications, and Site of Work

A. Examination of Contract Documents; Site. Before commencing any portion of the Work, Contractor shall again carefully examine all applicable Contract Documents, the Project Site, and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify the Engineer of any potential error, inconsistency, ambiguity, conflict, or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall the Contractor or any Subcontractor proceed with Work if uncertain as to the applicable requirements.

B. Additional Instructions. After notification of any error, inconsistency, ambiguity, conflict, or lack of detail or explanation, the Engineer will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.

C. Quality of Parts, Construction and Finish. All parts of the Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish.

D. Contractor's Variation from Contract Document Requirements. If it is found that the Contractor has varied from the requirements of the Contract Documents including the requirement to comply with all Applicable Laws, the Engineer may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by the Contractor at the Contractor's expense.

3.2 Intent of Contract Documents

A. The Contract Documents are complementary; what is required by any one will be binding as if required by all. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to the City.

B. The Contractor shall furnish, unless otherwise provided in the Contract Documents, all materials, implements, machinery, equipment, tools, supplies and labor necessary to the prosecution and completion of the Project.

C. Clarifications and interpretations of the Contract Documents shall be issued by the Engineer as provided in these General Conditions.

D. If utilities to equipment/fixtures are not shown but are necessary to operate the equipment/fixtures, the utilities service installation is considered to be part of the Work. The implied Work will conform to the appropriate sections of the Contract Documents.

E. Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Contractor in dividing Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

3.3 Reference Standards.

A. Standards, Specifications, Codes, Laws, and Regulations.

1. Reference to federal specifications, federal standards, other standards, specifications, manuals, or codes of any technical society, organization, or association, or to Applicable Laws, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Applicable Laws in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of the City, Contractor, or any of their Subcontractors, consultants, agents, or

employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to the City, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.4 Reporting and Resolving Discrepancies; Order of Precedence.

A. Reporting Discrepancies.

1. The Contract Documents are intended to be fully cooperative and complementary. Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to the City any conflict, error, ambiguity, or discrepancy which Contractor discovers, should have discovered, or has actual knowledge of, and shall obtain a written interpretation or clarification from the City before proceeding with any Work affected thereby. If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (i) any Applicable Law, (ii) any standard, specification, manual, or code, or (iii) any instruction of any Supplier, then Contractor shall promptly submit a written Request for Information (RFI) to the City. Contractor shall not proceed with the Work affected thereby (except in an emergency) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in the Contract Documents, and any Work performed by Contractor before receipt of an amendment or supplement shall be at Contractor's own risk.

B. Order of Precedence.

1. In case of conflicts between the Contract Documents, the order of precedence shall be as follows:

   a. Permits from other agencies as may be required by law

   b. Change Orders, most recent first

   c. Contract

   d. Addenda, most recent first

   e. Special Conditions

   f. Specifications

   g. Construction Plans and Drawings(Contract Drawings)

   h. General Conditions

   i. Instructions to Bidders

   j. Notice Inviting Bids

k. Contractor's Bid (Bid Forms)

l. Standard Specifications for Public Works Construction "Greenbook" latest edition (Sections 1-9 Excluded)

m. Applicable Local Agency Standards and Specifications

n. Standard Drawings

o. Reference Documents

2. With reference to the Drawings the order of precedence shall be as follows:

a. Figures govern over scaled dimensions

b. Detail drawings govern over general drawings

c. Addenda/Change Order drawings govern over Drawings

d. Contract Drawings govern over Standard Drawings

e. Contract Drawings govern over Shop Drawings

3. Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality and most expensive shall always apply.

3.5 Amending and Supplementing Contract Documents.

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof only by Change Order or written amendment to the Contract duly executed by the parties.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized at no cost to the City, by one or more of the following ways:

1. The City's review of a Submittal, Shop Drawing, Sample or substitution request without exception (subject to the provisions of the Contract Documents); or

2. The City's issuance of a response to an RFI.

C. However, no review or RFI response will reduce or modify the Contractor's obligation to fully satisfy and comply with the requirements of the Contract Documents.

3.6 Reuse of Documents.

A. Contractor and any Subcontractor or Supplier shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer of Record or its consultants, including electronic media editions; or

2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of the City and Engineer of Record and specific written verification or adaptation by Engineer of Record.

B. The prohibitions of this Article will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 -INDEMNIFICATION; INSURANCE

4.1 Indemnification

A. To the fullest extent permitted by law, Contractor shall immediately defend (with counsel of the City's choosing), indemnify and hold harmless the City, its officials, officers, agents, employees, and representatives, and each of them from and against:

1. Any and all claims, demands, causes of action, costs, expenses, injuries, losses or liabilities, in law or in equity, of every kind or nature whatsoever, but not limited to, injury to or death, including wrongful death, of any person, and damages to or destruction of property of any person, arising out of, related to, or in any manner directly or indirectly connected with the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses, however caused, regardless of whether the allegations are false, fraudulent, or groundless, and regardless of any negligence of the City or its officers, employees, or authorized volunteers (including passive negligence), except the sole negligence or willful misconduct or active negligence of the City or its officials, officers, employees, or authorized volunteers.

2. Contractor's defense and indemnity obligation herein includes, but is not limited to damages, fines, penalties, attorney's fees and costs arising from claims under the Americans with Disabilities Act (ADA) or other federal or state disability access or discrimination laws arising from Contractor's Work during the course of construction of the improvements or after the Work is complete, as the result of defects or negligence in Contractor's construction of the improvements.

3. Any and all actions, proceedings, damages, costs, expenses, fines, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Contractor;

4. Any and all losses, expenses, damages (including damages to the Work itself), attorney's fees, and other costs, including all costs of defense which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the Work and all of Contractor's obligations under Contract. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

B. Contractor shall immediately defend, at Contractor's own cost, expense and risk, with the counsel of the City choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its officials, officers, agents, employees and representatives. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the City, its officials, officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse the City, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782.

C. The provisions of this Article shall survive the termination of this Contract howsoever caused, and no payment, partial payment, or acceptance of occupancy in whole or part of the Work shall waive or release any of the provisions of this Article.

4.2 Insurance

The Contractor shall obtain, and at all times during performance of the Work of Contract, maintain all of the insurance described in this Article. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required hereunder. Contractor shall not allow any Subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this Article. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause. Contractor shall furnish the City with original certificates of insurance and endorsements effective coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms acceptable to the City. All certificates and endorsements must be received and approved by the City before Work commences.

A. **Additional Insureds; Waiver of Subrogation**. The City, its officials, officers, employees, agents and authorized volunteers shall be named as Additional Insureds on Contractor's All Risk policy and on Contractor's and its subcontractors' policies of Commercial General Liability and Automobile Liability insurance using, for Contractor's policy/ies of Commercial General Liability insurance, ISO CG forms 20 10 and 20 37 (or endorsements providing the exact same coverage, including completed operations), and, for subcontractors' policies of Commercial General Liability insurance, ISO CG form 20 38 (or endorsements providing the exact same coverage). Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, all available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as Additional Insureds hereunder. All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against the City, its officers, officials**,** agents, employees or volunteers or shall specifically allow Contractor - or others providing insurance evidence in compliance with these specifications - to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against the City, and shall require similar written express waivers and insurance clauses from each of its subcontractors. Copies of these waivers shall be submitted to the City prior to commencement of work.

B. **Workers' Compensation Insurance**. The Contractor shall provide workers' compensation insurance for all of the employees engaged in Work under this Contract, on or at the Site, and, in case of any sublet Work, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the Site, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor is required to secure payment of compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. The Contractor shall file with the City certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to the City, if in the form and coverage as set forth in the Contract Documents.

C. **Employer's Liability Insurance**. Contractor shall provide Employer's Liability Insurance, including Occupational Disease, in the amount of at least one million dollars ($1,000,000.00) per person per accident. Contractor shall provide the City with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of the City.

D. **Commercial General Liability Insurance**. Contractor shall provide "occurrence" form Commercial General Liability insurance coverage at least as broad as the most current ISO CGL Form 00 01, including but not limited to, premises liability, contractual liability, products/completed operations, personal and advertising injury which may arise from or out of Contractor's operations, use, and management of the Site, or the performance of its obligations hereunder. The policy shall not contain any exclusion contrary to this Contract including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 39); or (2) cross-liability for claims or suits against one insured against another. Policy limits shall not be less than $2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be paid in addition to the limits.

1. Such policy shall comply with all the requirements of this Article. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to the City, and shall not preclude the City from taking such other actions available to the City under other provisions of the Contract Documents or law.

2. All general liability policies provided pursuant to the provisions of this Article shall comply with the provisions of the Contract Documents.

3. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in these General Conditions relating to liability for injury to or death of persons and damage to property.

4. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, the City may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Contract Documents.

5. All policies of general liability insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

E. **Automobile Liability Insurance**. Contractor shall provide Automobile Liability Insurance at least as broad as ISO CA 00 01 (Any Auto) in the amount of, at least, 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. <u>Acceptance of Defective Work.</u>

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* **June 3, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Tim Masot Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Bonnie Tam, Jacqueline Leon Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 19

SUBJECT: A MAINTENANCE SERVICES AGREEMENT WITH SAFE USA, INC. FOR CITYWIDE CRACK SEALING SERVICES

RECOMMENDATION: That the City Council authorize the City Manager, or their designee, to execute a Maintenance Services Agreement with Safe USA, Inc., of Ontario, California, for citywide crack sealing services. The agreement shall have an initial term of three (3) years, with a total amount not-to-exceed $396,000, and may include up to two (2) additional one-year extensions, for a total contract amount not-to-exceed $681,000 over a maximum term of five (5) years.

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 contract award to Safe USA, Inc. is for a total not-to-exceed amount of $396,000 over a three-year term. Two additional (2) one-year extensions may be exercised at the City's sole discretion. The cost of option year one is in the amount of $141,000. The cost for option year two is $144,000 for a total not-to-exceed amount of $681,000 over the five-year term. If approved, appropriations will be included in future Annual Budgets to City Council for approval as needed.

BACKGROUND & ANALYSIS: City Staff routinely conducts paving inspections as part of the ongoing effort to maintain and extend the life of City streets. Through these inspections, Staff occasionally identifies areas where crack sealing is necessary to prevent water intrusion and further pavement deterioration. Crack sealing is a cost-effective maintenance strategy that helps preserve pavement integrity and delay more extensive and costly repairs.

On March 31, 2025, the City solicited bids for Invitation No. 1907 for crack sealing services throughout the City. The bids were based on 300,000 linear feet price. The following six (6) vendors responded:

VENDOR	LOCATION	BID AMOUNT
Safe USA, Inc.	Ontario, CA	$681,000
Cortez Paving, Inc.	Redlands, CA	$927,000
Carter Enterprises Group, Inc.	Anaheim, CA	$1,605,000
Road Works, Inc.	Pomona, CA	$1,794,000
Roy Allen Slurry Seal	Santa Fe Springs, CA	$2,655,000
MD Rubberized Crack Fill, LLC	Lake Forest, CA	$6,945,000

Based on their favorable references and their submission of the lowest responsible and responsive bid, Staff recommends awarding a Maintenance Services Agreement to Safe USA, Inc.

CITY OF ONTARIO
303 EAST B STREET | ONTARIO, CALIFORNIA 91764
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PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
MAINTENANCE SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered as of _____, by and between the City of Ontario, a municipal corporation organized under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City") and **SAFE USA, INC.**, a **CORPORATION**, with its principal place of business at **767 W. Fifth Street Ontario, California 91762 ("Contractor").** City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain maintenance services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing **Crack Sealing Services** to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that is familiar with the plans of City.

2.2 Project.

City desires to engage Contractor to render such services for the **Crack Sealing Services SM 2526-3** project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

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

with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **July 1, 2025** to **June 30, 2028**, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than two additional one-year terms. Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Compensation.

3.2.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Three Hundred Ninety Six Thousand Dollars with Zero Cents ($396,000)** without written approval of City's **City Manager**. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

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

3.2.3 Deductions. City may deduct or withhold, as applicable, from each progress payment an amount necessary to protect City from loss because of: (1) stop payment notices as allowed by state law; (2) unsatisfactory prosecution of the Services by Contractor; (3) sums representing expenses, losses, or damages as determined by the City, incurred by the City for which Contractor is liable under the Agreement; and (4) any other sums which the City is entitled to recover from Contractor under the terms of the Agreement or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the City to deduct any of these sums from a progress payment shall not constitute a waiver of the City's right to such sums.

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

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

3.2.6 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. Contractor shall provide the City with ACH payment details whereby the City shall initiate the ACH transfers to Contractor 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 Contractor is not entitled: (1) Contractor shall immediately notify the City and the financial institution; (2) Contractor shall not withdraw any of the funds which were erroneously deposited or to which Contractor is not entitled; and (3) Contractor 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 Contractor is not entitled.

3.3 Responsibilities of Contractor.

3.3.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

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

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

3.3.4 City's Representative. The City hereby designates **Tim Masot, Parks & Streets Maintenance Superintendent**, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement except for increasing compensation. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

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

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

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

3.3.8 Period of Performance and Liquidated Damages

3.3.8.1 Contractor shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Contractor shall perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be provided separately in writing to the Contractor. Contractor agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such completion schedule or Project milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the sum of **Two Hundred Fifty Dollars ($250)** per day for each and every calendar day of delay beyond the Performance Time or beyond any completion schedule or Project milestones established pursuant to this Agreement.

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

protect the public health, welfare and safety, and other actions of a public agency applicable to the Services and Agreement.

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

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

3.3.10 Laws and Regulations; Employee/Labor Certifications.

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

3.3.10.2 Employment Eligibility; Contractor. By executing this Agreement, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Contractor shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some

other legally acceptable method. Contractor shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for in Section 3.3.10 or any of its sub-sections.

3.3.10.3 Employment Eligibility; Subcontractors, Sub-subcontractors and Consultants. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.3.10.1.

3.3.10.4 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Contractor verifies that they are a duly authorized officer of Contractor, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in Sections 3.3.10.1 or 3.3.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Contractor under Section 3.3.10.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

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

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

3.3.10.7 Water Quality.

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

regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

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

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

3.3.11 Insurance.

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

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

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

(B) Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability:* $2,000,000 per occurrence for bodily injury, personal

injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability:* $1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability:* Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of $1,000,000 per accident for bodily injury or disease. Defense costs shall be paid in addition to the limits.

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

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

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

(A) General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37, or endorsements providing the exact same coverage, the City of Ontario, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Services or ongoing and complete operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of the City, before the City's own primary insurance, deductible, or self-insurance shall be called upon to protect it as a named insured. Any insurance, deductible, or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth in Section 3.3.11.2(B), any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 3.3.11.3(A).

(B) Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) the City, its directors, officials, officers,

employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance, deductible, or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way. Policy shall contain or be endorsed to contain such provisions. Notwithstanding the minimum limits set forth in Section 3.3.11.2(B), any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 3.3.11.3(B).

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

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

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

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

3.3.11.6 Subcontractor Insurance Requirements. Contractor shall not allow any subcontractors to commence work on any subcontract relating to the work under the

Agreement until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. If requested by Contractor, the City may approve different scopes or minimum limits of insurance for particular subcontractors. The Contractor and the City shall be named as additional insureds on all subcontractors' policies of Commercial General Liability using ISO form 20 38, or coverage at least as broad.

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

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

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

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

3.3.13 Bonds.

3.3.13.1 Performance Bond. If required by law or otherwise specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.3.13.2 Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.3.13.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

3.3.13.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.3.14 Work Site.

3.3.14.1 Inspection Of Site. Contractor shall visit sites where Services are to be performed and shall become acquainted with all conditions affecting the Services prior to commencing the Services. Contractor shall make such examinations as it deems necessary to determine the condition of the work sites, its accessibility to materials, workmen and equipment, and to determine Contractor's ability to protect existing surface and subsurface improvements. No claim for allowances–time or money–will be allowed as to such matters after commencement of the Services.

3.3.14.2 Field Measurements. Contractor shall make field measurements, verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents, including any plans, specifications, or scope of work before commencing Services. Errors, inconsistencies or omissions discovered shall be reported to the City immediately and prior to performing any Services or altering the condition.

3.3.15 Loss and Damage. Contractor shall be responsible for all loss and damage which may arise out of the nature of the Services agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Services until the same is fully completed and accepted by City.

3.3.16 Warranty. Contractor warrants all Services under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Contract or in any guarantee or

warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Services or non-conformance of the Services to the Contract, commence and prosecute with due diligence all Services necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the work (or work of other contractors) damaged by its defective Services or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor's obligation hereunder to correct defective work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

3.4 Labor Code Requirements.

3.4.1 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.4.2 Registration/DIR Compliance. If the Services are being performed as part of an applicable "public works" or "maintenance" project, and if the total compensation is $15,000 or more, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, as applicable.

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

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

3.5 Termination of Agreement.

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

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

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

3.6 Indemnification.

3.6.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, employees, agents and volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs,

expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's Services, the Project or this Agreement, including without limitation the payment of all expert witness fees, attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to such loss or damage which is caused by the sole or active negligence or willful misconduct of the City.

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

3.7 General Provisions.

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

3.7.2 Independent Contractors and Subcontracting.

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

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

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

Contractor:

SAFE USA, INC.
767 W. Fifth Street
Ontario, California 91762
Attn: Jacob Coplenas, President

City:

City of Ontario
303 East "B" Street
Ontario, CA 91764
Attn: Tim Masot, Parks & Streets Maintenance Superintendent

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

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

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

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

3.7.7 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project.

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

3.7.9 Assignment or Transfer. Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.7.10 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

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

3.7.12 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.7.13 No Third Party Beneficiaries. Except to the extent expressly provided for in Section 3.5.7, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

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

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

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

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

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

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

SIGNATURES NEXT PAGE

SIGNATURE PAGE FOR MAINTENANCE SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND SAFE USA, INC.

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

CITY OF ONTARIO	**SAFE USA, INC.**
Approved By:	By: _____
_____	Its: _____
Scott Ochoa City Manager	Printed Name: _____
Approved as to Form:	By: _____
_____	Its: _____
Best Best & Krieger LLP City Attorney	Printed Name: _____
Attested By:	_____ Contractor's License Number and Classification
_____	_____
City Clerk	DIR Registration Number

EXHIBIT "A"

SCOPE OF SERVICES

1. CITY shall provide to the CONTRACTOR, a 90-day schedule spreadsheet that will include the location of the streets to be serviced. This report will be considered the "NOTICE TO PROCEED".
2. CONTRACTOR upon receiving the NOTICE TO PROCEED, shall provide the City Street Supervisor a schedule of work. Work Schedule shall include a start date to match the date given in the schedule spreadsheet and projected completion date. Start date shall commence on the dates specified in the monthly pavement schedule. If start date is to begin later than such schedule, it will need to be mutually agreed upon. Any changes to the schedule will be given a 20-day notice.
3. CONTRACTOR will be required to provide his/her staff with a portable electronic device compatible with the City's maintenance management system "App Order", at contractor's expense. The City "app" is free to download. CONTRACTOR shall create an application report and verify all streets serviced in App Order which will include:

a. Total amounts of actual repair
b. The physical location (address) and XY coordinate of each repair.
c. Itemized cost of each street serviced.
d. Enter Lineal Footage and "after" photo of each street serviced into appropriate work order, and change status of work order to "Completed by Contractor".

Services and Responsibilities

1. CONTRACTOR shall repair all cracks from ¼" to 1.5" in designated work areas. Contractor shall only seal transverse, longitudinal, block or reflective cracks, contractor shall not seal alligator cracks.
2. CONTRACTOR shall spray all crack (with growing weed and vegetation) to be sealed with Round Up or approved equal; at the rate recommended by the manufacturer, the City shall be informed of such spraying before and after to respond to resident concerns if any. Any crack that still shows signs of live vegetation will have to be rescheduled for spraying prior to the application of the crack sealing material at no additional costs of the City.
3. CONTRACTOR shall wait a minimum of 14 calendar days after chemical application, the contractor shall remove all weed and vegetation (dead) from the cracks, all cracks shall be cleaned of all material and foreign debris. Those cracks that are ¼" to ½" wide shall be cleaned to a full width and depth to a minimum of 1" deep. Those cracks greater than ½" shall be cleaned to a full width and to a depth of minimum of 2.5".
4. CONTRACTOR shall remove all foreign debris by blowing and or removed from the cracks using no less than a 175 cfm air compressor at 100 psi (with a special wand for blowing) to ensure cleanliness of asphalt walls, in combination with a hot air lance accompanied by no less than a 175 cfm compressor producing an air stream velocity of 3,000 ft/sec and heated air temperature of 295F with no direct flame.
5. CONTRACTOR shall fill all cleaned cracks with crack sealant RS-1 or equal, by inserting a nozzle into the crack and filing it from the bottom up, in such manner that does not result in sealant bridging or entrapping air pockets. With larger cracks settlement and temperature shrinkage may occur… thus requiring a second application to bring the material up to the surface, this application will be at no additional cost to the City. Immediately after sealant installation the material shall be squeegeed with a "U" shaped squeegee, striking off excess material and providing a band-aid effect with the sealant. Any excess material shall be removed from asphalt surfaces and sealed cracks should be covered with sand to the satisfaction of the City representative immediately after sealing.

6. CONTRACTOR, once grinding operations are completed on the proposed streets, sealing operation will be required to the cracks within the header and gutter grinding areas.
7. CONTRACTOR shall inform the City representative of any hazards encountered during their operations.
8. CONTRACTOR shall not cause any damage to City infrastructure. If the CONTRACTOR and/or CONTRACTOR's equipment does cause damage to above, the City must be notified immediately, and damages must be repaired at the CONTRACTOR's expense within 24 hours of the time the damage occurred.
9. CONTRACTOR shall completely and immediately clean up all debris after each workday. All costs incurred for disposal of waste materials shall be included in unit cost and not paid for separately.
10. CONTRACTOR shall schedule the operations to cause minimum of interruption, interference or disturbance to the operation of stores, businesses, office buildings, hotels, churches, etc., and allow access by pedestrians and emergency, delivery and service vehicles always.
11. CONTRACTOR shall take precautions during crack sealing operations; the contractor shall be responsible to sand all areas after the application of the crack sealing materials to prevent damage to private or City property, any damage resulting from the

contractors operations shall be remedy by the contractor at his own cost within 48 hours of notification. The contractor shall repair or reseal all crack sealed areas of the street which have not been cracked sealed properly or completely, which have been damaged by traffic due to premature opening or which develop bleeding due to the application being done in extremely hot days within fourteen (14) days after notification at no cost to the City.
12. CONTRACTOR shall provide a Safety Plan per the Manual of Standard Specifications or must provide an Employee Safety Manual that is specific to the company.
13. CONTRACTOR shall provide proof of an "Employee Manual" explaining instruction and giving direction on how saw cutting work is to be performed.

MAXWELL PRODUCTS

MAXWELLPRODUCTS.COM
650 South Delong Street
Salt Lake City, UT 84104

Certificate of Compliance

04/16/2025

Product: **Nuvo CS C**
Specification: MPI Specification

This document certifies that the above referenced material conforms to the following crack sealant specification requirements as indicated below.

Test	Method	Specification
Cone Penetration: 77°F (25°C)	ASTM D5329	45 dmm max
Softening Point	ASTM D36	205°F (96°C) min
Flexibility: 1" mandrel | 90° bend | 2 sec.	ASTM D3111	Pass 20°F (-7°C)
Tensile Adhesion: 77°F (25°C)	ASTM D 5329	500% min
Ductility: 77°F (25°C)	ASTM D113	40 cm min
Flow: 140°F (60°C)	ASTM D5329	3 mm max
Resilience: 77°F (25°C)	ASTM D5329	30% min

For questions or additional information call (801) 972-2090.

Sincerely

Weijie Ren

Weijie (Jay) Ren, Ph.D.
Lab Manager

Printed on: 2/1/2024 1:48:05 PM

To verify most current certification status go to: https://www.caleprocure.ca.gov

DGS
CALIFORNIA DEPARTMENT OF GENERAL SERVICES

Office of Small Business & DVBE Services

Certification ID: 2037355

Legal Business Name:
Safe Usa, Inc.

Doing Business As (DBA) Name 1:

Doing Business As (DBA) Name 2:

Address:
1030 N. Mountain Ave. #180
Ontario
CA 91762

Email Address:
jacob@safeusa.com

Business Web Page:

Business Phone Number:
714/743-7401

Business Fax Number:

Business Types:
Construction

Certification Type	Status	From	To
SB-PW	Approved	02/01/2024	01/31/2026

Stay informed! KEEP YOUR CERTIFICATION PROFILE UPDATED!
-LOG IN at CaleProcure.CA.GOV

Questions?
Email: OSDSHELP@DGS.CA.GOV
Call OSDS Main Number: 916-375-4940
707 3rd Street, 1-400, West Sacramento, CA 95605

Contractor's License Detail for License # 874085

DISCLAIMER: A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

- CSLB complaint disclosure is restricted by law (B&P 7124.6) If this entity is subject to public complaint disclosure click on link that will appear below for more information. Click here for a definition of disclosable actions.
- Only construction related civil judgments reported to CSLB are disclosed (B&P 7071.17).
- Arbitrations are not listed unless the contractor fails to comply with the terms.
- Due to workload, there may be relevant information that has not yet been entered into the board's license database.

Data current as of 4/16/2025 12:52:07 PM

Business Information

SAFE USA INC
1030 N MOUNTAIN AVENUE #180
ONTARIO, CA 91762
Business Phone Number:(909) 983-0703

Entity Corporation
Issue Date 03/09/2006
Reissue Date 11/07/2012
Expire Date **11/30/2026**

License Status

This license is current and active.

All information below should be reviewed.

Classifications

C32 - PARKING AND HIGHWAY IMPROVEMENT

Bonding Information

Contractor's Bond

This license filed a Contractor's Bond with AMERICAN CONTRACTORS INDEMNITY COMPANY.
Bond Number: 100692983
Bond Amount: $25,000
Effective Date: 01/01/2023
Contractor's Bond History

Bond of Qualifying Individual

The qualifying individual JACOB COPLENAS certified that he/she owns 10 percent or more of the voting stock/membership interest of this company; therefore, the Bond of Qualifying Individual is not required.
Effective Date: 11/07/2012

Department of Industrial Relations
STATE OF CALIFORNIA

APPLICATION FOR
PUBLIC WORKS CONTRACTOR REGISTRATION

Registration Information

Type: Public Works

Period: 07/01/2023 06/30/2025

Contractor Information

Contractor Name: SAFE USA, INC.

Trade Name: SAFE USA, INC.

License Type Number: 1000000311

Contractor Physical Address

Physical Business Country: United States of America

Physical Business Address: 1030 N. MOUNTAIN AVE. #180

Physical Business City/ Province: ONTARIO

Physical Business State: CA

Physical Business Postal Code: 91762

Contractor Mailing Address

Mailing Country: United States of America

Mailing Address: 1030 N. MOUNTAIN AVE. #180

Mailing City /Province: ONTARIO

Mailing State: CA

Mailing Postal Code: 91762

Contact Info

Daytime Phone:

Mobile Phone:

Daytime Phone Ext.:

Business Email: jacob@safeusa.com

Applicant's Email: monica@safeusa.com

EXHIBIT "B"

SCHEDULE OF SERVICES

SEE ATTACHMENT

EXHIBIT "B"

SCHEDULE OF SERVICES

CRACK SEALING SERVICES SM 2526-3

1st Year of Contract FY 2025/2026	300,000	l.f.	$.44=132,000
2nd Year of Contract FY 2026/2027	300,000	l.f.	$.44=132,000
3rd Year of Contract FY 2027/2028	300,000	l.f.	$.44=132,000
Three Year Total Cost			$396,000
Future Contract Additions **cost per l.f.**			$.47/.48

OPTION YEARS

4th Year of Contract	300,000	l.f.	$.47=141,000
5th Year of Contract	300,000	l.f.	$.48=144,000

EXHIBIT "C"

COMPENSATION

NTE $396,000

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Ontario (hereinafter referred to as "City") has awarded to _____, (hereinafter referred to as the "Contractor") _____ an agreement for _____ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of _____ DOLLARS, ($_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship, Surety shall undertake and faithfully fulfill all such obligations. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

(1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

(2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

(3) Permit the City to complete the Project in any manner consistent with local, California and federal law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__).

(Corporate Seal)

_____
Contractor/ Principal

By_____

Title_____

(Corporate Seal)

_____
Surety

By_____
Attorney-in-Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

(Attach Attorney-in-Fact Certificate) Title_____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, $_____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

_____

_____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____

_____

_____

(Telephone number of Surety and Agent or Representative for service of process in California) _____

_____

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____
On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of Ontario (hereinafter designated as the "City"), has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows:

_____ (the "Project"); and

WHEREAS, the work to be performed by the Principal is more particularly set forth in the Contract Documents for the Project dated _____ ("Contract Documents"), the terms and conditions of which are expressly incorporated by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the City in the penal sum of _____ _____ Dollars ($_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or

attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)_____

Contractor/ Principal

By_____

Title_____

_____

(Corporate Seal) Surety

By_____

Attorney-in-Fact

Title_____

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so much be attached hereto.

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____
On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

CITY OF ONTARIO *Agenda Report* **June 3, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Utilities Prepared By: Courtney Jones Staff Member Presenting: Scott Burton, Utilities General Manager Reviewed By: Dennice Raygoza, Albert G Gastelum, Michael Sigsbee Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 20

SUBJECT: AMENDMENT TO PROFESSIONAL SERVICES AGREEMENTS WITH STOEL RIVES LLP FOR LEGAL AND TECHNICAL SERVICES PERTAINING TO WATER MATTERS

RECOMMENDATION: That the City Council approve and authorize the City Manager, or designee, to execute Amendment No. 3 to the Professional Services Agreement with Stoel Rives LLP of Sacramento, California, for legal and technical services relating to water supply and water rights in the amount of $120,000 for a total not-to-exceed amount of $834,000, and to extend the term until June 30, 2027.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)
Operate in a Businesslike Manner
Pursue City's Goals and Objectives by Working with Other Governmental Agencies

FISCAL IMPACT: The proposed Amendment No. 3 to the Professional Services Agreement with Stoel Rives LLP of Sacramento, California, for legal and technical services relating to water supply and water rights in the amount of $120,000 for a total not-to-exceed amount of $834,000, and to extend the term until June 30, 2027. Under the existing Agreement and proposed Amendment, expenditures will be based on negotiated billing rates. If approved, appropriations will be included in future annual budgets presented to Council for approval in the Water Operating Fund. There is no impact to the General Fund.

BACKGROUND & ANALYSIS: The City has historically used Nossaman LLP of Los Angeles, California, for legal and technical representation concerning water supply and water rights matters. Due to a conflict of interest on this specific water financial assessments-related matter, Nossaman LLP is prohibited from representing the City. The City selected Stoel Rives LLP based on their expertise in adjudicated groundwater basins, ability to meet the City's timeframe requirements to file a challenge under the Chino Basin Watermaster Judgment, and following a determination that they could represent Ontario without the potential of any conflicts of interest. The City entered into

an Agreement with Stoel Rives for legal representation in March of 2022, and subsequently amended the Agreement to include additional scope of service and funding.

Staff proposes Amendment No. 3 to maintain the status of ongoing legal matters and will ensure the continuity of legal services central to preserving and managing Ontario's utility resources and community services.

April 30, 2025

Elizabeth P. Ewens
500 Capitol Mall, Suite 1600
Sacramento, CA 95814
D. 916.319.4667
elizabeth.ewens@stoel.com

Mr. Scott Burton
City of Ontario
303 "B" Street
Ontario, CA 91764

Re: Engagement Letter and Request for Advance Waiver of Conflicts of Interest – Amendment No. 3

Dear Mr. Burton:

Thank you for selecting Stoel Rives LLP ("Stoel Rives" or "Firm") to represent City of Ontario ("Client" or "you"). We appreciate the opportunity to act as your legal counsel. This letter, and the attached Standard Terms of Representation, set forth the terms on which Stoel Rives will provide legal services to you ("Terms of Engagement").

Scope of Engagement. You have engaged Stoel Rives to represent you in connection with the Chino Basin Watermaster litigation in the *Chino Basin Municipal Water District v. City of Chino, et al.* matter and challenge of Watermaster action/decision on November 18, 2021 to approve the FY 2021/2022 Assessment Package and a later-filed challenge of Watermaster action/decision to approve the FY 2022/23 Assessment Package, including matters relating to the implementation of the final ruling ("Engagement"). Unless otherwise agreed in writing, Stoel Rives has not agreed to represent you in any other matter. If you engage Stoel Rives to represent you in any matters beyond the scope of the Engagement, these Terms of Engagement shall apply to those matters.

Client Relationship. As we have discussed, our client in the Engagement will be City of Ontario. To the extent that you have affiliates not otherwise defined in this letter as clients, you agree that our representation of City of Ontario in the Engagement does not give rise to an attorney-client relationship between Stoel Rives and any of these affiliates, and that Stoel Rives may represent clients adverse to these affiliates in matters unrelated to this Engagement.

In addition, the Engagement does not include responsibility for review of your insurance policies to determine the possibility of coverage for the claim asserted in this matter, or for notification of your insurance carriers about the matter.

The Engagement also does not include any advice or other legal services relating to federal or state securities laws, including appearing or practicing before the U.S. Securities and Exchange Commission ("SEC"), or your disclosure obligations under such laws, and we understand that you will not, without our prior written consent, include documents or information we provide to you in any filings with federal or state securities regulators, including with the SEC.

Conflicts of Interest.

Advance Waiver. Stoel Rives represents companies, individuals, and government agencies in many matters throughout many jurisdictions. During the time we are representing you, we may represent other clients ("Firm clients") in disputes or transactions adverse to you that are not substantially related to the Engagement and do not materially limit our ability to represent you.

By signing this letter, you consent to our present and future representation of these Firm clients and other adversaries/competitors. This consent, if provided, also allows Stoel Rives to take positions adverse to either you, or any of your affiliates, in any matters (whether involving the same substantive areas of law for which you have retained the Firm or some other unrelated areas of law, and whether involving transactional, litigation, or advisory matters), so long as two conditions are met: (1) the representation does not involve any work that we have done for you; and (2) the representation would not place us in a position to use your confidential information adversely to you.

Because the work that we have been asked to perform on the Engagement is unrelated to any present matter we are handling adverse to you and under the terms of our agreement would be unrelated to any future matters we may take on adverse to you, we do not believe that there is a material risk that your confidential information will be used adversely to you. Similarly, the lack of a relationship between our work for you under the Engagement and our work for other clients – current and future – suggests to us that there is little risk that our efforts on your behalf will be affected. Although we do not believe that these factors would affect your representation, you should review this yourself.

To ensure that any consent you provide is fully informed, I welcome any questions you have and recommend that you review the issue of consent with independent counsel. Whether you actually do, however, is up to you.

Principal Attorneys Handling Your Matter(s). Mike Brown, Christopher Pooser, Whitney Brown and I will be the attorneys principally responsible for the Engagement. However, as our representation progresses and issues arise, other attorneys at Stoel Rives may become responsible for and handle certain aspects of our work for you. If you ever have any questions or concerns about how we staff matters, please do not hesitate to let me know. Otherwise, we will use our judgment to determine how to staff matters in the most cost-effective manner possible.

We are pleased to offer the City of Ontario the following rates for the lawyers and professional staff we currently expect to work on this matter. The hourly rates represent a very significant discount from our regular rates and are applicable only to this matter through FY 2025/26. If the matter continues beyond FY 2025/26 both parties agree to negotiate the rates and pricing arrangement to ensure it is mutually beneficial for both parties.

Elizabeth Ewens - $485
Michael Brown - $595
Christopher Pooser - $570
Whitney Brown - $375.50
Ha Nguyen (paralegal) - $295

If other timekeepers work on this matter, we will bill them at a discount which approximates the discount being offered on the timekeepers listed above. Unless the Client agrees in writing in advance, fees under this Engagement incurred during FY 2025/26 shall not exceed $60,000, and for FY 2026/27 also shall not exceed $60,000. In the event that the Client does not authorize fees to exceed this amount, and incurred legal fees exceed $120,000 for FY 2025/26 and FY 2026/27 then the Client agrees that it will not oppose any request or motion by the Firm to withdraw as counsel.

Independent Contractor Status. In the performance of legal services under this Agreement, Firm shall be, and acknowledges that Law Firm is, in fact and under law, an independent contractor and not an agent or employee of the Client. Law Firm has and retains the right to exercise full supervision and control of the manner and methods of providing services to Client under this Agreement.

Insurance. Firm maintains errors and omissions insurance coverage that would apply to the services to be rendered under this agreement. The policy limits of the errors and omissions insurance coverage are $50,000,000.00 per claim, and $100,000,000.00 aggregate. Additionally, Firm shall maintain these various forms of insurance:

(1) Professional Liability: $50 million per claim; $100 million aggregate,
(2) Workers' Compensation: $1 million policy limit,
(3) Commercial Liability: $2 million per occurrence; $4 million aggregate,
(4) Automobile: $2 million, combined single limit,
(5) Umbrella Policy: $5 million policy limit.

Promptly following the Effective Date of this Agreement, but in no event before Firm commences any services under this Agreement, Firm shall provide evidence satisfactory to the Client that it has the above insurance coverage. The Client, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the above insurance coverage.

Billing and Payment. Unless otherwise agreed, we will send invoices for our legal fees and expenses on a monthly basis. Our invoices include narratives of the legal services performed and itemize expenses incurred by Stoel Rives in connection with the Engagement. If you would like additional information about any of our invoices, please let me know. Payment is due within 30 days after the date of the invoice. The enclosed Standard Terms of Representation contains additional information regarding our billing processes and payment terms.

Publicity. In connection with our representation of you, Stoel Rives requests, and you consent, for us to use certain information about the Engagement for the sole purpose of describing our expertise in marketing materials. Your consent here is only with respect to information about the Engagement that you have disclosed to the public.

In-Firm Communications. From time to time, issues may arise relating to our duties under the professional conduct rules that apply to lawyers. These issues may involve conflict of interest questions or even a dispute between Stoel Rives and a client over how we have handled a client matter. When such issues arise, we may seek the advice of our Firm Counsel and loss prevention partners. We consider such consultations to be attorney-client privileged communications. We believe that it is in our clients' interests, as well as Stoel Rives' interest, that when legal ethics or related issues arise during a representation, we obtain expert analysis of our obligations. Accordingly, you agree that if we determine in our own discretion during the course of the representation that it is either necessary or appropriate to consult with our internal or outside counsel, we have your consent to do so and that our representation of you shall not waive any attorney-client privilege Stoel Rives may have regarding the confidentiality of our communications with counsel.

Protected Health Information. We do not believe that this Engagement will require us to access, create, receive, use, maintain, disclose, or transmit Protected Health Information ("PHI") as that term is defined in the privacy and security rules issued under the Health Insurance Portability and Accountability Act of 1996, as amended. In the event you believe that we need to review information that constitutes PHI, we request that you communicate with us in advance of sending the information so that we can confirm that such review is necessary and, if so, sign a business associate agreement and arrange for an appropriately secure method of transmission. We request that you do not email us PHI unless you are using an email encryption program.

Governing Law & Venue. This Agreement shall be interpreted, construed, and governed according to the laws of the State of California. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of Los Angeles.

If the Terms of Engagement meet with your approval, please promptly sign the letter in the space below and return a copy to me with the security deposit so that we may begin work. Please call or email me if you have any questions. Once again, let me say how pleased we are that you have entrusted Stoel Rives to represent you in the Engagement. We look forward to working with you.

Very truly yours,

Elizabeth P. Ewens

THE UNDERSIGNED ACKNOWLEDGES AND ACCEPTS THE TERMS OF ENGAGEMENT, AND CONSENTS TO STOEL RIVES' REPRESENTATION NOTWITHSTANDING THE CONFLICTS OF INTEREST DESCRIBED ABOVE.

CITY OF ONTARIO

By: _____

Title: _____

Date: _____

STANDARD TERMS OF REPRESENTATION

Fees. Unless otherwise agreed to in writing by the Client and Stoel Rives, the principal basis for computing our fees for the legal services we provide will be the amount of time spent on the matter by various lawyers and legal assistants multiplied by their individual hourly billing rates. Other factors we may consider in setting our fee include the novelty and difficulty of the questions involved; the skill required to perform the services properly; the experience, reputation, and ability of those performing the services; the time limitations imposed by the Client or the circumstances; the amount involved; and the results obtained.

Costs. We will include in our statements separate charges for services such as copying, messenger and delivery service, travel, international telephone, and filing fees. Unless otherwise agreed to in writing, the Client authorizes us to retain any investigators, consultants, or experts necessary in our judgment to represent the Client's interests in the specified matter. Their fees and expenses generally will not be paid by us, but will be billed directly to the Client.

Estimates. We are often requested to estimate the amount of fees and costs likely to be incurred in connection with a particular matter. Because fees and costs are usually not predictable, we generally make no commitment to the Client concerning the maximum fees and costs that will be necessary to resolve or complete the matter. Any mention by us of fees and costs is only an estimate. It is also expressly understood that your obligation to pay our fees and costs is in no way contingent on the ultimate outcome of the matter.

Client Responsibilities. You agree to pay our statements for services and expenses as agreed in the Terms of Engagement. In addition, you agree to be candid and cooperative with us and keep us informed with complete and accurate factual information, documents, communications, and other material relevant to the subject matter of our representation or otherwise reasonably requested by us. You also agree to make any necessary business and strategy decisions in a timely manner. Because we need to be able to communicate with you regarding the representation, you agree to keep us advised of name, address, telephone number, contact person, or email address changes.

Advice about Possible Outcomes. From time to time, we may express opinions or beliefs concerning the matter or various courses of action and the results that might be anticipated. Any such statement made by any of our lawyers is an expression of opinion only, based on information available to us at the time, and should not be construed by you as a promise or guarantee.

Electronic Communications. It is likely that, during the course of this engagement, you and Stoel Rives will use electronic devices and internet services (which may include unencrypted email, mobile phones, voice over Internet, electronic data/document websites, and other technology) to communicate and transfer documents. Although the use of this technology involves some degree of risk that third parties may access confidential communications, we believe and, by signing the engagement letter, you agree that the benefits of using this technology outweigh the risk of accidental disclosure. Nevertheless, just as we have policies and systems in place designed to make our electronic communications with you reasonably secure, it is equally important that you communicate with us in a manner that reasonably protects the confidentiality of information we share and any attorney-client privilege that may apply to our communications. This means that you should not use any computers or other electronic devices, networks, or internet addresses that are owned, controlled, or may be accessed by others to send or receive confidential information to or from us. Any device you use should be password protected and not accessible for use by any third party.

Responding to Subpoenas and Other Requests for Information. If we are required to respond to a subpoena or other formal request from a third party or a governmental agency for our records or other information relating to services we have performed for you, or to testify by deposition or otherwise concerning such services, we will first consult with you as to whether you wish to provide the information demanded or assert the attorney-client privilege to the extent you may properly do so. In such circumstances, you agree that you will reimburse us for our time and expense incurred in responding to any such demand, including, but not limited to, time and expense incurred in searching for information and photocopying costs, reviewing documents, appearing at depositions or hearings, and otherwise litigating issues raised by the request.

Termination of Engagement. You may, at any time, terminate our representation upon written notice to us. We reserve the right to withdraw from our representation as required or permitted by the applicable rules of professional conduct upon written notice to you. Your termination or our withdrawal will not relieve you of your obligation to pay for services already rendered, including work in progress and incomplete at the time of termination, and to pay for all expenses incurred on your behalf by us through the termination or withdrawal date.

Conclusion of Representation; Retention and Disposition of Documents. Unless previously terminated or otherwise agreed, our representation will conclude and the attorney-client relationship will terminate automatically upon the occurrence of either of the following: first, 30 days following the date on which we send you a final statement for services rendered in the matter(s); or second, in the event a final statement for services is not sent, when 12 months have elapsed with no meaningful billable services provided to the Client. Thereafter, should you reengage us to represent you, you agree that the terms of this letter shall apply to any matters that we handle for you unless a new engagement letter has been signed. At your request, client documents and property will be returned to you upon receipt of payment for outstanding fees and costs, although we reserve the right to copy any documents we deem appropriate. Our files and documents pertaining to the matter will be retained by us for ten years after the termination of a matter, without further notice to the Client.

Post-engagement Matters. The Client is engaging us to provide legal services in connection with a specific matter. After completion of the matter, changes may occur in the applicable laws or regulations that could impact the Client's future rights and liabilities. Unless the Client engages us after the completion of the matter to provide additional legal advice or services on issues arising from the matter, we have no continuing obligation to advise the Client on such issues or on future legal developments, including docketing milestones, making additional or continuation filings, monitoring renewal or notice dates or similar deadlines that may arise with respect to the matter, pursuing appeals, or taking other steps on the Client's behalf to protect its interests.

CITY OF ONTARIO *Agenda Report* **June 3, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Development Administration Prepared By: Pablo De Lara Staff Member Presenting: Rudy Zeledon, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 21

SUBJECT: **AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA23-006) BETWEEN THE CITY OF ONTARIO, LEGACY LAND PARTNERS, LLC, JAB MILL CREEK, LLC, AND RICHLAND ONTARIO DEVELOPERS, LLC.**

RECOMMENDATION: That the City Council adopt an Ordinance Approving a Development Agreement (File No. PDA23-006) between the City of Ontario, Legacy Land Partners, LLC, JAB Mill Creek, LLC, and Richland Ontario Developers, LLC.

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

FISCAL IMPACT: There is not a direct fiscal impact associated with this action. The Development Agreement will provide funding from the formation of a Community Facilities District (CFD) for City services and facilities required to support the Rich Haven Specific Plan (Specific Plan) development, thereby mitigating the increased costs associated with such services. In addition, the City will receive development impact, compliance processing, licensing, and permitting fees.

BACKGROUND & ANALYSIS: On May 20, 2025, the City Council held a public hearing to introduce and waive further reading of an Ordinance Approving the Development Agreement (File No. PDA23-006).

The Ontario Ranch Financial commitments required for construction of properties within a specific plan are substantial. Therefore, to adequately forecast these costs and gain assurance that the Project may proceed under the existing policies, rules, and regulations, Legacy Land Partners, LLC, JAB Mill Creek, LLC, and Richland Ontario Developers, LLC (collectively the "Applicant" or "Owner"), has requested that the City enter into negotiations to create a Development Agreement (Agreement).

The Agreement proposes to include 32.67 gross acres of land within Planning Areas 3C, 5A and 5C (Light Industrial District and Open Space - Non-Recreation) of the Rich Haven Specific Plan, the Agreement grants the Applicant a vested right to develop Tentative Parcel Map 20685 (File No. PMTT23-004), provided the Owner complies with the terms and conditions of the Specific Plan and related EIR.

The Tentative Parcel Map proposes to subdivide 32.67 gross acres of land into 8 lots and the associated Development Plan is for the construction of one industrial building totaling 460,000 square feet located at the northwest corner of Ontario Ranch Road and Mill Creek Avenue within Planning Areas 3C, 5A and 5C (Light Industrial District and Open Space - Non-Recreation) of the Rich Haven Specific Plan, as shown on the attached Exhibit B.

The term of the Agreement is for 10 years, with a 5-year option to renew. The main points of the Agreement address funding for all new City expenses created by the project, which includes: Development Impact Fees (DIF) for construction of public improvements (i.e. streets and bridges, sewer, water, storm drain and fiber); and the creation of a Community Facilities District (CFD) for the maintenance of public facilities. Additionally, the Owner shall pay in lieu-fees to the City for the future construction and completion of Ontario Ranch Regional Water and Storm Drain improvements.

In considering the Agreement at their meeting on April 22, 2025, the Planning Commission found the Agreement to be consistent with State law, The Ontario Plan, and the City's Development Agreement policies. As a result, the Planning Commission adopted Resolution No. PC25-016 with a 6 to 0 vote, recommending City Council approval of the Agreement.

ENVIRONMENTAL REVIEW: The environmental impacts of this Project were previously reviewed in conjunction with the Rich Haven Specific Plan Amendment (File No. PSPA22-001), for which an Environmental Impact Report (State Clearinghouse No. 2022100425) was adopted by the City Council on June 20, 2023. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of Project approval and are incorporated herein by this reference.

Exhibit A: RICH-HAVEN SPECIFIC PLAN LAND USE MAP

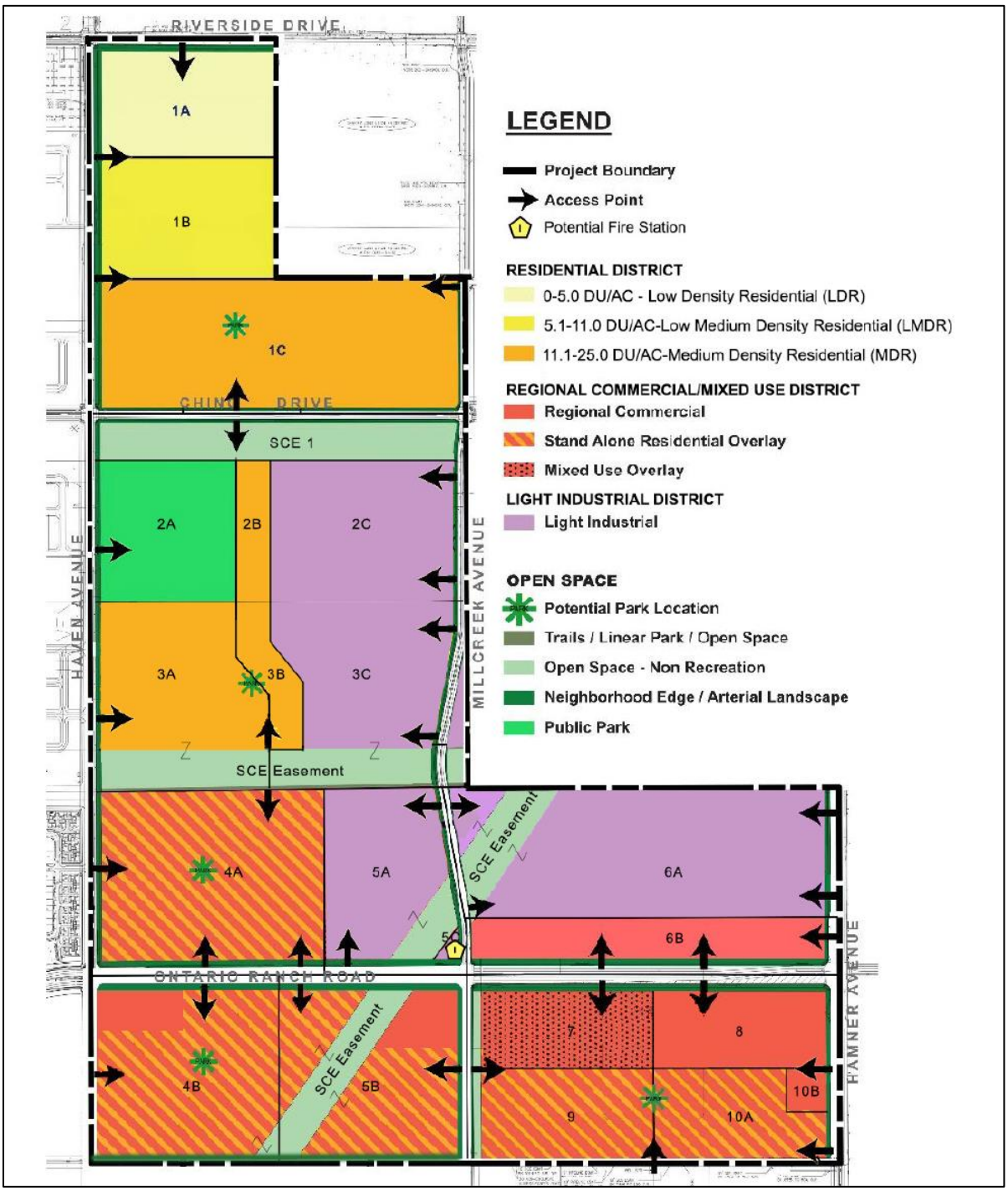
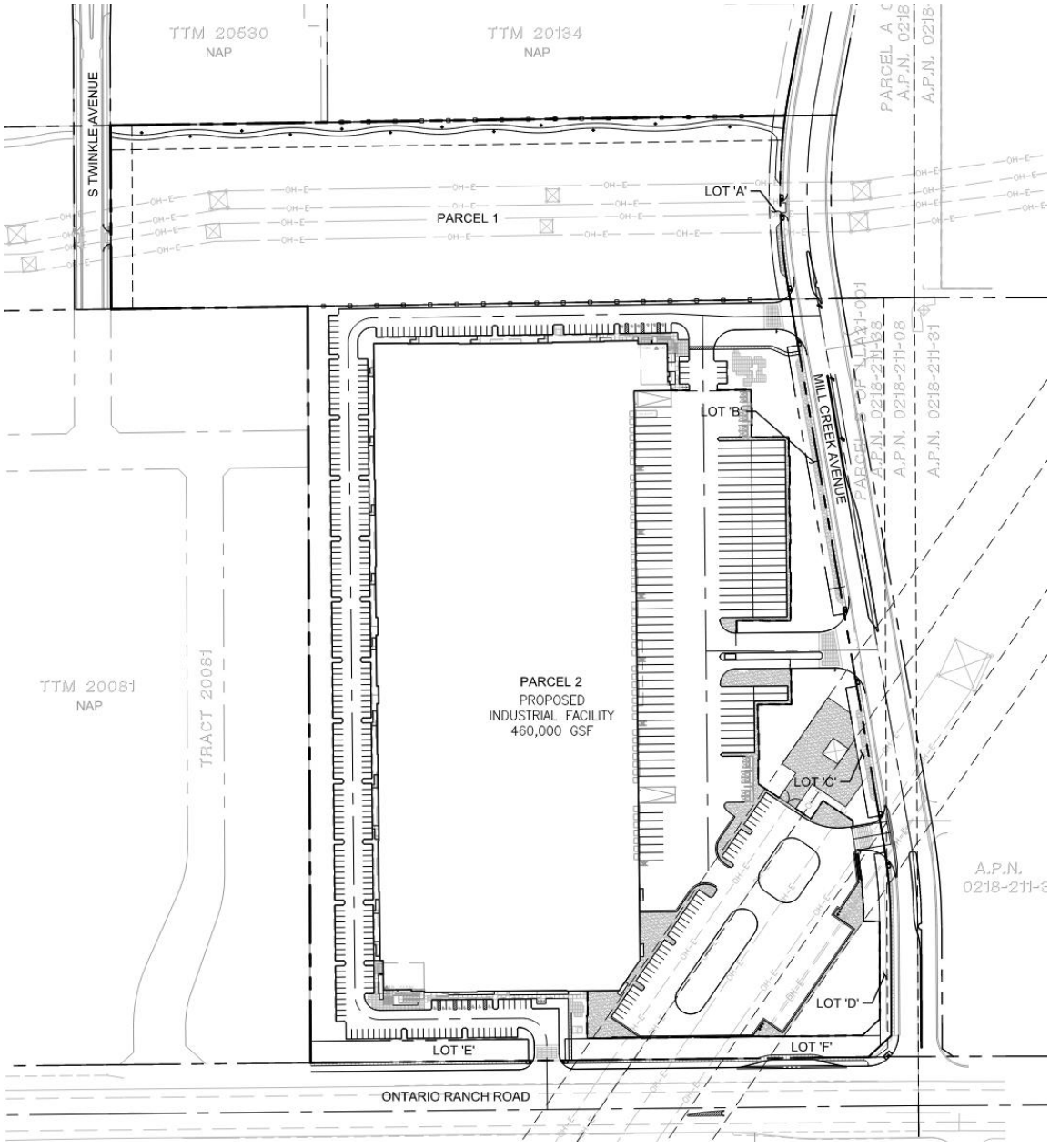


Exhibit B: TENATIVE PARCEL MAP



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING CITY COUNCIL APPROVE FILE NO. PDA23-006, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND LEGACY LAND PARTNERS, LLC, JAB MILL CREEK, LLC, AND RICHLAND ONTARIO DEVELOPERS, LLC, TO ESTABLISH THE TERMS AND CONDITIONS ASSOCIATED WITH TENTATIVE PARCEL MAP 20685 (FILE NO. PMTT23-004), LOCATED AT THE NORTHWEST CORNER OF ONTARIO RANCH ROAD AND MILL CREEK AVENUE WITHIN PLANNING AREAS 3C, 5A AND 5C (LIGHT INDUSTRIAL DISTRICT AND OPEN SPACE – NON RECREATION) OF THE RICH HAVEN SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APNS: 218-016-22 AND 218-211-42

WHEREAS, RICHLAND ONTARIO DEVELOPERS, LLC ("Applicant") has filed an Application for the approval of a Development Agreement, File No. PDA23-006, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the property to the north of the Project site is within Planning Area 3C (Light Industrial) of the Rich Haven Specific Plan and is vacant. The properties to the east are within the Specific Plan Agricultural Overlay zoning district and Planning Areas 6A and 6B (Light Industrial and Regional Commercial) of the Rich Haven Specific Plan, and are developed with SCE Mira Loma Substation, an industrial building and vacant land. The property to the south is within Planning Area 5B (Regional Commercial and Stand-alone residential overlay) of the Rich Haven Specific Plan and is vacant. The property to the west is within Planning Area 4A (Stand-alone residential overlay) of the Rich Haven Specific Plan, and is developed with a residential community; and

WHEREAS, the Application applies to 32.67 gross acres of land, located at the northwest corner of Ontario Ranch Road and Mill Creek Avenue within Planning Areas 3C, 5A and 5C (Light Industrial District and Open Space – Non-Recreation) of the Rich Haven Specific Plan; and

WHEREAS, the Applicant submitted Tentative Parcel Map No. 20685 (File No. PMTT23-004), to subdivide 32.67 gross acres of land into 2 numbered lots and 6 lettered lots in conjunction with a Development Plan to construct one industrial building totaling 460,000 square feet on the Project site; and

WHEREAS, the term of the Agreement is for 10 years, with a 5-year option to renew. The main points of the Agreement address funding for all new City expenses created by the project, which includes: Development Impact Fees (“DIF”) for construction of public improvements (i.e. streets, sewer, water, storm drain and fiber); and the creation of a Community Facilities District (“CFD”) for the maintenance of public facilities; and

WHEREAS, the environmental impacts of this Project were previously reviewed in conjunction with File No. PSPA22-001, the Rich Haven Specific Plan Amendment for which an Environmental Impact Report (State Clearinghouse No. 2022100425) was adopted by the City Council on June 20, 2023, and this Application introduces no new significant environmental impacts; and

WHEREAS, the City's "Local Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and make recommendations to the City Council on the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (hereinafter referred to as "ALUCP"), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on April 22, 2025, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Resolution No. PC25-016 recommending the City Council approve the Application; and

WHEREAS, on May 20, 2025, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the City Council of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the recommending body for the Project, the City Council has reviewed and considered the information contained in the previous Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of this Project were previously reviewed in conjunction with File No. PSPA22-001, the Rich Haven Specific Plan Amendment for which an Environmental Impact Report (State Clearinghouse No. 2022100425) was adopted by the City Council on June 20, 2023; and

(2) The previous Certified EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Certified EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Certified EIR reflects the independent judgment of the City Council; and

(5) The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the previous Certified EIR, and all mitigation measures previously adopted with the Certified EIR, are incorporated herein by this reference.

SECTION 2: ***Subsequent or Supplemental Environmental Review Not Required.*** Based on the information presented to the City Council, and the specific findings set forth in Section 1, above, the City Council finds that the preparation of a subsequent or supplemental Certified EIR is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the Certified EIR that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

(2) Does not constitute substantial changes with respect to the circumstances under which the Certified EIR was prepared, that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(3) Does not contain new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Certified EIR was certified/adopted, that shows any of the following:

    (a) The project will have one or more significant effects not discussed in the Certified EIR; or

(b) Significant effects previously examined will be substantially more severe than shown in the Certified EIR; or

(c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the City declined to adopt such measures; or

(d) Mitigation measures or alternatives considerably different from those analyzed in the Certified EIR would substantially reduce one or more significant effects on the environment, but which the City declined to adopt.

SECTION 3: ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending body for the Project, the City Council finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan 2050, as the Project site is not one of the properties in the Housing Element Sites Inventory contained in Tables B-1 and B-2 of the Housing Element Technical Report.

SECTION 4: ***Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan.

(1) On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the recommending body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the ONT ALUCP compatibility factors, including [1] Safety Criteria (ONT ALUCP Table 2-2) and Safety Zones (ONT ALUCP Map 2-2), [2] Noise Criteria (ONT ALUCP Table 2-3) and Noise Impact Zones (ONT ALUCP Map 2-3), [3] Airspace protection Zones (ONT ALUCP Map 2-4), and [4] Overflight Notification Zones (ONT ALUCP Map 2-5). As a result, the CITY COUNCIL, therefore, finds and determines that the Project will be consistent with the policies and criteria set forth within the ONT ALUCP; and

SECTION 5: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the City Council during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 4, above, the City Council hereby concludes as follows:

(1) ***The provisions of the development agreement are consistent with the goals, policies, plans, and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan 2050, and any applicable specific plans.***

(a) The Development Agreement applies to approximately 32.67 gross acres of land located at the northwest corner of Ontario Ranch Road and Mill Creek Avenue within Planning Areas 3C, 5A and 5C (Light Industrial District and Open Space – Non-Recreation) of the Rich Haven Specific Plan; and

(b) The Development Agreement establishes parameters for the development of land within the Rich-Haven Specific Plan. The Development Agreement also grants the Applicant, the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the Rich Haven Specific Plan; and

(c) The Development Agreement grants the Applicant a vested right to develop Tentative Parcel Map 20685 (File No. PMTT23-004) as long as the Applicant complies with the terms and conditions of the Rich Haven Specific Plan and EIR; and

(d) The Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

(e) The Development Agreement does not conflict with the Land Use Policies of The Ontario Plan Policy Plan (General Plan) and will provide for development, within the district, in a manner consistent with the Policy Plan and with related development; and

(f) This Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

SECTION 6: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 5, above, the City Council hereby RECOMMENDS THE CITY COUNCIL APPROVE the herein described Application, subject to each and every condition set forth in the Development Agreement (File No. PDA23-006 attached hereto as "Attachment A," and incorporated herein by this reference.

SECTION 7: **City Manager Administrative Authority.** The City Council acknowledges that refinements and further development of the Ontario Ranch development area may demonstrate that changes are appropriate with respect to the details and performance of the parties under the Development Agreement. The City Council desires to retain a certain degree of flexibility with respect to the details of the Ontario Ranch developments, and with respect to those items covered in general terms under the Development Agreement. If and when the City Manager (or designee) and the Developer mutually find that changes, adjustments, or clarifications are appropriate to further the intended purposes of the Development Agreement, and such are not materially inconsistent with the Development Agreement, they may, unless otherwise required by law, effectuate such changes, adjustments, or clarifications by written amendment to this Agreement, or through one or more memoranda which are mutually approved by the City Manager on behalf of the City and by the Developer, and, after execution, shall be attached to the Development Agreement and become a part thereof. Unless otherwise required by law, no such changes, adjustments, or clarifications shall require prior notice or hearing before the City Council. The City Manager, with the approval of the City Attorney, shall have the authority but not the obligation to execute amendments, memoranda or other documents, and may take any action necessary to implement the Development Agreement.

SECTION 8: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 9: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 10: ***Severability.*** If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 11: ***Effective Date.*** This Ordinance shall become effective 30 days following its adoption.

SECTION 12: ***Publication and Posting.*** The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within 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 3rd day of June, 2025.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held May 20, 2025 and adopted at the regular meeting held June 3, 2025 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held June 3, 2025 and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

FILE NO. PDA23-006
DEVELOPMENT AGREEMENT

By and Between

City of Ontario
a California municipal corporation,

and

Legacy Land Partners LLC, a Florida limited liability company,

and

JAB Mill Creek LLC, a Florida limited liability company

and

Richland Ontario Developers, LLC

(Development Agreement to follow this page)

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

CITY OF ONTARIO
CITY CLERK / RECORDS MANAGEMENT
303 EAST "B" STREET
ONTARIO, CA 91764-4196

Exempt from Fees Per Gov. Code § 6103

Space above this line for Recorder's Use Only

FILE NO. PDA23-006

DEVELOPMENT AGREEMENT

By and Between

City of Ontario
a California municipal corporation,

and

Legacy Land Partners LLC, a Florida limited liability company,

and

JAB Mill Creek LLC, a Florida limited liability company

and

Richland Ontario Developers, LLC

_____, 2025

San Bernardino County, California

DEVELOPMENT AGREEMENT PDA23-006

This Development Agreement (hereinafter "Agreement") is entered into effective as of the ____ day of _____, 2025 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and Legacy Land Partners LLC, a Florida limited liability company, JAB Mill Creek LLC, a Florida limited liability company, and Richland Ontario Developers, LLC (hereinafter "OWNER"):

RECITALS

WHEREAS, CITY is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code and Section 4.01.015 of the Ontario Development Code; and

WHEREAS, OWNER has requested CITY to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of CITY; and

WHEREAS, by electing to enter into this Agreement, CITY shall bind future City Councils of CITY by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of CITY; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by CITY and the City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of the CITY and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement in the Rich Haven Specific Plan Environmental Impact Report (State Clearinghouse No. 2006051081) (the "FEIR"). The City Council found and determined that the FEIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the project described in the FEIR, which included consideration of this Agreement; and

WHEREAS, this Agreement and the Project are consistent with the CITY's Comprehensive General Plan and the Rich Haven Specific Plan; and

WHEREAS, all actions taken and approvals given by CITY have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

WHEREAS, development of the Property in accordance with this Agreement will provide substantial benefits to CITY and will further important policies and goals of CITY; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, ensure progressive installation of necessary improvements, provide for public services appropriate to the development of the Project, and generally serve the purposes for which development agreements under Sections 65864 et seq. of the Government Code are intended; and

WHEREAS, OWNER has incurred and will in the future incur substantial costs in order to assure development of the Property in accordance with this Agreement; and

WHEREAS, OWNER has incurred and will in the future incur substantial costs in excess of the generally applicable requirements in order to assure vesting of legal rights to develop the Property in accordance with this Agreement.

WHEREAS, the Property is located in an area of the City of Ontario that has been known as the "New Model Colony" area and the New Model Colony area has now been renamed as "Ontario Ranch.

WHEREAS, Owner's Property is within the boundaries defined in Exhibit A of the Construction Agreement between the CITY and NMC Builders and the Property covered by this Agreement is what is known as a "Phase 2 Water Property" as such, shall be required to provide funding for CITY's future construction of the "Phase 2 Water Improvements" which will result in the availability of additional Net MDD Water Availability required for the development as shown on Exhibit "I-1"..

WHEREAS, the property developer/owner is made aware of the South Archibald Trichloroethylene (TCE) Plume "Disclosure Letter" (Exhibit "J"). Property owner may wish to provide the attached Letter as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq. This may include notifications in the Covenants, Conditions and Restrictions (CC&Rs) or other documents related to property transfer and disclosures. Additional information on the plume is available from the Santa Ana Regional Water Quality Control Board at http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T10000004658.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "CITY" means the City of Ontario, California, a California municipal corporation.

1.1.3 “Construction Agreement” means that certain Agreement for the Financing and Construction of Phases I and II Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony, entered into between the CITY and NMC Builders as of the 4th day of October, 2005, and all future amendments thereto and including the First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony entered into between the CITY and NMC Builders as of the 21st day of August, 2012 and the Amendment to the First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve and Easterly Portion of the New Model Colony entered into between the CITY and NMC Builders as of the 19th day of September 2017.

1.1.4 “Development” means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of public infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping. “Development” does not include the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

1.1.5 “Development Approvals” means all permits and other entitlements for use subject to approval or issuance by CITY in connection with development of the Property including, but not limited to:

(a) specific plans and specific plan amendments;

(b) tentative and final subdivision and parcel maps;

(c) development plan review.

1.1.6 “Development Exaction” means any requirement of CITY in connection with or pursuant to any Land Use Regulation or Development Approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

1.1.7 “Development Impact Fee” means a monetary exaction, other than a tax or special assessment, whether characterized as a fee or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4. For purposes of this Agreement only, "Development Impact Fee" shall not include processing fees and charges imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring

compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

1.1.8 "Development Plan" means the Existing Development Approvals and the Existing Land Use Regulations applicable to development of the Property.

1.1.9 "Effective Date" means the date that the ordinance approving this Agreement goes into effect.

1.1.10 "Existing Development Approvals" means all Development Approvals approved or issued on or prior to the Effective Date. Existing Development Approvals includes the Approvals incorporated herein as Exhibit "C" and all other Approvals which are a matter of public record on the Effective Date.

1.1.11 "Existing Land Use Regulations" means all Land Use Regulations in effect on the date of the first reading of the Ordinance adopting and approving this Agreement. Existing Land Use Regulations includes the Regulations incorporated herein as Exhibit "D" and all other Land Use Regulations that are in effect and a matter of public record on such date.

1.1.12 "General Plan" means the Ontario Plan adopted on August 16, 2022.

1.1.13 "Improvement" or "Improvements" means those public improvements required to support the development of the Project as described in the Parcel Map conditions for Parcel Map 20685 as further described in Exhibit "E" and depicted in Exhibit "F" (the "Infrastructure Improvements Exhibit").

1.1.14 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of CITY governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Property. "Land Use Regulations" does not include any CITY ordinance, resolution, code, rule, regulation or official policy, governing:

(a) the conduct of businesses, professions, and occupations;

(b) taxes and assessments;

(c) the control and abatement of nuisances;

(d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property;

(e) the exercise of the power of eminent domain.

1.1.15 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns.

1.1.16 "Net MDD" means net maximum daily water demand.

1.1.17 "NMC Builders" means the consortium of investors and developers responsible for the construction of infrastructure within the New Model Colony incorporated as NMC Builders, LLC.

1.1.18 "OWNER" means the persons and entities listed as owner on page 1 of this Agreement and their permitted successors in interest to all or any part of the Property.

1.1.19 **"**Phase 2 Water EDUs**"** means the number of equivalent dwelling units or non-residential square footage assigned to OWNER upon payment to City of the Phase 2 Water Participation Fee for the Project and evidenced by the issuance by CITY of a Certificate of Phase 2 Net MDD Availability in the form attached as Exhibit G.

1.1.20 "Phase 2 Water Improvements" means the future water infrastructure Improvements required for the issuance by CITY of the "Water Availability Equivalents" (WAE) for the Project.

1.1.21 "Phase 2 Water Participation Fee" means the fee paid to City upon City approval of the first Development Entitlement for the Project, to fund the Property's respective share of the projected costs of the design and construction of the Phase 2 Water Improvements by City. The Phase 2 Water Participation Fee shall be the calculated amount of the Regional Water DIF for the Project based upon the number of units, and land use category for residential units or the number of square feet, and land use category for non-residential square footage of the Project.

1.1.22 "Project" means the development of the Property contemplated by the Development Plan, as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.1.23 "Property" means the real property described on Exhibit "A" and shown on Exhibit "B" to this Agreement.

1.1.24 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to OWNER under this Agreement and reserved to CITY under Section 3.6 of this Agreement.

1.1.25 "Amendment to the Construction Agreement" means the amendment to the Construction Agreement modifying the boundaries of the property in Exhibit A of such Construction Agreement to include the Property covered by this Agreement and to provide for the additional funds required for CITY's future construction of the "Phase 2 Water Improvements" described in a modification to Exhibit C-3 of the Construction Agreement.

1.1.26 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "Rich Haven Specific Plan."

1.1.27 "Subsequent Development Approvals" means all discretionary Development Approvals required subsequent to the Effective Date in connection with development of the Property.

1.1.28 "Subsequent Land Use Regulations" means any discretionary Land Use Regulations adopted and effective after the Effective Date of this Agreement.

1.1.29 "Water Availability Equivalent (WAE)" means a designated portion of the total Net MDD made available through the construction of each Phase described in the Water Phasing Plan of the Construction Agreement. The number of Water Availability Equivalents (of portions thereof) required for the approval of a Tract or Subdivision Map shall be based upon water demand factors and assumptions listed in the Construction Agreement and shown in Exhibit "I-2".

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit "A" — Legal Description of the Property.

Exhibit "B" — Map showing Property and its location.

Exhibit "C" — Existing Development Approvals.

Exhibit "D" — Existing Land Use Regulations.

Exhibit "E" — Description of Required Infrastructure Improvements

Exhibit "F" — Infrastructure Improvements Exhibit

Exhibit "G" – Form of Certificate of Net MDD to be issued by CITY

Exhibit "H" – Form of Certificate of DIF Credit to be issued by CITY

Exhibit "I-1" – Ontario Ranch Water Supply Phasing Plan

Exhibit “I-2” – Water Demand Equivalents by Land Use

Exhibit “J” - Form of Disclosure letter

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out only in accordance with the terms of this Agreement.

2.1 Ownership of Property. OWNER represents and covenants that it is the owner of the fee simple title to the Property or a portion thereof, or has the right to acquire fee simple title to the Property or a portion thereof from the current owner(s) thereof. To the extent OWNER does not own fee simple title to the Property, OWNER shall obtain written consent from the current fee owner of the Property agreeing to the terms of this Agreement and the recordation thereof.

2.2 Term. The term of this Agreement shall commence on the Effective Date and shall continue for an initial term of ten (10) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement. The term of this Agreement may be extended for an additional five (5) years following expiration of the initial ten (10) year term, provided the following have occurred:

(a) OWNER provides at least 180 days written notice to CITY prior to expiration of the initial term; and

(b) OWNER is not then in uncured default of this Agreement.

2.3 Assignment.

2.3.1 Right to Assign. OWNER shall have the right to sell, transfer or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.), to any person, partnership, limited liability company, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement with respect to the portion of the Property sold and be made in strict compliance with the following:

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property. OWNER may be required to provide disclosure that the Property is within the South Archibald Trichloroethylene (TCE) Plume (Exhibit “J”). OWNER may wish to provide the attached Disclosure Letter (Exhibit I) as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq.

(b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, OWNER shall notify CITY’s City Manager, in writing, of such

sale, transfer or assignment and shall provide CITY with: (1) an executed agreement, in a form reasonably acceptable to CITY, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties and obligations of OWNER under this Agreement with respect to the portion of the Property so sold, transferred or assigned.

(c) Any sale, transfer or assignment not made in strict compliance with the foregoing conditions shall constitute a default by OWNER under this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by Paragraph (b) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee or assignee until and unless such agreement is executed. The City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny any proposed sale, transfer or assignment that is not made in compliance with this section 2.4.

2.3.2 Release of Transferring Owner. Notwithstanding any sale, transfer or assignment, a transferring OWNER shall continue to be obligated under this Agreement unless such transferring owner is given a release in writing by CITY, which release shall be provided by CITY upon the full satisfaction by such transferring owner of the following conditions:

(a) OWNER no longer has a legal or equitable interest in all or any part of the portion of the Property sold, transferred or assigned.

(b) OWNER is not then in default under this Agreement.

(c) OWNER has provided CITY with the notice and executed an agreement as required under Paragraph (b) of Subsection 2.4.1 above.

(d) The purchaser, transferee or assignee provides CITY with security equivalent to any security previously provided by OWNER (if any) to secure performance of its obligations hereunder which are to be performed upon portion of the Property sold, transferred or assigned .

2.3.3 Effect of Assignment and Release of Obligations. In the event of a sale, transfer or assignment pursuant to the provisions of Section 2.4.2 above:

(a) The assignee shall be liable for the performance of all obligations of OWNER with respect to transferred property but shall have no obligations with respect to the portions of the Property, if any, not transferred (the “Retained Property”).

(b) The owner of the Retained Property shall be liable for the performance of all obligations of OWNER with respect to Retained Property but shall have no further obligations with respect to the transferred property.

(c) The assignee's exercise, use and enjoyment of the Property or portion thereof shall be subject to the terms of this Agreement to the same extent as if the assignee were the OWNER.

2.3.4 Subsequent Assignment. Any subsequent sale, transfer or assignment after an initial sale, transfer or assignment shall be made only in accordance with and subject to the terms and conditions of this Section 2.4.

2.3.5 Termination of Agreement With Respect to Individual Lots Upon Sale to Public and Completion of Construction. The provisions of Subsection 2.4.1 shall not apply to the sale or lease (for a period longer than one year) of any parcel which has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user of the parcel. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

(a) The lot has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and,

(b) A certificate of occupancy has been issued for a building on the parcel, and the fees set forth under Section 4 of this Agreement have been paid.

2.4.6 Partial Assignment and Assumption. CITY and OWNER agree OWNER may partially assign its obligations and rights under this Agreement, and all amendments hereto, to a purchaser, transferee or assignee of a lot, which has been subdivided subject to provisions of a partial assignment and assumption agreement in a form approved by CITY. Any such complete and executed partial assignment and assumption of this Agreement shall be submitted to CITY for approval pursuant to Section 2.4.1 of this Agreement. CITY shall review, and if the above conditions, including but not limited to, those conditions in Section 2.4.2, are satisfied, CITY may approve the partial assignment and release and notify the purchaser, transferee or assignee in writing thereof. No such release approved pursuant to this Subsection 2.4.6 shall cause, or otherwise affect, a release of OWNER from the duties and obligations under this Agreement that are retained by OWNER and excluded from the transfer or assignment.

2.4 Amendment or Cancellation of Agreement. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section 65868.1. Any amendment of this Agreement, which amendment has been requested by OWNER, shall be considered by the CITY only upon the payment of the applicable processing charge. This provision shall not limit any remedy of CITY or OWNER as provided by this Agreement. Either Party or successor in interest, may propose an amendment to or cancellation, in whole or in part, of this Agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided otherwise in this Agreement or in Government Code Section 65865.1. For purposes of this section, the term "successor in interest" shall mean

any person having a legal or equitable interest in the whole of the Property, or any portion thereof as to which such person wishes to amend or cancel this Agreement. The procedure for proposing and adopting an amendment to, or cancellation of, in whole or in part, this Agreement shall be the same as the procedure for adopting and entering into this Agreement in the first instance. Notwithstanding the foregoing sentence, if the CITY initiates the proposed amendment to, or cancellation of, in whole or in part, this Agreement, CITY shall first give notice to the OWNER of its intention to initiate such proceedings at least sixty (60) days in advance of the giving the public notice of intention to consider the amendment or cancellation.

2.5.1 Minor Modification. Upon the written application of OWNER, minor modifications and changes to the Development Plan including modifications to building design or footprint (not affecting minimum setbacks), parking layout and design, and landscape area design may be approved by the Director of the Planning Department without the need to amend this Development Agreement. Other changes in the Development Plan shall be processed pursuant to the City Zoning Ordinance. It is also contemplated by CITY and OWNER that OWNER may, from time to time, seek amendments to one or more of the Development Approvals. Any such amendments are contemplated by CITY and OWNER as being within the scope of this Agreement as long as they are consistent with the Land Use Regulations and shall, upon approval by CITY, continue to constitute the Development Approvals as referenced herein. The parties agree that any such modifications or amendments shall not constitute an amendment to this Agreement nor require an amendment to this Agreement.

2.5 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 2.3.

(b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

(c) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.

(d) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by CITY or applicable public agency of all required dedications.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees

paid pursuant to Section 4.2 of this Agreement by OWNER to CITY on which construction has not yet begun shall be refunded to OWNER by CITY within ten (10) business days.

2.6 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to CITY:
Scott Ochoa, City Manager
City of Ontario
303 East "B" Street
Ontario, CA 91764

If to OWNER:
Craig Cristina
Richland
3161 Michelson, Suite 425
Irvine, CA 92612
ccristina@richlandcommunities.com

with a copy to:
Ruben Duran, City Attorney
Best Best & Krieger, LLP
2855 E Guasti Road
Ontario, CA 91761

With a copy to:
Richland Legal Dept.
c/o John Troutman
3161 Michelson, Suite 425
Irvine, CA 92612
jtroutman@richlandinvestments.com

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority in Section 3.4, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Development Plan.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority in Section 3.4, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, CITY shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

3.3 Timing of Development. The parties acknowledge that OWNER cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of OWNER, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Cal. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that OWNER shall have the right to develop the Property in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment.

3.3.1 Infrastructure Improvement Exhibit. Attached hereto as Exhibit "F" are a description of the Infrastructure Improvements needed for the development of the Property ("the Infrastructure Improvement Exhibits").

3.4 Reservations of Authority.

3.4.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the CITY shall not be prevented from applying new rules, regulations and policies upon the OWNER, nor shall a development agreement prevent the CITY from denying or conditionally approving any subsequent development project application on the basis of such new rules, regulations and policies where the new rules, regulations and policies consist of the following:

(a) Processing fees by CITY to cover costs of processing applications for development approvals or for monitoring compliance with any development approvals;

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records and any other matter of procedure;

(c) Regulations, policies and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the CITY and any local amendments to those codes adopted by the CITY; provided however that, OWNER shall have a vested right to develop the

Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan and the building codes in effect as of the Effective Date;

(d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the occupants of the Project and/or of the immediate community from a condition perilous to their health or safety;

(e) Regulations that do not conflict with those rules, regulations and policies set forth in this Agreement or the Development Plan and which do not impose additional obligations, costs, and expenses on Owner or the Project;

(f) Regulations that may conflict but to which the OWNER consents.

3.4.2 Subsequent Development Approvals. This Agreement shall not prevent CITY, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations that do not conflict with the Development Plan and/or the Existing Development Approvals, nor shall this Agreement prevent CITY from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Plan and/or the Existing Development Approvals.

3.4.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce. In the event OWNER alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Agreement, and the CITY does not agree, the OWNER may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided however, that nothing contained in this Section 3.6.3 shall impose on CITY any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

3.4.4 Intent. The parties acknowledge and agree that CITY is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations and exceptions are intended to reserve to CITY all of its police power which cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to CITY all such power and authority which cannot be restricted by contract.

(INSERT SPECIFIC INFRASTRUCUTRE IMPROVEMENTS)

3.5 Public Works; Utilities. If OWNER is required by this Agreement or a condition of project approval to construct any public works facilities which will be dedicated to CITY or

any other public agency upon completion, and if required by applicable laws to do so, OWNER shall perform such work in the same manner and subject to the same requirements as would be applicable to CITY or such other public agency should it have undertaken such construction. As a condition of development approval, OWNER shall connect the Project to all utilities necessary to provide adequate water, recycled water, sewer, gas, electric, and other utility service to the Project. As a further condition of development approval, OWNER shall to the extent possible contract with the CITY for CITY-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the CITY.

3.5.1 OWNER agrees that development of the Project shall require the construction of storm drain Improvements from the Property to the connection with the Cucamonga Creek Channel as described in Exhibit E and depicted in Exhibit F. OWNER shall be responsible for the construction of the necessary extension of storm drain facilities, as described in Exhibit E and depicted in Exhibit F. OWNER and CITY agree that CITY may issue grading, building permits and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY and OWNER agrees that OWNER shall not request, and CITY shall not issue a final occupancy permit for any buildings prior to completion of the storm drain Improvements described in Exhibit E and depicted in Exhibit F. CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to completion of the storm drain improvements.

3.5.2 OWNER agrees that development of the Project shall require the construction of street improvements as described in Exhibit E and depicted in Exhibit F. OWNER and CITY agree that CITY may issue grading, building permits and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY and OWNER agrees that OWNER shall not request and CITY shall not issue a final occupancy permit for any buildings on the Property prior to Substantial Completion of the street Improvements as described in Exhibit E and depicted in Exhibit F. For purposes of the foregoing, street improvements shall be deemed Substantially Complete even if the final lift of pavement has not been completed (i.e., Owner may install the final lift after completion of all other construction). CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to completion and subject to final acceptance by CITY of the street improvements. OWNER agrees that the street improvements shall be completed and subject to final acceptance by CITY prior to the release of any security for the construction of the street improvements.

3.5.3 OWNER agrees that development of the Property shall require the extension of permanent water utility Improvements as described in Exhibit E and depicted in Exhibit F consisting generally of the construction of the extension of permanent water utility Improvements from two (2) points of connection to serve the Property. OWNER and CITY agree that CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY upon completion of sufficient water and recycled water improvements to serve the Property from at least one point of connection and sufficient fire protection and

OWNER agrees that OWNER shall not request and CITY shall not issue a final occupancy permit for any buildings on the Property until the completion of permanent water and recycled water Improvements described in Exhibit E and depicted in Exhibit F. City agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to completion of the water and recycled water improvements if there is available water service from a minimum of two (2) points of connection and sufficient water is available for water quality purposes and fire protection purposes for any buildings while under construction.

3.6 Acquisition of Offsite Provision of Real Property Interests. In any instance where OWNER is required by any Development Approval or Land Use Regulation and the Construction Agreement to construct any public improvement on land not owned by OWNER ("Offsite Improvements"), the CITY and OWNER shall cooperate in acquiring the necessary legal interest ("Offsite Property") in accordance with the procedures set forth in Section 2.4 of the Construction Agreement. This section 3.6 is not intended by the parties to impose upon the OWNER an enforceable duty to acquire land or construct any public improvements on land not owned by OWNER, except to the extent that the OWNER elects to proceed with the development of the Project, and then only in accordance with valid conditions imposed by the CITY upon the development of the Project under the Subdivision Map Act or other legal authority.

3.6.1 CITY Acquisition of Non-Construction Agreement Offsite Property. In the event OWNER is required to construct any public improvements on land not owned by OWNER, but such requirement is not based upon the Construction Agreement, Sections 3.6.1 and 3.6.2 shall control the acquisition of the necessary property interest(s) ("Non-Construction Agreement Offsite Property"). If the OWNER is unable to acquire such Non-Construction Agreement Offsite Property and following the written request from the OWNER to CITY, CITY agrees to use reasonable and diligent good faith efforts to acquire the Non-Construction Agreement Offsite Property from the owner or owners of record by negotiation to the extent permitted by law and consistent with this Agreement. If CITY is unable to acquire the Non-Construction Agreement Offsite Property by negotiation within thirty (30) days after OWNER'S written request, CITY shall, initiate proceedings utilizing its power of eminent domain to acquire that Non-Construction Agreement Subject Property at a public hearing noticed and conducted in accordance with California Code of Civil Procedure Section 1245.235 for the purpose of considering the adoption of a resolution of necessity concerning the Non-Construction Agreement Offsite Property, subject to the conditions set forth in this Section 3.6.1 The CITY and OWNER acknowledge that the timelines set forth in this Section 3.6.1 represent the maximum time periods which CITY and OWNER reasonably believe will be necessary to complete the acquisition of any Non-Construction Agreement Offsite Property. CITY agrees to use reasonably good faith efforts to complete the actions described within lesser time periods, to the extent that it is reasonably able to do so, consistent with the legal constraints imposed upon CITY.

3.6.2 Owner's Option to Terminate Proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to making an offer to the owner of the Non-Construction Agreement Offsite Property. At any time within that fifteen (15) day

period, OWNER may, at its option, notify CITY that it wants CITY to cease all acquisition proceedings with respect to that Non-Construction Agreement Offsite Property, whereupon CITY shall cease such proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to the date of the hearing on CITY'S intent to consider the adoption of a resolution of necessity as to any Non-Construction Agreement Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease condemnation proceedings, whereupon CITY shall cease such proceedings. If OWNER does not notify CITY to cease condemnation proceedings within said fifteen (15) day period, then the CITY may proceed to consider and act upon the Non-Construction Agreement Offsite Property resolution of necessity. If CITY adopts such resolution of necessity, then CITY shall diligently institute condemnation proceedings and file a complaint in condemnation and seek an order of immediate possession with respect to the Non-Construction Agreement Offsite Property.

3.7 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of CITY possess authority to regulate aspects of the development of the Property separately from or jointly with CITY and this Agreement does not limit the authority of such other public agencies. CITY agrees to cooperate fully, at no cost to CITY, with OWNER in obtaining any required permits or compliance with the regulations of other public agencies provided such cooperation is not in conflict with any laws, regulations or policies of the CITY.

3.8 Tentative Parcel Maps; Extension. With respect to applications by OWNER for tentative parcel maps for portions of the Property, CITY agrees that OWNER may file and process tentative maps in accordance with Chapter 4.5 (commencing with Section 66498.1) of Division 2 of Title 7 of the California Government Code and the applicable provisions of CITY's subdivision ordinance, as the same may be amended from time to time. In accordance with the provisions of Section 66452.6 of the Government Code, each tentative subdivision map or tentative parcel map, heretofore or hereafter approved in connection with development of the Property, shall be deemed to have been granted an extension of time to and until the date that is five (5) years following the Effective Date of this Agreement. The CITY's City Council may, in its discretion, extend any such map for an additional period of up to five (5) years beyond its original term, so long as the subdivider files a written request for an extension with the City prior to the expiration of the initial five (5) year term.

4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs that will not be fully met by the Development Plan and further acknowledge and agree that this Agreement confers substantial private benefits on OWNER that should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on OWNER by providing more fully for the satisfaction of the public needs resulting from the Project.

4.2 Development Impact Fees.

4.2.1 Amount of Development Impact Fee. Development Impact Fees (DIF) shall be paid by OWNER. The Development Impact Fee amounts to be paid by OWNER shall be the amounts that are in effect at the time such amounts are due. Nothing contained in this Agreement shall affect the ability of the CITY to impose new Development Impact Fees or amend the amounts of existing Development Impact Fees. Additionally, nothing contained in this Agreement shall affect the ability of other public agencies that are not controlled by CITY to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by CITY.

4.2.2 Time of Payment. The Development Impact Fees required pursuant to Subsection 4.2.1 shall be paid to CITY prior to the issuance of building permit for each applicable building (subject to the application/use of available fee deferrals or credits), except for the Open Space and Habitat Acquisition Development Impact fee, which shall be paid by OWNER to CITY prior to the issuance of a grading permit

4.3 Responsibility for Construction of Public Improvements.

4.3.1 Timely Construction of Public Infrastructure. The phasing of the area wide infrastructure construction within the Ontario Ranch area shall be as approved by the CITY. OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the Project as shown on the attached Exhibit "F" and any and all parcel map conditions. Unless otherwise specified in the Parcel Map conditions, and subject to the provisions of Section 3.5 and 3.6, all other required Improvements for each Parcel Map, shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of a final occupancy permit for any buildings to be constructed on the Property. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Parcel Map conditions for Parcel Map No.20685.

4.3.2 Availability and Use of Recycled Water. OWNER agrees that recycled water shall be available and utilized by OWNER for all construction-related water uses including prior to, and during, any grading of the Property

4.3.3. Construction of DIF Program Infrastructure. To the extent OWNER is required to construct and complete construction of public improvements that are included in CITY's Development Impact Fee Program CITY agrees that CITY shall issue DIF Credit and DIF Reimbursement in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitations on the use of DIF Credit issued to OWNER to offset OWNER's DIF payment obligations shall also be subject to the provisions of a separate Fee Credit Agreement. OWNER may also be eligible to receive reimbursement from DIF collected by CITY and paid by other development that benefits from OWNER's construction of DIF Program Infrastructure. Any such DIF Reimbursement shall be subject to a Fee Credit Agreement between CITY and OWNER.

CITY and OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements.

4.4 Net MDD/Water Availability Equivalents.

4.4.1 Effectiveness of Agreement. Notwithstanding anything else set forth in this Agreement, CITY and OWNER each acknowledge, confirm, and agree, that (i) the City approval of this Agreement and (ii) the effectiveness of this Agreement, in each case, is conditioned upon OWNER's admission to NMC Builders as a "Member" thereof pursuant to the terms and conditions of the operating agreement of NMC Builders. OWNER and CITY agree that OWNER shall become a Member of NMC Builders within 30 days of the effective date of this Agreement.

4.4.2 Assigned Net MDD/Water Availability Equivalents. OWNER acknowledges that the City has agreed with NMC Builders to reserve exclusively for Members of NMC Builders, including OWNER, Net MDD made available through the construction of water system improvements funded by NMC Builders and/or OWNER. OWNER acknowledges that the provisions of the Construction Agreement Amendment require that the City shall not issue building permits or certificates of occupancy for the area of development within the New Model Colony served by the water system improvements funded by NMC Builders, except to the bearer of a Certificate of Net MDD Water Availability.

4.4.3 Requirement for NMC Builders LLC Membership as a Phase 2 Water Member. OWNER and CITY agree that OWNER's' payment to CITY required by Section 4.5.3 below represents OWNER's contribution to the funding required for the future construction of the Phase 2 Water Improvements and the availability of additional Net MDD Water Availability required for the development of the Property described in Exhibit A of this Agreement.

4.4.4 CITY issuance of Water Availability Equivalents. Within 30 days after the effectiveness of this Development Agreement OWNER shall pay or have paid to City the applicable Phase 2 Water Participation Fee. The Phase 2 Water Participation Fee shall be calculated based on the amount of the Regional Water DIF for the applicable land use category and the square footage of the applicable buildings. The calculated amount of the Phase 2 Water Participation Fee shall be paid to City within 30 days after the effective date of this Agreement or, at OWNER's option, the Phase 2 Water Participation Fee may be paid to City in two (2) installments. The first installment shall be fifty percent (50%) of the total Phase 2 Water Participation Fee and such first installment shall be due and payable to City within 30 days after the effective date of this Development Agreement. The second installment shall be the remaining amount of the Phase 2 Water Participation Fee and such second installment shall be due and payable to City within one (1) year after the payment of the first installment, or prior to, and as a condition precedent to, the recording of any final Parcel Map for the Project, whichever occurs first. Upon OWNER's complete payment to CITY of the Phase 2 Water Participation Fee CITY shall issue a Certificate of Water Availability Equivalents in the form attached hereto as Exhibit G. Such Water Availability Equivalents Certificate shall be issued by CITY within thirty (30) days of the receipt of such required payment. CITY and OWNER agree that the amount

of Water Availability Equivalents issued to OWNER shall be based on the maximum projected need for Water Availability Equivalents required for the Property based upon water demand factors and assumptions listed in Exhibit C-2R of the Phase 2 Water Amendment to the Construction Agreement "Water Demand Equivalents by Land Use" for each land use category. Additionally, within five (5) business days of CITY's receipt of OWNER's payment as required under this Section 4.5.2, CITY shall issue a certificate of DIF Credit against OWNER's DIF obligations in the Regional Water DIF Category.

4.4.5 Requirement for other Water System Improvements. A Certificate of Net MDD Availability is evidence only of available water capacity and does not satisfy any other conditions applicable to OWNER's Project, including those relating to design and construction of master-planned potable water and recycled water transmission and distribution system for the respective pressure zone and other public infrastructure requirements.

4.5 Requirement for other Water System Improvements. A Certificate of Net MDD Availability is evidence only of available water capacity and does not satisfy any other conditions applicable to OWNER's Project, including those relating to design and construction of master-planned potable water and recycled water transmission and distribution system for the respective pressure zone and other public infrastructure requirements.

4.6 Compliance with Public Benefits Requirements.

4.6.1 Failure to Provide Public Benefits. In the event OWNER fails or refuses to comply with any condition referenced in Section 4.1 through 4.6, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, OWNER shall be deemed in default of this Agreement pursuant to Section 8 hereof, thereby entitling the City to any and all remedies available to it, including, without limitation, the right of the City to withhold OWNER's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability. Nothing herein shall waive Owner's right to assert a default (or failure to perform) by the City has excused Owner's performance under this Agreement.

5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). OWNER agrees that, prior to the recordation of any Parcel Map, the property subject to such Parcel Map shall be included in a CFD to finance City services through annual special taxes that will initially be $.25 per square foot for non-residential buildings. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year, unless otherwise modified by CITY. Depending on the fiscal year that the CFD is formed and the CFD tax is levied, the annual special taxes may be higher. CITY shall be the sole and exclusive lead agency in the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities

to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. In addition to the rights of the CITY pursuant to section 5.1 hereof, CITY shall have the right, but not the obligation, to condition the formation of any CFD, assessment district or other public financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the condition to the formation of any CFD, assessment district or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit the City's ability to take any and all necessary steps requisite to the formation of the CFD to finance City services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district.

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

6.1.1 Time for and Initiation of Periodic Review. The CITY shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by the OWNER with the terms of this Agreement. The OWNER shall submit an Annual Monitoring Report to CITY, in a form acceptable to the City Manager, along with any applicable processing charge within ten (10) days after each anniversary date of the Effective Date of this Agreement. Within fifteen (15) days after the receipt of the Annual Monitoring Report, CITY shall review the Annual Monitoring Report. Prior to the expiration of the fifteen (15) day review period, CITY shall either issue a notice of continuing compliance or a notice of non-compliance and a notice of CITY's intent to conduct a Special Review pursuant to Sections 6.1.2 through 6.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his designee.

6.1.2 Initiation of Special Review. A special review may be called either by agreement between the parties or by initiation in one or more of the following ways:

(a) Recommendation of the Planning staff;

(b) Affirmative vote of at least four (4) members of the Planning Commission; or

(c) Affirmative vote of at least three (3) members of the City Council.

6.1.3 Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that the CITY intends to undertake a special review of this

Agreement to the OWNER. Such notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission.

6.1.4 Public Hearing. The Planning Commission shall conduct a hearing at which the OWNER must demonstrate good faith compliance with the terms of this Agreement. The burden of proof on this issue is upon the OWNER.

6.1.5 Findings Upon Public Hearing. The Planning Commission shall determine upon the basis of substantial evidence whether or not the OWNER has, for the period under review, complied in good faith with the terms and conditions of this Agreement.

6.1.6 Procedure Upon Findings.

(a) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.

(b) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has not complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission may recommend to the City Council to modify or terminate this Agreement.

(c) The OWNER may appeal a determination pursuant to paragraph (b) to the City Council in accordance with the CITY's rule for consideration of appeals in zoning matters generally.

6.2 Proceedings Upon Modification or Termination. If, upon a finding under Section 6.1.6(b), the CITY determines to proceed with modification or termination of this Agreement, the CITY shall give notice to the property OWNER of its intention so to do. The notice shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not the CITY proposes to terminate or to modify this Agreement; and

(c) Other information that the CITY considers necessary to inform the OWNER of the nature of the proceeding.

6.3 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, the OWNER shall be given an opportunity to be heard. The OWNER shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the OWNER. If the City Council finds, based upon substantial evidence in the administrative record, that the OWNER has not complied in good faith with the terms and conditions of the agreement, the City Council may terminate this Agreement or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the

interests of the CITY. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, OWNER is found to be in compliance with this Agreement, CITY shall, upon written request by OWNER, issue a Certificate of Agreement Compliance ("Certificate") to OWNER stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) OWNER is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. OWNER may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or OWNER, CITY shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [OMITTED]

8. DEFAULT AND REMEDIES.

8.1 Remedies in General. It is acknowledged by the parties that CITY would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof. In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that CITY shall not be liable in damages to OWNER, or to any successor in interest of OWNER, or to any other person, and OWNER covenants not to sue for damages or claim any damages:

(a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or

(b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

(c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

8.2 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all parties for the following reasons:

(a) Money damages are unavailable against CITY as provided in Section 8.1 above.

(b) Due to the size, nature and scope of the project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts.

8.3 Release. Except for nondamage remedies, including the remedy of specific performance and judicial review as provided for in Section 6.5, OWNER, for itself, its successors and assignees, hereby releases the CITY, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the CITY because it entered into this Agreement or because of the terms of this Agreement.

8.4 Termination or Modification of Agreement for Default of OWNER. Subject to the provisions contained in Subsection 6.3 herein, CITY may terminate or modify this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate or modify this Agreement pursuant to this Section only after providing written notice to OWNER of default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

8.5 Termination of Agreement for Default of CITY. OWNER may terminate this Agreement only in the event of a default by CITY in the performance of a material term of this Agreement and only after providing written notice to CITY of default setting forth the nature of the default and the actions, if any, required by CITY to cure such default and, where the default can be cured, CITY has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

9. THIRD PARTY LITIGATION.

9.1 General Plan Litigation. CITY has determined that this Agreement is consistent with its Comprehensive General Plan, as such General Plan exists as of the Effective Date ("General Plan"), and that the General Plan meets all requirements of law. OWNER has reviewed the General Plan and concurs with CITY's determination. CITY shall have no liability in damages under this Agreement for any failure of CITY to perform under this Agreement or the inability of OWNER to develop the Property as contemplated by the Development Plan of this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

9.2 Third Party Litigation Concerning Agreement. OWNER shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless CITY, its agents, officers and employees from any claim, action or proceeding against CITY, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. CITY shall promptly notify OWNER of any such claim, action or proceeding, and CITY shall cooperate in the defense. If CITY fails to promptly notify OWNER of any such claim, action or proceeding, or if CITY fails to cooperate in the defense, OWNER shall not thereafter be responsible to defend, indemnify, or hold harmless CITY. CITY may in its discretion participate in the defense of any such claim, action or proceeding.

9.3 Indemnity. In addition to the provisions of 9.2 above, OWNER shall indemnify and hold CITY, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of OWNER, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (OWNER's employees included) or any other element of damage of any kind or nature, to the extent relating to or in any way connected with or arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, failure and conveyance of the public improvements, save and except claims for damages arising through the sole active negligence or sole willful misconduct of CITY. OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions. CITY may in its discretion participate in the defense of any such legal action.

9.4 Environment Assurances. OWNER shall indemnify and hold CITY, its officers, agents, and employees free and harmless from any liability, to the extent based or asserted, upon any act or omission of OWNER, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property during OWNER'S period of ownership of the Property, including, but not limited to, soil and groundwater conditions caused by OWNER, and OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. CITY may in its discretion participate in the defense of any such action.

9.5 Reservation of Rights. With respect to Sections 9.2, 9.3 and 9.4 herein, CITY reserves the right to either (1) approve the attorney(s) which OWNER selects, hires or otherwise engages to defend CITY hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense, provided, however, that OWNER shall reimburse CITY forthwith for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefor.

9.6 Survival. The provisions of this Sections 9.1 through 9.6, inclusive, shall survive the termination of this Agreement.

10. MORTGAGEE PROTECTION.

10.1 Mortgagee Protection. The parties hereto agree that this Agreement shall not prevent or limit OWNER, in any manner, at OWNER's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. CITY acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with OWNER and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. CITY will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee, has submitted a request in writing to the CITY in the manner specified herein for giving notices, shall be entitled to receive written notification from CITY of any default by OWNER in the performance of OWNER's obligations under this Agreement.

(c) If CITY timely receives a request from a Mortgagee requesting a copy of any notice of default given to OWNER under the terms of this Agreement, CITY shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to OWNER. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of OWNER's obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by OWNER is a

condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement

(e) In the event of a default by Owner, any Mortgagee shall have the right to remedy, or cause to be remedied, such default within sixty (60) days following the later to occur of (i) the date of Mortgagee's receipt of the notice referred to in Section 10.1(b) above, or (ii) the expiration of the period provided herein for Owner to remedy or cure such default, and City shall accept such performance by or at the insistence of the Mortgagee as if the same had been timely made by Owner; provided, however, that (i) if such default is not capable of being cured within the timeframes set forth in this Section and Mortgagee commences to cure the default within such timeframes, then Mortgagee shall have such additional time as is required to cure the default so long as Mortgagee diligently prosecutes the cure to completion and (ii) if possession of the Property (or portion thereof) is required to effectuate such cure or remedy, the Mortgagee shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within sixty (60) days after receipt of the copy of the notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy.

11. MISCELLANEOUS PROVISIONS.

11.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the San Bernardino County Recorder by the City Clerk within the ten (10) days after the CITY executes this Agreement, as required by Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if the CITY terminates or modifies the agreement as provided for herein and in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the San Bernardino County Recorder.

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

11.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provision of the Public Benefits set forth in Section 4 of this Agreement, including the payment of the fees set forth therein, are essential elements of this Agreement and CITY would not have entered into this Agreement but for such provisions,

and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

11.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

11.6 Singular and Plural. As used herein, the singular of any word includes the plural.

11.7 Joint and Several Obligations. Subject to Section 2.4, if at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one owner, all obligations of such owners under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners. Notwithstanding the foregoing, no owner of a single lot which has been finally subdivided and sold to such owner as a member of the general public or otherwise as an ultimate user shall have any obligation under this Agreement except as provided under Section 4 hereof.

11.8 Time of Essence. Time is of the essence in the performance of .the provisions of this Agreement as to which time is an element.

11.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

11.10 No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

11.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control, (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

11.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

11.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

11.14 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

11.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Bernardino, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the development of private property and the owner of such property.

11.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The City Manager may delegate his powers and duties under this Agreement to an Assistant City Manager or other management level employee of the CITY.

11.18 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by CITY of its power of eminent domain.

11.19 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, OWNER shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this County and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto.

11.20 Estoppel Certificate. Within thirty (30) business days following a written request by any of the parties, the other party shall execute and deliver to the requesting party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party. OWNER shall pay to CITY all costs incurred by CITY in connection with the issuance of estoppel certificates requested by Owner under this Section 11.20 prior to CITY's issuance of such certificates.

11.21 Authority to Execute. The person or persons executing this Agreement on behalf of OWNER warrants and represents that he or she/they have the authority to execute this Agreement on behalf of his or her/their corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind OWNER to the performance of its obligations hereunder.

11.22 Prevailing Wage. OWNER, for itself, its successors, and assigns, agrees, covenants, and warrants that the development of the Property, if any, shall comply with all applicable federal and state labor laws (including, without limitation, the requirement under California law to pay prevailing wages and hire apprentices), and all obligations as set forth herein.

11.22.1 CITY makes no representations concerning prevailing wages in compliance with California Labor Code Section 1770 et seq.

11.22.2 OWNER acknowledges and agrees that it shall be independently responsible for reviewing the applicable laws and regulations with respect to the payment of prevailing wages and complying therewith. OWNER shall bear all risks of payment or

non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law.

11.22.3 The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction and development of the Property by OWNER, its successors or assigns. OWNER shall be solely responsible for determining and effectuating compliance with such laws.

11.22.4 OWNER, ON BEHALF OF ITSELF, ITS SUCCESSORS, AND ASSIGNS, WAIVES AND RELEASES CITY FROM ANY RIGHT OF ACTION THAT MAY BE AVAILABLE TO OWNER PURSUANT TO LABOR CODE SECTION 1781 OR THE DAVIS BACON ACT. RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 11.22, OWNER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542, WHICH READS AS FOLLOWS: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

INITIALS. BY INITIALING BELOW, OWNER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES:

_____
(Owner's Initials)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT PDA23-006

"OWNER"

LEGACY LAND PARTNERS LLC, a Florida limited liability company

By: _____
Name:
Its: _____

Date: _____

JAB MILL CREEK LLC, a Florida limited liability company

By: _____
Name:
Its: _____

Date: _____

"CITY"

CITY OF ONTARIO

By:_____
Scott Ochoa
City Manager

Date: _____

ATTEST:

_____
City Clerk, Ontario

APPROVED AS TO FORM:

BEST BEST KRIEGER, LLP

_____
City Attorney

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 20_____, before me,_____,
Date *Insert Name and Title of the Officer*

personally appeared _____
Name(s) of Signer(s)

_____,
who proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____
Signature of Notary Public

Place Notary Seal Above

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 20_____, before
me,_____,
Date *Insert Name and Title of the Officer*

personally appeared

_____
Name(s) of Signer(s)

_____
_____, who proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____
Signature of Notary Public

Place Notary Seal Above

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

Legal Description of Property

REAL PROPERTY IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA.

ALL OF LOT "G", AND LOT "L SOUTH" OF TRACT MAP NO. 20134, IN THE CITY OF ONTARIO, FILED IN BOOK 357 OF TRACT MAPS AT PAGES 23 THROUGH 33, INCLUSIVE, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, TOGETHER WITH PARCEL 1 OF CERTIFICATE OF COMPLIANCE NO. CC 22-003 RECORDED 06/16/2023 AS DOC# 2023-0149702 OF OFFICIAL RECORDS OF SAID COUNTY AND STATE.

THIS DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION.

02/05/2025

GERALD R. ANDERSON, LS 4400 DATE

EXPIRES 09/30/25



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

JN X100-019_XLD-067

EXHIBIT "B"
TO DEVELOPMENT AGREEMENT

Map showing Property and its location

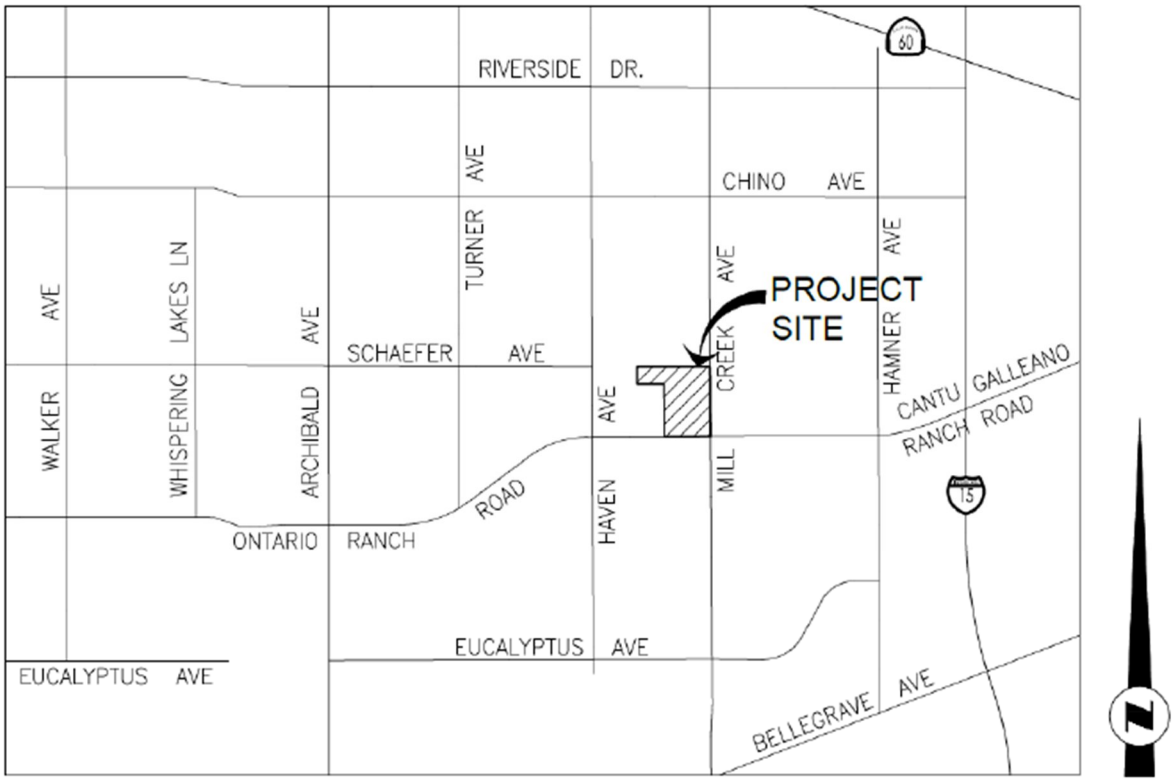


EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Existing Development Approvals

On October 23, 2007 the Planning Commission:

a) Issued Resolution No. PC07-125 recommending City Council certification of the Rich-Haven Specific Plan EIR (SCH#2006051081).
b) Issued Resolution No. PC07-127 recommending to City Council approval of the Rich-Haven Specific Plan (File No. PSP05-004).

On December 4, 2007, the City Council:

a) Issued Resolution No. 2007-145 certifying the Rich-Haven Specific Plan EIR (SCH#2006051081).
b) Adopted Ordinance No. 2884 approving the Rich-Haven Specific Plan.

On February 23, 2016, the Planning Commission:

a) Issued Resolution No. PC16-003 recommending City Council adoption of an Addendum to the Rich-Haven EIR.
b) Issued Resolution PC16-004 recommending approval of the Rich-Haven Specific Plan Amendment (File No. PSPA16-001).

On March 15, 2016, the City Council:

a) Issued Resolution No. 2016-024 for the adoption of an Addendum (File No. PSPA16-001) to the Rich-Haven Specific Plan EIR.
b) Issued Resolution No. 2016-025 approving an Amendment (File No. PSPA16-001) to the Rich-Haven Specific Plan.

On January 23, 2018, the Planning Commission:

a) Issued Resolution No. PC18-014 recommending City Council adoption of an Addendum to the Rich-haven EIR.
b) Issued Resolution No. PC18-015 recommending to City Council adoption of the Rich-Haven Specific Plan Amendment (File No. PSPA16-005).

On February 20, 2018, the City Council:

a) Issued Resolution No. 2018-017 for the adoption of an Addendum (File No. PSPA16-005) to the Rich-Haven Specific Plan EIR.
b) Issued Resolution No. 2018-018 approving an Amendment (File No. PSPA16-005) to the Rich-Haven Specific Plan.

EXHIBIT "D"
TO DEVELOPMENT AGREEMENT

Existing Land Use Regulations

These documents are listed for reference only:

1. The Rich-Haven Specific Plan (File No. PSP05-004) Environmental Impact Report, Resolution No. 2007-145.

2. The Rich-Haven Specific Plan (File No. PSP05-004), Ordinance No. 2884.

3. Addendum to the Rich-Haven Specific Plan (File No. PSPA16-001) Environmental Impact Report, Resolution No. 2016-024.

4. Amendment to the Rich-Haven Specific Plan (File No. PSPA16-001), Resolution No. 2016-025.

5. Addendum to the Rich-Haven Specific Plan (File No. PSPA16-005) Environmental Impact Report, Resolution No. 2018-017.

6. Amendment to the Rich-Haven Specific Plan (File No. PSPA16-005), Resolution No. 2018-018.

7. City of Ontario Municipal Code
    a. Six – Sanitation & Health
    b. Seven – Public Works
    c. Eight – Building Regulations
    d. Nine – Development Code
    e. Ten – Parks & Recreation

EXHIBIT "E"
TO DEVELOPMENT AGREEMENT

Description of Required Infrastructure Improvements

OWNER shall design, construct, and complete the following Street, Storm Drain (SD), Potable Water (PW), Recycled Water (RW), and Fiber Optic (FO) improvements, prior to OWNER's request for any final certificate of occupancy permit for any building within the Property.

Street (ST) Improvements

a. ST improvements on Mill Creek Avenue, between the northerly project limits to Ontario Ranch Road.
b. ST improvements on Ontario Ranch Road, between the Sunrise Avenue and Mill Creek Avenue.
c. Modify Traffic Signal at Mill Creek Avenue and Ontario Ranch Road.

Potable Water (PW) Improvements

a. PW on Mill Creek Avenue, between Chino Avenue and Ontario Ranch Road.

Recycled Water (RW) Improvements

a. RW on Mill Creek Avenue, between Chino Avenue and Ontario Ranch Road.
b. RW on Chino Avenue, between Haven Avenue and Mill Creek Avenue.

Fiber Optic (FO) Improvements

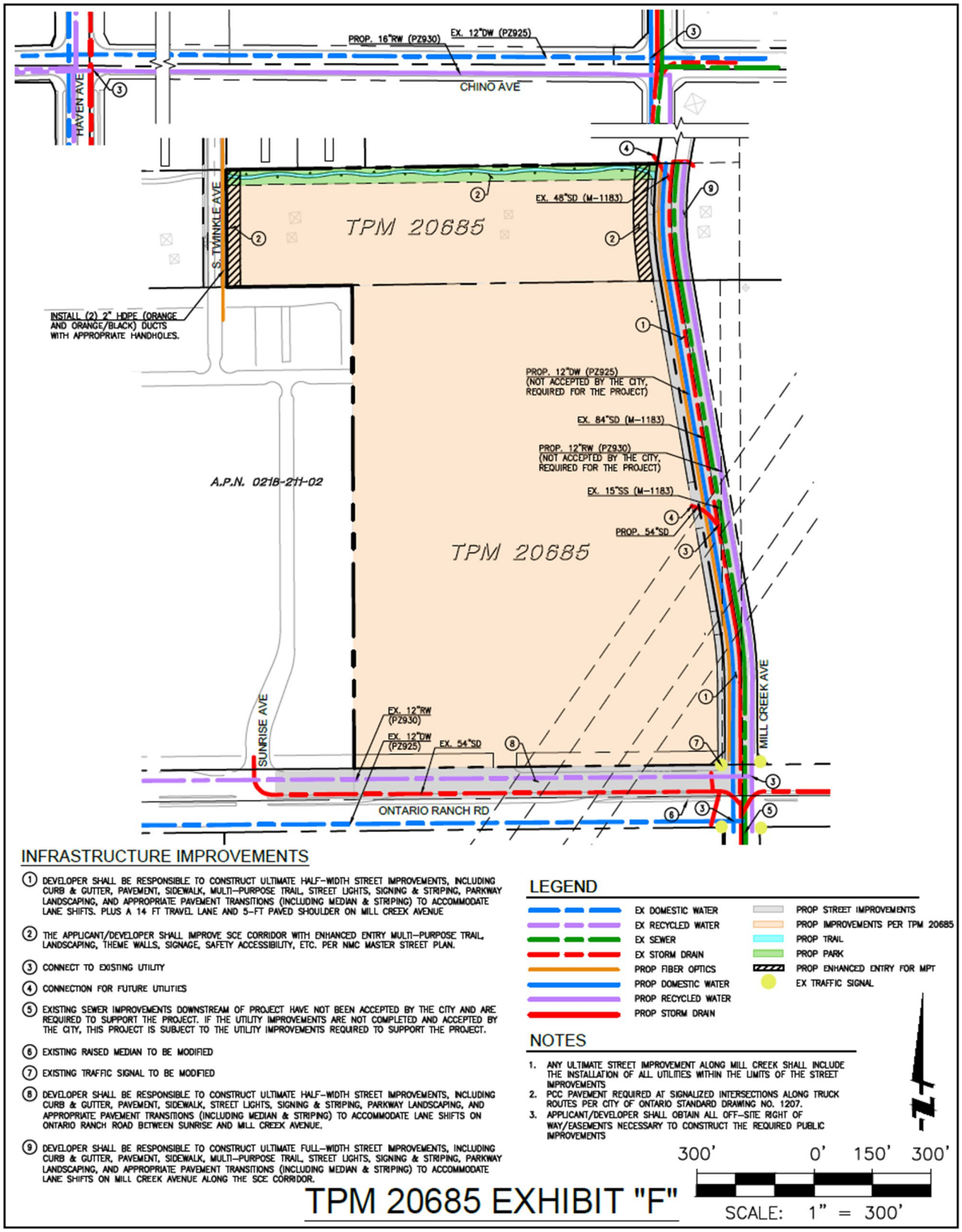
a. FO on Mill Creek Avenue, between the northerly project limits and Ontario Ranch Road.
a. FO on South Twinkle Avenue along the SCE corridor connecting existing FO.

Trail Improvements

a. SCE corridor improvements, between Twinkle Avenue and Mill Creek Avenue.

EXHIBIT “F”
TO DEVELOPMENT AGREEMENT

Required Infrastructure Improvements



INFRASTRUCTURE IMPROVEMENTS

1. DEVELOPER SHALL BE RESPONSIBLE TO CONSTRUCT ULTIMATE HALF-WIDTH STREET IMPROVEMENTS, INCLUDING CURB & GUTTER, PAVEMENT, SIDEWALK, MULTI-PURPOSE TRAIL, STREET LIGHTS, SIGNING & STRIPING, PARKWAY LANDSCAPING, AND APPROPRIATE PAVEMENT TRANSITIONS (INCLUDING MEDIAN & STRIPING) TO ACCOMMODATE LANE SHIFTS. PLUS A 14 FT TRAVEL LANE AND 5-FT PAVED SHOULDER ON MILL CREEK AVENUE
2. THE APPLICANT/DEVELOPER SHALL IMPROVE SCE CORRIDOR WITH ENHANCED ENTRY MULTI-PURPOSE TRAIL, LANDSCAPING, THEME WALLS, SIGNAGE, SAFETY ACCESSIBILITY, ETC. PER NMC MASTER STREET PLAN.
3. CONNECT TO EXISTING UTILITY
4. CONNECTION FOR FUTURE UTILITIES
5. EXISTING SEWER IMPROVEMENTS DOWNSTREAM OF PROJECT HAVE NOT BEEN ACCEPTED BY THE CITY AND ARE REQUIRED TO SUPPORT THE PROJECT. IF THE UTILITY IMPROVEMENTS ARE NOT COMPLETED AND ACCEPTED BY THE CITY, THIS PROJECT IS SUBJECT TO THE UTILITY IMPROVEMENTS REQUIRED TO SUPPORT THE PROJECT.
6. EXISTING RAISED MEDIAN TO BE MODIFIED
7. EXISTING TRAFFIC SIGNAL TO BE MODIFIED
8. DEVELOPER SHALL BE RESPONSIBLE TO CONSTRUCT ULTIMATE HALF-WIDTH STREET IMPROVEMENTS, INCLUDING CURB & GUTTER, PAVEMENT, SIDEWALK, STREET LIGHTS, SIGNING & STRIPING, PARKWAY LANDSCAPING, AND APPROPRIATE PAVEMENT TRANSITIONS (INCLUDING MEDIAN & STRIPING) TO ACCOMMODATE LANE SHIFTS ON ONTARIO RANCH ROAD BETWEEN SUNRISE AND MILL CREEK AVENUE.
9. DEVELOPER SHALL BE RESPONSIBLE TO CONSTRUCT ULTIMATE FULL-WIDTH STREET IMPROVEMENTS, INCLUDING CURB & GUTTER, PAVEMENT, SIDEWALK, MULTI-PURPOSE TRAIL, STREET LIGHTS, SIGNING & STRIPING, PARKWAY LANDSCAPING, AND APPROPRIATE PAVEMENT TRANSITIONS (INCLUDING MEDIAN & STRIPING) TO ACCOMMODATE LANE SHIFTS ON MILL CREEK AVENUE ALONG THE SCE CORRIDOR.

LEGEND

- EX DOMESTIC WATER
- EX RECYCLED WATER
- EX SEWER
- EX STORM DRAIN
- PROP FIBER OPTICS
- PROP DOMESTIC WATER
- PROP RECYCLED WATER
- PROP STORM DRAIN
- PROP STREET IMPROVEMENTS
- PROP IMPROVEMENTS PER TPM 20685
- PROP TRAIL
- PROP PARK
- PROP ENHANCED ENTRY FOR MPT
- EX TRAFFIC SIGNAL

NOTES

1. ANY ULTIMATE STREET IMPROVEMENT ALONG MILL CREEK SHALL INCLUDE THE INSTALLATION OF ALL UTILITIES WITHIN THE LIMITS OF THE STREET IMPROVEMENTS
2. PCC PAVEMENT REQUIRED AT SIGNALIZED INTERSECTIONS ALONG TRUCK ROUTES PER CITY OF ONTARIO STANDARD DRAWING NO. 1207.
3. APPLICANT/DEVELOPER SHALL OBTAIN ALL OFF-SITE RIGHT OF WAY/EASEMENTS NECESSARY TO CONSTRUCT THE REQUIRED PUBLIC IMPROVEMENTS

300' 0' 150' 300'

SCALE: 1" = 300'

TPM 20685 EXHIBIT "F"

EXHIBIT "G"
TO DEVELOPMENT AGREEMENT

FORM OF CERTIFICATE OF NET MDD AVAILABILITY

Pursuant to Section ___ of this Agreement between the City of Ontario, a California municipal corporation, and _____, a _____ company, hereinafter called "OWNER", the terms and definitions of which are hereby incorporated herein by this reference and hereinafter called "Agreement", the City of Ontario hereby certifies based on CITY receipt of payment of OWNER's share of the funding for the Phase 2 Water Improvements, that OWNER is entitled to the following Net MDD Water Availability.

Amount of Net MDD _____ gpm

_____
Scott Ochoa, City Manager

Dated:_____

EXHIBIT "H"
TO DEVELOPMENT AGREEMENT

FORM OF CERTIFICATE OF REGIONAL DIF CREDIT

Pursuant to Section 4.5.2 of this Agreement by and between the City of Ontario and _____, dated _____, 201_, the terms and definitions of which are hereby incorporated herein by this reference and hereinafter called the "Development Agreement', the City of Ontario hereby certifies that OWNER is entitled to the following amount and nature of DIF Credits in the Regional Water DIF Infrastructure Category:

Amount of Credit: $_____

_____
Scott Ochoa, City Manager

Dated:_____

EXHIBIT"I-1"
TO DEVELOPMENT AGREEMENT

ONTARIO RANCH
WATER SUPPLY PHASING PLAN

Phase 2	Water Availability Equivalency	Estimated Net MDD Available[1]
Phase 2 A		
Supply & Storage		
1. 1 - Additional Ground Water Well and Collection lines - Design and Construction	8,250 gpm[2]	**7,750 gpm**[2]
Pipelines (Transmission & Distribution)[2]		
2. 925 Zone Transmission lines – Design and Construction		
3. Temporary Pressure Reducing Station[3] – Design and Construction		
Phase 2B		
Supply & Storage		
4. 1 – Additional Ground Water Well and Collection lines – Design and Construction	10,500 gpm[2]	**9,860 gpm[2]**
5. 1 – 6 million gallon Reservoir – 925 Zone – Design and Construction		

(1) Upon Completion of the construction of all of the improvements described for each Phase a Certificate of Net MDD Availability shall be issued to Developer for the corresponding amount of Net MDD. Net MDD means the maximum daily demand on the potable water supply, net of the water requirements for public schools and parks. The Water Availability Equivalency includes the estimated requirements for public schools and parks. The amount of Net MDD specified is the cumulative amount for which building permits may be issued upon funding of the corresponding and all preceding Phases of improvements.

(2) The ability of a particular development to utilize Net MDD assigned to it by the Developer will require the completion of design and construction of Master-planned potable and recycled water transmission and distribution pipelines for the respective pressure zone. Other factors may include its location, the particular land use and Water Availability Equivalents assigned to it as specified in Exhibit C-2.

(3) Pressure reducing stations are a component of the pipeline transmission and distribution system.

EXHIBIT "I-2"

Available Water Supply - See Exhibit C-1R for Net MDD Available

Table A - Water Demand Equivalents By Land Use

The Ontario Plan	Potable Water			Recycled Water	
Land Use	Water Demand Factor (ADD)		Water Demand Equivalents (WDE)[2]	Recycled Water Demand Factor[1] (ADD)	Recycled Water Demand Of Total Water Demand
	(gpd/du)	(gpd/ac)	(gpm/unit)	(gpd/ac)	(%)
Detached Dwellings (less than 5 units per acre)	544		0.57	900	28%
Detached or Attached Dwellings (between 5 and 11 units per acre)	464		0.48	1,000	21%
Attached Dwellings (between 11 and 25 units per acre)	323		0.34	1,500	18%
High Density Dwellings (25+ units per acre)	152		0.16	1,500	27%
Commercial Lodging	150		0.16	1,700	50%
Retail/Services Uses		2,200	2.29	2,300	51%
Office Uses		3,400	3.54	2,300	40%
Business Park Uses		2,200	2.29	2,200	50%
Industrial Uses		2,000	2.08	2,200	52%
Institutional Use		2,200	2.29	1,600	42%
Parks		1,000	1.04	1,400	58%
Schools		3,500	3.65	1,600	31%

[1]Recycled Water Demands include irrigation for right-of-way (medians and parkways), neighborhood edge, pocket parks, and common areas.

[2] The WDE is based on the Maximum Day Demand (MDD) with a peaking factor of 1.5 in the NMC for all land use categories.

Table B - Example Water Supply Calculation

Land Use	Acres[1] (gross)	Residential Units	WDE Factor (gpm)	Potable MDD (gpm)	Recycled Water ADD (gpm)
Development					
Detached Dwellings (less than 5 units per acre)	1,284	5,061	0.57	2,868	803
Detached or Attached Dwellings (between 5 and 11 units per acre)	369	2,530	0.48	1,223	256
Attached Dwellings (between 11 and 25 units per acre)	194	3,410	0.34	1,147	202
Retail/Services Uses (per acre)[2]	104		2.29	239	166
TOTAL	**1,950**	**11,001**		**5,477**	**1,428**

Three (3) Wells Are required to Support this example, assuming each well produces 2,000 gpm and connection to the Recycled Water System maximizing Recycled Water Use.

[1] Residential Acres are estimated based on the weighted average derived from the average number of units per land use category.

[2] Commercial acreage is calculated from a total square footage of 1,361,000 SF with an average Floor to Area Ratio (FAR) of 0.30 for commercial services in The Ontario Plan.

Exhibit "JI"

FORM OF PLUME DISCLOSURE LETTER

CITY OF ONTARIO

ONTARIO MUNICIPAL UTILITIES COMPANY

PAUL S. LEON
MAYOR

DEBRA DORST-PORADA
MAYOR PRO TEM

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

AL C. BOLING
CITY MANAGER

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT BURTON
UTILITIES GENERAL MANAGER

March 2017

DISCLOSURE NOTICE
SOUTH ARCHIBALD TRICHLOROETHYLENE PLUME

Dear Property Owner/Developer/Applicant:

The City of Ontario ("City") has approved or will be approving development in the Ontario Ranch area in the next few years, subject to the appropriate and required statutory process. This letter is intended to serve as notice to all potential property owners of the existence of a groundwater plume, known as the South Archibald Trichloroethylene (TCE) Plume which may exist in, under or near owner's property.

The groundwater plume is in an area in the central Chino Basin south of the Pomona Freeway, west of Turner Avenue, east of Grove Avenue, and north of Kimball Avenue. The plume primarily consists of TCE, a discontinued industrial solvent, and is subject to a clean-up under the oversight and direction of the Santa Ana Regional Water Quality Control Board ("Regional Board").

The Regional Board's approved clean-up procedure involves the removal and treatment of groundwater containing TCE via groundwater wells to reduce the plume concentrations and control its migration. In addition, the City is providing potable water supplies for domestic purposes to residences with private domestic wells affected by the plume. Finally, the Regional Board will continue to monitor all impacted areas and private domestic wells to ensure that residents' health and the environment are properly safeguarded. These remedial actions are documented in a Remedial Action Plan approved by the Regional Board in September 2016.

Further and current information may be found on the Regional Board's Geotracker website at https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000004658.

Property owners may wish to include this letter as a part of a Real Estate Transfer Disclosure under California Civil Code Section 1102 et seq.

1425 SOUTH BON VIEW - ONTARIO, CALIFORNIA 91761-4406 - (909) 395-2605 - FAX (909) 395-2601

CITY OF ONTARIO *Agenda Report* **June 3, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Utilities Prepared By: Courtney Jones Staff Member Presenting: Scott Burton, Utilities General Manager Reviewed By: Dennice Raygoza, Albert G Gastelum, Michael Sigsbee Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 22

SUBJECT: AUTHORIZATION TO ISSUE A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES TO EVALUATE THE FEASIBILITY OF WASTEWATER AND RECYCLED WATER SERVICE ALTERNATIVES

RECOMMENDATION: That the City Council authorize the City Manager, or designee, to issue a Request for Qualifications (RFQ) to solicit proposals from qualified firms to evaluate the feasibility of wastewater and recycled water service alternatives.

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

FISCAL IMPACT: There is not a direct fiscal impact associated with this action. Award for services and funding for the proposed professional services will be brought back for City Council approval as needed.

BACKGROUND & ANALYSIS: At its May 6, 2025 meeting, City Council directed Staff to prepare an agenda item to evaluate alternatives to the Inland Empire Utilities Agency (IEUA) for wastewater and recycled water services.

For over 50 years, the City of Ontario has maintained a Regional Sewer Service Contract with the Inland Empire Utilities Agency (IEUA) for wastewater treatment services and recycled water supply based on the City's contractual entitlement. During the parties' efforts to renew this longstanding agreement, IEUA adopted Ordinance Nos. 111, 112, 114, and 115, which impose new terms and conditions of service without honoring the contractual renegotiation process. The City believes these unilateral actions are unconstitutional and unlawful and undermine the parties' historically collaborative efforts to steward the region's water resources to meet future needs. Ontario, in cooperation with other agencies, has initiated litigation against IEUA concerning this and other related matters.

IEUA's unilateral actions have introduced significant uncertainty regarding the long-term future of local wastewater and recycled water services and resources. In response, the City is taking proactive steps to evaluate alternative service models to ensure long-term stability and community benefit. As a part of this effort, the City will issue an RFQ to identify qualified firms to assist in evaluating alternatives. This evaluation will consider but not be limited to the following: compliance with Local Agency Formation Commission requirements, regulatory and environmental review processes, property acquisition needs, financial feasibility, and infrastructure concepts, including the possibility of a Joint Powers Authority formation. This effort represents a critical step towards developing a long-term, self-reliant options and solutions for wastewater and recycled water services. While this evaluation proceeds, the City will continue to assess potential partnerships with neighboring agencies, including IEUA.

The scope of work will include an assessment of specific alternatives, such as the feasibility of constructing satellite treatment facilities in areas of continued development or redirecting existing sewer flows to support the City's recycled water system. As part of this effort, the City will explore infrastructure strategies to address potential service gaps and ensure reliable long-term capacity.

Establishing wastewater treatment facilities is a complex, multi-phase undertaking that requires careful planning, environmental review, community engagement, and regulatory coordination. The RFQ will allow the City to identify and engage firms with the necessary expertise to guide the City through this critical planning effort and ensure long-term service resilience.

CITY OF ONTARIO *Agenda Report* **June 3, 2025**	**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: 23

SUBJECT: AUTHORIZE THE RENEWAL OF THE CITY'S ENTERPRISE RESOURCE PLANNING SOFTWARE, WORKDAY, INC.

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute the renewal to the Master Subscription Agreement (MSA) with Workday, Inc. of Pleasanton, CA, for licensing and maintenance, for a total amount of $12,931,493. Additionally, authorize a 15% contingency amount of $1,939,724 to accommodate annual renewals for two testing and development environments, as well as any unforeseen modules. The total authorization for this agreement amounts to $14,871,217 over a ten-year term.

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 annual subscription licensing and maintenance for Workday software. The proposed ten year MSA has a total contract not-to-exceed amount of $14,871,217, which includes $1,038,220 for FY2025/26, $1,087,787 for FY2026/27, $1,139,788 for FY2027/28, $1,194,341 for FY2028/29, $1,251,573 for FY2029/30, $1,311,616 for FY2030/31, $1,374,611 for FY2031/32, $1,440,703 for FY2032/33, $1,510,047 for FY2033/34, $1,582,807 for FY2034/35 and a 15% contingency amount of $1,939,724 which includes $800,000 for the annual renewals for two testing and development environments, and $1,139,724 for additional unforeseen modules. The fixed billing rates specified in the current MSA will determine the amount charged for services and reflect the actual services provided. If approved, appropriations will be added to the future years' budgets consistent with the annual budget adoption process.

BACKGROUND & ANALYSIS: The City of Ontario has strategically invested in modernizing its operations by adopting Workday software solutions. Starting with the Human Resources (HR) and Payroll Software Solution using Workday's platform in May 2015, the City Council approved expansions to the system. Workday's Financial Enterprise Resource Planning (ERP), Timekeeping, and Absence modules were added in July 2020 and August 2021, respectively.

Implementing Workday's comprehensive suite of solutions enables the City to optimize its business processes, streamline workflows, and deliver enhanced services to our constituents. Workday

integrates Accounting, Accounts Payable, Purchasing, Payroll, Human Capital Management (HCM), Timekeeping and Absence modules, and a centralized cashiering system, and has proven instrumental in driving efficiency and modernizing our operations.

The City's collaboration with Workday signifies a commitment to embracing innovative technologies that empower its workforce and elevate service delivery. Workday remains a strategic ally in the City's pursuit of operational excellence and sustained success as it evolves and grows.

To that end, the proposed order form represents an opportunity for the City to facilitate growth and expansion. In addition to the listed modules, it adds the Learning module that will allow the City to centralize training and development management and tracking. This new module enables improvements in compliance, performance, and employee development. Additionally, the order form is a ten-year commitment that reduces the average annual costs and provides contingency funding for additional user licensing to ensure that the City remains well-equipped to support and empower its employees with modern, user-friendly tools and resources. Staff requests City Council approval for a contract not-to-exceed amount of $14,871,217 over ten years to continue and expand the use of Workday with the Learning module.

ORDER FORM 00495054.0
and MSA AMENDMENT

Customer Name	City of Ontario
Workday Entity	Workday, Inc. 6110 Stoneridge Mall Road Pleasanton, CA 94588
MSA Effective Date	May 11, 2015
MSA Amendment	This Order Form is subject to and governed by the referenced MSA, as amended, **including the UMSA Amendment attached hereto.**
Product Terms	Service SKUs are subject to the applicable Product Terms available at https://www.workday.com/en-us/legal/universal-contract-terms-and-conditions/index.html, which are incorporated herein by reference.
MSA Amendment Effective Date	July 8, 2025
Order Form Effective Date	July 8, 2025
Order Term	July 8, 2025 through July 7, 2035
Currency	USD
Total Fees	12,931,493

Payment Schedule Table

Payment #	Payment Due Date	Payment Amount
1	Due in accordance with the MSA, invoiced upon Order Form Effective Date	1,038,220
2	Due on First anniversary of the Order Term start date	1,087,787
3	Due on Second anniversary of the Order Term start date	1,139,788
4	Due on Third anniversary of the Order Term start date	1,194,341
5	Due on Fourth anniversary of the Order Term start date	1,251,573
6	Due on Fifth anniversary of the Order Term start date	1,311,616
7	Due on Sixth anniversary of the Order Term start date	1,374,611
8	Due on Seventh anniversary of the Order Term start date	1,440,703
9	Due on Eighth anniversary of the Order Term start date	1,510,047
10	Due on Ninth anniversary of the Order Term start date	1,582,807
	Total Payment Amount	**12,931,493**

For the avoidance of doubt, the Payment Schedule Table will be used for invoicing purposes.

Subscription Fees Table

Subscription Period	Date Range	Subscription Fee
1	July 8, 2025 through July 7, 2026	1,038,220
2	July 8, 2026 through July 7, 2027	1,087,787
3	July 8, 2027 through July 7, 2028	1,139,788
4	July 8, 2028 through July 7, 2029	1,194,341
5	July 8, 2029 through July 7, 2030	1,251,573
6	July 8, 2030 through July 7, 2031	1,311,616
7	July 8, 2031 through July 7, 2032	1,374,611
8	July 8, 2032 through July 7, 2033	1,440,703
9	July 8, 2033 through July 7, 2034	1,510,047
10	July 8, 2034 through July 7, 2035	1,582,807
	Total Subscription Fee	**12,931,493**

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Subscription Rights Table

SKU	Service	Pricing Metric	Annual Subscription Rights
HCM	Human Capital Management	FSE*	Full Enterprise (incl. Former Workers with Access)
CCB	Cloud Connect for Benefits	FSE*	Full Enterprise
USP**	Payroll for United States	FSE*	United States-based Employees only
LRN	Learning	FSE*	Full Enterprise
CCLRN	Cloud Connect for Learning	FSE*	Full Enterprise
FIN	Core Financials	FSE*	Full Enterprise
GM	Grants Management	FSE*	Full Enterprise
PLNF	Financial Planning	FSE*	Full Enterprise
PRA	Prism Analytics	FSE*	Full Enterprise
PRJT	Projects	FSE*	Full Enterprise
TT	Time Tracking	FSE*	Full Enterprise
EXP	Expenses	FSE*	Full Enterprise
PRO	Procurement	FSE*	Full Enterprise
INV	Inventory	FSE*	Full Enterprise

*For Pricing Metric details see the Full-Service Equivalent ("FSE") Count Table below.
**Customer agrees that the number of FSE Workers for all Payroll Services and any Workday payroll connector will always be equal to the total number of FSE Workers for HCM.

Full-Service Equivalent ("FSE") Count Table

FSE Population Category	Baseline FSE Count
Full Enterprise (incl. Former Workers with Access)	1,553
Full Enterprise	1,552
United States-based Employees only	1,552

Customer Contact Information

	Billing, In Care of	Subscriptions Contact
Contact Name	Toni McNaughton	Toni McNaughton
Street Address City/Town, State/Region/County, Zip/Post Code, Country	303 East "B" St Ontario California 91764 United States	303 East "B" St Ontario California 91764 United States
Phone/Fax #	(909) 395-2064	(909) 395-2064
Email (required)	tmcnaughton@ontarioaca.gov	tmcnaughton@ontarioaca.gov

For customers based in the U.S., certain portions of the Service included in this Order Form can be used with optional downloadable software components ("**Downloadable Components**"). Any applicable tax for Downloadable Components will be separately presented on the invoice based on a valuation attributed to the Downloadable Components. As of the Order Form Effective Date, there is no value attributed to any of the Downloadable Components.

Customer agrees that any product SKUs subscribed to by Customer under this or other active or future order forms shall be subject to the MSA referenced herein and to the applicable Product Line(s) and Product Terms rather than the Product Addenda attached to any other Order Forms. This Order Form is the Signature Document and incorporates all documents linked and/or attached, **including the UMSA Amendment attached hereto**. Customer may not withhold, reduce, or set-off fees owed under this Order Form. All purchase order forms, tax exemption certificates and FST/VAT/business registration, supplier setup requests, and invoice inquiries shall be submitted to Accounts.Receivable@workday.com.

IN WITNESS WHEREOF, this Order Form is entered into as of the Order Form Effective Date.

City of Ontario	**Workday, Inc.**
Signature	Signature
Name	Name
Title	Title
Date Signed	Date Signed

ADDITIONAL ORDER FORM TERMS ADDENDUM

1. General.
Unless otherwise defined herein, capitalized terms used in this Order Form have the same meaning as set forth in the MSA. The Total Subscription Fee is based on the maximum indicated in the Subscription Rights Table and any use in excess of such maximum(s) indicated will be subject to the Growth and Expansion section herein. Annual Subscription Rights limits may not be decreased during the Order Term.

2. FSE Metric Calculation and Worker Category Definitions.
The total FSE Count is calculated by categorizing each Worker to one of the Worker Categories below, multiplying the applicable number of Workers by the Applicable Percentage, and then adding the FSE Count for each Worker Category.

FSE Calculation Table:

Worker Category	Total Workers	Applicable Percentage	FSE Count
Full Time Employees	1,430	100.0%	1,430
Part-Time Employees	477	25.0%	120
Associates	11	12.5%	2
Former Workers with Access	4	2.5%	1
Total FSE Count:	**1**,922		**1,55**3

The Service may be used by Customer only for the Worker Categories listed above and as defined below.

"**Full-Time Employee**" is an employee of Customer regularly scheduled for more than twenty hours per week regardless of the method of payment or actual hours worked, whether or not such employee is eligible to receive employee benefits in accordance with Customer's internal standard practices. A Full-Time Employee will be considered non-temporary if they are hired to work for a period of more than 3 months in a given year.

"**Part-Time Employee**" is an employee of Customer regularly scheduled for twenty hours per week or less regardless of the method of payment or actual hours worked, whether or not such employee is eligible to receive employee benefits in accordance with Customer's internal standard practices. A Part-Time Employee will be considered non-temporary if they are hired to work for a period of more than 3 months in a given year.

"**Associate**" is an individual not counted as a Full-Time or Part-Time Employee but in one of the following categories: temporary employees, independent contractors and affiliated non-employees including, but not limited to, volunteers and vendors whose Active Records are in the Service.

"**Former Worker with Access**" is a former worker that continues to have access to the Service through the Employee Self-Service features. Former Workers with Access are only included in the Subscription Rights for the Human Capital Management Service.

Former Workers with Static Records shall be excluded from the FSE calculation but may continue to be maintained in the Service. "**Static Records**" are records in the Service for workers with whom Customer has no further relationship and to whom Customer does not provide self-service access. Static Records include former worker records used solely for historical reference. All other worker records are "**Active Records**".

3. Growth and Expansion.
A. Annual Reporting Obligation.
Customer will report to subscriptions@workday.com no earlier than 90 days and no later than 60 days ("**Annual Reporting Period**") based on the number of Active FSE Worker Records and Additional Metrics provided below, as applicable, as of 90 days ("**Count Date**") prior to each anniversary of the Order Term start date. Customer agrees to pay fees for any excess Subscription Rights at the Expansion Rates

described below to cover the period from the anniversary of the Order Term start date immediately following the Annual Reporting Period through the subsequent anniversary date (each a "**Reporting Cycle**"). Customer understands that an order form will be required to document any annual fees due pursuant to this section in its entirety. Such order form must be executed no later than 30 days prior to each anniversary of the Order Term start date until the Renewal (as defined below), at which time the Annual Reporting Obligation will be incorporated into the Renewal Term.

a. FSE Metric Reporting.

Reporting for Active FSE Worker Records is based on the additional FSE Workers which are defined as any Active FSE Worker records exceeding the Baseline FSE Count.

FSE Expansion Table

SKU	Annual FSE Expansion Rate
All Service SKU(s) with the FSE Pricing Metric in the Subscription Rights Table unless stated otherwise within this table	804.88
USP	153.45
CCB	61.38

B. Growth Event Reporting Obligation.

In addition to the Annual Reporting Obligation, if Customer exceeds any Subscription Rights by 5% or more ("Growth Event") as a result of any one-time addition of Workers (e.g., M&A), Customer must report the excess Subscription Rights to subscriptions@workday.com within 30 days of the Growth Event. Customer agrees to pay the applicable annual fees from the start date of the Growth Event through the subsequent anniversary date which will be documented under a separate order form.

4. Renewal.

Customer may renew its subscription for the Service by notifying Workday prior to the end of the Order Term and Workday will generate a new Order Form for a single three-year renewal term ("**Renewal Term**") at the below pricing. Such order form must be executed no later than 30 days prior to the end of this Order Term.

Renewal Table

Renewal Term Years	Annual Renewal Subscription Fees
1st year of Renewal Term	Base Subscription Fee x (1+ (5% Innovation Index + Renewal Term CPI))
2nd year of Renewal Term	Previous Year Subscription Fee x (1+ (5% Innovation Index + Renewal Term CPI))
3rd year of Renewal Term	Previous Year Subscription Fee x (1+ (5% Innovation Index + Renewal Term CPI))

The "**Base Subscription Fee**" means the Subscription Fee for the final Subscription Period listed in the Subscription Fees Table. If the final Subscription Period is a partial year, the Base Subscription Fee is the annualized value of the final Subscription Period. The Expansion Rates for the Renewal Term shall be increased by the same percentage as the Annual Renewal Subscription Fees per year in the Renewal Table. Annual Renewal Subscription Fees are valid only if Customer's Base Subscription Fee is equal to or greater than the Base Subscription Fee defined herein. Fees for the Renewal Term are due by the first day of each corresponding year of the Renewal Term. Individual payments shall match the Annual Renewal Subscription Fee as defined in the Renewal Table above. If Customer wishes to procure any additional SKUs or Subscription Rights for a Renewal Term that are not included in the Base Subscription Fee, fees for those items will be in addition to the fees anticipated under this section.

5. Additional Definitions (as applicable).

"**CPI**" means the consumer price index established by the United States Department of Labor for All Urban Consumers, US City Average, All Items (change in annual average).

"Renewal Term CPI" means CPI established for the calendar year prior to the most recent February 1 preceding the Renewal Term, if a positive number.

"**Innovation Index**" means the fixed annual rate of increase in Subscription Fees based on improved Service functionality and performance that is a result of Workday's efforts and investment in product development and infrastructure.

6. Additional Scope of Use Terms.

Prism Analytics.

1. Calculation of Usage.

Customer's subscription to PRA herein permits Customer to use PRA up to 100M of Published Data Rows for each applicable Instance (implementation and production). "Published Data Rows" are the number of data rows in total datasets designated as "published" (and therefore capable of being reported upon) in the Customer's PRA data catalog. Published Data Rows are measured separately for each Instance. Workday shall provide Customer with detailed instructions on how to monitor Customer's own usage in PRA and how to manage Published Data Rows. Customer may monitor its own usage in PRA and manage Published Data Rows by unpublishing, filtering and republishing, or deleting data in order to keep its usage of PRA below the Published Data Rows limits set forth above, or Customer may purchase additional capacity (PRACUs, as defined below) for use in Customer's applicable Instance which expands the allowable Published Data Rows. Customer's "Data Limit" for each Instance is the sum of the limit set forth above and all current applicable Capacity Unit subscriptions purchased by Customer for such Instance. Workday reserves the right to monitor the number of Published Data Rows by Instance used by Customer, and if at any time Customer exceeds its Data Limit applicable to Published Data Rows for a particular Instance, then Customer may experience reduced performance of the Instance. If Customer continues to exceed its Data Limit for more than thirty (30) days after receiving a notification from Workday of such overage, through Workday's customer care offering or other reasonable means, then Workday will (i) require Customer to enter into a new Order Form at a prorated amount based on the fees per PRACU set forth in this Order Form, for the applicable number of additional PRACUs necessary to cover the difference between the measured usage and Customer's current Data Limit for that Instance, or (ii) limit the addition of data to the applicable Instance and the number of data rows that may be published. A Capacity Unit will increase Customer's current Data Limit for the applicable Instance for the entirety of the remainder of the applicable Order Term. Pricing of Capacity Units is dictated by the terms set forth herein.

2. Workday Prism Analytics Capacity Units ("PRACU").

Each PRACU will increase the allowable Published Data Rows for a particular Instance by an additional 100M of Published Data Rows with an annual fee of $40,000 per PRACU for each Year (fees for any partial Year of the Order Term will be prorated, on a monthly basis, based on such annual fee). A PRACU term begins on the PRACU Order Form Effective Date and ends on the last day of the then-current Order Term for Prism Analytics. PRACU charges will be invoiced in accordance with the MSA. An Order Form will be required for the purchase of any PRACUs.

WORKDAY SERVICE SKU DESCRIPTIONS ADDENDUM

Customer may only use the Service SKUs subscribed to as indicated in the body of this Order Form.

Service	Product Line	Description
Human Capital Management	Human Capital Management	Workday HCM supports an organization in organizing, staffing, paying, and developing its global workforce. Workday HCM includes Global Human Resources Management (Workforce Lifecycle Management, Organization Management, Compensation, Business Asset Tracking, Absence, and Employee Benefits Administration) and Global Talent Management (Goal Management, Performance Management, Succession Planning, and Career and Development Planning). Workday HCM includes connectors that facilitate integration to select Workday partners that provide capabilities including: recruiting, learning, time and attendance, and user account provisioning (LDAP/Active Directory).
Cloud Connect for Benefits	Human Capital Management	Cloud Connect for Benefits extends Workday HCM by providing integration to a growing catalog of benefits providers, including: health insurance, health and flexible spending accounts, retirement savings plans, life insurance, AD&D insurance, and COBRA administrators.
Payroll for United States	Payroll	Workday Payroll for US supports the creation and management of Payroll for U.S. employees. Configure earnings, deductions, accumulations, and balances. Identify tax authorities each company wishes to withhold for. Manage worker tax data, payment elections, involuntary withholding orders, and payroll input. Calculate, review/audit, and complete payrolls and settlement runs. Configure and calculate payroll commitments. Workday Payroll includes connectors that facilitate integration to select Workday partners that provide capabilities, including: time and attendance, tax filing, check printing, and direct deposit.
Learning	Talent Management	Workday Learning supports an organization in training and developing its workforce. This includes the ability to manage, organize and deliver learning content using Media Cloud, and to leverage Workday HCM data to create targeted learning campaigns. A variety of learning content is supported - including but not limited to video, packaged third-party content, and user-generated content. Workday Learning also offers the ability to manage certifications and instructor-led course enrollments, and to gather feedback and analytics relating to the learning experience.

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Cloud Connect for Learning	Talent Management	Cloud Connect for Learning extends Workday Learning by providing integrations to third party content providers. This includes the ability to search third party learning course information, access learning courses, and, if and when available, track and retain records. This SKU requires an active subscription to Workday Learning.
Core Financials	Financial Management	Core Financials provides traditional financial management and accounting functionality, including financial management, accounting and reporting, financial consolidation, supplier accounts, customer accounts, business assets, cash management, budgets, contracts, billing, revenue recognition, capital projects and project tracking. Core Financials includes connectors that facilitate integration to select Workday partners that provide capabilities, including customer relationship management, electronic payments and customer payments via credit card.
Grants Management	Financial Management	Workday Grants Management enables organizations to administer and report on awards from the federal government, foundations, or other funding institutions. Workday Grants Management includes functionality to track and manage sponsors, awards, grants, and grant hierarchies. It also includes capabilities to calculate facilities and administration costs, and to bill and report to sponsors.
Financial Planning	Adaptive Planning	Financial Planning provides the ability for Customer to create financial planning models for the purpose of supporting the financial planning process. Workers may interact with the financial planning model for the purposes of data entry, forecasting, reporting, and analysis.
Prism Analytics	Analytics and Reporting	Workday Prism Analytics is an analytics application that provides Workday customers the ability to blend and analyze Workday data and non-Workday data from multiple sources. Workday Prism Analytics includes a data repository for storage and management of data, data preparation tools for transformation and blending of data from various sources, and tools to explore and analyze the data.
Projects	Financial Management	Projects enables organizations to create and manage projects, initiatives, and other types of work. This includes the ability to build project plans and utilize project breakdown structures that include phases, tasks, and milestones as well as plan, staff, and track projects, capital projects, initiatives, and work efforts.
Time Tracking	Workforce Management	Workday Time Tracking supports an organization in collecting, processing, and distributing time data for its global workforce. The Workday Time Tracking module

		includes the following capabilities: basic time scheduling, time entry (hourly, time in/time out), approvals, configurable time calculation rules, project tracking and reporting.
Expenses	Financial Management	Workday Expenses supports employee expense processing. Workday Expenses includes self-service and administrative functions to support employee expense reporting and reimbursement, including expense reports, global expense rules, approvals, reimbursement, credit card integration, spend analytics and project tracking. Workday Expenses also includes connectors that facilitate integration to partners that provide capabilities, including corporate card transactions and support for 'punchout' to suppliers.
Procurement	Spend Management	Workday Procurement includes procure to pay functionality to address spend for goods and services. Manage suppliers, supplier contracts, requisitions, purchase and change orders, receipts, and goods and services sourcing. Maintain purchase items, catalogs, and a supplier portal. Create receipt accruals for approved, but not yet invoiced receipts. Workday Procurement includes connectors that facilitate integration to partners that provide capabilities, including: corporate card transactions, and support for 'punchout' to suppliers.
Inventory	Spend Management	Workday Inventory provides basic functionality for goods procured, stored, consumed and replenished within an organization. Workday Inventory includes the ability to define and place inventory in storage locations, count physical inventory and make necessary adjustments, value items in inventory, assign and manage different units of measure and replenish inventory using automatic re-order points. Workday Inventory is designed for tracking of internally used goods only and does not support use cases for external distribution (e.g., to customers or distributors).

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WORKDAY MSA AMENDMENT
UNIVERSAL TERMS

The purpose of this amendment ("**Universal MSA Amendment**") is to incorporate general terms and conditions from product addenda incorporated via link or attached to Customer's Prior Subscription Order Forms into the main subscription agreement (or similarly titled subscription agreement) between the Customer and Workday ("**MSA**") to serve as the universal terms to be applicable across all Workday Service SKUs. This Universal MSA Amendment supersedes and replaces certain MSA terms, including prior amendments, related to Workday's delivery of the Service, as further set out below. This Universal MSA Amendment is entered into as of the Order Term start date of the Order Form, into which this Universal MSA Amendment is incorporated by reference, or to which it is attached, ("**Amendment Effective Date**") and will remain in effect during the Term of the Agreement. Unless otherwise defined herein, capitalized terms used in this Universal MSA Amendment will have the same meaning as set forth in the Agreement.

1. Definitions.

The following definitions in the MSA are amended as follows:

"**Audit Reports**" means the most recently issued security audit reports prepared by Workday's independent third party auditor and other security relevant assessment reports for the applicable Service as identified in the Product Terms, which may be updated by Workday from time to time, with no update materially decreasing the protections provided by the controls set forth in the applicable Audit Report during the Term.

"Agreement" means this MSA, including the SLA, Security Exhibit, Data Processing Exhibit, Business Associate Exhibit (if applicable), any other exhibits, addenda, or attachments hereto, and any fully executed Order Form (including Product Terms).

"**Improvements**" means all improvements (including verification of such improvements), updates, enhancements (including Enhanced Features), error corrections, bug fixes, prevention of or addressing service or technical problems, release notes, upgrades and changes to the Service and Documentation, as developed by Workday and made generally available for Production use without a separate charge to Customers.

"**Order Form**" means the fully executed ordering document (including Product Terms) under which Customer subscribes to Service application(s) or other services. Order Forms do not include any of the preprinted terms on a Customer purchase order or other terms on a purchase order that are additional or inconsistent with the terms of this Agreement.

"**Production**" means the Customer's use of, or Workday's written verification of the availability of, the Service (a) to administer its users (as identified in the applicable subscription Order Form); (b) to generate data for Customer's books/records; or (c) in any decision support capacity. Production does not include any sandbox, preview, or implementation Instance.

"**Service"** means the applicable Workday software-as-a-service application and Improvements, as described in the Documentation and Product Terms, and subscribed to under an Order Form. For purposes of clarification, Service excludes professional services, support services, training services, and Non-Workday Content.

"**SLA**" means the Production support and service level availability policy for the Service application(s) identified in the applicable Product Terms, which may be updated by Workday from time to time, with no update materially decreasing Workday's responsibilities under the SLA during the applicable Order Term.

The following definitions are hereby added to the MSA:

"**AUP**" means the acceptable use policy for the applicable Service located at https://www.workday.com/en-us/legal/universal-contract-terms-and-conditions/index.html, which may also incorporate by reference acceptable use policies of applicable Workday Subprocessors.

"**Customer Content**" means electronic data or information submitted to the Service by Customer or Authorized Parties.

"**Enhanced Features**" will have the same meaning as set forth in the applicable Product Terms.

"**Instance**" means a unique instance of the Service, with a separate set of Customer Content held by Workday in a logically separated database (i.e., a database segregated through password-controlled access).

"**Loss**" means reasonable attorney's fees and any damages or costs finally awarded or entered into in settlement of a Claim.

"**Non-Workday Content**" means a third-party product, web-based, offline, mobile, or other software application functionality or other content that is provided by Customer or a third party and interoperates with a Workday Service application.

"**Prior Subscription Order Forms**" means subscription Order Form(s) executed by Customer and Workday before the Amendment Effective Date and which are still active as of the Amendment Effective Date.

"**Product Terms**" means the product terms for a specific Service application available at https://www.workday.com/en-us/legal/universal-contract-terms-and-conditions/index.html or attached to the subscription Order Form (for reference only), which may be updated by Workday from time to time; provided that no update will materially decrease the applicable security and privacy commitments and any such changes will not become effective until 30 days after publication of the updated Product Terms.

2. Instance. The term "Tenant" (or such equivalent term) is deleted and replaced by the term "Instance". Any Customer Tenant or data center location terms in the Agreement are hereby deleted. Workday Data Center locations are currently available on Workday Community at Workday Data Centers (https://community-content.workday.com/content/workday-community/en-us/reference/learn/resources/data-center-locations-by-workday-product-offering.html) or a successor site made available to Workday's customers.

3. Customer Content. The term "Customer Data" (or such equivalent term in the MSA) is deleted and replaced with the term "Customer Content". Workday will have the right to use Customer Content only to provide the Service, subject to this Agreement.

4. Customer Obligations. The section in the MSA titled "Customer Obligations" or other similarly titled section is deleted and replaced with the following section:

"**Customer Obligations.** Customer will have sole responsibility for (a) obtaining and verifying it has all authorizations, consents, and rights necessary to use the Service; (b) any Non-Workday Content it installs, uses, or enables; (c) obtaining and verifying it has all authorizations, consents, and rights necessary to use the Service; (d) ensuring compliance with this Agreement and the AUP by its Affiliates and Authorized Parties, and any breach by its Affiliates or Authorized Parties will be deemed a breach by Customer. Customer will take reasonable efforts to prevent unauthorized access to, or use of, the Service, and will notify Workday promptly of any unauthorized access or use. Customer will be responsible for any third-party claim against Workday arising from violations by Customer, its Affiliates or Authorized Parties of the AUP,. Customer will not: (1) use the Service in violation of Laws or the Documentation; (2) in connection with the Service, send or store infringing, obscene, threatening, or otherwise unlawful or tortious material, including material that violates privacy rights; (3) knowingly send or store Malicious Code in connection with the Service; (4) knowingly interfere with or disrupt performance of the Service or the data contained therein; or (5) attempt to gain access to the Service or its related systems or networks in a manner not set forth in the Documentation. During the applicable subscription Term, Workday reserves the right to suspend Customer's access to an applicable Service in the event Workday reasonably determines such action is necessary to preserve the integrity and/or security of such Service or Workday in good faith reasonably determines that Customer has violated the AUP; however, Workday will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to such suspension. Workday will use commercially reasonable efforts to minimize the length and scope of suspension in light of the circumstances. Customer agrees that it is not relying on delivery of future service features or product roadmaps in obtaining subscriptions to any Service."

5. Universal Security Exhibit & Universal Data Processing Exhibit.

a. Universal Security Exhibit. If the MSA is not already subject to the Universal Security Exhibit ("**Security Exhibit**"), then the Security Exhibit currently located at https://www.workday.com/en-us/legal/universal-contract-terms-and-conditions/index.html will supersede and replace all prior versions of security exhibits. All references in the Agreement (including in any Order Form) to "Workday Security Exhibit", "Security Exhibit", "Workday Universal Security Exhibit", or "Universal Security Exhibit" will be deemed to be references to the Security Exhibit. The Security Exhibit may be updated by Workday from time to time. No update will materially decrease the protections provided by the controls set forth in the Security Exhibit during the Term.

b. Universal Data Processing Exhibit.

(i) If the MSA is already subject to the Universal Data Processing Exhibit ("**Data Processing Exhibit**" or "**DPE**") then that DPE will continue to apply, except that the term **"Covered Service**" (as defined in the DPE) will mean (i) any Service provided under the MSA as amended by this Universal MSA Amendment, and/or (ii) any Professional Services.

(ii) If the MSA is not already subject to the DPE, then the DPE currently located at https://www.workday.com/en-us/legal/universal-contract-terms-and-conditions/index.htm (the "**DPE**") will supersede and replace all existing terms in the MSA or separate addenda, exhibit or amendment governing Workday's processing of personal data as a data processor on behalf of Customer, including but not limited to any references in the Customer's Agreement to a Data Processing Exhibit or Data Processing Agreement. All references in the Agreement (including in an Order Form) to a Data Processing Exhibit, Data Processing Agreement, or similar terms, will be deemed to be references to the Data Processing Exhibit. The DPE may be updated by Workday from time to time to comply with applicable Data Protection Laws applicable to Workday as a Data Processor. No update will materially decrease Workday's Data Processor obligations under the DPE.

6. Protection and Security of Customer Content. The section in the MSA titled "Protection and Security" or other similarly titled section is deleted and replaced with the following section:

> "**Security Program and Audit Reports.** Workday maintains a security program that conforms to the Security Exhibit and Audit Reports (as set forth in the applicable Product Terms). Through Workday's customer self-service systems or upon Customer's written request, Workday will make available to Customer Workday's then-current Audit Reports for the applicable Service application to enable Customer to verify Workday's compliance with its obligations under this Agreement. Audit Reports constitute Workday's Confidential Information and are subject to the confidentiality terms in this Agreement or separate confidentiality agreement terms (as applicable).
>
> **Privacy.** Personal Data will only be processed in accordance with the DPE."

7. Retrieval of Customer Content. The section in the MSA titled "Retrieval of Customer Content" or other similarly titled section is deleted and replaced with the following section:

> "**Retrieval of Customer Content.** Upon Customer's written request made on or prior to expiration or termination of this Agreement (including any Transition Period), Workday will give Customer limited access to the Service for a period of up to 60 days, at no additional cost, solely for purposes of retrieving Customer Content ("**Retrieval Period**"). After such Retrieval Period (or if no Retrieval Period, after termination or expiration of this Agreement or applicable Order Form) and subject to Workday's legal obligations, Workday has no obligation to maintain or provide any Customer Content and will, unless legally prohibited, delete Customer Content by deleting Customer's applicable Instance; provided, however, that Workday will not be required to remove copies of the Customer Content from its backup media and servers until such time as the backup copies are scheduled to be deleted, provided further that in all cases Workday will continue to protect the Customer Content in accordance with this Agreement. Customer Content will be made available for extract in a machine-readable format as described in the Documentation."

8. Product Terms. Upon the Amendment Effective Date, any product-specific terms attached to or linked from Customer's Prior Subscription Order Forms (e.g. the Innovation Services Addendum and the Media Cloud Addendum), or other separate product-specific terms, will be terminated and will have no further force or effect, and all Prior Subscription Order Forms, or other separate product-specific terms, are hereby amended to be subject to the Product Terms for the applicable Product Line (as identified in an Order Form) available at https://www.workday.com/en-us/legal/universal-contract-terms-and-conditions/index.html, which are incorporated herein by reference. Workday is not required to escrow third-party source code used in providing the Service.

9. [RESERVED].

10. [RESERVED].

11. Service Credit Exhibit. Customer must request the Service Credit no later than 60 days after the applicable failure occurs. To the extent that the MSA contains a termination right for missed Service Availability or Service Response minimums, such termination right will only apply for the applicable Service application (and Customer must serve notice of such termination no later than 30 days after the applicable failure occurs).

12. Confidentiality. The following language is hereby added to the section in the MSA titled "Confidentiality" or other similarly titled section.

"For purposes of clarification, the parties' confidentiality obligations also apply to Confidential Information either party (or its Affiliates) shares with the other party (or its Affiliates) related to potential future subscription services. The parties agree that (a) the Recipient's or its Representatives' online portal terms conflicting with the Confidentiality terms of this MSA will not be binding on the Discloser submitting its Confidential Information to the Recipient through the Recipient (or its Representative's) online portal; and (b) the Confidentiality terms of this MSA apply to all such Confidential Information disclosed to the Recipient through such online portals; and (c) the Recipient's or its Representatives' online portal terms conflicting with the Confidentiality terms of this MSA are superseded by this Agreement with respect to confidentiality obligations. "Representatives" means a party's Affiliates, officers, directors, agents, employees, contractors, consultants, financial and legal advisors, and service providers, including providers of third party submission tools or online portals."

13. Additional Amendments:

(a) Section 3.6 of the MSA shall be deleted in its entirety.

14. Miscellaneous. In the event of any conflict, the following order of precedence will control: (i) the applicable Product Terms, which will apply exclusively to the delivery of the Service SKUs and related features (including Enhanced Features) of an applicable Product Line; (ii) this Universal MSA Amendment; (iii) the Order Form, and (iv) the MSA.

CITY OF ONTARIO *Agenda Report* **June 3, 2025**	**SECTION:** **PUBLIC HEARINGS**
Department: Economic Development Prepared By: Karen Khukoyan Department: Prepared By: Karen Khukoyan Staff Member Presenting: Jennifer McLain Hiramoto, Economic Development Director Reviewed By: Charity Hernandez Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 24

SUBJECT: **A RESOLUTION APPROVING PURSUANT TO CEQA FINDINGS AS TO THE CERTIFIED FINAL ENVIRONMENTAL IMPACT REPORT FOR THE DOWNTOWN CIVIC CENTER PLANNED UNIT DEVELOPMENT (SCH NO. 2004051155) AS PREVIOUSLY AMENDED, A DISPOSITION AND DEVELOPMENT AGREEMENT AND LOAN AGREEMENT BETWEEN THE CITY OF ONTARIO AND A BLOCK, LLC FOR THE ADAPTIVE REUSE OF HISTORIC PROPERTY AND NEW DEVELOPMENT LOCATED AT THE 100 BLOCK OF NORTH EUCLID AVENUE; ACCEPTING THE ECONOMIC OPPORTUNITY STATUTE (GOVT CODE SECTION 52220 ET. SEQ) REPORT AND MAKING RELATED FINDINGS AUTHORIZING THE SALE OF THE PROPERTIES**

RECOMMENDATION:

A. That the City Council adopt a Resolution approving the Disposition and Development Agreement ("DDA") between the City of Ontario ("City") and A Block, LLC ("Developer"); approving a Construction Loan Agreement (“Loan Agreement”) between the City of Ontario ("Lender") and A Block, LLC ("Borrower"); approving, as amended, the certified Downtown Civic Center Planned Unit Development Environmental Impact Report (SCH No. 2004051155) findings; and

B. Authorize the City Manager, or his designee, to sign all documents necessary to implement the Disposition and Development Agreement and Loan Agreement.

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

FISCAL IMPACT: The proposed purchase price is One Dollar ($1.00) subject to the terms and conditions contained in the Disposition and Development Agreement. The City will issue a Construction Loan to the Developer in an amount not-to-exceed $19,000,000 with an annual interest rate equal to the prime rate, with a ceiling of 8% and a floor of 5%. The Loan will be funded

from the available City funds, excluding General Fund, and will be repaid within five years from the initial draw.

BACKGROUND & ANALYSIS: The City continues to invest significant resources in revitalizing the historic downtown into a vibrant, 18-hour destination. It is doing this in several ways, including but not limited to:

- Acquiring underutilized or dilapidated buildings, with an emphasis on restoring historic properties;
- Partnering with experienced developers capable of infusing new apartments, offices and/or retail space into downtown;
- Investing in strategic infrastructure projects, such as improving sewer, water, lighting, wayfinding and parking; and
- Offering incentives and loan programs to qualifying business and property owners for restaurant equipment and facade improvements.

Prior to the Great Recession, a portion of property on the northeast corner of Euclid Avenue and Holt Boulevard (also known as the 100 Block of North Euclid Avenue and Block A1 in reference to the EIR) was acquired as part of a redevelopment initiative in downtown. The vision was to incorporate historic buildings, referred to as the Yangtze/Commercial Hotel, Lerch Building, Citizen Business Bank, and The Old Bridal Shop, into a mixed-use development that would include high-density residential, retail spaces, commercial services, and a public commons area. This adaptive reuse was intended to enable the occupancy of businesses such as restaurants or other retail establishments that would serve local workers, shoppers, and residents, thereby contributing to the City's broader goal of revitalizing and enhancing the downtown area both economically and aesthetically. In 2016, the City bought the remaining parcels to perfect the acquisition of the block. The Property encompasses Assessor Parcel No.'s 1048-553-01 through 1048-553-17 (“Property"), as depicted in Exhibit "A" attached hereto.

The City and Developer have negotiated a Disposition and Development Agreement that provides for the conveyance of the Property to the Developer for One Dollar ($1.00). In exchange, the Developer will deliver an adaptive reuse Project consisting of the rehabilitation of existing historic structures and construction of additional multi-story, mixed-use residential and commercial/retail components on the Property. The proposed Project will consist of approximately 156 multi-family residential dwelling units and nearly 35,000 square feet of ground floor commercial/retail/restaurant space fronting on Euclid Avenue, B Street, Lemon Avenue, and Holt Boulevard in addition to the required parking (“Project").

The Developer will be required to preserve and retain the historic context of the historic buildings by obtaining a Certificate of Appropriateness under the Adaptive Reuse Ordinance adopted on December 17, 2024, which is intended to streamline the entitlement process. This will allow the Developer to swiftly complete an Adaptive Reuse Plan and other entitlements required for the proposed uses.

The Project will be phased over a five-year period with the adaptive reuse of the historic structures being completed in Phases 1 and 2. Phases 1 and 2 will include 22 residential units and approximately 25,000 square feet of retail and commercial uses. Phases 3 and 4 include new

construction of up to 134 multi-family market rate units and just roughly 10,000 square feet of commercial and retail space.

The Loan Agreement is intended to finance the construction of Phase 1 which includes rehabilitation of two of the City's Local Historic Landmarks Designated by City Council on January 20, 1998, Landmark no. 18 (Lerch Building), No. 19 (Yangtze/Commercial Hotel), and The Old Bridal Shop (which is not a local landmark but eligible for local landmark designation). The Developer will be required to provide proof of financing for Phases 2 through 4 which is estimated to be an investment of over $70,000,000.

The Property was appraised by R.P. Laurain and Associates in May of 2025 with the appraiser arriving at a negative Opinion of Value. The negative value was derived from recent comparable land and building values coupled with the Developer's overall Project costs supported by a Historic Structures Report ("HSR") prepared by a state certified architect. The HSR included an analysis of the historic nature of the buildings as well as the structural integrity of the buildings and an engineer's cost estimate to retrofit the buildings to allow for the Developer's proposed use. The proposed rehabilitation/historic preservation and new improvement costs exceed the current market value of the Property, by approximately $10,760,000. The renovation costs include, but are not limited to: seismic retrofitting, hazardous material abatement, a new elevator, new plumbing, mechanical, and electrical systems, fire sprinklers, facade improvements, interior finishes, and restaurant furnishing, fixtures, and equipment.

The proposed Project will effectuate restoration of the historic fabric of the 100 Block of North Euclid Avenue, add much-needed quality dining and entertainment options, new high quality multi-family residential, and would serve as an impetus for additional redevelopment opportunities in downtown. It would also result in the creation of economic opportunity by an increase in new revenues to the City in the form of both sales tax and property tax, as well as creation of temporary construction jobs and permanent full-time jobs.

ENVIRONMENTAL REVIEW: On November 16, 2004, the City Council Certified an Environmental Impact Report (SCH No. 2004051155) for the Downtown Civic Center Planned Unit Development ("DCCPUD EIR" or "EIR"). Additionally, the City Council approved file PUD08-001, an amendment to the DCCPUD for which an Addendum to the Certified EIR was adopted in June 2011, allowing an increase in the density range within the Commercial/Residential Mixed-Use District of the DCCPUD, which the Project site is within. Further, the City Council approved file PUD20-002, an amendment to the DCCPUD for which an Addendum to the Certified EIR was adopted on April 6, 2021, allowing ground floor residential land uses and options for parking structures. As amended, the DCCPUD established a density range of 45-65 units per acre, resulting in a maximum residential buildout of 163 units, and established a maximum Floor Area Ratio of 0.40, resulting in a maximum non-residential buildout of roughly 43,000 square feet across the roughly 3-acre site.

Pursuant to CEQA, when taking subsequent discretionary actions in furtherance of a project for which an EIR has been certified, the lead agency is required to review any changed circumstances to determine whether any of the circumstances under Public Resources Code section 21166 and State CEQA Guidelines Section 15162 require additional environmental review. Here, staff has evaluated the Project in light of the standards for subsequent environmental review outlined in Public

Resources Code section 21166, State CEQA Guidelines section 15162.

The Project will provide approximately 156 units and approximately 35,000 square feet of non-residential uses (commercial and retail/restaurant), which is consistent with, and within the scope of, the anticipated buildout of the 100 Block of North Euclid (also known as Block A1), evaluated in the certified EIR and permitted under the DCCPUD. Further Project, which includes the adaptive reuse of existing historic structures and the construction of new residential and commercial development, as described above, has been considered by the DCCPUD and subsequent amendments, and is within the density and intensity anticipated by the DCCPUD. As such, staff has concluded that the EIR, as amended, fully analyzed and mitigated, where feasible, all potentially significant environmental impacts, if any, that would result from the Project, and therefore, no subsequent EIR or mitigated negative declaration is required. The Project introduces no new significant environmental impacts and all previously adopted mitigation measures from the DCCPUD EIR can be made a condition of Project approval.

Furthermore, the HSR identified significant features, structural retrofit requirements, and other recommendations for the restoration and reuse of the historic structures to help support and facilitate the Project as anticipated by the DCCPUD.

Exhibit “A”

100 Block N Euclid Avenue



RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING, PURSUANT TO CEQA FINDINGS AS TO THE CERTIFIED FINAL ENVIRONMENTAL IMPACT REPORT FOR THE DOWNTOWN CIVIC CENTER PLANNED UNIT DEVELOPMENT (SCH NO. 2004051155) AS PREVIOUSLY AMENDED, THE DISPOSITION AND DEVELOPMENT AGREEMENT AND LOAN AGREEMENT BETWEEN THE CITY OF ONTARIO AND A BLOCK, LLC FOR THE ADAPTIVE REUSE OF HISTORIC PROPERTY AND NEW DEVELOPMENT LOCATED AT THE 100 BLOCK OF NORTH EUCLID AVENUE; ACCEPTING THE ECONOMIC OPPORTUNITY STATUTE (GOVT CODE SECTION 52220 ET. SEQ) REPORT AND MAKING RELATED FINDINGS AUTHORIZING THE SALE OF THE PROPERTIES.

WHEREAS, the City owns that certain real property located at the 100 block of North Euclid which includes what is commonly known as the Lerch Building, Yangtze Building, the Old Bridal Shop and surrounding parcels more specifically described as: 120 North Euclid Avenue (APN 1048-553-15), 122 and 126 North Euclid Avenue, (APN 1048-553-16 and APN 1048-553-17), 116 E. B Street, (APN 1048-553-02), 0 North Euclid Avenue (APN 1048-553-01), 0 E. B Street (APN 1048-553-03); 127 N. Lemon Avenue (APN 1048-553-04), 115 N. Lemon Avenue (APN 1048-553-05), 127 E. Holt Boulevard (APN 1048-553-06), 123 E. Holt Boulevard (APN 1048-553-07), 117 E. Holt Boulevard (APN 1048-553-08), 115 E. Holt Boulevard (APN 1048-553-09), 0 N. Euclid Avenue, (APN 1048-553-10), 110 N. Euclid Avenue (APN 1048-553-11), 110 N. Euclid Avenue, Ontario (APN 1048-553-12), 114 N. Euclid Avenue (APN 1048-553-13) also known as Parcel 13, 118 N. Euclid Avenue (APN 1048-553-14) (“Properties”); and

WHEREAS, A Block LLC (“Developer”) proposes to purchase the Properties for the development of a 4 Phase project including adaptive reuse of the Lerch building, the Yangtze building, and the Old Bridal Shop building and Parcel 13. The adaptive reuse portion of the project will rehabilitate, structurally retrofit for adaptive re-use, and construct a multi-story, mixed-use residential and retail commercial development project. The Yangtze Property, a three-story building, will include a 10,000-sf. ground level restaurant and a total of 22 residential units on the second and third floors. The Lerch Property, a two-story building, will be developed with retail on the first floor and a spa and gym on the second floor. Further, included as part of the development associated with the purchase of the Properties and covered by this Agreement is the development of the Old Bridal Shop Property with 2,000 sf. of restaurant space and 2,700 sf. of industrial space for a proposed brewery, all as specifically described as Block A1 in the Downtown Civic Center Planned Unit Development; and

WHEREAS, the Developer proposes to purchase Parcel 13 for adaptive re-use that will consist of 7,000 square feet of retail on the ground floor and 6,000 square feet of community room, and a roof patio on the second floor, including all required or associated on-site and off-site improvements, all hardscape and all landscaping, all as

specifically described as Block A1 in the Downtown Civic Center Planned Unit Development; and

WHEREAS, the Developer proposes to purchase the remaining properties to construct multifamily housing, ground level parking, and a variety of restaurant and commercial uses; and

WHEREAS the City obtained appraisals for the Properties showing that overall the Properties have a negative value based upon the onsite remediation and rehabilitation required to develop the buildings while complying with the adaptive reuse requirements; and

WHEREAS, the City's Planning Commission has found pursuant to Government Code Section 65402, that the Project, which consists of approximately 156 multi-family residential dwelling units and nearly 35,000 square feet of ground floor commercial/retail/restaurant space fronting on Euclid Avenue, B Street, Lemon Avenue, and Holt Boulevard in addition to the required parking ("Project") is consistent with the City's General Plan, and has taken the necessary actions to comply with CEQA; and

WHEREAS, the City has prepared a report pursuant to Government Code Section 52200 et. seq. ("Report") which includes a copy of the proposed Disposition and Development Agreement ("DDA"), a summary of the proposed transaction including the cost of the agreement to the City with land acquisition costs, clearance costs, relocation costs, the costs of any improvements to be provided by the City and the expected interest on any loans or bonds to finance the agreements; the estimated value of the interest to be conveyed determined at the highest and best uses permitted under the general plan or zoning; the estimated value of the interest to be conveyed, determined at the use and with the conditions, covenants, and development costs required by the sale; and the purchase price; and

WHEREAS, the Report includes an explanation of why the sale will assist in the creation of economic opportunity, with reference to the supporting facts and materials relied upon; and

WHEREAS, the adaptive reuse of these buildings and the redevelopment of the Properties will protect and promote the sound development of economic opportunity in Ontario and the general welfare of the Ontario's residents through the employment of all appropriate means; and

WHEREAS, the creation of economic opportunity in Ontario cannot be accomplished by private enterprise alone, without public participation and assistance in the acquisition of land, in planning and in the financing of land assembly, in the work of clearance, and in the making of improvements necessary therefor, it is in the public interest to advance or expend public funds for these purposes, and to provide a means by which economic opportunity can be created; and

WHEREAS the creation of economic opportunity and the provisions for appropriate continuing land use and construction policies with respect to property

acquired, in whole or in part, for economic opportunity constitute public uses and purposes for which public money may be advanced or expended and are governmental functions of state concern in the interest of health, safety, and welfare of the people of the state and the City of Ontario; and

WHEREAS, pursuant to Government Code Section 52200.6, the authority granted to create economic opportunity and to sell property for economic development is an alternative to any other procedure or process found in the Constitution, state law, local ordinance, or charter; and

WHEREAS, pursuant to the California Environmental Quality Act (Public Resource Code § 21000 et seq.) ("CEQA"), and the State CEQA Guidelines (14 Cal. Code Regs. §§ 15000 et seq.) the City previously determined that an Environmental Impact Report ("EIR") be prepared pursuant to CEQA in order to analyze all potential adverse environmental impacts of the Downtown Civic Center Planned Unit Development ("DCCPUD") (SCH NO. 2004051155) which was certified by the City Council on November 16, 2004; and

WHEREAS, the City Council approved file PUD08-001, an amendment to the DCCPUD for which an Addendum to the Certified EIR was adopted in June 2011, allowing an increase in the density range within the Commercial/Residential Mixed-Use District of the DCCPUD, which the Project site, Block A1, is within; and

WHEREAS, the City Council approved file PUD20-002, an amendment to the DCCPUD for which an Addendum to the Certified EIR was adopted on April 6, 2021, allowing ground floor residential land uses and options for parking structures; and

WHEREAS, pursuant to CEQA, when taking subsequent discretionary actions in furtherance of a project for which an EIR has been certified, the lead agency is required to review any changed circumstances to determine whether any of the circumstances under Public Resources Code section 21166 and State CEQA Guidelines Section 15162 require additional environmental review; and

WHEREAS, staff evaluated the project in light of the standards for subsequent environmental review outlined in Public Resources Code section 21166, State CEQA Guidelines section 15162; and WHEREAS, the DCCPUD established a density range of 45-65 units per acre, resulting in a maximum residential buildout of 163 units, and established a maximum Floor Area Ratio of 0.40, resulting in a maximum non-residential buildout of roughly 43,000 square feet across Block A1; and

WHEREAS, the proposed Project will provide approximately 156 units and approximately 35,000 square feet of non-residential uses (commercial and retail/restaurant), which is consistent with, within the scope of, the anticipated buildout of the 100 Block of north Euclid evaluated in the certified EIR and permitted under the DCCPUD; and

WHEREAS, as anticipated by the DCCPUD, the HSR identified significant features, structural retrofit requirements, and other recommendations for the restoration and reuse of the historic structures to help support and facilitate the Project; and

WHEREAS, the proposed Project, which includes the adaptive reuse of existing historic structures and the construction of new residential and commercial development, as described above, was evaluated in the certified DCCPUD EIR and adopted addenda, and is within the density and intensity anticipated by the DCCPUD as amended.

WHEREAS, based on staff's evaluation, staff concluded that the EIR, as amended, fully analyzed and mitigated, where feasible, all potentially significant environmental impacts, if any, that would result from the Project, and therefore, no subsequent EIR or mitigated negative declaration is required, as the Project introduces no new significant environmental impacts and all previously adopted mitigation measures from the DCCPUD Environmental Impact Report are considered a condition of the Project approval and are incorporated herein by this reference; and

WHEREAS, the City desires to sell the Properties to the Developer for the rehabilitation of the Properties and completion of the Project and the Developer desires to purchase the Properties from the City for the same purpose.

WHEREAS, the City and Developer have negotiated a Disposition and Development Agreement (the "Agreement"), a copy of which is attached to this Resolution as Exhibit A and which provides for the sale of the Property to Developer at consideration which is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the sale, and binds Developer to construct the Project, subject to all required approvals and environmental compliance, in a timely manner, and in accordance with the terms therein; and

WHEREAS, the Developer's proposed acquisition of the Property and subsequent construction and completion of the Project on the Property pursuant to the terms of this Agreement is in the best interest of the City and the health, safety and welfare of the City's taxpayers and residents and is in accordance with the public purposes set forth in applicable law. Implementation of this Agreement will further the goals and objectives of the City's general plan by: (i) strengthening the City's land use and social structure, (ii) alleviating economic and physical blight on the Property and in the surrounding community, (iii) generate property tax revenue, (iv) produce new jobs, (v) stimulate economic vitality and (vi) continue to inspire additional investment within the Downtown Civic Center corridor creating much needed redevelopment.

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

SECTION 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

SECTION 2. CEQA. As the decision-making body for the Agreement, City Council has reviewed and considered the previously certified FEIR, the two addenda,

any oral or written comments received, and the administrative record prior to making any decision on the Agreement. The Council finds that the FEIR contains a complete and accurate reporting of all of the environmental impacts associated with the Agreement.

SECTION 3. Findings on the Necessity for a Subsequent or Supplemental Environmental Impact Report. Based on the substantial evidence set forth in the record, including but not limited to, the previously certified FEIR, the two addenda, and all related information presented to the City Council, the Council finds, pursuant to State CEQA Guidelines Section 15164 that the preparation of a subsequent or supplemental EIR is not required for the Agreement.

SECTION 4. Findings on Environmental Impacts. Having considered the administrative record, the previously certified FEIR and all written and oral evidence presented to the City Council, the Council finds that all environmental impacts of the Agreement have been addressed within the FEIR and the two addenda, and the Agreement will be subject to the adopted Mitigation Measure and Reporting Requirement. The City Council finds that no new or additional mitigation measures or alternatives are required. The Council further finds that there is no substantial evidence in the administrative record that the Agreement may result in any significant environmental impacts beyond those analyzed in the FEIR.

SECTION 5. Economic Opportunity Report and Findings. The City Council approves and adopts the Economic Opportunity Report, attached hereto as Exhibit B, prepared pursuant to Government Code Section 52200 et. seq. As part of that adoption the City Council finds that

5.1 The sale and development of the Property pursuant to the Agreement will further the goals and purposes of the City, and is in the common interest of the City and its residents.

5.2 The City Council has reviewed the fiscal analysis prepared by the City's tax consultant, HdL Enterprises, and finds that the sale of the property will assist in the creation of economic opportunity through the generation of tax revenue, the creation of jobs, the elimination of dilapidated buildings in the core of the downtown area, and will act as a catalyst to future redevelopment in the surrounding area which will, ideally, reactivate the downtown which has suffered since the last recession and the Covid-19 pandemic. The fiscal analysis demonstrates that the DDA and associated Loan Agreement will increase property tax revenues to all property tax collecting entities by at least 15% of the total property tax resulting from the project at full implementation when compared to the year prior to the property being acquired by the City.

5.3 The consideration is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the sale. The property is being conveyed to the Developer as a negative value due to the substantial improvement costs to restore the building to current building codes. With improvement costs estimated at $19,000,000 for the adaptive re-use of

three existing structures and approximately $70,000,000 for the balance of the Project, the estimated reuse value of the interests to be conveyed are significantly higher than present fair market value.

5.4 The City loan of $19,000,000 is for the purpose of rehabilitating commercial buildings or structures and based upon the high cost to restore the buildings to current building code standards the assistance is necessary for the economic feasibility of the development and the assistance cannot be obtained on economically feasible terms in the private market. The City has looked to redevelop these buildings for many years and based upon the risk associated with the rehabilitation of these historic structures and the requirements imposed by the City's zoning code and the City's desires for the area, the City has been unable to find a developer or private lending institution willing to underwrite the project.

5.5 Based upon the information provided in the staff report and at the public hearing the Council does hereby find that the sale of the Properties serves the public purpose of economic development by creating jobs, increasing tax revenues, improving infrastructure in the downtown, reducing blight, and creating a catalyst for other development in the Downtown area.

SECTION 6. Approval of Agreement. The City Council hereby approves the Agreement in substantially the form attached hereto as Exhibit A subject to any non-substantive revisions which do not increase the City's liability and are approved by the City Attorney, and authorizes the City Manager to sign and enter into the Agreement and perform the obligations of the City under the Agreement.

SECTION 7. Notice of Determination. The Executive Director, or designee, is hereby directed to file a Notice of Determination for the Agreement under CEQA.

SECTION 8. Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City declares that the City would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

SECTION 9. 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 3rd day of June, 2025.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2025- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held June 3, 2025 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2025- duly passed and adopted by the Ontario City Council at their regular meeting held June 3, 2025.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A
DISPOSITION AND DEVELOPMENT AGREEMENT

EXHIBIT B
ECONOMIC OPPORTUNITY REPORT

REQUEST OF
CLERK, CITY COUNCIL CITY OF ONTARIO

WHEN RECORDED RETURN TO:

City of Ontario
303 East "B" Street
Ontario, CA 91764-4196
Attention: City Clerk/ Records Management

Exempt from Filing Fees Gov. Code Sections 27383, 6103

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between the

CITY OF ONTARIO,

a California Municipal Corporation,

and

A BLOCK, LLC

a California limited liability company

[Dated as of June 6, 2025, for reference purposes only]

CITY OF ONTARIO

DISPOSITION AND DEVELOPMENT AGREEMENT

(CITY OF ONTARIO AND A BLOCK, LLC)

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Agreement**") is dated as of June 3, 2025 for reference purposes only, and is entered into by and between the City of Ontario, a California municipal corporation (the "**City**"), and A Block LLC a California Limited Liability Company (the "**Developer**") (collectively, the "**Parties**," and each a "**Party**"). The Parties enter into this Agreement with reference to the following recited facts (collectively, the "**Recitals**," and each a "**Recital**").

RECITALS

A. The City owns that certain real property commonly called the Lerch Building generally located at 120 North Euclid Avenue, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "A" and depicted as APN 1048-553-15 (the "**Lerch Property**").

B. The City owns that certain real property commonly called the Yangtze Building generally located at 122 and 126 North Euclid Avenue, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "B" and depicted as APN 1048-553-16 and APN 1048-553-17 (the "**Yangtze Property**").

C. The City owns that certain real property commonly called the Old Bridal Shop generally located at 116 E. B Street, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "C" and depicted as APN 1048-553-02 (the "**Old Bridal Shop Property**")

D. The City owns that certain real property generally located at 0 North Euclid Avenue, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "D" and depicted as APN 1048-553-01 ("Parcel 1").

E. The City owns that certain real property generally located at 0 E. B Street, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "E" and depicted as APN 1048-553-03 ("Parcel 3").

F. The City owns that certain real property generally located at 127 N. Lemon Avenue, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "F" and depicted as APN 1048-553-04 ("Parcel 4").

G. City owns that certain real property generally located at 115 N. Lemon Avenue, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "G" and depicted as APN 1048-553-05 ("Parcel 5")

H. City owns that certain real property generally located at 127 E. Holt Boulevard, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "H" and depicted as APN 1048-553-06 ("Parcel 6")

I. City owns that certain real property generally located at 123 E. Holt Boulevard, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "I" and depicted as APN 1048-553-07 ("Parcel 7")

J. City owns that certain real property generally located at 117 E. Holt Boulevard, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "J" and depicted as APN 1048-553-08 ("Parcel 8")

K. City owns that certain real property generally located at 115 E. Holt Boulevard, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "K" and depicted as APN 1048-553-09 ("Parcel 9")

L. City owns that certain real property generally located at 0 N. Euclid Avenue, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "L" and depicted as APN 1048-553-10 ("Parcel 10")

M. City owns that certain real property generally located at 110 N. Euclid Avenue, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "M" and depicted as APN 1048-553-11 ("Parcel 11")

N. City owns that certain real property generally located at 110 N. Euclid Avenue, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "N" and depicted as APN 1048-553-12 ("Parcel 12")

O. City owns that certain real property generally located at 114 N. Euclid Avenue, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "O" and depicted as APN 1048-553-13 ("Parcel 13")

P. City owns that certain real property generally located at 118 N. Euclid Avenue, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "P" and depicted as APN 1048-553-14 ("Parcel 14")

Q. The Developer proposes to purchase the Lerch Property, the Yangtze Property and the Old Bridal Shop Property (together shall be referred to as "**Phase 1 Properties**") from the City as part of "**Phase 1**" of a larger four phase Downtown Civic Center Planned Unit Development, for the specific purposes to rehabilitate, structurally retrofit for adaptive re-use, and construct of an additional multi-story, mixed-use residential and retail commercial development project. The Yangtze Property, a three-story building, will include a 10,000 sf. ground level restaurant and a total of 24 residential units on the second and third floors. The Lerch Property, a two-story building, will be developed with retail on the first floor and a spa and gym on the second floor. Further, included as part of the development associated with the purchase of the Properties and covered by this Agreement are the development of the Old Bridal Shop Property for 2,000 sf. of restaurant space and 2,700 sf. of industrial space for a proposed brewery, all as specifically described as Block A1 in the Downtown Civic Center Planned Unit Development. (Resolution

No. 2004-139, Final Environmental Impact Report for Ontario Downtown Civic Center Project, and related documents, all to be developed in accordance with the Plans and Specifications to be approved by the City, and any conditions imposed by the City in its approval of the Plans and Specifications and the Historic Properties in accordance with the Secretary of the Interior Standards (collectively the "**Phase 1 Project**" or "**Phase 1**").

R The Developer proposes to purchase Parcel 13 from the City as Phase 2 ("**Phase 2 Property**") of the Downtown Civic Center Planned Unit Development. Phase 2 shall follow the Downtown Civic Center Planned Unit Development to rehabilitate, structurally retrofit for adaptive re-use and will consist of 7,000 square feet of retail on the ground floor and 6,000 square feet of community room, and a roof patio on the second floor, including all required or associated on-site and off-site improvements, all hardscape and all landscaping, all as specifically described as Block A1 in the Downtown Civic Center Planned Unit Development. (Resolution No. 2004-139, Final Environmental Impact Report for Ontario Downtown Civic Center Project, and related documents, all to be developed in accordance with the Plans and Specifications to be approved by the City, and any conditions imposed by the City in its approval of the Plans and Specifications and the Historic Properties in accordance with the Secretary of the Interior Standards (collectively the "**Phase 2 Project**" or "**Phase 2**")

S. The Developer proposes to purchase Parcel 3, Parcel 4, Parcel 5, Parcel 6, Parcel 7, Parcel 8, Parcel 9 from the City as Phase 3 (together shall be referred to as "**Phase 3 Properties**") of the Downtown Civic Center Planned Unit Development. Phase 3 shall consist of Phase 3 of 4 of the Downtown Civic Center Planned Unit Development to construct two buildings, one building, will include ground level parking and 5,200 square feet of restaurant with 500 square feet of commercial space. The building will have 24 residential units on the 2nd, 3rd, and 4th story and one building will include ground level parking, 70 residential units on the 2nd, 3rd, and 4th story and a roof deck/pool, including all required or associated on-site and off-site improvements, all hardscape and all landscaping, all as specifically described as Block A1 in the Downtown Civic Center Planned Unit Development, Resolution No. 2004-139, Final Environmental Impact Report for Ontario Downtown Civic Center Project, and related documents, all to be developed in accordance with the Plans and Specifications to be approved by the City, and any conditions imposed by the City in its approval of the Plans and Specifications.(collectively the "**Phase 3 Project**" or "**Phase 3**").

T. The Developer proposes to purchase Parcel 1, Parcel 12, Parcel 11, Parcel 10 from the City as Phase 4 (together shall be referred to as "**Phase 4 Properties**") of the Downtown Civic Center Planned Unit Development. Phase 4 shall consist of Phase 4 of 4 of the Downtown Civic Center Planned Unit Development to construct two buildings, one building will include 6,500 square feet of retail on the ground level and 15 residential units on the 2nd and 3rd floor and one building will include 5,500 square feet of retail on the ground floor and 12 residential units on the 2nd and 3rd floor, including all required or associated on-site and off-site improvements, all hardscape and all landscaping, all as specifically described as Block A1 in the Downtown Civic Center Planned Unit Development, Resolution No. 2004-139, Final Environmental Impact Report for Ontario Downtown Civic Center Project, and related documents, all to be developed in accordance with the Plans and Specifications to be approved by the City, and any conditions imposed by the City in its approval of the Plans and Specifications.(collectively the "**Phase 4 Project**" or "**Phase 4**")

U. Phase 1 Project, Phase 2 Project, Phase 3 Project and Phase 4 Project shall together constitute the Downtown Civic Center Planned Unit Development (the "**Project**").

V. The City obtained an appraisal dated May 16, 2022 for the Lerch Property, which appraised the Lerch Property as having a negative value of One Million, Nine Hundred Forty Thousand Dollars (-$2,185,000.00).

W. The City obtained an appraisal dated May 16, 2022 for the Yangtze Property, which appraised the Yangtze Property as having a negative value of Five Million, Four Hundred Twenty Thousand Dollars (-$5,875,000.00)

X. The City obtained an appraisal dated May 16, 2022 for the Old Bridal Shop Property, which appraised the Old Bridal Shop as having a negative value of Eight Hundred Forty Thousand Dollars (-$1,065,000.00)

Y. The City obtained an appraisal dated May 16, 2022 for Parcel 1, Parcels 3 through 12 and Parcel 14 which appraised Parcel 1, Parcels 3 through 12 and Parcel 14 as having a positive value of Two Million Five Hundred Seventy Thousand Dollars ($2,440,000.00)

Z. JJ. The City obtained an appraisal dated May 16, 2022 for Parcel 13, which appraised Parcel 13 as having a negative value of Two Million Nine Hundred Sixty Thousand Dollars (-$4,075,000.00).

LL. The Developer's proposed acquisition of the Properties and subsequent rehabilitation, construction, and completion of Properties and Project pursuant to the terms of this Agreement is in the best interest of the City and the health, safety and welfare of the City's taxpayers and residents and is in accordance with the public purposes set forth in applicable law. Implementation of this Agreement will further the goals and objectives of the City's general plan by: (i) strengthening the City's land use and social structure, and (ii) alleviating economic and physical blight on the Properties and in the surrounding community.

MM. The City's Planning Commission has found pursuant to Government Code Section 65402, that the Project is consistent with the City's General Plan, and has taken the necessary actions to comply with CEQA;

NN. The City desires to sell the Properties to the Developer for the rehabilitation of the Properties and completion of the Project and the Developer desires to purchase the Properties from the City for the same purpose.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH THE PARTIES ACKNOWLEDGE, AND PURSUANT TO THE PROMISES AND COVENANTS SET FORTH IN THIS AGREEMENT, THE PARTIES AGREE, AS FOLLOWS:

TERMS AND CONDITIONS

ARTICLE I

DEFINITIONS; REPRESENTATIONS AND WARRANTIES; EFFECTIVE DATE

1.1 Definitions. All initially capitalized terms not otherwise defined in this Agreement shall have the following meanings:

1.1.1 "**Additional Insureds**" has the meaning ascribed to such term in Section 5.9.

1.1.2 **"Affiliate"** means and refers to any person or entity, directly or indirectly, Controlling or Controlled by or under common Control with the Developer, whether by direct or indirect ownership of equity interests, by contract or otherwise.

1.1.3 "**CEQA**" means the California Environmental Quality Act, Public Resources Code Sections 21000, et seq and California Code of Regulations Section 15000 et seq.

1.1.4 "**Certificate of Completion**" means the written certification of City that the construction of the Project has been completed in compliance with the terms and conditions of this Agreement, substantially in the form of **Exhibit "V"** attached to this Agreement.

1.1.5 "**City**" means the City of Ontario, California, a California municipal corporation.

1.1.6 "**City Loan**" means the amount loaned to the Developer on a reimbursement basis from the City as defined and limited by the Total Development Costs for Phase 1. The City Loan is made by the City to assist the Developer to finance construction and rehabilitation of Phase 1 and is evidenced by the City Loan Agreement for the Properties entered into by the Parties prior to the close of Escrow.

1.1.7 "**City Loan Commencement Date**" means the date the City Loan Documents are approved by City Council. .

1.1.8 "**City Loan Documents**" means collectively the City Loan Agreement, and the City Note.

1.1.9 "**City Loan Principal**" means the total dollar number, not to exceed Nineteen Million Dollars ($19,000,000.00), determined by the City to be the Total Development Costs for Phase 1.

1.1.10 "**City Manager**" means the City Manager of the City or his or her designee or successor in function.

1.1.11 "**City Note**" means the promissory notes made by Developer in favor of City for the City Loan in form approved by the City Attorney, which shall be recorded against the Properties at the Close of Escrow.

1.1.12 "**City Requirements**" has the meaning ascribed to the term in Section 2.5.2.

1.1.13 "**City's Title Notice Response**" means the written response of the City to the Developer's Title Notice, in which the City either (i) elects to cause the removal from the Preliminary Report of any matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy that were objected to in the Developer's Title Notice, or (ii) elects not to cause the removal from the Preliminary Report of any matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy that were objected to in the Developer's Title Notice.

1.1.14 "**Close of Escrow**" or "**Closing**" means the recording of the Grant Deed and Loan Documents for the Properties in the Official Records of the Recorder of the County, and completion of each of the actions set forth in ARTICLE III by the Escrow Holder for the City to sell the Properties to the Developer and the Developer to purchase the Properties from the City.

1.1.15 "**Closing Date**" means the date that the Closing occurs.

1.1.16 "**Completion of Construction**" means the issuance of a Certificate of Completion confirming that the final certificate of occupancy for the Phase of the Project, based on the plans submitted by the Developer to the City, has been issued.

1.1.17 "**Construction Commencement Date**" means the date that is thirty (30) days from the Permit Issuance Date.

1.1.18 "**Construction Costs**" means the total cost incurred by Developer for constructing the Phases of the Project in accordance with this Agreement.

1.1.19 "**Construction Drawings**" means plans or blueprints detailing design, dimensions, materials, and methods required to build the Project.

1.1.20 "**Construction Drawings Submittal Date**" means the date when Developer submits to the City its Plans and Specifications for each Phase, which shall be in compliance with the Schedule of Performance.

1.1.21 "**Construction Lender**" means a Lender(s) that provide(s) a Construction Loan to the Developer to pay the Construction Costs of all or a portion of the Project.

1.1.22 "**Construction Loan**" means a Loan obtained by Developer from a Construction Lender to finance all or part of the Construction Costs in conformity with the Financing Plan.

1.1.23 "**Construction Loan Deed of Trust(s)**" means the Lien(s) required by a Construction Lender to secure the Developer's performance under the associated Construction Loan.

1.1.24 **"Control"** means and refers to possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether by ownership of equity interests, by contract or otherwise.

1.1.25 **"Controlling"** and **"Controlled"** mean and refer to exercising or having Control.

1.1.26 "**County**" means the County of San Bernardino, California.

1.1.27 "**Developer**" means A Block, LLC, a California limited liability Company.

1.1.28 "**Developer's Title Notice**" means a written notice from the Developer to the City indicating the Developer's acceptance of the state of the title to the Properties, as described in the Preliminary Report, or the Developer's objection to specific matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy for the Properties, describing in suitable detail the actions that the Developer reasonably believes are indicated to cure or correct each of the Developer's objections.

1.1.29 "**Developer's Title Notice Waiver**" means a written notice from the Developer to the City waiving the Developer's previous objection in the Developer's Title Notice to specific matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy for the Properties.

1.1.30 "**Due Diligence Investigations**" means the Developer's due diligence investigations of the Properties to determine the suitability of the Properties for development and operation of the Project, including, without limitation, investigations of the environmental and geotechnical suitability of the Properties, as deemed appropriate in the reasonable discretion of the Developer, all at the sole cost and expense of the Developer.

1.1.31 "**Effective Date**" has the meaning ascribed to the term in Section 1.3.

1.1.32 "**Environmental Claims**" has the meaning ascribed to the term in Section 5.8.

1.1.33 "**Environmental Laws**" means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability of standards of conduct concerning any hazardous substance (as later defined), or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to hazardous substances on, under, or about the

Properties, occupational or environmental conditions on, under, or about the Properties, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") [42 USC Section 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 ("RCRA") [42 USC Section 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act ("FWPCA") [33 USC Section 1251 et seq.]; the Toxic Substances Control Act ("TSCA") [15 USC Section 2601 et seq.]; the Hazardous Materials Transportation Act ("HMTA") [49 USC Section 5101 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC Section 6901 et seq.] the Clean Air Act [42 USC Section 7401 et seq.]; the Safe Drinking Water Act [42 USC Section 300f et seq.]; the Solid Waste Disposal Act [42 USC Section 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USC Section 1201 et seq.] the Emergency Planning and Community Right to Know Act [42 USC Section 11001 et seq.]; the Occupational Safety and Health Act [29 USC Section 655 and 657]; the California Underground Storage of Hazardous Substances Act [California Health & Safety Code Section 25288 et seq.]; the California Hazardous Substances Account Recodification Act [California Health & Safety Code Section 78000 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [California Health & Safety Code Section 24249.5 et seq.] the Porter-Cologne Water Quality Act [California Water Code Section 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to occupational health or industrial hygiene, and only to the extent the occupational health or industrial hygiene laws, ordinances, or regulations relate to hazardous substances on, under, or about the Properties, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

1.1.34 "**Environmental Matters**" has the meaning ascribed to the term in Section 5.8.

1.1.35 "**Escrow**" has the meaning ascribed to the term in Section 2.1.

1.1.36 "**Escrow Closing Date**" has the meaning ascribed to the term in Section 3.6.

1.1.37 "**Escrow Holder**" means Fidelity Title Insurance Company.

1.1.38 "**Escrow Opening Date**" has the meaning ascribed to the term in Section 3.1.

1.1.39 "**Event of Default**" has the meaning ascribed to the term in Section 7.1.

1.1.40 "**Financing Commitment**" means (a) one or more commitment(s) from one or more Construction Lender(s) agreeing to provide sufficient funds which, when combined with the Developer's equity contribution and the financial assistance to be provided by the City pursuant to this Agreement, is sufficient, as determined by the City in its reasonable discretion, to fully fund the Project's Construction Costs, or (b) a letter from one or

more Construction Lender(s) indicating approval of a loan to the Developer for the development of the Properties.

1.1.41 "**FIRPTA Affidavit**" means an affidavit complying with Section 1445 of the United States Internal Revenue Code.

1.1.42 "**Grant Deed**" means a deed in the form of **Exhibit "S"** to this Agreement, conveying all of the City's interest in the Properties to the Developer.

1.1.43 "**Governmental Agency**" means any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city, public utility or otherwise) whether now or later in existence. These include, but are not limited to, City Planning Department, Building Department, Fire Department, Engineering Department, Police Department, affiliates of the City, Ontario Municipal Utility Company, Inland Empire Utilities Agency, Southern California Edison, Southern California Gas Company, San Bernardino County Health Department, and/or consultants of the City.

1.1.44 "**Governmental Requirements**" means all codes, statutes, ordinances, laws, permits, orders, and any rules and regulations promulgated thereunder of any Governmental Agency.

1.1.45 "**Hazardous Substances**" means, without implied limitation, substances defined as "hazardous substances," "hazardous material," "toxic substance," "solid waste," or "pollutant or contaminate" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601, et seq.; the Toxic Substances Control Act ("TSCA") [15 U.S.C. Sections 2601, et seq.]; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 5101, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or by the EPA, or any successor authority, as hazardous substances [40 CFR Part 302]; and those substances defined as "hazardous waste" in Section 78075 of the California Health and Safety Code or, as "hazardous substances" in Section 25316 of the California Health and Safety Code; other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under federal, state, or local laws or regulations and in the regulations adopted pursuant to said laws, and shall also include manure, asbestos, polychlorinated biphenyl, flammable explosives, radioactive material, petroleum products, and substances designated as a hazardous substance pursuant to 33 USC Section 1321 or listed pursuant to 33 USC Section 1317.

1.1.46 "**Historic Properties**" means the Lerch Property the Yangtze Property, and Parcel 13.

1.1.47 "**Indemnified Parties**" has the meaning ascribed to the term in Section 5.8.

1.1.48 "**Lender**" means any state or federally chartered bank, savings and loan, capital investment group, or other third party financial institution which

routinely makes Loans to developments and developers such as the Project and the Developer in the normal course of business and which has been approved by the City pursuant to Section 6.3.

1.1.49 "**Lerch Property**" means the real property commonly called the Lerch Building generally located at 120 North Euclid Avenue, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "A" and depicted as APN 1048-553-15.

1.1.50 "**Lien**" means any mortgage, deed of trust, or other security instrument encumbering Developer's fee interest in the Properties and/or Project, or any part thereof, or any pledge or other agreement given as security for the repayment of a Loan and by which a Lender would be able to acquire any interest in the Developer upon the Developer's breach of any obligation under the Lender's Loan Documents.

1.1.51 "**Loan**" means any loan or third-party equity/capital contribution (e.g. mezzanine financing) for the Project excluding the City Loan.

1.1.52 "**Loan Documents**" means the various documents and instruments made by and between the Developer and a Lender that evidence a Loan and the security for repayment of such Loan.

1.1.53 "**Maintenance Deficiency**" has the meaning ascribed to the term in Section 5.3.1.

1.1.54 "**Normal Business Hours**" means the normal business hours of the City. As of the Effective Date, the City's normal business hours are Monday through Thursday, between the hours of 7:30 a.m. and 5:30 p.m. Pacific Time and Friday from 8:00 a.m. and 4:30 p.m. Pacific Time.

1.1.55 "**Notice of Agreement**" means the notice in the form of Exhibit "T" to this Agreement to be recorded against the Properties at the Close of Escrow to provide constructive record notice of the existence and application of this Agreement to the Properties.

1.1.56 **"Official Records"** means the Official Records of San Bernardino County.

1.1.57 "**Old Bridal Shop**" means the real property commonly called the Old Bridal Shop generally located at 116 E B Street, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "C" and depicted as APN 1048-553-02.

1.1.58 "**Party**" means, individually, the City or the Developer, as applicable.

1.1.59 "**Parties**" means, collectively, the City and the Developer.

1.1.60 "**PCO Statement**" means a preliminary change of ownership statement provided for in California Revenue and Taxation Code Section 480.3.

1.1.61 **"Permit Issuance Date"** means the date when the City issues the first building permit to Developer, which date shall be in compliance with the Schedule of Performance for each Phase.

1.1.62 "**Permitted Transfer**" means and refers to any of the following types of Transfers by the Developer, where the person or entity to which such Transfer is made expressly assumes the obligations of the Developer under this Agreement in a written instrument satisfactory to the City.

1.1.62.1 Any Transfer of stock or equity of the Developer that does not change management or operational Control of the Properties or the Project;

1.1.62.2 Any Transfer of any interest in the Developer or the Properties or Project or any portion thereof irrespective of the percentage of ownership (i) to any other owner of any interest in the Developer; or (ii) to any Affiliate, or (iii) to any other person or entity in which any holder of an interest (including any beneficial interest) in the Developer is a manager, officer or partner or in which any of the aforementioned is a shareholder, member or partner (including a beneficial owner); and

1.1.62.3 Any Lien given to Lender in connection with a Loan approved by the City pursuant to Section 6.3.

1.1.63 "**Phase**" means one or more of the four (4) development phases of the Project as shown on Exhibit W.

1.1.64 "**Phase 1 Project" and "Phase 1**" means only Phase 1 of 4 of the Downtown Civic Center Planned Unit Development to rehabilitate, structurally retrofit for adaptive re-use and construct an additional multi-story, mixed-use residential and retail commercial development project, including all required or associated on-site and off-site improvements, all hardscape and all landscaping, all as specifically described as Block A1 in the Downtown Civic Center Planned Unit Development, Resolution No. 2004-139, Final Environmental Impact Report for Ontario Downtown Civic Center Project, and related documents, all to be developed in accordance with Plans and Specifications to be approved by the City, and any conditions imposed by the City in its approval of the Plans and Specifications and the Historic Properties in accordance with the Secretary of the Interior Standards.

1.1.65 "**Phase 1 Properties**" means that certain real property commonly called the Lerch Building generally located at 120 North Euclid Avenue, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit A and depicted as APN 1048-553-15 (the "Lerch Property"); that certain real property commonly called the Yangtze Building generally located at 122 and 126 North Euclid Avenue, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit B and depicted as APNs 1048-553-16 and 1048-553-17 (the "Yangtze Property") and the that certain real property commonly called the Old Bridal Shop generally located at 116 E. B Street, Ontario, California 91762, and as more

particularly described in the legal description(s) attached to this Agreement as Exhibit C and depicted as APN 1048-553-02 (the "Old Bridal Shop Property") the that real property, and all current and future improvements thereon (including, without implied limitation, the Project and Phase 1 Project), legally described in Exhibit A, Exhibit B and Exhibit C.

1.1.66 "**Phase 2 Project" and "Phase 2**" means only Phase 2 of 4 of the Downtown Civic Center Planned Unit Development to rehabilitate, structurally retrofit for adaptive re-use and construct 7,000 square feet of retail on the ground floor and 6,000 square feet of community room, and a roof patio on the second floor, including all required or associated on-site and off-site improvements, all hardscape and all landscaping, all as specifically described as Block A1 in the Downtown Civic Center Planned Unit Development, Resolution No. 2004-139, Final Environmental Impact Report for Ontario Downtown Civic Center Project, and related documents, all to be developed in accordance with , Plans and Specifications to be approved by the City, and any conditions imposed by the City in its approval of the Plans and Specifications and the Historic Properties in accordance with the Secretary of the Interior Standards.

1.1.67 "**Phase 2 Property**" means that certain real property generally located at 114 N. Euclid Avenue, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "O" and depicted as APN 1048-553-13 ("Parcel 13") the that real property, and all current and future improvements thereon (including, without implied limitation, the Project and Phase 2 Project), legally described in Exhibit O.

1.1.68 "**Phase 3 Project" and "Phase 3**" means only Phase 3 of 4 of the Downtown Civic Center Planned Unit Development to construct two buildings, one building, will include ground level parking and 5,200 square feet of restaurant with 500 square feet of commercial space. The building will have 24 residential units on the 2nd, 3rd, and 4th story and one building will include ground level parking, 70 residential units on the 2nd, 3rd, and 4th story and a roof deck/pool, including all required or associated on-site and off-site improvements, all hardscape and all landscaping, all as specifically described as Block A1 in the Downtown Civic Center Planned Unit Development, Resolution No. 2004-139, Final Environmental Impact Report for Ontario Downtown Civic Center Project, and related documents, all to be developed in accordance with , Plans and Specifications to be approved by the City, and any conditions imposed by the City in its approval of the Plans and Specifications.

1.1.69 "**Phase 3 Properties**" means that certain real property generally located at 0 E. B Street, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "E" and depicted as APN 1048-553-03 ("Parcel 3"); that certain real property generally located at 127 N. Lemon Avenue, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "F" and depicted as APN 1048-553-04 ("Parcel 4"); that certain real property generally located at 115 N. Lemon Avenue, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "G" and depicted as APN 1048-553-05 ("Parcel 5"); that certain real property generally located at 127 E. Holt Boulevard, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "H" and depicted as APN 1048-553-06 ("Parcel 6"); that certain real property generally located at 123 E. Holt Boulevard, Ontario,

California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "I" and depicted as APN 1048-553-07 ("Parcel 7");that certain real property generally located at 117 E. Holt Boulevard, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "J" and depicted as APN 1048-553-08 ("Parcel 8"); that certain real property generally located at 115 E. Holt Boulevard, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "K" and depicted as APN 1048-553-09 ("Parcel 9") that real property, and all current and future improvements thereon (including, without implied limitation, the Project and Phase 3 Project), legally described in Exhibit E, Exhibit F, Exhibit G, Exhibit H, Exhibit I, Exhibit J, and Exhibit K.

1.1.70 "**Phase 4 Project" and "Phase 4**" means only Phase 4 of 4 of the Downtown Civic Center Planned Unit Development to construct two buildings, one building will include 6,500 square feet of retail on the ground level and 15 residential units on the 2nd and 3rd floor and one building will include 5,500 square feet of retail on the ground floor and 12 residential units on the 2nd and 3rd floor, including all required or associated on-site and off-site improvements, all hardscape and all landscaping, all as specifically described as Block A1 in the Downtown Civic Center Planned Unit Development, Resolution No. 2004-139, Final Environmental Impact Report for Ontario Downtown Civic Center Project, and related documents, all to be developed in accordance with , Plans and Specifications to be approved by the City, and any conditions imposed by the City in its approval of the Plans and Specifications.

1.1.71 "**Phase 4 Properties**" means that that certain real property generally located at 0 North Euclid Avenue, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "D" and depicted as APN 1048-553-01 ("Parcel 1"); that certain real property generally located at 0 N. Euclid Avenue, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "L" and depicted as APN 1048-553-10 ("Parcel 10"); that certain real property generally located at 110 N. Euclid Avenue, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "M" and depicted as APN 1048-553-11 ("Parcel 11"); that certain real property generally located at 110 N. Euclid Avenue, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "N" and depicted as APN 1048-553-12 ("Parcel 12") that real property, and all current and future improvements thereon (including, without implied limitation, the Project and Phase 4 Project), legally described in Exhibit D, Exhibit L, Exhibit M and Exhibit N.

1.1.72 "**Plans and Specifications**" has the meaning ascribed to the term in Section 2.5.1.

1.1.73 "**Preliminary Report**" means a preliminary report issued by the Title Company in contemplation of the issuance of the Title Policy, accompanied by legible copies of all documents listed in Schedule B of the report as exceptions to coverage under the proposed Title Policy. The Parties acknowledge that they may prepare one (1) or more Preliminary Reports for each parcel, or group of parcels, comprising the Properties. In such case, all reports, notices, and objection letters which pertain to the Preliminary Report for the entirety

of the Properties shall apply separately to each Preliminary Report associated with a parcel or a group of parcels.

1.1.74 **"Prevailing Wages" and "Prevailing Wage Law"** means compliance, to the extent applicable to the Project, with California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq.

1.1.75 "**Project**" means any and all of the following: Phase 1 Project, Phase 2 Project, Phase 3 Project, and Phase 4 Project.

1.1.76 "**Project Completion Date**" means that date set forth therefor by which a Certificate of Completion shall be issued for the Project, as more particularly provided in the Schedule of Performance. The Project Completion Date shall be no later than Five (5) years from City Council approval of Agreement.

1.1.77 "**Properties**" means any and all of the following: Phase 1 Properties, Phase 2 Properties, Phase 3 Properties and Phase 4 Properties.

1.1.78 **"Properties Transfer"** means and refers to any "change in ownership," as defined in Revenue and Taxation Code Sections 60, et seq., of all or any portion of the Properties.

1.1.79 "**Purchase Price**" means the amount of One Dollar ($1.00), in cash or immediately available funds.

1.1.80 "**Record**", "**recorded**", "**recording**" or "**recordation**" each mean and refer to recordation of the referenced document in the official records of the Recorder of the County of San Bernardino, California.

1.1.81 "**Schedule of Performance**" means the schedule for the performance of certain actions by the Parties pursuant to this Agreement, attached to this Agreement as Exhibit "R".

1.1.82 "**Scope of Development**" means the detailed description of the Project attached to this Agreement as Exhibit "Q".

1.1.83 "**Secretary of the Interior's Standards**" means the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68, 1995).

1.1.84 "**Title Company**" means Fidelity Title Company.

1.1.85 "**Title Policy**" means a standard CLTA owners' policy of title insurance issued by the Title Company, with coverage in the full amount of the Purchase Price and insuring fee title to the Properties, subject only to the Permitted Exceptions. However, at Developer's option, Developer may acquire an ALTA extended coverage policy. City

shall pay for the standard CLTA policy. Developer shall pay for any additional or ALTA extended coverage policy.

1.1.86 "**Total Development Costs for Phase 1**" means the total amount necessary to complete Phase 1. The City Loan to Developer shall be used exclusively to reimburse Developer for the actual reasonable costs incurred by Developer for the development and construction of Phase 1 up to Nineteen Million Dollars ($19,000,000.00). Any development cost for Phase I in excess of the City Loan amount shall be borne exclusively by Developer.

1.1.87 "**Transfer**" means any of the following:

1.1.87.1 Any total or partial sale, assignment, conveyance, trust, power, or transfer in any other mode or form, by the Developer of more than a 49% interest in the Developer's interest in this Agreement, the Properties, or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest in the Developer's interest in this Agreement, the Properties or the Project; or

1.1.87.2 Any total or partial sale, assignment, conveyance, or transfer in any other mode or form, of or with respect to any interest in the Developer or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest in any interest in the Developer; or

1.1.87.3 Any merger, consolidation, sale, or lease of all or substantially all of the assets of the Developer or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest of all or substantially all of the assets of the Developer; or

1.1.87.4 Any Properties Transfer; or

1.1.87.5 The recordation of any deed of trust, mortgage, Lien or similar encumbrance against all or any portion of the Properties or the Project.

1.1.87.6 Transfer shall not include the sale, transfer, assignment, or conveyance in any form of shares, interest, membership, affiliation, or stock in Developer, so long as original members, stock/share/interest holder(s) in Developer retain management and control of Developer.

1.1.88 "**Unavoidable Delay**" means any delay that is caused by the exclusively by the other party or that is beyond the control of the City or the Developer, including delay caused by Unforeseen Site Conditions, strikes, acts of God, weather, inability to obtain labor or materials, inspections or approvals, governmental restriction and/or action of Governmental Agency, civil commotion, fire or similar causes, but excluding circumstances subject to Section 8.11.2.

1.1.89 "**Unforeseen Site Conditions**" means any condition of the Property and/or Project that are concealed or latent physical conditions or subsurface conditions that (a) materially differ from the conditions encountered or anticipated by Developer while preparing Plans and Specifications, or (b) are of an unusual nature, differing

materially from the conditions ordinarily encountered, or generally recognized as inherent, in Developers work.

1.1.90 "**Yangtze Property**" means the real property commonly called the Yangtze Building generally located at 122 and 126 North Euclid Avenue, Ontario, California 91762, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit B and depicted as APNs 1048-553-16 and 1048-553-17.

1.2 Representations and Warranties.

1.2.1 City Representations and Warranties. The representations and warranties of City contained in this Section 1.2.1 shall be based upon the actual knowledge of the City Manager as of the Effective Date, without any duty of investigation or inquiry. All representations and warranties contained in this Section 1.2.1 are true and correct as of the Effective Date. City's liability for misrepresentation or breach of warranty, representation or covenant, wherever contained in this Agreement, shall survive the execution and delivery of this Agreement and the Closing. City hereby makes the following representations, covenants and warranties and acknowledges that the execution of this Agreement by Developer has been made in material reliance by Developer on such covenants, representations and warranties:

1.2.1.1 City is a California municipal corporation, duly formed and operating under the laws of the State of California. City has the legal power, right and authority to enter into this Agreement and to execute the instruments and documents referenced herein, and to consummate the transactions contemplated hereby.

1.2.1.2 The persons executing any instruments for or on behalf of City have been authorized to act on behalf of City and this Agreement is valid and enforceable against City in accordance with its terms and each instrument to be executed by City pursuant hereto or in connection therewith will, when executed, shall be valid and enforceable against City in accordance with its terms. No approval, consent, order or authorization of, or designation or declaration of any other person, is required in connection with the valid execution and delivery of and compliance with this Agreement by City.

1.2.1.3 City has taken all requisite action and obtained all requisite consents for agreements or matters to which City is a party in connection with entering into this Agreement and the instruments and documents referenced herein and in connection with the consummation of the transactions contemplated hereby. Execution hereon by the City requires no further votes, resolutions or approvals of this Agreement.

1.2.1.4 If the City becomes aware of any act or circumstance that would change or render incorrect, in whole or in part, any representation or warranty made by the City under this Agreement, whether as of the date given or any time thereafter, whether or not such representation or warranty was based upon the City's knowledge and/or belief as of a certain date, the City will give immediate written notice of such changed fact or circumstance to the Developer.

1.2.2 Developer Representations and Warranties. The representations and warranties of Developer contained in this Section 1.2.2 shall be based upon the actual knowledge of Alex Baroian as of the Effective Date. All representations and warranties

contained in this Section 1.2.2 are true and correct as of the Effective Date. Developer's liability for misrepresentation or breach of warranty, representation or covenant, wherever contained in this Agreement, shall survive the execution and delivery of this Agreement and the Closing. Developer hereby makes the following representations, covenants and warranties and acknowledges that the execution of this Agreement by City has been made in material reliance by City on such covenants, representations and warranties:

1.2.2.1 Developer is a California limited liability company any, lawfully entitled to do business in the State of California and the City. Developer has the legal right, power and authority to enter into this Agreement and the instruments and documents referenced herein and to consummate the transactions contemplated hereby. The persons executing this Agreement and the instruments referenced herein on behalf of Developer hereby represent and warrant that such persons have the power, right and authority to bind Developer.

1.2.2.2 Developer has taken all requisite action and obtained all requisite consents in connection with entering into this Agreement and the instruments and documents referenced herein and the consummation of the transactions contemplated hereby, and no consent of any other party is required for Developer's authorization to enter into Agreement.

1.2.2.3 Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby shall result in a breach of or constitute a default under any other agreement, document, instrument or other obligation to which Developer is a party or by which Developer may be bound, or under law, statute, ordinance, rule, governmental regulation or any writ, injunction, order or decree of any court or governmental body applicable to Developer or to the Properties.

1.2.2.4 This Agreement is, and all agreements, instruments and documents to be executed by Developer pursuant to this Agreement shall be, duly executed by and shall be valid and legally binding upon Developer and enforceable in accordance with their respective terms. No approval, consent, order or authorization of, or designation or declaration of any other person, is required in connection with the valid execution and delivery of in compliance with this Agreement by Developer.

1.2.2.5 If the Developer becomes aware of any act or circumstance that would change or render incorrect, in whole or in part, any representation or warranty made by the Developer under this Agreement, whether as of the date given or any time thereafter, whether or not such representation or warranty was based upon the Developer's knowledge and/or belief as of a certain date, the Developer will give immediate written notice of such changed fact or circumstance to the City.

1.3 Effective Date. This Agreement is dated June 6, 2025 for reference purposes only. This Agreement shall not become effective until the date on which all of the following are true (the "**Effective Date**"): (i) this Agreement is approved and executed by the appropriate authorities of Developer and delivered to City; (ii) Developer has delivered to City a certified copy of the official action taken by all of the members of the Developer approving this Agreement, in the form attached to this Agreement as Exhibit "U"; (iii) following all legally required notices and hearings,

this Agreement is approved by the City Council; and (iv) this Agreement is executed by the authorized representatives of City.

1.4 Exhibit List. The following is a list of the Exhibits attached to this Agreement. Each of the Exhibits is incorporated by this reference into the text of this Agreement.

Exhibit A	Legal Description of Lerch Property
Exhibit B	Legal Description of Yangtze Property
Exhibit C	Legal Description of Old Bridal Shop Property
Exhibit D	Legal Description of Parcel 1
Exhibit E	Legal Description of Parcel 3
Exhibit F	Legal Description of Parcel 4
Exhibit G	Legal Description of Parcel 5
Exhibit H	Legal Description of Parcel 6
Exhibit I	Legal Description of Parcel 7
Exhibit J	Legal Description of Parcel 8
Exhibit K	Legal Description of Parcel 9
Exhibit L	Legal Description of Parcel 10
Exhibit M	Legal Description of Parcel 11
Exhibit N	Legal Description of Parcel 12
Exhibit O	Legal Description of Parcel 13
Exhibit P	Legal Description of Parcel 14
Exhibit Q	Scope of Development
Exhibit R	Schedule of Performance
Exhibit S	Form of Grant Deed
Exhibit T	Form of Notice of Agreement
Exhibit U	Form of Official Action of Developer
Exhibit V	Form of Certificate of Completion
Exhibit W	Development Phases

ARTICLE II

PROPERTY DISPOSITION

2.1 Purchase and Sale. In exchange for the Purchase Price and the Developer's other covenants and undertakings set forth in this Agreement, the City shall sell the Properties to the Developer and the Developer shall purchase the Properties from the City pursuant to the terms and conditions of this Agreement. For the purposes of exchanging funds and documents to complete the sale from the City to the Developer and the purchase by the Developer from the City of the Properties pursuant to the terms of this Agreement, the City and the Developer agree to open an escrow ("**Escrow**") with the Escrow Holder. ARTICLE III of this Agreement constitutes the joint escrow instructions of the Parties to the Escrow Holder for completion of the Escrow for the sale of the Properties, as contemplated by this Agreement. The Developer and the City shall execute such further escrow instructions, consistent with the provisions of this Agreement, as may be reasonably requested by the Escrow Holder. In the event of any conflict between the provisions of this Agreement and any other escrow instructions requested by the Escrow Holder, the provisions of this Agreement shall control.

2.2 Payment of Purchase Price. The Developer shall deposit the Purchase Price into Escrow.

2.3 Title. Developer has reviewed and hereby agrees to accept the title to and conveyance of the Properties "**AS IS**," "**WHERE IS**" and "**SUBJECT TO ALL FAULTS**" condition.

2.4 Developer Investigations. Prior to entering into this Agreement, Developer has completed all of its Due Diligence Investigations with respect to the entirety of the Properties at its sole cost and expense. The Developer shall rely solely and exclusively upon the results of its Due Diligence Investigations of the Properties, including, without limitation, investigations regarding geotechnical soil conditions, compliance with applicable laws pertaining to the use of the Properties by the Developer and any other matters relevant to the condition or suitability of the Properties for the Project, as the Developer deemed necessary or appropriate. City makes no representation or warranty to the Developer relating to the condition of the Properties or suitability of the Properties for any intended use or development by the Developer. The Developer hereby accepts all conditions of the Properties in its existing "**AS IS**," "**WHERE IS**" and "**SUBJECT TO ALL FAULTS**" condition, as of the date the City Council approved this Agreement, without any liability of the City whatsoever.

2.5 Developer to Obtain all Project Entitlements.

2.5.1 Developer has developed and presented to City staff and the City Council, for review, in accordance with the Schedule of Performance or will develop and present to the City for review in accordance with the Schedule of Performance, the following (collectively, the "**Plans and Specifications**"):

2.5.1.1 The Adaptive Reuse Ordinance (ARO) package for Phase 1 and Phase 2.

2.5.1.2 A proposed complete conceptual development plan for the Project on the Properties that describes and depicts: (1) the location and placement of proposed buildings; (2) the architectural and elevations of the proposed buildings; (3) the complete rehabilitation of the Properties; in accordance with all local, state and federal laws as well as the Historic Properties in compliance with the Secretary of the Interior Standards;

2.5.1.3 A list of potential users or tenants and anticipated lease rates for the Properties, as developed with the Project;

2.5.1.4 A proposed time schedule and cost estimates for the development of the Project on the Properties;

2.5.1.5 A proposed financing plan identifying financing sources for all private and public improvements proposed for Phase 2, Phase 3 and Phase 4 of the Project; and

2.5.1.6 Developer will, pursuant to the Schedule of Performance as necessary, develop and present to the City, for review, the New Development Entitlement Package (the "New Development Entitlement Package") for Phase 3 and Phase 4.

2.5.2 The Secretary of the Interior Standards, City's zoning, building and land use regulations (whether contained in ordinances, the City's municipal code, conditions of approval, policies, practice or elsewhere) (collectively, the "**City Requirements**"), shall be applicable to the use and development of the Project on the Properties by the Developer. The Developer acknowledges that all Plans and Specifications and any changes to the Plans and Specifications shall be subject to the City Requirements. No action by the City with reference to this Agreement or any related documents shall be deemed to constitute a waiver of any City Requirements regarding the Properties, the Project, the Developer, any successor-in-interest of the Developer or any successor-in-interest to the Properties. The City Requirements may only be changed or waived by modification or variance approved by the City and consistent with this Agreement. No entitlement, permit or other approval from the City for development of the Project on the Properties shall attach to any portion of the Properties or otherwise become effective to allow the Developer to develop the Project on the Properties until after the Developer owns fee title to that portion of the Properties to which such entitlement, permit or other approval pertains. Under no circumstances shall the Developer commence development of any portion of the Project on the Properties prior to the Developer owning fee title to the Properties.

2.5.3 The approval of the Scope of Development shall not be binding on the City Council or the Planning Commission of the City regarding any approvals of the Project required by such bodies. The Developer obtains no right to develop the Project on the Properties or any portion of the Properties by virtue of this Agreement, except that following the Close of Escrow, the Developer shall possess the same rights as any other owner of property within the Properties that desires to develop its property in a manner consistent with the City's General Plan. If any revisions of the Scope of Development are required by a Governmental Agency (other than the City) having jurisdiction over the Properties or the Project, the Developer shall promptly make any such revisions that are generally consistent with the Scope of Development. Should any revisions be required by any such Government Agency, any timeline contemplated herein shall be extended to enable Developer to submit and obtain approval from that Government Agency.

2.5.4 Notwithstanding any provision to the contrary in this Agreement, following the Close of Escrow, the Developer agrees to accept and comply fully with any and all conditions of approval applicable to all approvals, permits and other governmental actions regarding the development or operation of the Project on the Properties, so long as such conditions of approval are consistent with the Scope of Development and this Agreement in all material respects.

2.5.5 **Developer to Pay All Costs and Expenses**. The Parties agree that the City shall not provide any financial assistance to the Developer in connection with the Project except as may be expressly set forth in this Agreement. The Developer shall be solely responsible for paying for the costs of all design work, construction, labor, materials, fees and permit expenses associated with the Project. The Developer shall pay any and all fees pertaining to the review and approval of the Project by the City, any other Governmental Agency and utility service providers, including the costs of preparation of all required construction, planning and other documents reasonably required by a Governmental Agency pertinent to the development or operation of the Project on the Properties, including, but not limited to, specifications, drawings, plans, maps, permit applications, land use applications, zoning

applications, environmental review and disclosure documents and design review documents. The Developer shall pay for any and all costs, including, but not limited to, the costs of design, construction, relocation and securing of permits for sewer or utility improvements and connections, that may be required in development of the Project, whether located on or off of the Properties. The Developer shall obtain any and all necessary approvals, prior to the commencement of applicable portions of construction, and the Developer shall take reasonable precautions to ensure the safety and stability of surrounding properties during said construction. In accordance with this Section 2.5.5, Developer shall be responsible for the costs, or immediate reimbursement to the City upon delivery of an invoice for the costs, of the following:

2.5.5.1 all fees or expenses of engineers, architects, financial consultants, legal, planning or other consultants or contractors, retained by the Developer for any study, analysis, evaluation, report, schedule, estimate, environmental review, planning and/or design activities, drawings, specifications or other activity or matter relating to the Properties or the Project or the development or negotiation of this Agreement that may be undertaken by the Developer;

2.5.5.2 all fees, charges and costs, make all deposits and provide all bonds or other security associated with the submission to and processing by the City of any and all applications and other documents and information to be submitted to the City by the Developer pursuant to this Agreement or otherwise associated with the Project; and

2.5.6 The Developer shall obtain all entitlements, permits and other approvals for use and development of the Project on the Properties from each Governmental Agency, within the time period for such actions specifically set forth in the Schedule of Performance, subject to any extensions of time authorized by this Agreement upon the occurrence of an Unavoidable Delay.

ARTICLE III

ESCROW INSTRUCTIONS

3.1 Opening of Escrow. For purposes of this Agreement, the opening of Escrow shall be the first date on which a fully executed copy of this Agreement and Purchase Price are deposited with Escrow Holder ("**Escrow Opening Date**"). The Developer shall cause the Escrow to be opened within five (5) days following the Effective Date. Escrow Holder shall promptly confirm in writing to each of the Parties the date of the Escrow Opening Date. This ARTICLE III shall constitute the joint escrow instructions of the City and the Developer to Escrow Holder for conduct of the Escrow to complete the purchase and sale of the Properties between them, as contemplated in this Agreement.

3.2 Conditions to Close of Escrow. The conditions set forth below shall be satisfied or waived in writing by the respective benefited Party on or before the Escrow Closing Date or the Party benefited by any unsatisfied condition shall not be required to proceed to close Escrow.

3.2.1 Developer's Conditions to Close of Escrow. The Developer's obligation to purchase the Properties from the City on the Escrow Closing Date shall

be subject to the satisfaction of the following conditions precedent, each of which can only be waived in writing by the Developer:

3.2.1.1 The Developer has executed and delivered to the City wet signature copies of all City Loan Documents;

3.2.1.2 The Title Company is unconditionally committed to issue the Title Policy for the Properties, subject to any Permitted Exceptions, to the Developer;

3.2.1.3 The City deposits the items into the Escrow required by Section 3.4;

3.2.1.4 The representations, warranties and covenants of the City set forth in Section 1.2.1 are true and correct in all material respects on the Effective Date and on the Escrow Closing Date;

3.2.1.5 The City has completed all of their material obligations required by this Agreement to be completed prior to the Close of Escrow.

3.2.2 City's Conditions to Close of Escrow. The City's obligation to sell the Properties to the Developer on or before the Escrow Closing Date shall be subject to the satisfaction of the following conditions precedent, which can only be waived in writing by the City:

3.2.2.1 The Developer has deposited the Purchase Price into Escrow;

3.2.2.2 The Developer agrees to accept the title to and conveyance of the Properties, pursuant to Section 2.2;

3.2.2.3 The Title Company is unconditionally committed to issue the Title Policy for the Properties, subject to any Permitted Exceptions, to the Developer;

3.2.2.4 The Developer has completed all of its material obligations required by this Agreement to be completed prior to the Close of Escrow including the execution of all of the City Loan Documents;

3.2.2.5 The representations, warranties and covenants of the Developer set forth in Section 1.2.2 are true and correct in all material respects on the Effective Date and on the Escrow Closing Date; and

3.2.2.6 The Developer deposits the funds and items into the Escrow required by Section 3.3 for the Escrow.

3.3 Developer's Escrow Deposits. Following satisfaction or waiver of each of the Developer's conditions to Close of Escrow set forth in Sections 3.2.1, as applicable, the Developer shall deposit the following funds and documents into Escrow at least two (2) business days prior to the Escrow Closing Date in a writing delivered to the Parties:

3.3.1 **Purchase Price and Other Funds.** Purchase Price, plus any additional funds required to be deposited into Escrow by the Developer under the terms of this Agreement to close the Escrow, all in immediately available funds.

3.3.2 **PCO Statement.** A PCO Statement executed by the authorized representative(s) of the Developer.

3.3.3 **Executed City Loan Documents.** The City Loan Documents executed by the authorized representative(s) of the Developer in recordable form.

3.3.4 **Acceptance of Grant Deeds.** The Certificate of Acceptance of the Deeds for Phase 1 Properties, Phase 2 Property, Phase 3 Properties and Phase 4 Properties, in the form attached to the Grant Deed, executed by the authorized representative(s) of the Developer in recordable form.

3.3.5 **Notice of Agreement.** The Notice of Agreement executed by the authorized representative(s) of the Developer in recordable form.

3.4 **City's Escrow Deposits.** Following satisfaction or waiver of each of the City's conditions to Close of Escrow set forth in Sections 3.2.2, as applicable, the City shall deposit the following documents into Escrow at least two (2) business days prior to the Escrow Closing Date:

3.4.1 **Executed City Loan Documents.** The City Loan Documents executed by the authorized representative(s) of the City in recordable form.

3.4.2 **Grant Deeds.** The Grant Deeds executed by the authorized representative(s) of the City in recordable form.

3.4.3 **FIRPTA Affidavit (City).** The FIRPTA Affidavit completed and executed by the authorized representative(s) of the City.

3.4.4 **Notice of Agreement.** The Notice of Agreement executed by the authorized representative(s) of the City in recordable form.

3.5 **Closing Procedure.** When each of the Developer's Escrow required deposits, as set forth in Section 3.3, and each of the City's Escrow required deposits, as set forth in Section 3.4, are deposited into Escrow, Escrow Holder shall request confirmation in writing from both the City and the Developer that each of their respective conditions to the Close of Escrow, as set forth in Section 3.2, are satisfied or waived. Upon Escrow Holder's receipt of written confirmation from both the City and the Developer that each of their respective conditions to the Close of Escrow are either satisfied or waived, Escrow Holder shall close the Escrow for the Properties by doing all of the following:

3.5.1 **Recordation of Documents.** File the following with the Office of the Recorder of the County, for recordation in the order set forth in Section 3.7 (i) the Grant Deeds, with the Developer's certificate of acceptance attached, (ii) the Notice of Agreement, (iii) the City Note , and (iv) other documents as determined necessary for recordation by the City.

3.5.2 **Distribution of Recorded Documents.** Distribute each recorded document to the Party or person designated for such distribution in Section 3.7.

3.5.3 **PCO Statement.** File the PCO Statement with the Office of the Recorder of the County.

3.5.4 **FIRPTA Affidavit.** File the FIRPTA Affidavit with the United States Internal Revenue Service.

3.5.5 **Title Policy.** Obtain and deliver the Title Policy to the Developer.

3.5.6 **Purchase Price.** Deliver the Purchase Price to the City, and less any other charges to the account of the City, and return any remaining funds held by Escrow Holder for the account of the Developer to the Developer, less the Developer's share of Escrow closing costs, and less any other charges to the account of the Developer.

3.6 Close of Escrow. Close of Escrow shall occur no later seven (7) days following the Effective Date of this Agreement. If for any reason the Close of Escrow has not occurred by the Escrow Closing Date, then any Party not then in default of this Agreement may cancel the Escrow and terminate this Agreement, subject to the notice and cure provisions of Section 7.1 (to the extent applicable), without liability to any other Party or any other person for such termination and cancellation, by delivering written notice of termination to the other Party(ies) and Escrow Holder and, thereafter, the Parties shall proceed pursuant to Section 3.10 if the non-terminating Party is not in default or pursuant to Section 7.2 or 7.3 (as applicable) if the non-terminating Party is in default. Without limiting the right of any Party to terminate this Agreement, pursuant to the preceding sentence, if Escrow does not close on or before the Escrow Closing Date, and no Party has exercised its contractual right to cancel Escrow and terminate this Agreement before such time, then Escrow shall close as soon as reasonably possible following the first date on which Escrow Holder is in a position to close the Escrow pursuant to the terms and conditions of this Agreement.

3.7 Recordation and Distribution of Documents. As applicable, Escrow Holder shall cause the following documents to be recorded in the official records of the Recorder of the County in the following order of priority at the Close of Escrow: (i) the Grant Deeds, with the Developer's certificate of acceptance attached, (ii) the Notice of Agreement; (iii) any other documents to be recorded through Escrow upon the joint instructions of the Parties. All recorded documents shall provide that they are to be returned to Escrow Holder after recordation. When originals of such recorded documents are returned to Escrow Holder, Escrow Holder shall deliver: (i) the original Grant Deed, with the Developer's original certificate of acceptance attached, to the Developer and copies to the City, each showing all recording information, (ii) the original of the Notice of Agreement to the City, with copies to the Developer, each showing all recording information, and (iii) the Original of the City Note to the City, with copies to the Developer, each showing all recording information, and (iv) the original of any other document recorded at the close of Escrow to the Party or other person designated in the joint escrow instructions of the Parties for such recordation and a copy of each such document to the other Party or Parties, each showing all recording information.

3.8 Escrow Closing Costs, Taxes and Title Policy Premium. The City and the Developer shall each pay one-half (1/2) of the Escrow fees and such other costs as Escrow Holder may charge for the conduct of the Escrow. Escrow Holder shall notify the Developer and the City of the costs to be borne by each of them at the Close of Escrow by delivering the Escrow Holder's estimated closing/settlement statement to both the City and the Developer at least four (4) business days prior to the Escrow Closing Date. The City shall pay the premium charged by the Title Company for the standard Title Policy for the Properties, exclusive of any endorsements or other supplements to the coverage of such Title Policy that may be requested by the Developer, as well as documentary transfer taxes and any and all other charges, fees and taxes levied by a Governmental Authority relative to the conveyance of any portion of the Properties through the Escrow transaction contemplated in this Agreement. The Developer shall pay any and all recording fees relative to the conveyance of any portion of the Properties through the Escrow transaction contemplated in this Agreement.

3.9 Escrow Cancellation Charges. If the Escrow fails to close due to either the City's material default under this Agreement and the Escrow is cancelled and this Agreement is terminated, the City shall pay all ordinary and reasonable Escrow and title order cancellation charges. If the Escrow fails to close due to the Developer's material default under this Agreement and the Escrow is cancelled and this Agreement is terminated, the Developer shall pay all ordinary and reasonable Escrow and title order cancellation charges. If the Escrow fails to close for any reason other than the material default of either the Developer or the City and the Escrow is cancelled and this Agreement is terminated, the Developer and the City shall each pay one-half (1/2) of any ordinary and reasonable Escrow and title order cancellation charges.

3.10 Escrow Cancellation. If this Agreement is terminated and the Escrow cancelled pursuant to a contractual right granted to a Party in this Agreement to terminate this Agreement and cancel the Escrow, other than due to the material default of another Party, the Parties shall do each of the following:

3.10.1 Cancellation Instructions. The Parties shall, within three (3) business days of receipt of Escrow Holder's written request, execute any reasonable Escrow cancellation instructions requested by Escrow Holder;

3.10.2 Return of Funds and Documents. Within ten (10) days of receipt by the Parties of a settlement statement of Escrow and title order cancellation charges from Escrow Holder: (i) the Developer or Escrow Holder shall return to the City any documents previously delivered by the City to the Developer or Escrow Holder, (ii) the City or Escrow Holder shall return to the Developer all documents previously delivered by the Developer to the City or Escrow Holder; (iii) Escrow Holder shall return to the Developer any funds deposited by Developer into Escrow, less the Developer's share of customary and reasonable Escrow and title order cancellation charges, if any; and (iv) Escrow Holder shall return to the City any funds deposited by City into Escrow if it has already been deposited, less the City's share of customary and reasonable Escrow and title order cancellation charges, if any.

3.11 Report to IRS. Following the Close of Escrow and prior to the last date on which such report is required to be filed with the Internal Revenue Service, if such report is required pursuant to Section 6045(e) of the Internal Revenue Code, Escrow Holder shall report the gross

proceeds of the purchase and sale of the Properties to the Internal Revenue Service on Form 1099-B, W-9 or such other form(s) as may be specified by the Internal Revenue Service pursuant to Section 6045(e). Upon the filing of such reporting form with the Internal Revenue Service, Escrow Holder shall deliver a copy of the filed form to the City and the Developer.

ARTICLE IV

PROJECT DEVELOPMENT

4.1 Developer Covenant to Undertake Project. Upon Close of Escrow the Developer covenants, for itself, its successors and assigns, to and for the exclusive benefit of the City, that the Developer shall commence and complete the development of the Project on the Properties within the time period for such actions set forth in the Schedule of Performance. The Developer covenants and agrees for itself, its successors, and assigns, that the Project and Properties shall be rehabilitated, improved and developed in compliance with the City Requirements and in substantial conformity with the terms and conditions of this Agreement, the Scope of Development, the Schedule of Performance, any and all plans, specifications and similar development documents required by this Agreement, except for such changes as may be mutually agreed upon in writing by and among the Parties, rehabilitate all Historic Properties to in accordance with the Secretary of the Interior Standards, and comply with all applicable laws, regulations, orders and conditions of each Governmental Agency with jurisdiction over the Properties or the Project. The covenants of this Section 4.1 shall run with the land of the Properties until the earlier of the date of recordation of the Certificate of Completion or the fifteenth (15th) anniversary of the date of the Close of Escrow.

4.2 Development of Properties.

4.2.1 Developer has agreed perform the Project to construct and rehabilitate the Properties as a commercial and residential development including all required or associated on-site and off-site improvements, all hardscape and all landscaping, all as specifically described in the Scope of Development, in accordance with the Plans and Specifications to be approved by the City and any conditions imposed by the City in its approval of the Plans and Specifications, as well as rehabilitate all Historic Properties to be developed in accordance with the Secretary of the Interior Standards.

4.2.2 Phase 1

4.2.2.1 Phase 1 Project Loan.

4.2.2.1.1 Developer has presented City with a total cost estimate for completion of Phase 1 Project, including all work performed in compliance with Prevailing Wage Laws if required by state law, for Nineteen Million Dollars ($19,000,000.00).

(a) Developer acknowledges and agrees that City will loan Developer amounts in the form of reimbursements only for the actual reasonable development costs, up to the issuance of the Certificate of Completion, Developer pays for the Project and the amount the City shall loan Developer shall not to exceed Nineteen Million Dollars ($19,000,000.00)(the "**City Loan**").

(b) Developer shall submit to City monthly invoices including supporting documentation showing the actual costs incurred for the Project prior to Completion of Construction for Phase 1.

(c) City shall review the invoices and supporting documentation. In City's sole and absolute discretion determines additional information is needed City will specify the additional information or documentation that is needed, and Developer shall provide the requested documentation within fourteen (14) days, unless a City grants a longer period of time for compliance. Should Developer fail to timely provide the requested documentation the expense shall be deemed unreasonable.

(d) City can object to any expenses the City determines is unreasonable contained in the monthly invoices. Within fourteen (14) days, Developer shall have the right to provide additional supporting documentation to justify the reasonableness of the expense to the City. City shall review any additional supporting documentation provided by Developer to reconsider the reasonableness of the expense for the Project.

(e) City shall pay any reasonable costs for the construction of the Project within forty-five (45) days of receipt of monthly invoice or the receipt of the additionally requested documentation or additional information, whichever comes later. Absolutely no costs shall be paid by the City for work completed after Completion of Construction for Phase 1.

(f) Developer acknowledges that Developer is solely responsible for the construction of the Project and is solely responsible for any costs of the Project that exceed the Total Development Costs for Phase 1.

(g) City shall provide in writing to Developer the Total Development Costs for Phase 1 upon the earlier of (1) the last reimbursement payment made to Developer or (2) total payments to Developer is Nineteen Million Dollars ($19,000,000.00). After Completion of Construction for Phase 1, the City shall not accept any invoices, under any circumstances, from the Developer, even if said invoice would have been reimbursed if delivered at an earlier date.

4.2.2.1.2 In accordance with and subject to all of the terms, conditions, and covenants of this Agreement, the City agrees to make the City Loan in the amount of City's determined Total Development Costs for Phase 1 (the "**City Loan Principal**"). The Principal represents the total amount of reimbursements made by the City to the Developer pursuant to the terms of this Agreement for the construction, rehabilitation, etc., of the Project. The term of the City Loan will be 10 years from the date that the **City Loan Commencement Date**. No separate notice is required. All amounts advanced via reimbursement payments by the City to the Developer under the City Loan will bear interest at a variable interest rate of at the then current prime rate of interest with a ceiling of 8% and a floor of 5% from the date of the first disbursement by City to Developer until the date the City Loan is paid in full. The rate of interest shall be in accordance with the terms of the Note of the City Loan. The City Note shall be senior in priority of payment to any other loans approved by the City.

4.3 Developer Changes to Plans and Specifications During Course of Construction. The Developer shall submit all changes, to the City for its review and approval no less than fifteen (15) days prior to the date that the Developer intends to implement such changes. The City shall have ten (10) days from its receipt of such proposed changes to review the same and advise the Developer in writing whether such changes are acceptable to the City in its reasonable discretion. Any proposed changes which are not disapproved by the City within such ten (10) day period shall be deemed approved.

4.4 Construction Start and Completion of Project. The Developer shall commence construction of each Phase the Project in accordance with the Schedule of Performance and, thereafter, shall diligently proceed to complete the construction of each Phase of the Project in a good and workmanlike manner in substantial conformity with the City Requirements, approved plans, specifications, and conditions for the Project approved by the City. The Developer shall obtain a Certificate of Completion for each of the Properties in each Phase on or before the Project Completion Date. The Developer will, promptly upon completion of construction of each Phase of the Project, cause the Project to be inspected by each Governmental Agency with jurisdiction over the Project, shall correct any defects and deficiencies that may be disclosed by any such inspection and shall cause to be duly issued all occupancy certificates and other licenses, permits and authorizations necessary for the operation and occupancy of the completed Phase of the Project. The Developer shall do and perform all of the foregoing acts and things and cause to be issued and executed all such occupancy certificates, licenses, and authorizations for each Phase of the Project on or before the date set forth therefor in the Schedule of Performance as the completion date for each Phase of the Project. After the Construction Commencement Date for the Project, the Developer shall not permit the work of improvement of each Phase of the Project to cease or be suspended for a time period in excess of thirty (30) consecutive calendar days, subject to Unavoidable Delays. Developer shall not commence a subsequent Phase of the Project unless and until Completion of Construction for the prior Phase, unless the City has agreed in writing to the commencement of the subsequent Phase of the Project. Should Developer construct more than one Phase of the Project simultaneously upon written consent of the City, the Developer shall not permit work of improvement of each Phase of the Project under construction to cease or be suspended for a time period in excess of thirty (30) consecutive calendar days, subject to Unavoidable Delays.

4.5 Compliance with Laws. All work performed in connection with the development of the Project shall comply with all Governmental Requirements.

4.6 Schedule of Performance. The Schedule of Performance establishes various dates and times for the accomplishment of various tasks assigned to the City and the Developer and the satisfaction of the conditions precedent to the close of the Escrow. The Parties agree that time is of the essence in the performance of such tasks and the satisfaction of conditions precedent, in view of the large investment of resources that all Parties recognize will be required for assembly of the Properties and the undertaking of the Project. If the date or time for the performance of a task or the satisfaction of a condition, as set forth in either the text of this Agreement or in the Schedule of Performance, may not be achieved, then prior to such date or time set forth in the text of this Agreement or the Schedule of Performance, the Parties shall consider whether a modification to the text of this Agreement or to the Schedule of Performance is indicated. Any decision to approve a modification to a time or date established in either the text of this Agreement

or the Schedule of Performance shall be subject to the sole discretion of each Party. Any modification of a time or date for performance of a particular task or satisfaction of a particular condition that does not result in a change of more than one hundred eighty (180) days may be approved on behalf of the City by the City Manager, in his or her reasonable discretion. A modification of a time or date for performance of a task or satisfaction of a condition (or a series of such modifications) that results in an aggregate change of more than one hundred eighty (180) days shall be subject to the approval of the City Council, in its sole and absolute discretion. If performance of a task or satisfaction of a condition in the Schedule Performance is prevented or delayed by Unavoidable Delays, the deadline for completion of such task or satisfaction of such condition shall be extended by the period of such Unavoidable Delays.

4.7 Developer Attendance at City Meetings. The Developer agrees to have one or more of its employees or consultants who are knowledgeable regarding this Agreement and the development of the Project, such that such person(s) can meaningfully respond to City questions regarding the progress of the Project, attend City Council meetings, when requested to do so on not less than ten (10) days prior written notice by City staff.

4.8 City's Right to Inspect Project and Properties. Officers, employees, agents and representatives of the City shall have the right of reasonable access to the Properties, without the payment of charges or fees, during normal construction hours, during the period of construction of the Project. Such officers, employees, agents or representatives of the City shall be those persons who are designated by the City Manager. Any and all officers, employees, agents or representatives of the City who enter the Properties shall identify themselves at the construction management office on the Properties, upon their entrance on to the Properties, and shall at all times be accompanied by a representative of the Developer, while on the Properties. The Developer shall make a representative of the Developer available for this purpose at all times during normal construction hours, upon reasonable notice from the City. The City shall indemnify and hold the Developer harmless from injury, property damage or liability arising out of the exercise by the City of the right of access to the Properties provided in this Section 4.8, other than injury, property damage or liability arising from the negligence or willful misconduct of the Developer or its officers, agents or employees. The City shall inspect relevant portions of the Properties, prior to issuing any written statements reflecting adversely on the Developer's compliance with the terms and conditions of this Agreement pertaining to development of the Project. If in the City's reasonable judgment it is necessary, the City shall have the further right, from time to time, to retain a consultant or consultants to inspect the Project and verify compliance by the Developer with the provisions of this Agreement. The Developer acknowledges and agrees that any such inspections are for the sole purpose of protecting the City's rights under this Agreement, are made solely for the City's benefit, that the inspections may be superficial and general in nature, and are for the purposes of informing the City of the progress of the Project and the conformity of the Project with the terms and conditions of this Agreement, and that the Developer shall not be entitled to rely on any such inspection(s) as constituting an approval, satisfaction or acceptance of any materials, workmanship, conformity of the Project with this Agreement or otherwise. The Developer agrees to make its own regular inspections of the work of construction of the Project to determine that the quality of the Project and all other requirements of the work of construction of the Project are being performed in a manner satisfactory to the Developer. The Developer also agrees to immediately notify the City in writing should the Developer's inspections show any matters that will prevent the entire Project from being completed by the Project Completion Date

set forth therefore in the Schedule of Performance. Without limiting the foregoing, the Developer shall permit the City upon reasonable notice to examine and copy all books and account records and other papers relating to the Properties and the construction of the Project. The Developer will use commercially reasonable efforts to cause all contractors, subcontractors and materialmen to cooperate with the City to enable such examination.

4.9 Cost of Construction. The cost and expense of undertaking and completing the Project, including, without limitation, constructing all legally imposed on- and off-site improvements, and providing all utilities therefor, shall be borne by Developer at its sole cost, expense and liability. Developer shall be solely responsible for payment of all City land use, construction, inspection, plan check and development impact fees (collectively, "**Development Fees**") imposed by the City with respect to the development of the Project. Developer shall bear all costs and expenses associated with the processing and obtaining of the entitlements and shall bear all costs and expenses (except to the extent expressly set forth otherwise in this Agreement), associated with any and all terms, conditions, requirements, mitigation measures and other exactions imposed on, or required in connection with, the entitlements.

4.10 California Environmental Quality Act (CEQA)

4.10.1 The Developer agrees, at its sole cost and expense, to fully indemnify, protect, hold harmless, and defend with counsel acceptable to the Indemnified Parties, from and against any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements and expenses, including, without limitation, attorney fees, disbursements and costs of attorneys, environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever that may, at any time, be imposed upon, incurred or suffered by, or claimed, asserted or awarded against, the Indemnified Parties, directly or indirectly relating to or arising from CEQA for the approval of the Project and/or this Agreement.

4.11 Prevailing Wages.

4.11.1 THE DEVELOPER ACKNOWLEDGES THAT THE CITY HAS MADE NO REPRESENTATION, EXPRESS OR IMPLIED, TO THE DEVELOPER OR ANY PERSON ASSOCIATED WITH THE DEVELOPER REGARDING WHETHER OR NOT LABORERS EMPLOYED RELATIVE TO THE CONSTRUCTION, INSTALLATION OR OPERATION OF THE PROJECT MUST BE PAID THE PREVAILING PER DIEM WAGE RATE FOR THEIR LABOR CLASSIFICATION, AS DETERMINED BY THE STATE OF CALIFORNIA, PURSUANT TO 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**"). THE DEVELOPER AGREES WITH THE CITY THAT THE DEVELOPER SHALL ASSUME THE RESPONSIBILITY AND BE SOLELY RESPONSIBLE FOR DETERMINING WHETHER OR NOT LABORERS EMPLOYED RELATIVE TO THE CONSTRUCTION, INSTALLATION OR OPERATION OF THE PROJECT MUST BE PAID THE PREVAILING PER DIEM WAGE RATE FOR THEIR LABOR CLASSIFICATION, AS DETERMINED BY THE STATE OF CALIFORNIA, PURSUANT TO PREVAILING WAGE LAWS.

4.11.2 THE DEVELOPER, ON BEHALF OF ITSELF, ITS SUCCESSORS, AND ASSIGNS, WAIVES AND RELEASES THE CITY FROM ANY RIGHT OF ACTION THAT MAY BE AVAILABLE TO ANY OF THEM PURSUANT TO LABOR CODE SECTION 1781. THE DEVELOPER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542 RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 4.11, WHICH READS AS FOLLOWS:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

4.11.3 BY INITIALING BELOW, THE DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 4.11:

_____
Initials of Authorized
Developer Representative

4.11.4 ADDITIONALLY, THE DEVELOPER SHALL INDEMNIFY, DEFEND WITH COUNCIL ACCEPTABLE TO THE CITY AND HOLD CITY HARMLESS, AGAINST ANY CLAIMS PURSUANT TO LABOR CODE SECTIONS 1726 AND 1781 ARISING FROM THIS AGREEMENT OR THE CONSTRUCTION OR INSTALLATION OF ALL OR ANY PORTION OF THE PROJECT.

4.12 <u>Certificate of Completion</u>.

4.12.1 Following the substantial completion of each Phase of the Project, and upon written request from the Developer for issuance of a Certificate of Completion for the Properties within the completed Phase, the City shall inspect the Properties of the Phase to determine whether or not the Phase of the Project has been substantially completed in compliance with this Agreement. If the City determines that the Phase of the Project is complete and in compliance with this Agreement, the City Manager shall furnish the Developer with a Certificate of Completion for the Properties within the Phase. If the City determines that the Phase of the Project is not in compliance with this Agreement, the City Manager shall send written notice of each non-conformity to the Developer. Upon issuance of the final certificate of occupancy for the development of the Phase of the Project, based on the plans submitted by the Developer to the City, the City shall furnish the Developer with a Certificate of Completion for each Phase of the Properties.

4.12.2 Upon the Developer's substantial completion of each Phase of the Project, the Developer shall request and be entitled to receive a Certificate of Completion, including the right of the City Manager to issue the Certificate of Completion, except that the Certificate of Completion, upon issuance, shall be evidence of the City's conclusive determination of satisfactory substantial completion of the construction of the Phase of the Project pursuant to the terms of this Agreement. However, the Certificate of Completion shall not terminate, or affect in any regard, the responsibilities of the Developer to repay the City Loan or the covenants and terms of the City or Developer related to said City Loan, or City Loan Agreement, or any undeveloped Phase of the Project.

4.12.3 The City shall not unreasonably withhold the issuance of a Certificate of Completion. A Certificate of Completion shall be evidence of the City's conclusive determination of satisfactory completion of the Phase of the Project to which it pertains pursuant to the terms of this Agreement. After the recordation of a Certificate of Completion for each Phase of the Project, any person then owning or thereafter purchasing, leasing or otherwise acquiring any interest in Properties improved with the Phase of the Project shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement regarding construction or installation of the Project except that such person shall be bound by any reservations, covenants, conditions, restrictions and other interests recorded against the Properties pursuant to this Agreement and the Grant Deed.

4.12.4 If the City fails or refuses to issue a Certificate of Completion following written request from the Developer, the City shall, within fifteen (15) calendar days of the Developer's written request or within three (3) calendar days after the next regular meeting of the City Council, whichever date occurs later, provide the Developer with a written statement setting forth the reasons for the City's failure or refusal to issue a Certificate of Completion. The statement shall also contain the City's opinion of the action(s) the Developer must take to obtain a Certificate of Completion from the City. If the reason for the Developer's failure to complete the Phase of the Project is confined to the immediate unavailability of specific items or materials for construction or landscaping at a price reasonably acceptable to the Developer or other minor building "**punch-list**" items, the City may issue its Certificate of Completion upon the posting of a bond or irrevocable standby letter of credit by the Developer in a form reasonably acceptable to the City in an amount representing the fair value of the work on the Phase of the Project remaining to be completed, as reasonably determined by the City. If the City fails to provide such written statement, within the specified time period, the Developer shall be deemed conclusively and without further action of the City to have satisfied the requirements of this Agreement with respect to the Phase of the Project, as if a Certificate of Completion had been issued by the City pursuant to this Agreement.

4.12.5 A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the Phase of the Project, or any parts thereof including any reimbursements made by the City as part of the City Loan. A Certificate of Completion shall not be deemed to constitute a notice of completion under Section 3093 of the California Civil Code, nor shall it act to terminate the continuing covenants, restrictions or conditions contained in the Grant Deed or any other instruments recorded against the Phase of the Properties pursuant to this Agreement. A Certificate of Completion is not evidence of the

compliance of the Project with any City Requirements or any building code, conditions of approval, land use, zoning or other requirements of the City or any Governmental Agency with jurisdiction over the Phase of the Properties, other than the City.

4.12.6 The City and Developer acknowledge that the nature of the Project, including but not limited to, the adaptive reuse/structural retrofit of existing structures necessarily involves the risk of Unforeseen Site Conditions and Unavoidable Delays. Should any Unforeseen Site Conditions and/or Unavoidable Delays impede Developers ability to seek a Certificate of Occupancy and/or Certificate of Completion for any particular phase, Developer may request a Temporary Certificate of Occupancy ("TCO") for that phase(s) or portions of a phase(s) ready to be occupied. Developer may seek a TCO for all or portions of a phase in order to further the Parties interests contained herein. Should Developer seek and be issued a TCO by the City, such TCO shall extend Developers obligation to obtain a Certificate of Completion for the duration such TCO is valid.

ARTICLE V

DEVELOPER COVENANTS

5.1 Covenant to Maintain Properties on Tax Rolls. The Developer for itself, its successors and assigns to all or any part or portion of the Properties and/or Project, covenants and agrees that:

5.1.1 The entirety of the Properties shall remain on the County secured real property tax rolls for twenty years from the date of issuance of the final Certificate of Completion for the Project.

5.1.2 The Developer shall pay all property tax bills with respect to the Properties and all improvements thereon on or before the last day for the timely payment of each property tax installment on each December 10 and April 10 during such time period and to timely pay all supplemental tax bills regarding the Properties issued by the County. The Developer further covenants and agrees to provide to the City, on or before July 31 of each year, commencing in the calendar year following the calendar year in which a Certificate of Completion is recorded and in each calendar year, thereafter, for the full term of this covenant: (i) a true and correct copy of all property tax assessment notices, property tax bills and property tax assessment correspondence by and between the Developer and the County regarding the Properties and all improvements thereon, with respect to the preceding fiscal year of the County, and (ii) cancelled checks issued by the Developer in payment of all property tax payments that are made to the County regarding the Properties and all improvements thereon (or other reasonably acceptable evidence of such payment), with respect to the preceding County fiscal year.

5.1.3 The covenants of this Section 5.1 shall run with the land of the Properties, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed.

5.2 No Conveyance to Tax Exempt Entity. The Developer for itself, its successors and assigns to all or any part or portion of the Properties and/or Project, covenants and agrees that:

5.2.1 The Developer shall not use or otherwise sell, transfer, convey, assign, lease, leaseback or hypothecate the Properties, the Project, or any portion of any of the foregoing to any entity or person, or for any use of the Properties, the Project, or any portion of any of the foregoing, that is partially or wholly exempt from the payment of real or personal property taxes or that would cause the exemption of the payment of all or any portion of real or personal property taxes otherwise assessable regarding the Properties, the Project, or any portion of any of the foregoing, without the prior written consent of the City, which may be withheld in the City's sole and absolute discretion for a period of 20 years from the date of issuance of the certificate of completion for the Project by the City.

5.2.2 If the Properties, or any portion of the Properties, shall be conveyed, transferred or sold to any entity or person that is partially or wholly exempt from the payment of real or personal property taxes otherwise assessable against the Properties, or any portion thereof, without the prior written consent of the City, then, at the City's election and in addition to all other remedies available to the City under this Agreement or at law or in equity, the Developer shall pay to the City a fee in lieu of payment of such taxes each year in an amount determined by the City to be one percent (1%) of the "**full cash value**" of the Properties, or portion thereof, as may be subject to such exemption from payment of real or personal property taxes. The City's determination of "**full cash value**" for in-lieu payment purposes under this Section 5.2.2 shall be established by the City each year, if necessary, by reference to the real or personal property tax valuation principles and practices generally applicable to a county property tax assessor under Section 1 of Article XIIIA of the California Constitution. The City's determination of "**full cash value**" and that an in-lieu payment is due shall be conclusive on such matters. If the City determines that an amount is payable as an in-lieu payment under this Section 5.2.2 in any tax year, then such amount shall be paid to the City for that tax year within forty-five (45) days following transmittal by the City to the Developer of an invoice for payment of the in-lieu amount.

5.2.3 The covenants of this Section 5.2 shall run with the land of the Properties, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed.

5.3 Maintenance Condition of the Properties. The Developer for itself, its successors and assigns to all or any part or portion of the Properties and/or Project, covenants and agrees that:

5.3.1 The areas of the Properties that are subject to public view (including all existing and future improvements, paving, walkways, landscaping, exterior signage and ornamentation) shall be maintained in good repair and a neat, clean and orderly condition, ordinary wear and tear excepted. If there is an occurrence of an adverse condition on any area of the Properties that is subject to public view in contravention of the general maintenance standard described above (a "**Maintenance Deficiency**"), then the City shall notify the Developer in writing of the Maintenance Deficiency. If the Developer fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) days of its receipt of notice of the Maintenance Deficiency, the City shall have the right to enter the Properties and perform all acts necessary to cure the Maintenance Deficiency, or to take any other action at law or in equity that may then be available to the City to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the City for the abatement of a Maintenance Deficiency on the Properties pursuant to this Section 5.3.1 shall become a lien on the Properties, as applicable. If the amount

of the lien is not paid within thirty (30) days after written demand for payment from the City to the Developer, the City shall have the right to enforce the lien in the manner provided in Section 5.3.3.

5.3.2 Graffiti, as this term is defined in Government Code Section 38772, that has been applied to any exterior surface of a structure or improvement on the Properties that is visible from any public right-of-way adjacent or contiguous to the Properties, shall be removed by the Developer 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 ninety-six (96) hours following the time of the discovery of the graffiti, the City shall have the right to enter the Properties and remove the graffiti, without notice to the Developer. Any sum reasonably expended by the City for the removal of graffiti from the Properties pursuant to this Section 5.3.2, shall be a lien on the Properties. If the amount of the lien is not paid within thirty (30) days after written demand to the Developer from the City, the City shall have the right to enforce its lien in the manner provided in Section 5.3.3.

5.3.3 The Parties further mutually understand and agree that the rights conferred upon the City under this Section 5.3 expressly include a grant by the Developer of a security interest in the Properties with the power to establish and enforce a lien or other encumbrance against the Properties or any portion thereof, in the manner provided under Civil Code Sections 2924, 2924b and 2924c, to secure the obligations of the Developer and it successors under Section 5.3.1 or Section 5.3.2, including the reasonable attorneys' fees and costs of the City associated with the abatement of a Maintenance Deficiency or removal of graffiti. For the purposes of the preceding sentence the words "reasonable attorneys' fees and costs of the City" mean and include the salaries, benefits and costs of the City Attorney and the lawyers employed in the Office of the City Attorney.

5.3.4 The provisions of this Section 5.3, shall be a covenant running with the land of the Properties, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed. Nothing in the foregoing provisions of this Section 5.3 shall be deemed to preclude the Developer from making any alteration, addition, or other change to any structure or improvement or landscaping on the Properties, provided that any such changes comply with applicable zoning and building regulations of the City.

5.4 Obligation to Refrain from Discrimination. The Developer for itself, its successors and assigns to all or any part or portion of the Properties and/or Project, covenants and agrees that:

5.4.1 There shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Properties nor shall the Developer, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sub-lessees or vendees of the Properties. The covenant of this Section 5.4 shall run with the land

of the Properties and shall be enforceable against the Developer and its successors and assigns in perpetuity and be a covenant in the Grant Deed and the Notice of Agreement.

5.4.2 The covenant of this Section 5.4 shall run with the land of the Properties in perpetuity, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed.

5.5 Form of Non-Discrimination and Non-Segregation Clauses. The Developer for itself, its successors and assigns to all or any part or portion of the Properties and/or Project, covenants and agrees that:

5.5.1 The Developer, such successors and such assigns shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Properties (or any portion thereof) on the basis of sex, marital status, race, color, religion, creed, ancestry or national origin of any person. All deeds, leases or contracts pertaining to the Properties shall contain or be subject to substantially the following non-discrimination or non-segregation covenants:

5.5.1.1 In deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sub-lessee, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

5.5.1.2 In leases: "The Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants lessees, sub-lessee, sub-tenants, or vendees in the premises herein leased."

5.5.1.3 In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed or leased, nor shall the transferee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sub-lessees, sub-tenants, or vendees of the premises herein transferred." The foregoing provision shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

5.5.2 The covenant of this Section 5.5 shall run with the land of the Properties in perpetuity, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed.

5.6 Survival of Special Development Covenants. All of the covenants set forth in ARTICLE V, inclusive, shall be a covenant running with the land of the Properties and each such special development covenant shall survive the Close of Escrow, execution and recordation of the Grant Deed, and issuance and recordation of any Certificate of Completion for the time period specifically set forth in each such special development covenant. The Parties acknowledge that although the special development covenants apply to the entirety of the Properties, portions of the Project and Properties may, in accordance with the Permitted Transfer requirements, be sold or otherwise transferred to various successors and assigns of the Developer. Accordingly, the City agrees that with respect to enforcement of any of the special development covenants, it is understood and agreed that, in the event of a breach of any of the special development covenants, the City will seek to enforce those covenants only against the then-current owner(s) of that portion of the Properties which is not in compliance with any one or more the special development covenants. No owner of any portion of the Properties which is in compliance with the special development covenants shall be liable for the breach of any of the special development covenants by any other owner of any other portion of the Properties; provided, however, that the foregoing shall not preclude City from seeking damages against any prior owner of any portion of the Properties if, during the tenure of such owner's ownership, such owner's portion of the Properties was not in compliance with any one or more of the special development covenants.

5.7 Developer Covenant to Defend this Agreement. The Developer acknowledges that the City is a "**public entity**" and/or "**public agency**" as defined under applicable California law. Therefore, the City must satisfy the requirements of certain California statutes relating to the actions of public entities and public agencies including, without limitation, CEQA and Prevailing Wage Laws . Also, as a public body, the City's action in approving this Agreement may be subject to proceedings to invalidate this Agreement or mandamus. The Developer assumes the risk of delays and damages and costs that may result to or be incurred by the Developer from any third-party legal actions related to the City's approval of this Agreement or the pursuit of the activities contemplated by this Agreement, even in the event that an error, omission or abuse of discretion by the City is determined to have occurred. If a third-party asserts a claim, including, in the case of a government entity, a notice of violation, against the City or Developer, regarding the City's approval of this Agreement or the pursuit of the activities contemplated by this Agreement, either the City may terminate this Agreement on thirty (30) days written notice to the Developer of the City's intent to terminate this Agreement, referencing this Section 5.7, without any further obligation to perform the terms of this Agreement and without any liability to the Developer resulting from such termination, unless the Developer unconditionally agrees to indemnify and defend the City, with legal counsel acceptable to the City, against such third-party legal action, as provided in the next sentence. Within thirty (30) days of receipt of the City's notice of intent to terminate this Agreement, as provided in the preceding sentence, the Developer may offer to defend the City, with legal counsel reasonably acceptable to the City, in the third-party legal action and pay all of the court costs, attorney fees, monetary awards, sanctions, attorney fee awards, expert witness and consulting fees, and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action. Any such offer from the Developer must be in writing and reasonably acceptable to the City in both form and substance.

Notwithstanding the language in this paragraph, in the case of a CEQA related action Section 4.10.1 shall control and in the case of a Prevailing Wage related Section section 4.11.4 shall control. Notwithstanding anything to the contrary in this Agreement and for the avoidance of doubt, nothing contained in this Section 5.7 shall be deemed or construed to be an express or implied admission that the City is liable to the Developer or any other person or entity for damages alleged from any alleged or established failure of the City to comply with any statute, including, without limitation, CEQA, and Prevailing Wage. The Developer's defense of such third party actions as described in this Section 5.7 shall constitute an Unavoidable Delay.

5.8 Environmental Indemnity of the City by the Developer. The Developer agrees, at its sole cost and expense, to fully indemnify, protect, hold harmless, and defend (with counsel selected by the Developer and approved by the City) the City and its commissions, agents, attorneys, officers, employees, and authorized representatives (collectively, the "**Indemnified Parties**"), from and against any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements and expenses, including, without limitation, attorney fees, disbursements and costs of attorneys, environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever (collectively, "**Environmental Claims**") that may, at any time, be imposed upon, incurred or suffered by, or claimed, asserted or awarded against, the Indemnified Parties, directly or indirectly relating to or arising from any of the following "**Environmental Matters**" existing or occurring during or arising from the Developer's ownership of the Properties or construction or operation of the Project:

5.8.1 The presence of Hazardous Materials on, in, under, from or affecting all or any portion of the Properties or the Project.

5.8.2 The storage, holding, handling, release, threatened release, discharge, generation, leak, abatement, removal or transportation of any Hazardous Materials on, in, under, from or affecting the Properties or the Project.

5.8.3 The violation of any law, rule, regulation, judgment, order, permit, license, agreement, covenant, restriction, requirement or the like by the Developer, its agents or contractors, relating to or governing in any way Hazardous Materials on, in, under, from or affecting the Properties or the Project.

5.8.4 The failure of the Developer, its agents or contractors, to properly complete, obtain, submit and/or file any and all notices, permits, licenses, authorizations, covenants and the like in connection with the Developer's activities on the Properties or regarding the Project.

5.8.5 The implementation and enforcement by the Developer, its agents or contractors of any monitoring, notification or other precautionary measures that may, at any time, become necessary to protect against the release, potential release or discharge of Hazardous Materials on, in, under, from or affecting the Properties or the Project.

5.8.6 The failure of the Developer, its agents or contractors, in compliance with all applicable Environmental Laws, to lawfully remove, contain,

transport or dispose of any Hazardous Materials existing, stored or generated on, in, under or from the Properties or the Project.

5.8.7 Any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency in connection with any Hazardous Materials on, in, under, from or affecting the Properties or the Project or the violation of any Environmental Law relating to the Properties or the Project.

5.8.8 The Developer shall pay to the Indemnified Parties all costs and expenses including, without limitation, reasonable attorneys' fees and costs, incurred by the Indemnified Parties in connection with enforcement of the aforementioned environmental indemnity.

5.9 Insurance. In order to protect the City and its commissions, agents, attorneys, officers, employees and authorized representatives (collectively, "**Additional Insureds**") against any and all claims and liability for death, injury, loss and damage resulting from the Developer's actions in connection with this Agreement, the Properties, and the Project, the Developer shall secure and maintain the insurance coverage, described in and required by this Section 5.9. The City shall not have any obligation under this Agreement until the Developer provides the required policies and/or certificates evidencing the insurance required by this Section 5.9 to the City and the City approves such evidence of insurance. The Developer shall pay any deductibles and self-insured retentions under all insurance policies issued in satisfaction of the terms of this Agreement. Developer shall retain all insurance policies as set forth in this Section 5.9 until recordation of the Certificate of Completion.

5.9.1 Workers' Compensation Insurance Requirement. The Developer shall submit written proof that the Developer is insured against liability for workers' compensation in accordance with the provisions of Section 3700 of the Labor Code. By executing this Agreement, the Developer makes the following certification, required by Section 1861 of the Labor Code:

> "I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of the Agreement."

The Developer shall require each contractor and sub-contractor performing work on the Project to provide workers' compensation coverage for all of such contractor's or sub-contractor's employees, unless the contractor's or sub-contractor's employees are covered by workers' compensation insurance provided by the Developer. If any class of employees engaged in work or services performed in connection with the Project is not covered by Labor Code Section 3700, the Developer shall provide and/or require each contractor or sub-contractor to provide adequate workers' compensation insurance covering such employees. Each workers' compensation policy procured pursuant to this Section 5.9.1 shall contain a full waiver of subrogation clause in favor of the Additional Insureds.

5.9.2 Liability and Permanent Insurance Requirements.

5.9.2.1 The Developer shall maintain or cause to be maintained in full force and effect, until the issuance of the Certificate of Completion, subject to Section 5.9.2.4, the following insurance coverage:

5.9.2.1.1 Commercial General Liability Insurance coverage, including, but not limited to, Premises-Operations, Contractual Liability Insurance (specifically covering all indemnity obligations of the Developer pursuant to this Agreement), Products-Completed Operations Hazards, Personal Injury (including bodily injury and death), and Properties Damage for liability arising out of the construction of the Project and/or the Developer's operations concerning the Properties or the Project. The commercial general liability insurance coverage in conjunction with any "umbrella policy" shall have minimum limits for Bodily Injury and Properties Damage liability of TWO MILLION DOLLARS ($2,000,000) each occurrence and FOUR MILLION DOLLARS ($4,000,000) aggregate. The use of an "umbrella policy" is permitted to achieve the aforementioned liability limits.

5.9.2.1.2 Developer shall maintain and Developer will require the general contractor and subcontractors to obtain Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Properties Damage covering all owned, leased, hired and non-owned vehicles used by the Developer with minimum limits for Bodily Injury and Properties Damage of ONE MILLION DOLLARS ($1,000,000) each occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate. Such insurance shall be provided by a business or commercial vehicle policy.

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

5.9.2.1.4 If the Developer hires a consultant to provide design services, such as architectural or engineering services in connection with the Project, or any portion of the Project, the Developer shall require each such consultant to provide Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, the performance of such design services, with limits of not less than TWO MILLION DOLLARS ($2,000,000).

5.9.2.1.5 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.

5.9.2.1.6 Upon acceptance of the Project or any portion thereof, from each contractor, the Developer shall maintain Fire and Extended Coverage Insurance on the Project on a blanket basis or with an agreed amount clause in amounts not less than 100% of the replacement value of all portions of the Project so accepted.

5.9.2.2 During the construction of the Project, the Developer shall require that each contractor performing work on the Project maintain the following insurance coverage, as specified below, at all times during the performance of said work, or the Developer shall provide for such contractors "wrap" coverage, as specified below, at all times during the performance of said work:

5.9.2.2.1 The Developer shall maintain Builder's Risk Insurance to be written on an All Risk Completed Value form, in an aggregate amount equal to 100% of the completed insurable value of the Project or portion of the Project on which such contractor is performing work.

5.9.2.2.2 Each general contractor and each sub-contractor shall maintain Commercial General Liability Insurance with limits of not less than ONE MILLION DOLLARS ($1,000,000) per occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate to protect the Developer during the construction of the Project from claims involving bodily injury and/or death and damage to the property of others.

5.9.2.2.3 Each general contractor and each sub-contractor shall maintain Automobile Liability Insurance against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, hired and non-owned vehicles used in the performance of the contractor's obligations with minimum limits for bodily injury and property damage of ONE MILLION DOLLARS ($1,000,000) each occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate. Such automobile liability insurance shall be provided by a business or commercial vehicle policy.

5.9.2.3 The insurance required in Section 5.9.2.1 and Section 5.9.2.2 above shall include endorsements naming the Additional Insureds as additional insured for liability arising out of this Agreement and any operation related to this Agreement.

5.9.2.4 Any insurance coverage required under this Agreement shall not be written on a "claims made" basis. The applicable certificate of insurance must clearly provide that the coverage is on an "occurrence" basis. The requirements of this Section 5.9.2.4 shall survive any expiration or termination of this Agreement and the recordation of the Grant Deed and any Certificate of Completion.

5.9.2.5 Receipt by the City of evidence of insurance that does not comply with the above requirements shall not constitute a waiver of the insurance requirements of this Agreement.

5.9.2.6 Subject to Section 5.9.2.4, all of the insurance coverage required under this Section 5.9 shall be maintained by the Developer or its contractors, as required by the terms of this Agreement, until the issuance of the Certificate of Completion and shall not be reduced, modified, or canceled without, at least, thirty (30) days prior written notice to the City. Also, phrases such as "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates of insurance or any coverage for the Additional Insureds. The Developer shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled,

non-renewed, or whose policy limits are exhausted or upon insolvency of the insurer that issued the policy. If any notices of change, or cancellation are received Developer shall immediately notify the City, but requirements for "no changes without 30 days advance notice" may not be accepted by insurers, and minor variations in notice of cancellations clauses shall not be a breach of this Agreement. Failure of Developer to have replacement insurance meeting all requirements put in place prior to the cancellation date of any required insurance policy is a breach of this Agreement.

5.9.2.7 All insurance to be obtained and maintained by the Developer under this Section 5.9 shall be issued by a company or companies listed in the then current "Best's Key Rating Guide" publication with a minimum of an "A:XV" rating and be authorized to conduct business in the State of California, but said carriers may be 'non admitted' by the State of California Department of Insurance.

5.9.2.8 The City will not accept self-insurance in satisfaction of the insurance requirements of this Section 5.9.

5.9.2.9 All insurance obtained and maintained by the Developer in satisfaction of the requirements of this Agreement shall be primary to and not contributing to any insurance maintained by the Additional Insureds.

5.9.2.10 Insurance coverage in the minimum amounts set forth in this Section 5.9 shall not be construed to relieve the Developer of any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the Additional Insureds from taking such other actions as are available to them under any other provision of this Agreement or otherwise at law.

5.9.3 Failure by the Developer to maintain all insurance coverage required by this Section 5.9 in effect shall be an Event of Default by the Developer. The City, at its sole option, may exercise any remedy available to them in connection with such an Event of Default. Alternatively, the City may, at its sole option, purchase any such required insurance coverage and the City shall be entitled to immediate payment from the Developer for any premiums and associated costs paid by the City for such insurance coverage. Any election by the City to purchase or not to purchase insurance otherwise required to be carried by the Developer shall not relieve the Developer of its obligation to obtain and maintain the insurance coverage required by this Agreement.

ARTICLE VI

PROJECT FINANCING

6.1 Construction Loans. The Developer covenants to the City that no Construction Loan Deed of Trust(s) shall to be recorded against the Properties until Phase 1 has received the final Certificate of Completion for Phase 1. . Developer covenants to the City that Construction Loan(s) Deed of Trust may only be recorded on one Phase of the Project at a time. A subsequent Phase of the Project cannot receive a construction loan until the previous Phase of the Project has Completion of Construction. For illustrative purposes only Developer completes Phase 1,

Developer can obtain a construction loan for Phase 2, but cannot obtain construction loans for Phase 3 or 4 until Developer receives the Completion of Construction for Phase 2.

6.2 Unauthorized Liens. Until recordation of the final Certificate of Completion for each Phase , the Developer shall not record, and shall not allow to be recorded, against the any uncompleted Phase of the Properties, or any portion thereof, any Lien not expressly authorized by this Agreement. The Developer shall remove, or shall have removed, any unauthorized Lien made or recorded against the Properties or any portion of the Properties, or shall assure the satisfaction thereof to the satisfaction of the City. After one hundred twenty (120) calendar days prior written notice to the Developer, the City shall have the right, but not the obligation, to satisfy any unauthorized Lien made or recorded prior to recordation of the Certificate of Completion and receive reimbursement from the Developer for any amounts paid or incurred in satisfying any such Lien including staff time and costs, upon demand. Nothing in this Section 6.2, though, shall require the Developer to pay or make provisions for the payment of any tax, assessment, lien, or charge that the Developer is in the process of contesting the validity or amount thereof, in good faith, and so long as such contest shall not subject the Properties, or any portion thereof, to forfeiture or sale.

6.3 Rights of Lenders and City Regarding Permitted Loans and Liens.

6.3.1 Until repayment of the City Loan and any accrued interest in it's entirety, the City shall have the right of reasonable review and approval of any Lender from which the Developer proposes to obtain any Loan, whether or not such Loan is secured by a Lien against the Property or any portion thereof. The City shall not unreasonably withhold, condition or delay its approval of any proposed Lender or Loan. Developer acknowledges that City Loan shall be a first priority security and any other Loan shall be subordinate to City Loan. In deciding whether to give, condition or withhold such approval, the City may consider, among other matters, whether or not the proposed Lender is a state or federally chartered bank, savings and loan, or other financial institution which routinely provides construction financing to development projects such as the Project, whether the terms of the Loan are reasonable and customary when compared to the financing terms of similar development projects in the County, the size and financial strength of the proposed Lender, and what effect, if any, any changes requested by the Lender to either this Agreement or any of the exhibits to this Agreement may have upon the City's rights and remedies hereunder. In connection therewith, in any notice requesting approval of a proposed Lender and Loan, the Developer shall include a statement identifying any amendments, modifications, or other changes to this Agreement or its exhibits which the proposed Lender will request in connection with the Developer's obtaining of the Loan. The City agrees to reasonably consider, but shall not be obligated to accept, any amendment, modification, or other change to this Agreement or any of the exhibits to this Agreement which materially restricts, diminishes, or burdens the City's rights and remedies.

6.3.2 Whenever the City delivers any notice or demand to the Developer regarding any breach or default by the Developer under this Agreement that, if not timely cured by the Developer, would entitle the City to terminate this Agreement, the City shall send a copy of such notice to each affected Lender of which the City has received notice and a contact address for transmittal of such notices. Whenever the City delivers any notice or demand to the Developer regarding any breach or default by the Developer under this Agreement that, if

not timely cured by the Developer, would entitle the City to exercise its power of termination of the fee estate of all or any portion of the Property pursuant to Section 7.6, the City shall at the same time send a copy of such notice or demand to each affected Lender of which the City has received notice and a contact address for transmittal of such notice. Each affected Lender receiving a copy of any such notice shall have the right, at its option, to commence the cure or remedy of any such default of the Developer and to diligently and continuously proceed with such cure or remedy, within one hundred eighty (180) calendar days following its receipt of notice of the default. If a default of the Developer under this Agreement cannot, with diligence, be remedied or cured, or the remedy or cure of such default cannot be commenced, within such one hundred eighty (180) calendar day period, the Lender shall have such additional time as is reasonably necessary to remedy or cure such default of the Developer, but in no event beyond three hundred sixty five (365) calendar days following its receipt of notice of the default. If such default of the Developer can only be remedied or cured by the Lender upon obtaining possession of the Property, the Lender shall seek to obtain possession of the Property with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default of the Developer within one hundred eighty (180) calendar days after obtaining possession of the Property. Nothing contained in this Agreement shall be deemed to permit or authorize any Lender to undertake or continue the construction of any portion of the Project (beyond the extent necessary to conserve or protect improvements or construction already made), without expressly assuming the Developer's obligations under this Agreement by written agreement approved by the City, in which the Lender agrees to complete, in the manner provided in this Agreement, the improvements to which the Lien or title of the Lender relates, which approval shall not unreasonably be withheld, delayed, or conditioned by the City.

6.3.3 In any case where, one hundred eighty (180) calendar days after delivery of notice of a default of the Developer under Section 6.3.2, an affected Lender has not exercised the option provided in Section 6.3.2 to construct the applicable portions of the Project, or has exercised the option, but has not proceeded diligently and continuously with construction, the City shall have the option, in the City's sole and absolute discretion, to purchase the Loan of such Lender and any security interest of such Lender under its Loan Documents by payment to the Lender of the amount of the unpaid Loan, including principal, accrued and unpaid interest, late charges, costs, expenses and other amounts payable to the Lender by the Developer under its Loan Documents and, if the ownership of the Property or any portion of the Property has previously vested in such Lender, the City, at its option but not as its obligation, shall be entitled to a conveyance of any title or interest in the Property vested in such Lender from such Lender.

6.3.4 After expiration of the one hundred eighty (180) calendar day period provided for in Section 6.3.3, any affected Lender may demand, in writing, that the City act to exercise or forego the option granted in Section 6.3.3. If the City fails to exercise the right granted in Section 6.3.3 within sixty (60) calendar days from the date of the City's receipt of such written demand from a Lender, the City shall be conclusively deemed to have waived its right of purchase of that Lender's interest pursuant to Section 6.3.3.

6.3.5 In the event of a default or breach by the Developer under any Loan Documents, where the Lender has not exercised its option to complete the Project under Section 6.3.2, the City may cure the default of the Developer under the applicable Loan Documents, but is under no obligation to do so, prior to completion of any sale or foreclosure of

the Property or any portion thereof under the applicable Loan Documents. The City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing any default of the Developer under any Loan Documents.

6.3.6 In any case where a Lender has acquired title to all or any portion of the Property or Project through foreclosure, deed in lieu of foreclosure, or any other means, and such Lender proposes to enter into an agreement to transfer the Property and/or Project, or any portion thereof, to a third party transferee, the Lender shall provide the City with written notice thereof, which notice shall include a reasonably detailed description of the terms and conditions of the proposed transaction. The City shall have the option, but not the obligation, to purchase the Property and/or Project on substantially the same terms as described in the Lender's notice, which option, if ever, shall be exercised by written notice from the City to the Lender within twenty (20) days following the City's receipt of the Lender's notice. If the City elects not to exercise its option, then, subject to Section 8.3.2, the Lender may complete the transaction described in its notice, provided that such transaction is closed on materially identical terms and conditions as those described in the Lender's notice to the City. If the Lender and third party transferee desire to materially amend the terms of their proposed transaction, the Lender shall give the City written notice of the proposed modifications and the City shall once again have the right to elect to acquire the Property and the Project (or portion thereof) on terms and conditions substantially similar to those modified terms. If, for any reason, the proposed transaction between the Lender and third party transferee fails to close within two hundred forty (240) days following the date on which the City first receives notice of the proposed transaction (or notice of the proposed modified transaction, whichever is later), then the City once again have the right to elect to acquire the Property and/or Project pursuant to this Section 6.3.6.

6.3.7 The restrictions set forth in this Section 6.3 shall remain in effect only until the recordation of the final Certificate of Completion for the Project

ARTICLE VII

DEFAULTS, REMEDIES AND TERMINATION

7.1 Defaults - General.

7.1.1 Parties agree that City may terminate this Agreement without cause at its sole and absolute discretion at any time prior to the Close of Escrow by providing written notice to Developer. Should City exercise it power of termination under this Section 7.1.1 Developer shall not be entitled to any compensation or damages from City.

7.1.2 Subject to any extensions of time provided for in this Agreement, failure or delay by any Party to perform any term or provision of this Agreement shall constitute an "Event of Default" under this Agreement; provided, however, that if a Party otherwise in default commences to cure, correct or remedy such default, within thirty (30) calendar days after receipt of written notice from the injured Party specifying such default, and shall diligently and continuously prosecute such cure, correction or remedy to completion (and where any time limits for the completion of such cure, correction or remedy are specifically set forth in

this Agreement, then within said time limits), such Party shall not be deemed to be in default under this Agreement and no Event of Default shall be deemed to have occurred.

7.1.3 The injured Party shall give written notice of default to the Party in default, specifying the default complained of by the non-defaulting Party. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

7.1.4 Any failure or delays by any Party in asserting any of their rights and/or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by any Party in asserting any of its rights and/or remedies shall not deprive that Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies.

7.1.5 In addition to other acts or omissions of the Developer that may legally or equitably constitute a default or breach of this Agreement, the occurrence of any of the following specific events, prior to the issuance of a Certificate of Completion for the Project, shall constitute an "Event of Default" under this Agreement and shall not be subject to the notice and cure provisions of Section 7.1.1:

7.1.5.1 Any material default by the Developer under any Loan Documents for any purpose or reason that remains uncured following any applicable notice and expiration of any applicable cure period under such Loan Documents.

7.1.5.2 Any representation, warranty or disclosure made to the City by the Developer regarding this Agreement or the Project is materially false or misleading, whether or not such representation or disclosure appears in this Agreement.

7.1.5.3 The Developer fails to make any payment or deposit of funds required under this Agreement or to pay any other charge set forth in this Agreement, following seven (7) days' written notice to the Developer from the City of such failure.

7.1.5.4 The construction of the Project is delayed or suspended for a period in excess of that permitted under Section 4.4 or the Developer has not been issued, or entitled to be issued, a Completion of Construction for each Phase in accordance with the Schedule of Performance.

7.1.5.5 There occurs any event of dissolution, reorganization or termination of the Developer that adversely and materially affects the operation or value of the Properties or the Project, and such event is not corrected within five (5) days following written notice of such event from the City to the Developer.

7.1.5.6 The Developer Transfers its interest in this Agreement, the Properties, or the Project, or any portion thereof, whether voluntarily or involuntarily or by operation of law, in violation of the terms and conditions of this Agreement and such action is not cured within the period prescribed in Section 8.3.2.

7.1.5.7 The Developer becomes insolvent or a receiver is appointed to conduct the affairs of the Developer under state or federal law.

7.1.5.8 The Developer's legal status as a California limited liability company authorized by the Secretary of State of the State of California to transact business in California is suspended or terminated.

7.2 LIQUIDATED DAMAGES TO THE CITY. UPON THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW, THE CITY MAY CANCEL THE ESCROW PURSUANT TO SECTION 3.10, AND UPON CANCELLATION OF THE ESCROW, THE CITY SHALL BE RELIEVED OF ANY OBLIGATION UNDER THIS AGREEMENT TO SELL OR CONVEY THE PROPERTY OR ANY PORTION THEREOF AND ANY SUCH ESCROW CANCELLATION SHALL BE WITHOUT ANY LIABILITY OF THE CITY TO THE DEVELOPER OR ANY OTHER PERSON ARISING FROM SUCH ACTIONS. THE CITY AND THE DEVELOPER ACKNOWLEDGE THAT IT IS EXTREMELY DIFFICULT AND IMPRACTICAL, IF NOT IMPOSSIBLE, TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY THE CITY IN THE EVENT OF A CANCELLATION OF THE ESCROW DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES THE CITY WOULD SUFFER IN THE EVENT OF A CANCELLATION OF THE ESCROW DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW, THE CITY AND THE DEVELOPER AGREE THAT A REASONABLE ESTIMATE OF THE CITY'S DAMAGES IN SUCH EVENT IS THE TOTAL SUM OF TWENTY THOUSAND DOLLARS ($20,000) (THE "**LIQUIDATED DAMAGES AMOUNT**"). THEREFORE, UPON THE CANCELLATION OF THE ESCROW BY THE CITY DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF THE ESCROW, ESCROW HOLDER SHALL IMMEDIATELY CANCEL THE ESCROW AND PAY THE LIQUIDATED DAMAGES AMOUNT TO THE CITY, IN PART, FROM THE EARNEST MONEY DEPOSIT WITHIN FIVE (5) DAYS OF ESCROW CANCELLATION. RECEIPT OF THE LIQUIDATED DAMAGES AMOUNT SHALL BE THE CITY'S SOLE AND EXCLUSIVE REMEDY UPON THE CANCELLATION OF THE ESCROW DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW.

CITY'S INITIALS: _____ DEVELOPER'S INITIALS: _____

7.3 DEVELOPER'S ELECTION RE: SPECIFIC ENFORCEMENT OF AGREEMENT OR WAIVER OF RIGHT TO SPECIFIC PERFORMANCE AND LIMITATION ON RECOVERY OF DAMAGES PRIOR TO CLOSE OF ESCROW. UPON THE OCCURRENCE OF AN EVENT OF DEFAULT PERTAINING TO THE CONVEYANCE OF THE PROPERTY BY THE CITY UNDER THIS AGREEMENT PRIOR TO CLOSE OF ESCROW, THE DEVELOPER SHALL, AS ITS SOLE AND EXCLUSIVE REMEDY, HAVE THE RIGHT TO EXERCISE ONE OF THE ALTERNATIVE REMEDIES DESCRIBED IN SECTIONS 7.3.1 AND 7.3.2. THE DEVELOPER'S ELECTION, ONCE MADE, SHALL BE IRREVOCABLE.

7.3.1 WAIVER OF RIGHT TO SPECIFIC PERFORMANCE AND LIMITATION ON RECOVERY OF DAMAGES. THE DEVELOPER MAY WAIVE THE REMEDIES SET FORTH IN SECTION 7.3.2 AND MAY CANCEL THE ESCROW PURSUANT TO SECTION 3.10, AND UPON CANCELLATION OF THE ESCROW, THE DEVELOPER SHALL BE RELIEVED OF ANY OBLIGATION UNDER THIS AGREEMENT TO PURCHASE OR ACCEPT TITLE TO THE PROPERTY AND ANY SUCH ESCROW CANCELLATION SHALL BE WITHOUT ANY LIABILITY OF THE DEVELOPER TO THE CITY OR ANY OTHER PERSON ARISING FROM SUCH ACTIONS. THE DEVELOPER SHALL BE LIMITED TO RECOVERING ANY AMOUNTS ACTUALLY EXPENDED BY THE DEVELOPER IN REASONABLE RELIANCE ON THIS AGREEMENT PRIOR TO THE DATE OF THE OCCURRENCE OF THE EVENT OF DEFAULT BY THE CITY, NOT TO EXCEED TEN THOUSAND DOLLARS ($10,000). THE DEVELOPER WAIVES ANY RIGHT TO RECOVER ANY OTHER SUMS FROM THE CITY ARISING FROM AN EVENT OF DEFAULT BY THE CITY PRIOR TO THE CLOSE OF ESCROW. THE DEVELOPER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542 RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 7.3.1, WHICH CIVIL CODE SECTION READS AS FOLLOWS:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

BY INITIALING BELOW, THE DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 7.3.1.

DEVELOPER'S INITIALS _____

IN CONNECTION WITH THE WAIVERS OF THIS SECTION 7.3.1, THE DEVELOPER FURTHER WAIVES THE RIGHT TO RECORD A NOTICE OF PENDENCY OF ACTION AGAINST ALL OR ANY PORTION OF THE PROPERTY EXCEPT DEVELOPER MAY RECORD SUCH A NOTICE IN CONNECTION WITH ANY SUIT FOR SPECIFIC PERFORMANCE PERMITTED HEREUNDER IN THE EVENT DEVELOPER ELECTS NOT TO WAIVE ITS RIGHT TO SEEK SPECIFIC PERFORMANCE UNDER SECTION 7.3.2.

7.3.2 SPECIFIC PERFORMANCE. THE DEVELOPER MAY WAIVE THE REMEDIES SET FORTH IN SECTION 7.3.1 AND, IN ACCORDANCE WITH CIVIL CODE SECTION 3384, ET SEQ., INSTITUTE AN ACTION AGAINST THE CITY FOR SPECIFIC PERFORMANCE OF THE TERMS OR PROVISIONS OF THIS AGREEMENT WHICH WERE TO HAVE BEEN COMPLETED BY THE CITY PRIOR TO THE CLOSE OF ESCROW.

7.4 Legal Actions.

7.4.1 Except as otherwise provided by Section 7.3, any Party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy available to that Party under this Agreement or at law or in equity. Such legal actions must be instituted in the Superior Court of the State of California in and for the County of San Bernardino, California, in any other appropriate court within the County of San Bernardino, California.

7.4.2 The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflicts of laws principles. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in and relates to real property located in the City of Ontario, County of San Bernardino, California.

7.5 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this ARTICLE VII are non-exclusive and cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party(ies).

7.6 City Power of Termination Regarding the Properties.

7.6.1 The City hereby reserves a power of termination pursuant to Civil Code Sections 885.010, et seq., exercisable by the City, in its sole and absolute discretion, upon thirty (30) calendar days written notice to the Developer referencing this Section 7.6, to terminate the fee interest of the Developer in the Properties and/or any improvements to the Properties and revest such fee title in the City and take possession of all or any portion of such real property and improvements, without compensation to the Developer, upon the occurrence of an Event of Default by the Developer following the Close of Escrow and prior to the repayment of the City Loan, or expiration of this Agreement, whichever occurs later.

7.6.2 The thirty (30) calendar day written notice specified Section 7.6.1 shall specify the Event of Default by the Developer triggering the City's exercise of its power of termination. The City shall proceed with its remedy set forth in Section 7.6.1 only if the Developer continues in default for a period of sixty (60) calendar days following such notice or, upon commencing to cure such default, fails to diligently and continuously prosecute said cure to satisfactory conclusion.

7.6.3 The rights of the City under this Section 7.6 shall be subject and subordinate to, shall be limited by and shall not defeat, render invalid or limit:

7.6.3.1 Each Lien recorded against the Properties and specifically authorized by this Agreement as a Permitted Transfer;

7.6.3.2 Any leases, declarations of covenants, conditions and restrictions, easement agreements or other recorded documents or interests applicable to the Properties and specifically authorized by this Agreement as a Permitted Transfer.

7.6.4 Parties agree that should City exercise it power of termination prior to all Certificates of Completion being issued for Phase 1, Developer or its successors or assigns shall convey by grant deed to the City title the entirety of Phase 1, Phase 2, Phase 3, and Phase 4.

7.6.5 Parties agree that should Developer timely obtain all Certificates of Completion for Phase 1 but fails to timely comply with the Schedule of Performance for Phase 2, then Developer or its successors or assigns shall convey by grant deed to the City title the entirety of Phase 2, Phase 3 and Phase 4.

7.6.6 Parties agree that should Developer timely obtain all Certificates of Completion for Phase 1 and Phase 2 but fails to timely comply with the Schedule of Performance for Phase 3, then Developer or its successors or assigns shall convey by grant deed to the City title the entirety of Phase 3, and Phase 4.

7.6.7 Parties agree that should Developer timely obtain all Certificates of Completion for Phase 1, Phase 2, and Phase 3 but fails to timely comply with the Schedule of Performance for Phase 4, then Developer or its successors or assigns shall convey by grant deed to the City title the entirety of Phase 4.

7.6.8 Upon the City's exercise of its power of termination pursuant to this Section 7.6, the Developer or its successors or assigns shall convey by grant deed to the City title to the Properties, as specified in the City's notice pursuant to Section 7.6.1, and all improvements thereon, in accordance with Civil Code Section 1109, as such code section may hereafter be amended, renumbered, replaced or substituted. Such conveyance shall be duly acknowledged by the Developer and a notary in a manner suitable for recordation. The City may enforce its rights pursuant to this Section 7.6 by means of an injunctive relief or forfeiture of title action filed in any court of competent jurisdiction.

7.6.9 IMMEDIATELY FOLLOWING THE THIRTY (30) DAY PERIOD SPECIFIED IN SECTION 7.6.1, ABOVE, THE CITY, ITS EMPLOYEES AND AGENTS SHALL HAVE THE RIGHT TO REENTER AND TAKE POSSESSION OF THE PROPERTY AND ANY IMPROVEMENTS THEREON, WITHOUT FURTHER NOTICE OR COMPENSATION TO THE DEVELOPER. BY INITIALING BELOW, THE DEVELOPER HEREBY EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS THAT THE DEVELOPER MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 791 AND CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1162, AS THOSE STATUTES MAY BE AMENDED, REPLACED, RENUMBERED OR SUBSTITUTED, OR UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

DEVELOPER'S INITIALS _____

7.6.10 THE DEVELOPER ACKNOWLEDGES AND AGREES THAT THE CITY'S EXERCISE OF ITS POWER OF TERMINATION AND RIGHT OF REENTRY PURSUANT TO THIS SECTION 7.6 MAY WORK A FORFEITURE OF THE ESTATE IN THE DEFAULTED PORTION OF THE PROPERTY CONVEYED TO THE

DEVELOPER THROUGH THE GRANT DEED. THE DEVELOPER HEREBY EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL EQUITABLE AND LEGAL DEFENSES THAT THE DEVELOPER MAY HAVE TO SUCH FORFEITURE, INCLUDING, BUT NOT LIMITED TO, THE DEFENSES OF LACHES, WAIVER, ESTOPPEL, SUBSTANTIAL PERFORMANCE OR COMPENSABLE DAMAGES. THE DEVELOPER FURTHER EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS AND DEFENSES THAT THE DEVELOPER MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3275 OR ANY OTHER STATUTE OR COMMON LAW PRINCIPLE OF SIMILAR EFFECT. THE DEVELOPER ACKNOWLEDGES THAT THE TERMS AND CONDITIONS OF THIS AGREEMENT REFLECT THE POSSIBILITY OF FORFEITURE BY VIRTUE OF THE EXERCISE OF THE CITY'S POWER OF TERMINATION PROVIDED IN THIS SECTION 7.6 AND FURTHER ACKNOWLEDGE THAT IT HAS RECEIVED INDEPENDENT AND ADEQUATE CONSIDERATION FOR ITS WAIVER AND RELINQUISHMENT OF RIGHTS AND REMEDIES PURSUANT TO SECTION 7.6.9. AND THIS SECTION 7.6.10.

DEVELOPER'S INITIALS _____

7.7 Developer Indemnification of the City. In addition to any other specific indemnification or defense obligations of the Developer set forth in this Agreement, the Developer agrees to indemnify, defend (upon written request by the City and with counsel reasonably acceptable to the City and hold harmless the Indemnified Parties, from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs and expenses, including, but not limited to reasonable attorney's fees of counsel retained by the Indemnified Parties, expert fees, costs of staff time, and investigation costs, of whatever kind or nature, that are in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, through any act, omission, fault or negligence, whether active or passive, of the Developer or the Developer's officers, agents, employees, independent contractors or subcontractors of any tier, relating in any manner to this Agreement, any work to be performed by the Developer related to this Agreement, the Properties, or the Project, or any authority or obligation exercised or undertaken by the Developer under this Agreement. Without limiting the generality of the foregoing, the Developer's obligation to indemnify the Indemnified Parties shall include injury or death to any person or persons, damage to any property, regardless of where located, including the property of the Indemnified Parties, any workers' compensation or prevailing wage determination, claim or suit or any other matter arising from or connected with any goods or materials provided or services or labor performed regarding the Project or the Properties on behalf of the Developer by any person or entity.

ARTICLE VIII

GENERAL PROVISIONS.

8.1 Incorporation of Recitals. The Recitals of fact set forth preceding this Agreement are true and correct and are incorporated into this Agreement in their entirety by this reference.

8.2 Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the development of the Project is a private development, that neither

party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement.

8.3 Restrictions on Transfers.

8.3.1 The Developer acknowledges that the qualifications and identity of the Developer are of particular importance to the City. The Developer further recognizes and acknowledges that the City has relied and is relying on the specific qualifications and identity of the Developer in entering into this Agreement with the Developer and, as a consequence, Transfers are permitted only as expressly provided in this Agreement. The Developer shall promptly notify the City in writing of any and all changes whatsoever in the identity of the business entities or individuals either comprising or in control of the Developer, as well as any and all changes in the interest or the degree of control of the Developer by any such person, of which information the Developer or any of its partners, members or officers are notified or may otherwise have knowledge or information.

8.3.2 Except as expressly permitted in this Agreement, the Developer represents to the City that it has not made and agrees that it will not make or create, or suffer to be made or created, any Transfer other than a Permitted Transfer, either voluntarily, involuntarily or by operation of law, until after the recordation of a Certificate of Completion for the Project subject to the Transfer; provided, however, that the City may approve in its reasonable discretion, Transfers other than Permitted Transfers prior to the recordation of a Certificate of Completion. In deciding whether to approve or disapprove any proposed Transfer, the City may consider the proposed transferee's financial strength and the experience of the proposed transferee and its senior management in undertaking and successfully completing projects of a similar type and size as the Project or that portion of the Project proposed to be transferred. Any Transfer made in contravention of this Section 8.3 shall be voidable at the election of the City and this Agreement may be terminated by the City or the City may exercise any other remedy available to the City under the terms of this Agreement, provided, however, that (i) the City shall first notify the Developer in writing of its intention to terminate this Agreement or to exercise any other remedy, and (ii) the Developer shall have twenty (20) calendar days following its receipt of such written notice to commence and, thereafter, diligently and continuously proceed to cure the default of the Developer and submit evidence of the initiation and satisfactory completion of such cure to the City, in a form and substance reasonably satisfactory to the City.

8.3.3 The Developer shall provide the City no less than thirty (30) days prior written notice of any proposed Permitted Transfer which the Developer desires to enter into prior to the recordation of the Certificates of Completion for the Project, other than a Permitted Transfer for which no notice shall be required. The Developer shall have the burden of demonstrating to the City's reasonable satisfaction that the proposed Permitted Transfer meets the conditions and requirements of this Agreement with respect to Permitted Transfers.

8.3.4 In connection with the City's review of any request for approval of any proposed Transfer under this Section 8.3, or of any Lender or Loan under Section 6.3, the Developer agrees to reimburse the City for those third party costs and expenses

incurred by the City in connection with its review of the Developer's request for approval, including, without implied limitation, the reasonable fees and costs of those outside consultants and legal counsel retained by the City to assist it in its review of the Developer's request, including the City Attorney.

8.3.5 Anything in this Agreement to the contrary notwithstanding, the restrictions and prohibitions on Transfers contained in this Section 8.3 shall terminate upon issuance of a Certificate of Completion for the Project.

8.4 Notices, Demands and Communications Between the Parties.

8.4.1 Any and all notices, demands or communications submitted by any Party to another Party pursuant to or as required by this Agreement shall be proper, if in writing and dispatched by messenger for immediate personal delivery, by a nationally recognized overnight courier service or by registered or certified United States Mail, postage prepaid, return receipt requested, to the principal office of the City or the Developer, as applicable, as designated in Section 8.4.2. Such written notices, demands or communications may be sent in the same manner to such other addresses as either Party may from time to time designate. Any such notice, demand or communication shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that it is delivered by personal delivery, on the date of delivery by a nationally recognized overnight courier service or three (3) calendar days after it is placed in the United States Mail, as provided in this Section 8.4.

8.4.2 The following are the authorized addresses for the submission of notices, demands or communications to the Parties:

TO DEVELOPER:	A Block LLC Alex Baroian 109 E Harvard Street, Suite 300 Glendale, CA 91205
TO CITY:	City of Ontario 303 East B St Ontario, CA 91764 Attention: City Manager (T) 909-395-2000
COPY TO:	Best Best & Krieger, LLP 18101 Von Karman Ave, Suite 1000 Irvine, CA 92614 Attention: Elizabeth Wagner Hull (T) 949-263-2600

8.5 Conflict of Interest. No member, official or employee of the City, having any conflict of interest, direct or indirect, related to this Agreement, the Properties, or the development

or operation of the Project shall participate in any decision relating to this Agreement. The Parties represent and warrant that they do not have knowledge of any such conflict of interest.

8.6 Warranty Against Payment of Consideration for Agreement. The Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section 8.6, shall not include persons to whom fees are paid for professional services, if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary by the Developer.

8.7 Non-liability of City, Officials and Employees. No member, official or employee of the City shall be personally liable to the Developer, or any successor in interest of the Developer, in the event of any default or breach by the City under this Agreement or for any amount that may become due to the Developer or to its successor, or on any obligations under the terms of this Agreement, except as may arise from the gross negligence or willful acts of such member, official or employee.

8.8 Calculation of Time Periods. Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to Business Days in this Agreement shall mean consecutive Business Days.

8.9 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Agreement shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this Agreement, refers to such document, as modified from time to time (excepting any modification that violates this Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this Agreement includes the word "and." Every reference to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

8.10 Governing Law. The procedural and substantive laws of the State shall govern the interpretation and enforcement of this Agreement, without application of conflicts of laws principles. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in and relates to real property located in the County. All legal actions arising from this Agreement shall be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

8.11 Unavoidable Delay; Extension of Time of Performance.

8.11.1 Notice. Subject to specific provisions of this Agreement, performance by any Party under this Agreement shall not be deemed, or considered to be, in default where any such default is due to an Unavoidable Delay and/or Unforeseen Site Condition resulting in an extension of time pursuant to this Agreement that is not attributable to the fault of the Party claiming an extension of time to perform. An extension of time for any Unavoidable Delay and/or Unforeseen Site Condition resulting in an extension of time pursuant to this Agreement shall be for the period of the Unavoidable Delay and/or Unforeseen Site Condition and shall commence to run from the date of occurrence of the Unavoidable Delay and/or Unforeseen Site Condition resulting in an extension of time pursuant to this Agreement, if the Party asserting the existence of the Unavoidable Delay and/or Unforeseen Site Condition resulting in an extension of time pursuant to this Agreement provides the other Parties with written notice of the occurrence of the Unavoidable Delay and/or Unforeseen Site Condition resulting in an extension of time pursuant to this Agreement, within ten (10) days of the commencement of such asserted Unavoidable Delay and/or Unforeseen Site Condition resulting in an extension of time pursuant to this Agreement. Otherwise, the extension of time for an Unavoidable Delay and/or Unforeseen Site Condition resulting in an extension of time pursuant to this Agreement shall commence on the date of receipt of written notice of the occurrence of the Unavoidable Delay and/or Unforeseen Site Condition resulting in an extension of time pursuant to this Agreement by the Parties not requesting an extension of time to perform due to such Unavoidable Delay and/or Unforeseen Site Condition resulting in an extension of time pursuant to this Agreement.

8.11.2 Assumption of Economic Risks. The Parties expressly acknowledge and agree that changes in either general economic conditions or changes in the economic assumptions of either of them that may have provided a basis for entering into this Agreement and that occur at any time after the execution of this Agreement, do not constitute an Unavoidable Delay and do not provide any Party with grounds for asserting the existence of an Unavoidable Delay in the performance of any covenant or undertaking arising under this Agreement. Each Party expressly assumes the risk that changes in general economic conditions or changes in such economic assumptions relating to the terms and covenants of this Agreement could impose an inconvenience or hardship on the continued performance of such Party under this Agreement.

8.12 Inspection of Books and Records. The City shall have the right at all reasonable times, at the City's cost and expense, to inspect the books and records of the Developer pertaining to the Properties and/or the Project. The Developer shall also have the right at all reasonable times, at the Developer's sole cost and expense, to inspect the books and records of the City pertaining to the Properties and/or the Project, to the extent relevant to the Developer's obligations under this Agreement. Nothing in this Section 8.12 or elsewhere in this Agreement shall, however, constitute a waiver or modification of any right or privilege which any Party may have with respect to any document, statement, or other record, including, without implied limitation, the attorney-client privilege, the attorney-work product privilege, any privilege arising under any state or federal evidentiary code or rule, or any privilege or exclusionary right arising under any state or federal freedom of information or public records disclosure law.

8.13 Real Estate Commissions. The City shall not be liable for any real estate commissions, brokerage fees or finder fees that may arise from or be related to this Agreement.

The Developer shall pay any fees or commissions or other expenses related to its retention or employment of real estate brokers, agents or other professionals.

8.14 Binding on Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

8.15 Entire Agreement.

8.15.1 This Agreement shall be executed in three (3) duplicate originals, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Agreement that constitute the entire understanding and agreement of the Parties regarding the Properties, the Project, and the other subjects addressed in this Agreement.

8.15.2 This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all negotiations or previous agreements between the Parties with respect to the Properties, the Project, and the other subjects addressed in this Agreement.

8.15.3 None of the terms, covenants, agreements or conditions set forth in this Agreement shall be deemed to be merged with any deed conveying title to the Properties and this Agreement shall continue in full force and effect before and after such conveyances.

8.15.4 All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representative(s) of all Parties.

8.16 Execution of this Agreement. Following execution of three (3) originals of this Agreement by the authorized representative(s) of the Developer and prompt delivery of such originals, thereafter, to the City, accompanied by an official action of the governing body of the Developer authorizing the individuals executing this Agreement on behalf of the Developer to execute and perform this Agreement, in form and substance acceptable to the City, this Agreement shall be subject to the review and approval by the City Council, in their sole and absolute discretion, no later than forty-five (45) calendar days after such date of delivery to the City. If the City have not approved, executed, and delivered an original of this Agreement to the Developer within the foregoing time period, then no provision of this Agreement shall be of any force or effect for any purpose.

8.17 City Manager Implementation. City shall implement this Agreement through the City Manager. The City Manager is hereby authorized by City to enter into agreements referenced in this Agreement or reasonably required to implement this Agreement on behalf of City, issue approvals, interpretations or waivers and enter into amendments to this Agreement on behalf of City, to the extent that any such action(s) does/do not materially or substantially change the Project or increase the monetary obligations of City by more than Fifty Thousand Dollars ($50,000) in the aggregate. All other actions shall require the consideration and approval of City Council, unless expressly provided otherwise by action of City Council. Nothing in this Section 8.17 shall restrict

the submission to City Council of any matter within the City Manager's authority under this Section 8.17 in the City Manager's sole and absolute discretion, to obtain City Council authorization on such matter. The specific intent of this Section 8.17 is to authorize certain actions on behalf of City by the City Manager, but not to require that such actions be taken by the City Manager, without consideration by City Council.

8.18 Survival of Indemnity Obligations. All general and specific indemnity and defense obligations of the Parties set forth in this Agreement shall survive the expiration or termination of this Agreement, the execution or recordation of the Grant Deed, and/or the issuance and recordation of any Certificate of Completion.

8.19 Time Declared to be of the Essence. As to the performance of any obligation hereunder as to which time is a component thereof, the performance of such obligation within the time provided is of the essence.

[Signatures on Following Pages]

SIGNATURE PAGE
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

CITY:

THE CITY OF ONTARIO
a California municipal corporation

Dated:_____, 2025 By:_____
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

By: _____
City Attorney

SIGNATURE PAGE
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

DEVELOPER:

A BLOCK, LLC a California limited liability company

Dated:_____

By:_____
Alexis Baroian
Manager / Member

EXHIBIT A
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

Legal Description of the Lerch 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:

LOT 9, BLOCK 45, TOWN OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 9 OF MAPS, PAGE 43, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM THE SOUTH 6 INCHES THEREOF.

APN: 1048-553-15

EXHIBIT B
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

Legal Description of the Yanghtze 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:

LOTS 6 AND 7 AND THE SOUTH 3 FEET OF LOT 5, IN BLOCK 45, TOWN OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 9, PAGE 43 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 1048-553-17

EXHIBIT C

TO

DISPOSITION AND DEVELOPMENT AGREEMENT

(City of Ontario and A Block, LLC)

Legal Description of the Old Bridal Shop 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:

LOT 3 BLOCK 45, TOWN OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 9 OF MAPS, PAGE 43, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 1048-553-02

EXHIBIT D
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

Legal Description of the Parcel 1

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:

LOTS 4 AND 5, BLOCK 45, TOWN OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAPS ON FILE IN BOOK 9, PAGE 43 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM SAID LOT 5, THE SOUTH 3.00 FEET THEREOF.

APN: 1048-553-01

EXHIBIT E
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

Legal Description of the Parcel 3

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:

LOT 2 BLOCK 45, TOWN OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 9 OF MAPS, PAGE 43, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 1048-553-03

EXHIBIT F
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

Legal Description of the Parcel 4

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:

LOT 1 BLOCK 45, TOWN OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 9 OF MAPS, PAGE 43, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 1048-553-04

EXHIBIT G
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

Legal Description of the Parcel 5

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:

THE NORTH 40.00 FEET OF LOTS 16, 17 AND 18, BLOCK 45, OF THE TOWN OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 9 OF MAPS, PAGE 43 RECORDS OF SAID COUNTY.

EXCEPT THEREFROM AL OIL, HYDROCARBON SUBSTANCES AND MINERALS OF EVERY KIND AND CHARACTER LYING MORE THAN 400.00 FEET BELOW THE SURFACE OF SAID LAND, TOGETHER WITH THE RIGHT TO DRILL INTO, THROUGH AND TO USE AND OCCUPY ALL PARTS OF SAID LAND LYING MORE THAN 400.00 FEET BELOW THE SURFACE THEREOF FOR ANY AND ALL PURPOSES INCIDENTAL TOT EH EXPLORATION FOR AND PRODUCTION OF OIL, GAS, HYDROCARBON SUBSTANCES, OR MINERALS FROM SAID OR OTHER LANDS BUT WITHOUT, HOWEVER, ANY RIGHT TO USE EITHER THE SURFACE OF SID LAND OR ANY PORTION OF SAID LAND WITHIN 500.00 FEET OF THE SURFACE FOR ANY PURPOSE OR PURPOSES WHATSOEVER NOT PREVIOUSLY RESERVED AS RESERVED IN THE DEED EXECUTED BY RAYMOND GIN, ETAL., RECORDED MARCH 30, 1993 AS INSTRUMENT NO. 93-139095, OF OFFICIAL RECORDS.

EXCEPT THEREFROM (TO THE EXTENT VALIDLY EXCEPTED OR RESERVED BY OTHER PARTIES NAMED IN PRIOR DEEDS, LEASES AND OTHER DOCUMENTS OF RECORD) ALL OIL, BAS, HYDROCARBON SUBSTANCESAND MINERALS OF EVERY KIND AND CHARACTER LYING MORE THAN 500 FEET BELOW THE SURFACE, TOGETHER WITH THE RIGHT TO DRILL INTO, THROUGH AND TO USE AND OCCUPY ALL PARTS OF THE PROPERTY LYING MORE THAN 500 FEET BELOW THE SURFACE, THEREOF FOR ANY AND ALL PURPOSESINCIDENTAL TO THE EXPLORATION FOR AND PRODUCTION OF OIL, GAS, HYDROCARBON SUBSTANCES OR MINERALS FROM THE PROPERTY OR ANY PORTION THEREOF BUT WITHOUT, HOWEVER, ANY RIGHT TO USE OR DISTURB EITHER THE SURFACE OF THE PROPERTY OR ANY PORTION THEREOF WITHIN 500 FEET OF THE SURFACE FOR ANY PURPOSE OR PURPOSES WHATSOEVER, MORE PARTICULARLY DESCRIBED IN AND RESERVED BY COPY ONTARIO REDEVELOPMENT AGENCY, A PUBLIC BODY, CORPORATE AND POLITIC, OFTHE STATE OF CALIFORNIA IN THE DOCUMENT RECORDED JUNE 27, 1997 AS INSTRUMENT NO. 19970229022, OF OFFICIAL RECORDS OF SAID COUNTY.

APN: 1048-553-05

EXHIBIT H
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

Legal Description of the Parcel 6

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:

ALL THAT PORTION OF LOT 18, BLOCK 45 OF THE TOWN OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 9 OF MAPS, PAGE 43, RECORDS OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT; THENCE NORTH 127.00 FEET; THENCE WEST 30.00 FEET; THENCE SOUTH 127.00 FEET; THENCE EAST 30.00 FEET TO THE POINT OF BEGINNING.

APN: 1048-553-06

EXHIBIT I
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

Legal Description of the Parcel 7

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:

THAT PORTION OF BLOCK 45 OF THE TOWN OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 9 OF MAPS, PAGE 43, RECORDS OF SAID COUNTY, PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTH LINE OF SAID BLOC, 81.00 FEET EAST OF THE SOUTHWEST CORNER OF LOT 16; THENCE NORTH AND PARALLEL TO THE WEST LINE OF SAID LOT, 127.00 FEET; THENCE EAST AND PARALLEL TO THE SOUTH LINE OF SAID BLOCK, 33.00 FEET TO A POINT 30.00 FEET WEST OF THE EAST LINE OF LOT 18; THENCE SOUTH AND PARALLEL TO THE EAST LINE OF LOT 18, 127.00 FEET TO THE SOUTH LINE OF LOT 18; THENCE WEST 33.00 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM ALL OIL, HYDROCARBON SUBSTANCES AND MINERALS OF EVERY KIND AND CHARACTER LYING MORE THAN 500 FEET BELOW THE SURFACE OF SAID LAND, TOGETHER WITH THE RIGHT TO DRILL INTO, THROUGH AND TO USE AND OCCUPY ALL PARTS OF SAID LAND LYING MORE THAN 500 FEET BELOW THE SURFACE THEREOF FOR ANY AND ALL PURPOSES INCIDENTAL TO THE EXPLORATION FOR AND PRODUCTION OF OIL, GAS, HYDROCARBON SUBSTANCES OR MINERALS FROM SAID OR OTHER LANDS BUT WITHOUT, HOWEVER, ANY RIGHT TO USE EITHER THE SURFACE OF SAID LAND OR ANY PORTION OF SAID LAND WITHIN 500 FEET OF THE SURFACE FOR ANY PURPOSE OR PURPOSES WHATSOEVER NOT PREVIOUSLY RESERVED, MORE PARTICULARLY DESCRIBED IN AND RESERVED BY LUIS A. ROJAS AND ALICIAROJAS, HUSBAND AND WIFE, AS JOINT TENANTS, IN THE DOCUMENT RECORDED ON AUGUST 25, 1992 AS INSTRUMENT NO. 92-352921, OF OFFICIAL RECORDS OF SAID COUNTY.

APN: 1048-553-07

EXHIBIT J
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

Legal Description of the Parcel 8

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:

PORTION OF LOTS 16 AND 17, IN BLOCK 45, ACCORDING TO MAP OF THE TOWN OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 9 OF MAPS, PAGE 43, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING 28.00 FEET EAST OF THE SOUTHWEST CORNER OF LOT 16 OF SAID BLOCK 45; THENCE NORTH 127.00 FEET; THENCE EAST 53.00 FEET; THENCE SOUTH 127.00 FEET TO THE SOUTH LINE OF LOT 17 OF SAID BLOCK 45; THENCE WEST TO THE POINT OF BEGINNING.

EXCEPT THEREFROM (TO THE EXTENT VALIDLY EXCEPTED OR RESERVED BY OTHER PARTIES NAMED IN PRIOR DEEDS, LEASES AND OTHER DOCUMENTS OF RECORD) ALL OIL, BAS, HYDROCARBON SUBSTANCES AND MINERALS OF EVERY KIND AND CHARACTER LYING MORE THAN 500 FEET BELOW THE SURFACE, TOGETHER WITH THE RIGHT TO DRILL INTO, THROUGH AND TO USE AND OCCUPY ALL PARTS OF THE PROPERTY LYING MORE THAN 500 FEET BELOW THE SURFACE, THEREOF FOR ANY AND ALL PURPOSES INCIDENTAL TO THE EXPLORATION FOR AND PRODUCTION OF OIL, GAS, HYDROCARBON SUBSTANCES OR MINERALS FROM THE PROPERTY OR ANY PORTION THEREOF BUT WITHOUT, HOWEVER, ANY RIGHT TO USE OR DISTURB EITHER THE SURFACE OF THE PROPERTY OR ANY PORTION THEREOF WITHIN 500 FEET OF THE SURFACE FOR ANY PURPOSE OR PURPOSES WHATSOEVER, MORE PARTICULARLY DESCRIBED IN AND RESERVED BY COPY ONTARIO REDEVELOPMENT AGENCY, A PUBLIC BODY, CORPORATE AND POLITIC, OFTHE STATE OF CALIFORNIA IN THE DOCUMENT RECORDED JUNE 27, 1997 AS INSTRUMENT NO. 19970229022, OF OFFICIAL RECORDS OF SAID COUNTY.

APN: 1048-553-08

EXHIBIT K
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

Legal Description of the Parcel 9

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:

THAT PORTION OF LOT 16 IN BLOCK 45 OF TOWN OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 9 OF MAPS, PAGE 43, RECORDS OF SAID COUNTY, ESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 16; THENCE NORTH 127.00 FEET; THENCE EAST AND PARALLEL WITH “A” STREET 28.00 FEET; THENCE SOUTH 127.00 FEET; THENCE WEST 28.00 FEET TO THE POINT OF BEGINNING.

APN: 1048-553-09

EXHIBIT L
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

Legal Description of the Parcel 10

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:

LOT 15, BLOCK 45, TOWN OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 9 OF MAPS, PAGE 43 RECORDS OF SAID COUNTY.

EXCEPT THEREFROM THE SOUTH 10.00 FEET OF LOT 15, AS CONVEYED TO THE CITY OF ONTARIO, A MUNICIPAL CORPORATION BY A DOCUMENT RECORDED JANUARY 9, 1970 AS INSTRUMENT NO. 173, IN BOOK 7368, PAGE 887 OF OFFICIAL RECORDS.

APN: 1048-553-10

EXHIBIT M
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

Legal Description of the Parcel 11

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:

LOT 14, BLOCK 45, TOWN OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 9 OF MAPS, PAGE 43 RECORDS OF SAID COUNTY.

EXCEPT THEREFROM THE SOUTH 10.00 FEET OF LOT 15, AS CONVEYED TO THE CITY OF ONTARIO, A MUNICIPAL CORPORATION BY A DOCUMENT RECORDED JANUARY 9, 1970 AS INSTRUMENT NO. 173, IN BOOK 7368, PAGE 887 OF OFFICIAL RECORDS.

APN: 1048-553-11

EXHIBIT N
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

Legal Description of the Parcel 12

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:

LOT 13, BLOCK 45, TOWN OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 9 OF MAPS, PAGE 43 RECORDS OF SAID COUNTY.

APN: 1048-553-12

EXHIBIT O
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

Legal Description of the Parcel 13

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:

LOTS 11 AND 12, BLOCK 45 OF TOWN OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 9, PAGE 43 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 11; THENCE SOUTHERLY ALONG THE EAST LINES OF SAID LOTS 11 AND 12 TO THE SOUTH LINE OF SAID LOT 12; THENCE WESTERLY ALONG SAID SOUTH LINE TO THE WEST LINE OF SAID LOTS 11 AND 12; THENCE NORTHERLY ALONG SAID WEST LINES TO THE NORTH LINE OF SAID LOT 11; THENCE EASTERLY ALONG SAID LINE TO THE POINT OF BEGINNING.

SAID LAND IS DESCRIBED PURSUANT TO A CERTIFICATE APPROVING A LOT LINE ADJUSTMENT NO. LLA 02-001, RECORDED NOVEMBER 14, 2002 AS INSTRUMENT NO. 02-615590, OFFICIAL RECORDS.

APN: 1048-553-13

EXHIBIT P

EXHIBIT P
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

Legal Description of the Parcel 14

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:

LOT 10, BLOCK 45, TOWN OF ONTARIO AND THE SOUTH SIX INCHES OF LOT 9, BLOCK 45, TOWN OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 9 OF MAPS, PAGE 43, RECORDS OF SAID COUNTY.

APN: 1048-553-14

EXHIBIT Q

TO

DISPOSITION AND DEVELOPMENT AGREEMENT

(City of Ontario and A Block, LLC)

The Project will include the rehabilitation of existing historic structures and construction of additional multi-story, mixed-use residential and commercial/retail components on the Property and consist of approximately 156 multi-family residential dwelling units and nearly 35,000 square feet of ground floor commercial/retail/restaurant space fronting on Euclid Avenue, B Street, Lemon Avenue, and Holt Boulevard in addition to the required parking. The Developer will be required to preserve and retain the historic context of the historic buildings by obtaining a Certificate of Appropriateness under the Adaptive Reuse Ordinance.

The Project will be phased over a five-year period with the adaptive reuse of the historic structures being completed in Phases 1 and 2. Phases 1 and 2 will include 22 residential units and approximately 25,000 square feet of retail and commercial uses. Phases 3 and 4 include new construction of up to 134 multi-family market rate units and just roughly 10,000 square feet of commercial and retail space.

EXHIBIT R
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

Schedule of Performance

	Action	**Date Action to be Completed By**
1.	Effective Date	See Section 1.3
2.	Developer to open Escrow and, concurrently, deposit Purchase Price into Escrow	Within 5 days following the Effective Date
3.	City to deliver Preliminary Report to Developer	Within 3 days following City's receipt of the Preliminary Report from Title Company
4.	Escrow Closing Date	No later than seven (7) days following the Effective Date of this Agreement
5	Developer to submit Phase 1 Plans and Specification to City	No later than 30 days from City Council approval of Agreement
6	Developer to submit Tentative Parcel Map to City	No later than 30 days from City Council approval of Agreement
7	Developer to record Final Map	No later than 6 months from close of Escrow or prior to issuance of first building permit whichever occurs first
8	Developer to receive Phase 1 Plans and Specification approval by City	No later than 6 months from the submittal of the Phase 1 Plans and Specifications to City
9	Developer to submit Phase 1 Shell/Construction Drawings to City	No later than 60 days from approval of Phase 1 Plans and specification by City
10	Developer to get Phase 1 Shell/Construction Drawings permit issued	No later than 4 months from submittal of construction drawings for Phase 1
11	Developer to request issuance of First Building Permit for the Phase 1 Project	No later than 365 days from City Council approval of Agreement

	Action	Date Action to be Completed By
12	Developer shall commence construction of Phase 1	No later than 30 days after issuance of building permit for Phase 1
13	Phase 1 construction completed and obtain all Certificates of Completion	No later than 24 months after commencement of construction
14	Developer to submit Phase 2 Plans and Specification to City	No later than 30 days from submittal of Phase 1 Shell/Construction Drawings to City
15	Developer to receive Phase 2 Plans and Specification approval by City	No later than 6 months from the submittal of the Phase 2 Plans and Specifications to City
16	Developer to submit Phase 2 Shell/Construction Drawings to City	No later than 60 days from approval of Phase 2 Plans and specification by City
17	Developer to get Phase 2 Shell/Construction Drawings permit issued	No later than 4 months from submittal of construction drawings for Phase 2
18	Developer to request issuance of First Building Permit for the Phase 2 Project	No later than 24 moths from City Council Approval
19	Developer shall commence construction of Phase 2	No later than 30 days after issuance of building permit for Phase 2
20	Phase 2 construction completed and obtain all Certificates of Completion	No later than 12 months after commencement of construction for Phase 2
21	Developer to submit Phases 3 and Phase 4 Plans and Specification to City	No later than 30 days from Submittal of Plans and Specifications for Phase 2
22	Developer to receive Phase 3 and 4 Plans and Specification approval by City	No later than 9 months from the submittal of the Phase 3 and Phase 4 Plans and Specifications to City

	Action	Date Action to be Completed By
23	Developer to submit Phase 3 Shell/Construction Drawings to City	No later than 90 days from approval of Phase 3 and Phase 4 Plans and specification by City
24	Developer to get Phase 3 Shell/Construction Drawings permit issued	No later than 4 months from submittal of construction drawings for Phase 3
25	Developer to request issuance of First Building Permit for the Phase 3 Project	No later than 36 moths from City Council Approval
26	Developer shall commence construction of Phase	No later than 30 days after issuance of building permit for Phase 3
27	Phase 3 construction completed and obtain all Certificates of Completion	No later than 24 months after commencement of construction for Phase 3
28	Developer to submit Phase 4 Shell/Construction Drawings to City	No later than 90 days from issuance of Phase 3 building permit
29	Developer to get Phase 4 Shell/Construction Drawings permit issued	No later than 4 months from submittal of construction drawings for Phase 4
30	Developer to request issuance of First Building Permit for the Phase 4 Project	No later than 48 moths from City Council Approval
31	Developer shall commence construction of Phase 4	No later than 30 days after issuance of building permit for Phase 4
32	Phase 4 construction completed and obtain all Certificates of Completion	No later than 12 months after commencement of construction for Phase 4

EXHIBIT S
TO DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

Form of Grant Deed

[Attached Behind This Page]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

_____

THE CITY OF ONTARIO
GRANT DEED

PART ONE

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

THE CITY OF ONTARIO, a California municipal corporation ("**Grantor**"),

hereby grants to

A Block, LLC a California limited liability company ("**Grantee**"),

that certain real properties located in the City of Ontario, County of San Bernardino, State of California, specifically described in Exhibit "A" attached to this Grant Deed ("**Properties**") and made a part of this Grant Deed by this reference.

PART TWO

The conveyance of the Properties by the Grantor to the Grantee in Part One is subject to the following community development terms, conditions, covenants and restrictions:

Section 1. Conveyance Subject to Terms of a Disposition and Development Agreement. The Properties is conveyed subject to that certain Disposition and Development Agreement (City of Ontario and A Block, LLC), dated as of June 6, 2025, between the Grantor and the Grantee (the "**Agreement**"). The provisions of the Agreement are incorporated into this Grant Deed by this reference and are deemed to be a part of this Grant Deed, as though fully set forth in this Grant Deed.

Section 2. Condition of Properties. The Grantee acknowledges and agrees that the Properties are conveyed by the Grantor to the Grantee in its "AS IS," "WHERE IS" and "SUBJECT TO ALL FAULTS CONDITION," as of the date of recordation of this Grant Deed, with no warranties, expressed or implied, as to the environmental or other physical condition of the Properties, the presence or absence of any patent or latent environmental or other physical condition on or in the Properties, or any other matters affecting the Properties.

Section 3. As provided in the Disposition and Development Agreement, Grantee shall promptly commence and complete development of the Properties in accordance with plans and specifications approved by Grantor. Rehabilitation of the Properties (the "Improvements") required by the Disposition and Development Agreement shall commence and be prosecuted diligently to completion at the time specified in, and subject to the terms of, the Agreement.

3.1 Grantee shall maintain the Improvements and any other improvements on the Properties in good condition and order, shall keep the Properties free from accumulation of debris and waste materials and shall permit no action or inaction on the Properties such that the Properties detracts from the surrounding neighborhood in any substantial manner.

3.2 All obligations imposed upon Grantee herein shall bind any and all successors of Grantee; provided, however, that upon sale or conveyance of the Properties, the party selling or conveying shall be relieved of any such obligation to the extent that such obligation arises after the date of sale or conveyance.

Section 4. **Covenant to Maintain Properties on Tax Rolls.** The Developer for itself, its successors and assigns to all or any part or portion of the Properties and/or Project, covenants and agrees that:

4.1 The entirety of the Properties shall remain on the County secured real property tax rolls for twenty years from the date of issuance of the final Certificate of Completion for the Project.

4.2 The Developer shall pay all property tax bills with respect to the Properties and all improvements thereon on or before the last day for the timely payment of each property tax installment on each December 10 and April 10 during such time period and to timely pay all supplemental tax bills regarding the Properties issued by the County. The Developer further covenants and agrees to provide to the City, on or before July 31 of each year, commencing in the calendar year following the calendar year in which a Certificate of Completion is recorded and in each calendar year, thereafter, for the full term of this covenant: (i) a true and correct copy of all property tax assessment notices, property tax bills and property tax assessment correspondence by and between the Developer and the County regarding the Properties and all improvements thereon, with respect to the preceding fiscal year of the County, and (ii) cancelled checks issued by the Developer in payment of all property tax payments that are made to the County regarding the Properties and all improvements thereon (or other reasonably acceptable evidence of such payment), with respect to the preceding County fiscal year.

4.3 The covenants of this Section 4 shall run with the land of the Properties, and shall be enforceable against the Developer and its successors and assigns.

Section 5. **No Conveyance to Tax Exempt Entity.** The Developer for itself, its successors and assigns to all or any part or portion of the Properties and/or Project, covenants and agrees that:

5.1 The Developer shall not use or otherwise sell, transfer, convey, assign, lease, leaseback or hypothecate the Properties, the Project, or any portion of any of the foregoing to any entity or person, or for any use of the Properties, the Project, or any portion of any of the foregoing, that is partially or wholly exempt from the payment of real or personal property taxes or that would cause the exemption of the payment of all or any portion of real or personal property taxes otherwise assessable regarding the Properties, the Project, or any portion of any of the foregoing, without the prior written consent of the City, which may be

withheld in the City's sole and absolute discretion for a period of 20 years from the date of issuance of the certificate of completion for the Project by the City.

5.2 If the Properties, or any portion of the Properties, shall be conveyed, transferred or sold to any entity or person that is partially or wholly exempt from the payment of real or personal property taxes otherwise assessable against the Properties, or any portion thereof, without the prior written consent of the City, then, at the City's election and in addition to all other remedies available to the City under this Agreement or at law or in equity, the Developer shall pay to the City a fee in lieu of payment of such taxes each year in an amount determined by the City to be one percent (1%) of the "**full cash value**" of the Properties, or portion thereof, as may be subject to such exemption from payment of real or personal property taxes. The City's determination of "**full cash value**" for in-lieu payment purposes under this Section 5.2.2 shall be established by the City each year, if necessary, by reference to the real or personal property tax valuation principles and practices generally applicable to a county property tax assessor under Section 1 of Article XIIIA of the California Constitution. The City's determination of "**full cash value**" and that an in-lieu payment is due shall be conclusive on such matters. If the City determines that an amount is payable as an in-lieu payment under this Section 5.2.2 in any tax year, then such amount shall be paid to the City for that tax year within forty-five (45) days following transmittal by the City to the Developer of an invoice for payment of the in-lieu amount.

5.3 The covenants of this Section 5 shall run with the land of the Properties, and shall be enforceable against the Developer and its successors and assigns.

Section 6. **Maintenance Condition of the Properties.** The Developer for itself, its successors and assigns to all or any part or portion of the Properties and/or Project, covenants and agrees that:

6.1 The areas of the Properties that are subject to public view (including all existing and future improvements, paving, walkways, landscaping, exterior signage and ornamentation) shall be maintained in good repair and a neat, clean and orderly condition, ordinary wear and tear excepted. If there is an occurrence of an adverse condition on any area of the Properties that is subject to public view in contravention of the general maintenance standard described above (a "**Maintenance Deficiency**"), then the City shall notify the Developer in writing of the Maintenance Deficiency. If the Developer fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) days of its receipt of notice of the Maintenance Deficiency, the City shall have the right to enter the Properties and perform all acts necessary to cure the Maintenance Deficiency, or to take any other action at law or in equity that may then be available to the City to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the City for the abatement of a Maintenance Deficiency on the Properties pursuant to this Section 6.1 shall become a lien on the Properties, as applicable. If the amount of the lien is not paid within thirty (30) days after written demand for payment from the City to the Developer, the City shall have the right to enforce the lien in the manner provided in Section 6.3.

6.2 Graffiti, as this term is defined in Government Code Section 38772, that has been applied to any exterior surface of a structure or improvement on the Properties that is

visible from any public right-of-way adjacent or contiguous to the Properties, shall be removed by the Developer 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 ninety-six (96) hours following the time of the discovery of the graffiti, the City shall have the right to enter the Properties and remove the graffiti, without notice to the Developer. Any sum reasonably expended by the City for the removal of graffiti from the Properties pursuant to this Section 6.2, shall be a lien on the Properties. If the amount of the lien is not paid within thirty (30) days after written demand to the Developer from the City, the City shall have the right to enforce its lien in the manner provided in Section 6.3.

6.3 The Parties further mutually understand and agree that the rights conferred upon the City under this Section 6.3 expressly include a grant by the Developer of a security interest in the Properties with the power to establish and enforce a lien or other encumbrance against the Properties or any portion thereof, in the manner provided under Civil Code Sections 2924, 2924b and 2924c, to secure the obligations of the Developer and it successors under Section 6.1 or Section 6.2, including the reasonable attorneys' fees and costs of the City associated with the abatement of a Maintenance Deficiency or removal of graffiti. For the purposes of the preceding sentence the words "reasonable attorneys' fees and costs of the City" mean and include the salaries, benefits and costs of the City Attorney and the lawyers employed in the Office of the City Attorney.

6.4 The provisions of this Section 6, shall be a covenant running with the land of the Properties, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed. Nothing in the foregoing provisions of this Section 6, shall be deemed to preclude the Developer from making any alteration, addition, or other change to any structure or improvement or landscaping on the Properties, provided that any such changes comply with applicable zoning and building regulations of the City.

Section 7. **Obligation to Refrain from Discrimination.** The Developer for itself, its successors and assigns to all or any part or portion of the Properties and/or Project, covenants and agrees that:

7.1 There shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Properties nor shall the Developer, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sub-lessees or vendees of the Properties. The covenant of this Section 7 shall run with the land of the Properties and shall be enforceable against the Developer and its successors and assigns in perpetuity and be a covenant in the Grant Deed and the Notice of Agreement.

7.2 The covenant of this Section 7 shall run with the land of the Properties in perpetuity, and shall be enforceable against the Developer and its successors and assigns.

Section 8. **Form of Non-Discrimination and Non-Segregation Clauses.** The Developer for itself, its successors and assigns to all or any part or portion of the Properties and/or Project, covenants and agrees that:

8.1 The Developer, such successors and such assigns shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Properties (or any portion thereof) on the basis of sex, marital status, race, color, religion, creed, ancestry or national origin of any person. All deeds, leases or contracts pertaining to the Properties shall contain or be subject to substantially the following non-discrimination or non-segregation covenants:

8.1.1 In deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sub-lessee, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

8.1.2 In leases: "The Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants lessees, sub-lessee, sub-tenants, or vendees in the premises herein leased."

8.1.3 In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed or leased, nor shall the transferee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sub-lessees, sub-tenants, or vendees of the premises herein transferred." The foregoing provision shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

8.2 The covenant of this Section 8 shall run with the land of the Properties in perpetuity, and shall be enforceable against the Developer and its successors and assigns.

Section 9. Grantee covenants and agrees that prior to recordation of the last Certificate of Completion for the Properties:

9.1 The Grantor hereby reserves a power of termination pursuant to Civil Code Sections 885.010, et seq., exercisable by the Grantor, in its sole and absolute discretion, upon thirty (30) calendar days written notice to the Grantee referencing this Section 9.1, to terminate the fee interest of the Grantee in the Properties and/or any improvements to the Properties and revest such fee title in the Grantor and take possession of all or any portion of such real property and improvements, without compensation to the Grantee, upon the occurrence of an Event of Default by the Grantee following the Close of Escrow and prior to the issuance of the Certificate of Completion for Properties.

9.2 The thirty (30) calendar day written notice specified in Section 9.1 shall specify the Event of Default by the Grantee triggering the Grantor's exercise of its power of termination. The Grantor shall proceed with its remedy set forth in Section 9.1 only if the Grantee continues in default for a period of sixty (60) calendar days following such notice or, upon commencing to cure such default, fails to diligently and continuously prosecute said cure to satisfactory conclusion. The right to re enter, repossess, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid, or limit:

9.3 The rights of the Grantor under this Section 9 shall be subject and subordinate to, shall be limited by and shall not defeat, render invalid or limit:

9.3.1 Each Lien recorded against the Properties and specifically authorized by this Agreement as a Permitted Transfer;

9.3.2 Any leases, declarations of covenants, conditions and restrictions, easement agreements or other recorded documents or interests applicable to the Properties and specifically authorized by this Agreement as a Permitted Transfer.

9.4 Upon the Grantor's exercise of its power of termination pursuant to this Section 9, the Grantee or its successors or assigns shall convey by grant deed to the Grantor title to the Properties, as specified in the Grantor's notice pursuant to Section 9.1, and all improvements thereon, in accordance with Civil Code Section 1109, as such code section may hereafter be amended, renumbered, replaced or substituted. Such conveyance shall be duly acknowledged by the Grantee and a notary in a manner suitable for recordation. The Grantor may enforce its rights pursuant to this Section 9 by means of an injunctive relief or forfeiture of title action filed in any court of competent jurisdiction.

9.5 The right to re enter, repossess, terminate and revest with respect to the Properties shall terminate when the last Certificate of Completion for the Properties has been recorded by the Grantor.

Section 10. In the event title to all or any part of the Properties is revested in the Grantor as provided in this Section 10, the Grantor shall, pursuant to its responsibilities under California Law, use its best efforts to resell the Property or part as soon and in such manner as the Grantor shall find feasible to a qualified and responsible party or parties (as determined by the Grantor) who will assume the obligation of completing the rehabilitation in accordance with the Disposition

and Development Agreement. Upon such resale of the Property the proceeds thereof shall be applied as follows:

10.1 First, the Grantor shall be reimbursed, on its own behalf or on behalf of the City of Ontario, California for all costs and expenses incurred by the Grantor, including but not limited to salaries of personnel incurred in connection with the recapture, management and resale of the Property or part (but less any income derived by the Grantor from the Property in connection with such management); all taxes, assessments, and water and sewer charges with respect to the Property or part (or, in the event the Property is exempt from taxation, assessment or such charges during the period of Grantor's ownership thereof, an amount equal to such taxes, assessments or charges as determined by the assessing official as would have been payable if the Property were not exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part at the time of revesting of title in the Grantor or to discharge or prevent such encumbrances or liens from attaching or being made by any subsequent successors or transferees; any expenditures made or obligations incurred with respect to the completion of the Improvements; and any amounts otherwise owed to the Grantor by the Grantee and its successors or transferee; and

10.2 Second, to the Grantor shall be reimbursed, on its own behalf or on behalf of the City of Ontario, California to the extent possible, the Total Development Costs for Phase 1. "Total Development Costs for Phase 1" means the total amount the City reimburses to Developer for the actual reasonable costs for the construction of the Project, including all work performed in compliance with Prevailing Wage Laws if required by state law, which shall not exceed Nineteen Million Dollars ($19,000,000.00).

10.3 Third, Grantee shall be reimbursed in an amount not to exceed the sum of (1) the Purchase Price paid to the Grantor by the Grantee for the Property (or allocable to the part thereof); (2) the costs incurred for the development of the Property solely paid by Grantee at the time of the reentry and repossession, (3) less any gains or income withdrawn or made by the Grantee from the Properties; and

10.4 Fourth, any balance remaining after such reimbursements shall be retained by the Grantor.

Section 11. To the extent that this right of reverter involves a forfeiture, it must be strictly interpreted against the Grantor, the party for whose benefit it is created. This right of reverter shall, however, be interpreted in light of the fact that the Grantor is by this deed conveying the Property to the Grantee for rehabilitation of historic properties speculation in undeveloped land and that such rehabilitation of the historic properties is a material element of the consideration received by Grantor for the Property.

Section 12. IMMEDIATELY FOLLOWING THE THIRTY (30) DAY PERIOD SPECIFIED IN SECTION 9.1, ABOVE, THE GRANTOR, ITS EMPLOYEES AND AGENTS SHALL HAVE THE RIGHT TO REENTER AND TAKE POSSESSION OF THE PROPERTY AND ANY IMPROVEMENTS THEREON, WITHOUT FURTHER NOTICE OR COMPENSATION TO THE GRANTEE. BY INITIALING BELOW, THE GRANTEE HEREBY EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY

AND ALL RIGHTS THAT THE GRANTEE MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 791 AND CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1162, AS THOSE STATUTES MAY BE AMENDED, REPLACED, RENUMBERED OR SUBSTITUTED, OR UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

GRANTEE'S INITIALS _____

Section 13. THE GRANTEE ACKNOWLEDGES AND AGREES THAT THE GRANTOR'S EXERCISE OF ITS POWER OF TERMINATION AND RIGHT OF REENTRY PURSUANT TO THIS Section 13 MAY WORK A FORFEITURE OF THE ESTATE IN THE PROPERTY CONVEYED TO THE GRANTEE THROUGH THE GRANT DEED. THE GRANTEE HEREBY EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL EQUITABLE AND LEGAL DEFENSES THAT THE GRANTEE MAY HAVE TO SUCH FORFEITURE, INCLUDING, BUT NOT LIMITED TO, THE DEFENSES OF LACHES, WAIVER, ESTOPPEL, SUBSTANTIAL PERFORMANCE OR COMPENSABLE DAMAGES. THE GRANTEE FURTHER EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS AND DEFENSES THAT THE GRANTEE MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3275 OR ANY OTHER STATUTE OR COMMON LAW PRINCIPLE OF SIMILAR EFFECT. THE GRANTEE ACKNOWLEDGES THAT THE TERMS AND CONDITIONS OF THE AGREEMENT REFLECT THE POSSIBILITY OF FORFEITURE BY VIRTUE OF THE EXERCISE OF THE GRANTOR'S POWER OF TERMINATION PROVIDED IN THIS Section 13AND FURTHER ACKNOWLEDGE THAT IT HAS RECEIVED INDEPENDENT AND ADEQUATE CONSIDERATION FOR ITS WAIVER AND RELINQUISHMENT OF RIGHTS AND REMEDIES PURSUANT TO Section 12 AND THIS Section 13.

GRANTEE'S INITIALS _____

Section 14. **Developer Covenant to Undertake Project.** Upon Close of Escrow the Developer covenants, for itself, its successors and assigns, to and for the exclusive benefit of the City, that the Developer shall commence and complete the development of the Project on the Properties within the time period for such actions set forth in the Schedule of Performance. The Developer covenants and agrees for itself, its successors, and assigns, that the Project and Properties shall be rehabilitated, improved and developed in compliance with the City Requirements and in substantial conformity with the terms and conditions of this Agreement, the Scope of Development, the Schedule of Performance, any and all plans, specifications and similar development documents required by this Agreement, except for such changes as may be mutually agreed upon in writing by and among the Parties, rehabilitate all Historic Properties to in accordance with the Secretary of the Interior Standards, and comply with all applicable laws, regulations, orders and conditions of each Governmental Agency with jurisdiction over the Properties or the Project. The covenants of this Section 14 shall run with the land of the Properties until the earlier of the date of recordation of the Certificate of Completion or the fifteenth (15th) anniversary of the date of the Close of Escrow.

Section 15. Covenants Run with the Land of the Properties. Each of the covenants and agreements contained in this Grant Deed touch and concern the Properties and each of them is

expressly declared to be a community development covenant that runs with the land for the benefit of the Grantor, and such covenants run with the land in favor of the Grantor for the entire period that such covenants are in full force and effect, regardless of whether the Grantor is or remains an owner of any land or interest in land to which such covenants relate. The Grantor, in the event of any breach of any such covenants, has the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings, to enforce the curing of such breach, as provided in the Agreement or by law. The covenants contained in this Grant Deed are for the benefit of and are enforceable only by the Grantor, and shall survive the execution and recordation of this Grantor Deed and the issuance and recordation of each and every Certificate of Completion, for the time period set forth above for each covenant.

Section 16. Costs and Attorneys' Fees for Enforcement Proceeding. If legal proceedings are initiated to enforce the rights, duties or obligations of any of the covenants set forth in this Grant Deed, then the prevailing party in such proceeding shall be entitled to collect its reasonable attorney fees and costs from the other party in addition to any other damages or relief obtained in such proceedings.

Section 17. Effect of Unlawful Provision; Severability. In the event that any provision of this Grant Deed is held to be invalid or unlawful by a final judgment of a court of competent jurisdiction, such invalidity shall not affect the validity of any other provision of this Grant Deed.

Section 18. All covenants contained in this Deed shall be covenants running with the land and equitable servitudes thereon. The covenants contained in Section 9 of this Deed shall terminate upon issuance of the last Certificate of Completion for the Properties. The covenants contained in this City Deed shall remain in effect in perpetuity unless specified otherwise; provided, however, that if the state law requiring such covenants changes such that such covenants are not required to remain in effect in perpetuity, such covenants shall terminate at such earlier date as may be permitted by state law.

IN WITNESS WHEREOF, the Grantor has caused this Grant Deed to be executed by its authorized representative(s) on this ____ day of _____, 2025.

GRANTOR:

THE CITY OF ONTARIO
a California municipal corporation

By: _____
City Manager

[ALL SIGNATURES MUST BE NOTARY ACKNOWLEDGED]

EXHIBIT A
TO
GRANT DEED

Properties Legal Description

CERTIFICATE OF ACCEPTANCE OF
GRANT DEED

The undersigned hereby acknowledges acceptance by A Block, LLC a California limited liability company, the Grantee in the within Grant Deed, of the delivery of the subject Properties described in the within Grant Deed from the City of Ontario.

GRANTEE:

A BLOCK, LLC a California limited liability company

Dated: _____ By: _____
[TITLE]

[ALL SIGNATURES MUST BE NOTARY ACKNOWLEDGED]

EXHIBIT T
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

Form of Notice of Agreement

[Attached Behind This Page]

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

The City of Ontario
303 E. B Street
Ontario, CA 91764
Attn: City Manager

Exempt from Recording fee
pursuant to Gov't Code § 27383

NOTICE OF AGREEMENT

Disposition and Development Agreement
(City of Ontario and A Block, LLC)

TO ALL INTERESTED PERSONS PLEASE TAKE NOTICE that A Block, LLC a California limited liability company (the "**Developer**") and the City of Ontario, a California municipal corporation (the "**City**") entered into an agreement entitled Disposition and Development Agreement (City of Ontario and A Block, LLC), dated as of June 6, 2025 (the "**Agreement**"). A copy of the Agreement is on file with the City and is available for inspection and copying by interested persons as a public record of the City at the City's offices located at 303 E. B Street, Ontario, CA 91764, during the City's regular business hours.

The Agreement affects the real property described in Exhibit A attached to this Notice of Agreement (the "**Properties**"). The meaning of defined terms, indicated by initial capitalization, used in this Notice of Agreement shall be the same as the meaning ascribed to such terms in the Agreement.

PLEASE TAKE FURTHER NOTICE that the Agreement contains certain development covenants running with the land of the Properties and other agreements between the Developer and the City affecting the Properties, as set forth below (all section references are to the Agreement):

Section 4.1 of the Agreement provides:

4.1 **Developer Covenant to Undertake Project.** Upon Close of Escrow the Developer covenants, for itself, its successors and assigns, to and for the exclusive benefit of the City, that the Developer shall commence and complete the development of the Project on the Properties within the time period for such actions set forth in the Schedule of Performance. The Developer covenants and agrees for itself, its successors, and assigns, that the Project and Properties shall be rehabilitated, improved and developed in compliance with the City Requirements and in substantial conformity with the terms and conditions of this Agreement, the Scope of Development, the Schedule of Performance, any and all plans, specifications and similar development documents required by this Agreement, except for such changes as may be mutually agreed upon in writing by and among the Parties, rehabilitate all Historic Properties to in

accordance with the Secretary of the Interior Standards, and comply with all applicable laws, regulations, orders and conditions of each Governmental Agency with jurisdiction over the Properties or the Project. The covenants of this Section 4.1 shall run with the land of the Properties until the earlier of the date of recordation of the Certificate of Completion or the fifteenth (15th) anniversary of the date of the Close of Escrow

Section 5.1 of the Agreement provides:

5.1 Covenant to Maintain Properties on Tax Rolls. The Developer for itself, its successors and assigns to all or any part or portion of the Properties and/or Project, covenants and agrees that:

5.1.1 The entirety of the Properties shall remain on the County secured real property tax rolls for twenty years from the date of issuance of the final Certificate of Completion for the Project.

5.1.2 The Developer shall pay all property tax bills with respect to the Properties and all improvements thereon on or before the last day for the timely payment of each property tax installment on each December 10 and April 10 during such time period and to timely pay all supplemental tax bills regarding the Properties issued by the County. The Developer further covenants and agrees to provide to the City, on or before July 31 of each year, commencing in the calendar year following the calendar year in which a Certificate of Completion is recorded and in each calendar year, thereafter, for the full term of this covenant: (i) a true and correct copy of all property tax assessment notices, property tax bills and property tax assessment correspondence by and between the Developer and the County regarding the Properties and all improvements thereon, with respect to the preceding fiscal year of the County, and (ii) cancelled checks issued by the Developer in payment of all property tax payments that are made to the County regarding the Properties and all improvements thereon (or other reasonably acceptable evidence of such payment), with respect to the preceding County fiscal year

5.1.3 The covenants of this Section 5.1 shall run with the land of the Properties, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed.

Section 5.2 of the Agreement provides:

5.2 **No Conveyance to Tax Exempt Entity.** The Developer for itself, its successors and assigns to all or any part or portion of the Properties and/or Project, covenants and agrees that:

5.2.1 The Developer shall not use or otherwise sell, transfer, convey, assign, lease, leaseback or hypothecate the Properties, the Project, or any portion of any of the foregoing to any entity or person, or for any use of the Properties, the Project, or any portion of any of the foregoing, that is partially or wholly exempt from the payment of real or personal property taxes or that would cause the exemption of the payment of all or any portion of real or personal property taxes otherwise assessable regarding the Properties, the Project, or any portion of any of the foregoing, without the prior written consent of the

City, which may be withheld in the City's sole and absolute discretion for a period of 20 years from the date of issuance of the certificate of completion for the Project by the City.

5.2.2 If the Properties, or any portion of the Properties, shall be conveyed, transferred or sold to any entity or person that is partially or wholly exempt from the payment of real or personal property taxes otherwise assessable against the Properties, or any portion thereof, without the prior written consent of the City, then, at the City's election and in addition to all other remedies available to the City under this Agreement or at law or in equity, the Developer shall pay to the City a fee in lieu of payment of such taxes each year in an amount determined by the City to be one percent (1%) of the **"full cash value"** of the Properties, or portion thereof, as may be subject to such exemption from payment of real or personal property taxes. The City's determination of **"full cash value"** for in-lieu payment purposes under this Section 5.2.2 shall be established by the City each year, if necessary, by reference to the real or personal property tax valuation principles and practices generally applicable to a county property tax assessor under Section 1 of Article XIIIA of the California Constitution. The City's determination of **"full cash value"** and that an in-lieu payment is due shall be conclusive on such matters. If the City determines that an amount is payable as an in-lieu payment under this Section 5.2.2 in any tax year, then such amount shall be paid to the City for that tax year within forty-five (45) days following transmittal by the City to the Developer of an invoice for payment of the in-lieu amount.

5.2.3 The covenants of this Section 5.2 shall run with the land of the Properties, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed.

Section 5.4 of the Agreement provides:

5.4 Maintenance Condition of the Properties. The Developer for itself, its successors and assigns to all or any part or portion of the Properties and/or Project, covenants and agrees that:

5.4.1 The areas of the Properties that are subject to public view (including all existing and future improvements, paving, walkways, landscaping, exterior signage and ornamentation) shall be maintained in good repair and a neat, clean and orderly condition, ordinary wear and tear excepted. If there is an occurrence of an adverse condition on any area of the Properties that is subject to public view in contravention of the general maintenance standard described above (a "Maintenance Deficiency"), then the City shall notify the Developer in writing of the Maintenance Deficiency. If the Developer fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) days of its receipt of notice of the Maintenance Deficiency, the City shall have the right to enter the Properties and perform all acts necessary to cure the Maintenance Deficiency, or to take any other action at law or in equity that may then be available to the City to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the City for the abatement of a Maintenance Deficiency on the Properties pursuant to this Section 5.4.1 shall become a lien on the Properties, as applicable. If the amount of the lien is not paid within thirty (30) days after written demand for payment from the City to the Developer, the City shall have the right to enforce the lien in the manner provided in Section 5.4.3.

5.4.2 Graffiti, as this term is defined in Government Code Section 38772, that has been applied to any exterior surface of a structure or improvement on the Properties that is visible from any public right-of-way adjacent or contiguous to the Properties, shall be removed by the Developer 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 ninety-six (96) hours following the time of the discovery of the graffiti, the City shall have the right to enter the Properties and remove the graffiti, without notice to the Developer. Any sum reasonably expended by the City for the removal of graffiti from the Properties pursuant to this Section 5.4.2, shall be a lien on the Properties. If the amount of the lien is not paid within thirty (30) days after written demand to the Developer from the City, the City shall have the right to enforce its lien in the manner provided in Section 5.4.3.

5.4.3 The Parties further mutually understand and agree that the rights conferred upon the City under this Section 5.3 expressly include a grant by the Developer of a security interest in the Properties with the power to establish and enforce a lien or other encumbrance against the Properties or any portion thereof, in the manner provided under Civil Code Sections 2924, 2924b and 2924c, to secure the obligations of the Developer and it successors under Section 5.4.1 or Section 5.4.2, including the reasonable attorneys' fees and costs of the City associated with the abatement of a Maintenance Deficiency or removal of graffiti. For the purposes of the preceding sentence the words "reasonable attorneys' fees and costs of the City" mean and include the salaries, benefits and costs of the City Attorney and the lawyers employed in the Office of the City Attorney.

5.4.4 The provisions of this Section 5.3, shall be a covenant running with the land of the Properties, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed. Nothing in the foregoing provisions of this Section 5.3 shall be deemed to preclude the Developer from making any alteration, addition, or other change to any structure or improvement or landscaping on the Properties, provided that any such changes comply with applicable zoning and building regulations of the City.

Section 5.5 of the Agreement provides:

5.5 **Obligation to Refrain from Discrimination**. The Developer for itself, its successors and assigns to all or any part or portion of the Properties and/or Project, covenants and agrees that:

5.5.1 There shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Properties nor shall the Developer, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sub-lessees or vendees of the Properties. The covenant of this Section 5.5 shall run with the land of the Properties and shall be enforceable against the Developer and its successors and assigns in perpetuity and be a covenant in the Grant Deed and the Notice of Agreement.

5.5.1.1 In deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sub-lessee, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

5.5.1.2 In leases: "The Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants lessees, sub-lessee, sub-tenants, or vendees in the premises herein leased."

5.5.1.3 In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed or leased, nor shall the transferee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sub-lessees, sub-tenants, or vendees of the premises herein transferred." The foregoing provision shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

5.5.2 The covenant of this Section 5.5 shall run with the land of the Properties in perpetuity, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed.

This NOTICE OF AGREEMENT is dated as of _____, 2025, and has been executed on behalf of the Developer and the City by and through the signatures of their authorized representative(s) set forth below. This Notice of Agreement may be executed in counterparts and when fully executed each counterpart shall be deemed to be one original instrument.

CITY:

THE CITY OF ONTARIO
a California municipal corporation

Dated: _____, 2025 By: _____
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

By: _____
City Attorney

DEVELOPER:

A BLOCK, LLC, a California limited liability company

Dated: _____ By: _____
[TITLE]

[ALL SIGNATURES MUST BE NOTARY ACKNOWLEDGED]

EXHIBIT A
TO
NOTICE OF AGREEMENT

Legal Description of Properties

EXHIBIT U
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

Form of Official Action of Developer

CERTIFICATION OF LLC AUTHORITY

The undersigned members of A BLOCK, LLC a California limited liability company (the "**LLC**"), do certify that we are all of the members of the LLC and that there are no other members.

We further certify that any one (1) of the following named persons, individually:

[INSERT NAMES]

be, and they are, authorized and empowered for and on behalf of and in the name of the LLC to execute and deliver that certain Disposition and Development Agreement (City of Ontario and A Block, LLC),dated June 6, 2025, between the City of Ontario, a California municipal corporation, ("**City**") and the LLC (the "**Agreement**"), to purchase certain real property located in the City of Ontario, California, as specifically described in the Agreement, and all other documents to be executed by the LLC in connection with the transactions contemplated in the Agreement, and to take all actions that may be considered necessary to conclude the transactions contemplated in the Agreement and perform the other obligations of the LLC pursuant to the Agreement.

The authority conferred shall be considered retroactive, and any and all acts authorized in this document that were performed before the execution of this Certificate are approved and ratified. The authority conferred shall continue in full force and effect until the City of Ontario, a California municipal corporation shall have received notice in writing from the LLC of the revocation of this Certificate.

We further certify that the activities covered by the foregoing certifications constitute duly authorized activities of the LLC; that these certifications are now in full force and effect; and that there is no provision in any document under which the LLC is organized and/or that governs the LLC's continued existence, limiting the power of the undersigned to make the certifications set forth in this certificate, and that such certifications are in conformity with the provisions of all such documents.

LLC Members:

_____

_____

EXHIBIT V
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

Form of Certificate of Completion

[Attached Behind This Page]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

_____
_____
_____
_____
Attention:

Exempt from Recording fee
pursuant to Gov't Code § 27383

CITY OF ONTARIO
CERTIFICATE OF COMPLETION
(City of Ontario and A Block, LLC)

I, Scott Ochoa, City Manager of the City of Ontario (the "City") certify that:

The Project described as [_____] required to be constructed in accordance with that certain Disposition and Development Agreement (City of Ontario and A Block, LLC) dated June 6 2025 ("DDA"), between the City and A Block, LLC a California limited liability company (the "**Developer**"), on that certain real property specifically described in the legal description(s) attached to this Certificate of Completion as **Exhibit A** (the "**Properties**"), is complete in accordance with the provisions of the Agreement.

This Certificate of Completion constitutes conclusive evidence of the City's determination of the Developer's satisfaction of its obligation under the Agreement for the rehabilitation of the Property(ies) as a commercial development, including any and all buildings, parking areas, landscaping areas and related improvements necessary to support or meet any requirements applicable to the Project and its use and occupancy on the Project, whether or not such improvements are located on or off the Properties or on other property subject to the Agreement. Notwithstanding any provision of this Certificate of Completion, the City may enforce any covenant surviving this Certificate of Completion in accordance with the terms and conditions of the Agreement and the Grant Deed by which the Properties was conveyed to the Developer by the City under the Agreement. The Agreement is an official record of the City and a copy of the Agreement may be inspected at the City's office located at 303 E. B Street, Ontario, California 91764, during the City's regular business hours.

DATED AND ISSUED this _____ day of _____, _____.

THE CITY OF ONTARIO
a California municipal corporation

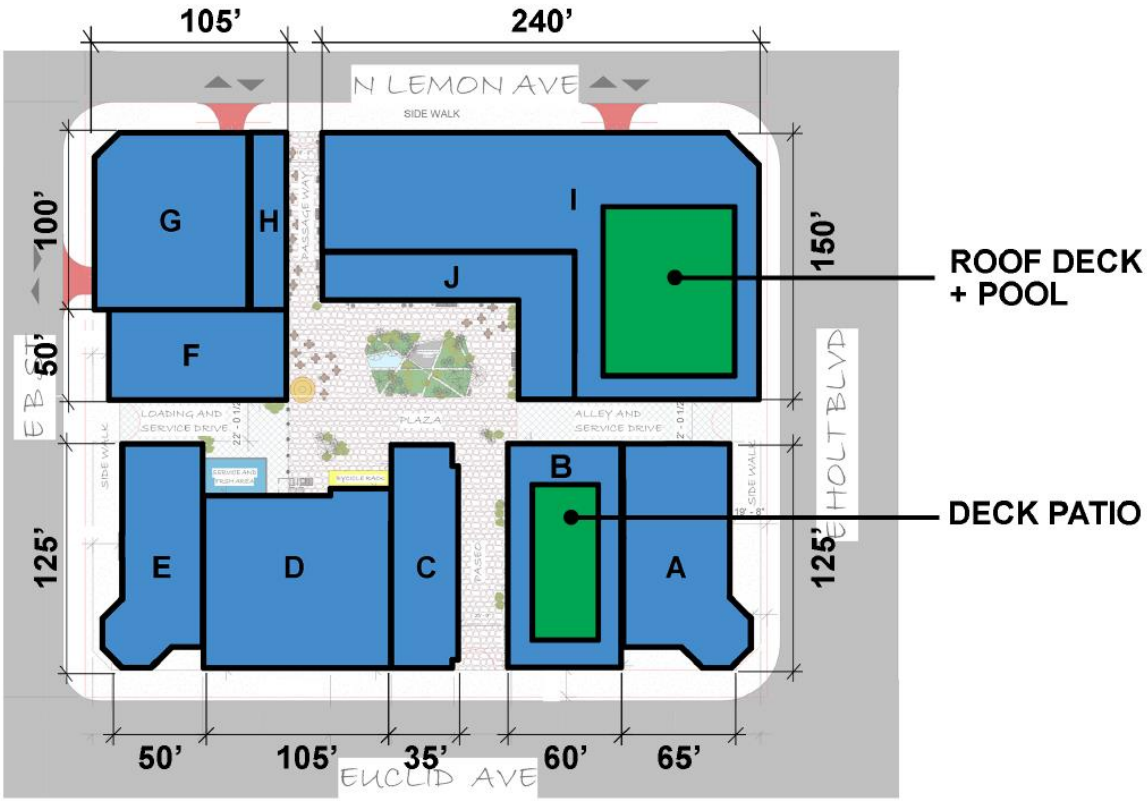
By: _____
City Manager

EXHIBIT A
TO
CERTIFICATE OF COMPLETION

Legal Description of the Properties

EXHIBIT W
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(City of Ontario and A Block, LLC)

Development Phases



ECONOMIC OPPORTUNITY
SUMMARY REPORT PURSUANT TO
CALIFORNIA GOVERNMENT CODE
SECTIONS 52200 – 52201 REGARDING
A DISPOSITION AND DEVELOPMENT
AGREEMENT BY AND BETWEEN THE
CITY OF ONTARIO
AND
A BLOCK, LLC.

The following Economic Opportunity Summary Report has been prepared pursuant to Sections 52200 - 52201 of the California Government Code. The report sets forth certain details of the proposed Disposition and Development Agreement ("Agreement") between the City of Ontario ("City") and A Block, LLC. ("Developer"). The site is approximately 3.123 acres located at the 100 Block North Euclid Avenue in the City of Ontario, California ("Property").

BACKGROUND STATEMENT

The following Summary Report is based upon information contained within the Agreement, and is organized into the following six sections:

I. **Terms of Agreement:** This section includes a description of the Project; and the obligations imposed on the City and the Developer by the Agreement.

II. **Cost of the Agreement to the City:** This section details the total cost to the City associated with implementing the Agreement.

Ill. **Estimated Value of the Interests to be Conveyed Determined at the Highest UsePermitted Under the General Plan:** This section estimates the value of the interests to be conveyed determined at the highest use permitted under the existing zoning and the requirements imposed by the General Plan.

IV. **Estimated Fair Market Value of the Interest to be Conveyed:** This section summarized the valuation estimate for the City Property based on the required use.

V. **Consideration Received:**This section describes the compensation to be received by the City.

VI. **Creation of Economic Opportunity:** This section describes the how the Project will asset in the creation of economic opportunity.

This Summary Report and the Agreement are to be made available for public inspection prior to the approval of the Agreement.

I. TERMS OF THE AGREEMENT

A. Project Description

The Property is located on the northeast corner of Euclid Avenue and Holt Boulevard and encompasses slightly over 3 acres. The current land use is mixed-use commercial and falls within the Downtown Mixed Use zoning district – MU-1. The Property is presently improved with an approximately 5,000 square foot commercial building (Boney's Market), 23,000 square foot historic commercial building (Yangtze), a 7,725 square foot historic commercial building (Lerch), a 15,570 square foot historic commercial building (Citizen National Bank), and 7 vacant parcels utilized as public parking lots.

The Project incorporates the structural retrofitting and adaptive reuse of three existing historic structures and one non-historic building on the Property, and construction of additional multi-story, mixed-use residential and retail commercial uses totaling approximately 156 residential dwelling units, and approximately 35,000 square feet of ground floor commercial/retail/service space fronting on Euclid Avenue, B Street, Lemon Avenue, and Holt Boulevard ("Project"). The Project will be phased over a five-year period with the adaptive reuse of the historic structures being completed in Phases 1 and 2 and the construction of the new commercial and residential development in Phases 3 and 4.

The Developer will also be required to build all associated on and off-site improvements, including but not limited to all hardscape, landscaping, and public street improvements.

B. City Responsibilities

The Agreement requires the City to accept the following responsibilities:

1. The City will sell the Property to the Developer for $1.00.
2. The City will Loan the Developer $19,000,000 to finance Phase 1 construction of the Project at the prime annual interest rate, with a ceiling of 8% and floor of 5%.
3. The City must work in good faith with the Developer to issue a Certificate of Appropriateness and other necessary entitlements from the Community Development Agency and other City Departments for the proposed uses.

C. Developer Responsibilities

The Agreement imposes the following responsibilities on the Developer:

1. The Developer must accept conveyance of the Property from the City under the terms of the Agreement, including paying $1.00 for the Property.

2. The Developer must preserve and retain the historic context of three historic buildings and obtain a Certificate of Appropriateness, Adaptive Reuse Plan, and other necessary entitlements from the Community Development Agency and other City Departments for the proposed uses.
3. The Developer must develop the Project with 156 high-quality, for sale multi-family residential units and approximately 35,000 square feet of retail and commercial space.
4. The Developer must accept the Construction Covenant, which requires Developer to complete the Project by the dates set forth in the Schedule of Performance
5. The Developer must pay back the $19,000,000 loan intended to finance Phase 1 construction of the Project at the prime annual interest rate, with a ceiling of 8% and floor of 5%, no later than 5 years from the initial draw down of funds.

II. COST OF THE AGREEMENT TO THE CITY

The Property was purchased for $4,565,000. The City paid for the preparation of an Environment Impact Report for an estimated cost of $100,000. The City paid $65,000 for the preparation of a Historic Structures Report ("HSR") prepared by a state certified architect. The City incurred relocation costs, site clearance costs, in addition to costs to maintain the property over the last several years. The City also incurred the cost of preparing the necessary studies, a land valuation report and the necessary agreements to facilitate the disposition and development of the Property.

Ill. ESTIMATED VALUE OF THE INTERESTS TO BE CONVEYED DETERMINED AT THE HIGHEST USE PERMITTED UNDER THE REDEVELOPMENT PLAN

Section 52201 of the California Government Code requires the City to identify the value of the interests being conveyed at the highest use allowed by the Property's zoning and the requirements imposed by the General Plan.

Pursuant to an appraisal prepared by R.P. Laurain & Associates., for the subject Property, the appraiser arrived at a negative Opinion of Value. The negative value was derived from recent comparable land and building values coupled with the Developer's overall Project costs supported by HSR. The HSR included an analysis of the historic nature of the buildings as well as the structural integrity of the buildings and an engineer's cost estimate to retrofit the buildings to allow for the Developer's proposed use. The proposed rehabilitation/historic preservation and new improvement costs exceed the current market value of the Property by $10,760,000.

IV. ESTIMATED REUSE VALUE OF THE INTERESTS TO BE CONVEYED

As discussed above, the property is being conveyed to the Developer as a negative value due to the substantial improvement costs to restore the building to current building codes. With improvement costs estimated at $19,000,000 for the adaptive re-use of three existing structures and approximately $70,000,000 for the balance of the Project, the estimated

reuse value of the interests to be conveyed are significantly higher than present fair market value.

V. CONSIDERATION RECEIVED AND COMPARISON WITH THE ESTABLISHED VALUE OF THE PROPERTY

Under the Agreement, the City is conveying the Property for $1.00. The Developer is making a significant investment in the Historic Downtown Ontario which will not only generate new jobs but also raise property taxes for which the City will receive its share of property tax revenues generated by the Project.

Based on the sale price and estimated value of the Property, the City is not selling the Property below the fair market value estimated by an independent appraiser.

VI. CREATION OF ECONOMIC OPPORTUNITY

The City has determined that the proposed development would fulfill goals and objectives defined in the City's adopted General Plan and create economic opportunities and benefits to the City including but not limited to the following:

1. The City will benefit from the interest accrued on the $19,000,00 loan.

2. The City anticipates that the mixed-use Project will generate significant increases in property tax. The estimated assessed value of property at the conclusion of construction is estimated to be approximately $89,500,000. The increase in property valuation will generate approximately $895,580 in additional property tax revenues to the City.

3. During construction, the Project will create approximately over 150 full-time jobs for skilled workers across various trades. In addition, over 75 full-time permanent jobs will be added after completion and stabilization of the Project's various residential and commercial components. This not only enhances the existing uses in the area, but also injects additional economic vitality into our community by providing diverse employment opportunities.

4. Generating substantial revenue for the City through additional local sales tax revenue which may be used by the City for the funding of necessary public services and facilities, including but not limited to, public safety services and facilities, public improvements and recreational opportunities that otherwise may not be available to the community for many years.

5. Implementation of the Agreement helps to remove blighting influences within the area by improving the physical appearance of the area. The Property currently includes multiple vacant and underutilized buildings that are designated as a local historic landmark. The Property also has several underutilized vacant lots. In its current condition and use, the Property is attractive to vandalism and illegal dumping. This will be removed and replaced by a new modern Project.

SECURED PROMISSORY NOTE

$19,000,000.00 Ontario, California
May ___, 2025

1. DEFINITIONS.

The following terms will be used as defined terms in this Secured Promissory Note (as it may be amended, modified, extended and renewed from time to time, this "Note"):

Lender/Payee:	CITY OF ONTARIO, a California municipal corporation, or the holder of this Note.
Borrower/Maker:	A BLOCK, LLC, a California limited liability company
Principal Amount:	NINETEEN MILLION and No/100 Dollars ($19,000,000.00).
Interest Rate:	Seven and one-half percent (7.50%) per annum, subject to adjustments as provided herein. The Interest Rate shall equal the Index Rate and shall adjust on each Adjustment Date in accordance with changes to the Index Rate. If the Index Rate published on the last business day preceding the Adjustment Date differs from the Index Rate then in effect, the Interest Rate shall adjust on the Adjustment Date to equal the rate set forth above. Notwithstanding the foregoing, the Interest Rate shall at all times be subject to a floor of five percent (5.00%) per annum (the "Interest Rate Floor") and a ceiling of eight percent (8.00%) per annum (the "Interest Rate Cap").
Default Interest Rate:	Five percent (5.00%) per annum above the Interest Rate. The Default Interest Rate shall change from time to time as and when the Interest Rate changes as a result of changes in the Index Rate.
Adjustment Date:	The first day following the change in the Index Rate.
Index Rate:	The rate of interest identified as the "prime rate" being the base rate on corporate loans posted by at least seventy-five percent (75%) of the thirty (30) largest banks in the United States as published from time to time by the Wall Street Journal. Should the Wall Street Journal cease publication of said prime rate, the Index Rate shall be that rate of interest as determined by the Lender to be most comparable to the prime rate.
Maturity Date:	July 1, 2030 unless the Maturity Date is modified as otherwise provided in this Note and the Loan Documents.
Business Day:	Any day of the year other than Saturdays, Sundays and legal holidays.
Deed of Trust:	That certain Construction Deed of Trust and Fixture Filing (With Assignment of Rents and Security Agreement) of even date herewith executed by Borrower, as "Trustor", for the benefit of Lender, as "Beneficiary."
Loan Documents:	The Loan Agreement, the Note, the Deed of Trust, and all other documents securing the repayment of the Note, guaranties, indemnity agreements and instruments executed by the Borrower and/or guarantor and/or indemnitor.

Loan:	The loan from Lender to Borrower in the Principal Amount and evidenced by this Note and/or the Loan Documents.
Loan Agreement:	That certain Construction Loan Agreement of even date herewith between Borrower and Lender.
Advance:	Any disbursement of Loan proceeds by Lender made pursuant to any of the Loan Documents.

2. PROMISE TO PAY.

For value received, Borrower promises to pay to the order of Lender, at 303 E B St, Ontario, CA 91764or at such other place as the Lender hereof may from time to time designate in writing, the Principal Amount or the aggregate unpaid principal amount of all Advances made by Lender to the undersigned from time to time and remaining outstanding on the Maturity Date, whichever is less, together with interest thereon, and all other sums due under and secured by the Deed of Trust or by any other Loan Documents.

3. INTEREST; PAYMENTS.

(a) Absent a continuing Event of Default hereunder or under any of the Loan Documents, each Advance made hereunder shall bear interest on the unpaid principal amount at the Interest Rate, from the date on which the Advance is funded until repaid. Throughout the term of this Note, interest shall be calculated on a 360-day year with respect to the unpaid balance of the Principal Amount and, in all cases, shall be computed for the actual number of days in the period for which interest is charged, which period shall consist of 365-days on an annual basis.

(b) All payments of principal and interest due hereunder shall be made (i) without deduction of any present and future taxes, levies, imposts, deductions, charges or withholdings, which amounts shall be paid by Borrower, and (ii) without any other set off, claim or defense of any kind or nature. Borrower will pay the amounts necessary such that the gross amount of the principal and interest received by the holder hereof is not less than that required by this Note and/or the Loan Documents. Notwithstanding the foregoing, Borrower shall not be required to pay franchise taxes and taxes imposed on or measured by Lender's net income or gross receipts or other taxes imposed in lieu of such taxes.

(c) Commencing on July 1, 2025, and continuing on the same day of each succeeding month thereafter (each, an "Interest Payment Date"), Borrower shall make consecutive monthly installments of all accrued unpaid interest. The Borrower shall have a grace period of ten (10) calendar days from the due date of each monthly payment to make such payment without incurring a late payment penalty or be found in default.

(d) Commencing on the first day of the month immediately following the issuance of the Certification of Completion and upon stabilization with respect to Phase 1 (as such term is defined in the DDA), and continuing on the same day of each succeeding month thereafter, Borrower shall make equal monthly installments of principal and interest amortized over a period of thirty (30) years. Notwithstanding the foregoing, with respect to the payments due after each Adjustment Date, the monthly installment payment amount shall be re-calculated to fully amortize the then remaining principal amount over the remaining portion of the original amortization period, with such calculation using the adjusted interest rate as determined herein.

(e) One (1) final "balloon" payment of all unpaid principal, interest, and all other amounts payable by Borrower pursuant to this Note or pursuant to the terms of any other Loan Documents shall be due and payable on the Maturity Date. If any payment of principal and interest to be made by Borrower hereunder shall become due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day.

(f) The Interest Rate on this Note is subject to change as provided herein based on changes in the Index Rate. Lender will tell Borrower the current Index Rate upon Borrower's request.

4. PREPAYMENT.

(a) Borrower may prepay the Loan, in whole or in part, at any time and from time to time without any prepayment penalties.

(b) In no event shall Borrower be entitled to re-borrow any amounts prepaid.

5. LAWFUL MONEY.

Principal and interest are payable in lawful money of the United States of America.

6. APPLICATION OF PAYMENTS/LATE CHARGE.

(a) Unless otherwise agreed to, in writing, or otherwise required by applicable law, payments will be applied first to accrued, unpaid interest, then to any unpaid collection costs, late charges and other charges, and any remaining amount to principal, provided, however, during the continuance of an Event of Default, as defined herein or in any other Loan Document, Lender reserves the right to apply payments among principal, interest, late charges, collection costs and other charges in such order of priority as Lender shall from time to time determine in its sole discretion. All prepayments shall be applied to the indebtedness owing hereunder in such order and manner as Lender may from time to time determine in its sole discretion.

(b) If any payment of interest and/or principal is not received by the holder hereof within ten (10) days of when such payment is due, then in addition to the remedies conferred upon the holder hereof pursuant to the provisions of this Note and/or the Loan Documents, a late charge of five percent (5%) of the amount of the payment due will be due and owing by the Borrower and will be added to the delinquent amount to compensate the holder hereof for the costs, expenses, and damages of the holder related to the delinquency of the Borrower in making such payment, regardless of any notice and/or cure periods (if any). Acceptance of any late charge will not constitute a waiver of default with respect to the overdue payment, and will not prevent or delay Lender from exercising any of its rights or remedies available under this Note and/or the Loan Documents.

(c) Upon the occurrence, and during the continuance, of an Event of Default, including the failure to pay upon final maturity, Lender, may at its option and in its sole discretion: (i) increase the applicable Interest Rate on this Note to the Default Interest Rate, and/or (ii) add any unpaid accrued interest to principal and such sum will bear interest therefrom until paid at the Default Interest Rate. The undersigned acknowledges that, during the time that any amount is in default, Lender will incur losses that are impracticable, costly, and inconvenient to ascertain. Those losses include, without limitation, the ability to invest amounts then due at the current rate of return and the unavailability of liquid funds. The undersigned agrees that the interest payable hereunder represents a reasonable sum considering all of the circumstances existing on the date of the execution of this Note and represents a reasonable estimate of the losses Lender will incur by reason of late payment. The undersigned further agrees that proof of actual losses would be costly, inconvenient, impracticable, and extremely difficult to fix. Acceptance of the interest will not constitute a waiver of the default with respect to the overdue installment and will not prevent Lender from exercising any of the other rights and remedies available under this Note and/or the Loan Documents. Notwithstanding anything contained herein, the interest rate will not exceed the maximum rate permitted by applicable law.

7. SECURITY.

This Note is secured, among other security, by security instruments covering real property and personal property of the undersigned located in the State of California, including, without limitation, the Deed of Trust, which Deed of Trust creates a lien on that certain real and personal property described therein.

8. ACCELERATION BY REASON OF TRANSFER.

The Deed of Trust contains the following limitation on the right of Borrower to transfer the Trust Estate (as defined in the Deed of Trust):

> "2.12 Transfer of Trust Estate by Trustor. In order to induce Beneficiary to make the loan, Trustor agrees that, in the event of any Transfer (as hereinafter defined), without the prior written consent of Beneficiary, Beneficiary shall have the absolute right, at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Beneficiary may grant or deny such consent in its sole discretion and, if consent should be given, any such Transfer shall be subject to this Deed of Trust, and such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release Trustor or any maker or guarantor (if any) of the Note from any liability thereunder without the prior written consent of Beneficiary. As used herein, "Transfer" shall mean:
>
> a) Except as permitted in the Loan Agreement, any sale, transfer, conveyance, assignment, hypothecation, mortgage, encumbrance, lease (except as expressly permitted by the Loan Documents) or vesting of the Trust Estate or any part thereof or interest therein to or in any person, firm or entity, whether voluntary, involuntary, by operation of law, or otherwise, provided, however, that the foregoing shall not include the granting of utility easements in the normal course of Trustor's business;
>
> b) any merger, consolidation or dissolution of Trustor;
>
> c) any sale or transfer of substantially all of the assets of Trustor;
>
> d) any sale, transfer, conveyance or assignment (at one time or over any period of time) of twenty five percent (25%) or more of the ownership interests (direct or indirect) of Trustor; and
>
> e) the execution of any agreements to do any of the foregoing."

9. EVENT OF DEFAULT.

The occurrence of any of the following shall be deemed to be an event of default ("Event of Default") hereunder:

(a) default in the payment of principal and/or interest, and/or any other sum advanced by Lender pursuant to the terms and provisions of this Note and/or the Loan Documents; and/or

(b) subject to Force Majeure (as defined in the Loan Agreement), the failure to perform any of the other terms, provisions, and obligations of the Borrower and/or any guarantor and/or any indemnitor pursuant to the Loan Documents within thirty (30) days from the receipt of written notice from the Lender (the "30 Day Notice") that such performance was due; provided, however that if such failure is not reasonably susceptible to cure within said thirty (30) days from receipt of the 30 Day Notice and provided that (i) Borrower shall have in good faith undertaken such cure within said thirty (30) day period and (ii) Borrower shall have diligently prosecuted such cure thereafter, Borrower shall have additional time to prosecute such cure, such additional time not to exceed the one hundred twenty (120) days, from receipt by Borrower of the 30 Day Notice; and/or

(c) if any event occurs that is an Event of Default under any of the Loan Documents.

10. REMEDIES.

Upon the occurrence, and during the continuance, of an Event of Default, then at the sole election and option of the holder hereof, the entire balance of principal together with all accrued interest thereon, and all other amounts payable by Borrower under the Loan Documents shall, without demand or notice, immediately become due and payable. Upon the occurrence of an Event of Default (and so long as such Event of Default shall continue), the entire balance of principal hereof, together with all accrued interest thereon, all other amounts due under the Loan Documents, and any judgment for such principal, interest, and other amounts due under the Loan Documents shall bear interest at the Default Interest Rate, subject to the limitations contained in Section 15 hereof. No delay or omission on the part of the holder hereof in exercising any right or remedy under this Note and/or under any of the other Loan Documents hereof shall operate as a waiver of such right.

11. WAIVER.

Borrower hereby waives diligence, demand for payment, presentment for payment, protest, notice of nonpayment, notice of protest, notice of intent to accelerate, notice of acceleration, notice of dishonor, and all other notices or demands of any kind (except notices specifically provided for in the Loan Documents, if any). Borrower waives to the full extent permitted by law, the right to plead any and all statutes of limitations and/or any defenses relating to marshaling of assets as a defense.

12. CHANGE, DISCHARGE, TERMINATION, OR WAIVER.

No provision of this Note may be changed, discharged, terminated, or waived except in a writing signed by the party against whom enforcement of the change, discharge, termination, or waiver is sought. No failure on the part of the holder hereof to exercise and no delay by the holder hereof in exercising any right or remedy under this Note and/or the Loan Documents and/or under the law shall operate as a waiver thereof.

13. ATTORNEY'S FEES.

The undersigned agrees to pay all reasonable costs including, without limitation, reasonable attorney fees, incurred by the holder of this Note in enforcing payment, whether or not suit is filed, including, without limitation, all costs, attorney fees, and expenses incurred by the holder of this Note in connection with any bankruptcy, reorganization, arrangement, or other similar proceedings involving the undersigned that in any way affects the exercise by the holder of this Note of its rights and remedies under this Note. All costs incurred by the holder of this Note in any action undertaken to obtain relief from the stay of bankruptcy statutes are specifically included in those costs and expenses to be paid by the undersigned. Borrower will pay to Lender all attorney fees and other costs referred to in this Section 13 on demand, together with interest from the date of the demand at the Default Rate until paid.

14. SEVERABILITY.

If any provision of this Note is unenforceable, the enforceability of the other provisions shall not be affected and they shall remain in full force and effect.

15. INTEREST RATE LIMITATION.

Borrower hereby agrees to pay an effective rate of interest that is the sum of the interest rate provided for herein, together with any additional rate of interest resulting from any other charges of interest or in the nature of interest paid or to be paid in connection with the Loan, including, without limitation, the Loan Fee and any other fees to be paid by Borrower pursuant to the provisions of the Loan Documents. Lender and Borrower agree that none of the terms and provisions contained herein or in any of the Loan Documents shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of State of California. In such event, if any holder of this Note shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on this Note to a rate in excess of the maximum rate permitted to be charged by the laws of the State of California, all such sums deemed to constitute interest in excess of such maximum rate shall, at the option of the holder, be credited to the payment of other amounts payable under this Note and/or the Loan Documents or returned to Borrower.

16. NUMBER AND GENDER.

In this Note the singular shall include the plural and the masculine shall include the feminine and neuter gender, and vice versa.

17. HEADINGS.

Headings at the beginning of each numbered section of this Note are intended solely for convenience and are not part of this Note.

18. CHOICE OF LAW.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES.

19. INTEGRATION.

The Loan Documents contain the complete understanding and agreement of the holder hereof and Borrower and supersede all prior representations, warranties, agreements, arrangements, understandings, and negotiations.

20. BINDING EFFECT.

The Loan Documents will be binding upon, and inure to the benefit of, the holder hereof, Borrower, and their respective successors and assigns. Borrower may not assign its obligations under the Loan Documents.

21. TIME OF THE ESSENCE.

Time is of the essence with regard to each provision of the Loan Documents as to which time is a factor.

22. SURVIVAL.

The representations, warranties, and covenants of the Borrower in the Loan Documents shall survive the execution and delivery of the Loan Documents and the making of the Loan.

23. JURY WAIVER.

TO THE EXTENT PERMITTED BY LAW, BORROWER AND LENDER (BY ITS ACCEPTANCE HEREOF) HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BORROWER AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS NOTE OR ANY OTHER RELATED DOCUMENT OR LOAN DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO PROVIDE THE FINANCING DESCRIBED HEREIN OR IN THE OTHER LOAN DOCUMENTS.

24. JOINT AND SEVERAL OBLIGATIONS.

If this Note is signed by more than one party as Borrower, all obligations of Borrower herein shall be the joint and several obligations of each party executing this Note as Borrower.

[Signatures on Following Page]

IN WITNESS WHEREOF, Maker has caused this Note to be properly executed as of the date first above written and has authorized this Note to be dated as of the day and year first above written.

"BORROWER"

By:_____

Its: Manager / Member

CONSTRUCTION LOAN AGREEMENT

This Construction Loan Agreement (the "Agreement") is entered into as of June 3, 2025, by and between A BLOCK LLC, a California limited liability company, whose address is 109 Harvard Street, Suite 300, Glendale, CA 91205 ("Borrower"), and CITY OF ONTARIO, a California municipal corporation ("Lender"), whose address is 303 East B Street, Ontario, CA 91764.

RECITALS

A. Borrower and Lender have entered into that certain Disposition and Development Agreement dated as of June 3, 2025 (the "DDA"), whereby Borrower has agreed, among other things, to purchase from Lender (i) that certain real property commonly called the Lerch Building generally located at 120 North Euclid Avenue, Ontario, California 91762 (the "Lerch Property"); (ii) that certain real property commonly called the Yangtze Building generally located at 122 and 126 North Euclid Avenue, Ontario, California 91762 (the "Yangtze Property"); and (iii) that certain real property commonly called the Old Bridal Shop generally located at 116 E. B Street, Ontario, California 91762 (the "Old Bridal Shop Property")(the Lerch Property, the Yangtze Property and the Old Bridal Shop Property are collectively referred to herein as the "Premises").

B. In connection with the purchase of the Premises, Borrower has requested Lender to make a loan to finance the rehabilitation of and construction of certain improvements on the Premises, as more particularly described in the DDA, upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the covenants and conditions herein contained, the parties agree as follows:

ARTICLE I. DEFINITIONS

1.1 Definitions. As used herein, the following terms shall have the meanings set forth below:

"Advance" shall mean a disbursement of Loan proceeds and/or advances by the Lender as contemplated by the Loan Documents.

"Agreement" shall mean this Construction Loan Agreement, as the same may be amended and supplemented as hereinafter provided.

"Appraisal" shall mean an appraisal prepared by an appraiser selected by Lender, which appraisal complies with all federal and state standards for appraisals and is otherwise in form and substance satisfactory to Lender.

"Authorized Representative of Borrower" shall mean the person or persons designated by Borrower to submit Requests for Disbursement on behalf of Borrower, and to take any and all actions on the part of Borrower under any of the Loan Documents.

"Borrower" shall mean A Block LLC, a California limited liability company.

"Borrower's Architect" shall mean the architect selected by Borrower and reasonably acceptable to Lender.

"Borrower's Organizational Documents" shall mean (i) those certain Articles of Organization of Borrower filed on July 12, 2022 with the California Secretary of State, and all modifications and amendments thereto as of the date hereof, and (ii) that certain Operating Agreement of Borrower dated August 12, 2022 and all modifications and amendments thereto as of the date hereof.

"Budget" shall mean a maximum budget for the Project, as modified from time to time pursuant to the terms of this Agreement. The budget and each modification thereof is to be approved in writing by Lender. As of the date hereof the Budget is in the form of Exhibit B attached hereto and is approved by Lender.

"Business Day" shall have the same meaning as set forth in the Note.

"CC&Rs" shall mean any covenants, conditions, restrictions, maintenance agreements or reciprocal easement agreements affecting the Premises.

"Certification of Non-Foreign Status" shall mean an affidavit, signed under penalty of perjury by an authorized representative of Borrower, stating (a) that Borrower is not a "foreign corporation", "foreign partnership", "foreign trust", or "foreign estate", as those terms are defined in the Internal Revenue Code and the regulations promulgated thereunder, (b) Borrower's U.S. employer identification number, and (c) the address of Borrower's principal place of business. Such affidavit shall be consistent with the requirements of the regulations promulgated under Section 1445 of the Internal Revenue Code, and shall otherwise be in form and substance acceptable to Lender.

"Change Orders" shall mean any change in the Plans and Specifications or the General Contract, which change has been approved by (a) the Borrower, (b) the Lender (subject to Section 6.7), and (c) the General Contractor, as applicable.

"Closing Date" shall mean the date upon which the Deed of Trust is recorded in the Official Records of the County.

"Collateral" shall mean all collateral described in the Loan Documents.

"Completion Date" shall mean _____ (___) months from the recordation date of the Deed of Trust.

"Construction Contract" shall mean any contract (other than the General Contract) relating to work performed or to be performed for the Improvements executed or to be executed by Borrower.

"Construction Contractor" shall mean any contractor who is a party to a Construction Contract.

"County" shall mean the County of San Bernardino, State of California.

"DDA" shall have the meaning set forth in Recital A.

"Deed of Trust" shall mean that certain Construction Deed of Trust and Fixture Filing (with Assignment of Rents and Security Agreement) of even date herewith executed by Borrower, as trustor, for the benefit of Lender, as beneficiary, creating a first lien on the Premises, the Improvements, and all other buildings, fixtures and improvements now or hereafter owned or acquired by Borrower and situated thereon.

"Environmental Indemnity" shall mean that certain Environmental Indemnity Agreement of even date herewith executed by Borrower.

"Event of Default" shall mean the occurrence of any of the events listed in Section 7.1 and the expiration of any applicable notice and cure period provided in said subsection.

"Funding Date" shall mean the date of funding of each respective Advance.

"Force Majeure" shall have the meaning set forth in Section 7.3 herein below.

"General Contract" shall mean any form of agreement by and between Borrower and the General Contractor relating to the construction of the Improvements.

"General Contractor" shall mean the general contractor for the Project selected by Borrower and reasonably acceptable to Lender.

"Governmental Authority" shall mean any arbitrator, other private adjudicator, court, government or governmental authority (federal, state, local or foreign).

"Hard Costs" or "Direct Costs" shall mean all costs incurred for labor performed in the construction of the Improvements and the materials incorporated into the Improvements.

"Improvements" shall mean the buildings and other improvements located on the Premises as described in the Plans and Specifications.

"Inspector" shall mean Lender's inspector (which may be an employee of the Lender or a third-party) or such other third-party consultants employed by Lender for the purposes of inspecting the work to be performed on the Premises.

"Interest Rate" shall have the same meaning as set forth in the Note.

"Lender" shall mean CITY OF ONTARIO, a California municipal corporation, and its successors and assigns.

"Loan" shall mean the loan from Lender to Borrower described in this Agreement in the principal amount of the Loan Amount.

"Loan Amount" shall mean the amount of NINETEEN MILLION and No/100 Dollars ($19,000,000.00).

"Loan Documents" shall mean the documents described in Section 3.1 hereof.

"Maturity Date" shall have the same meaning as set forth in the Note.

"Note" shall mean the Secured Promissory Note, dated the date hereof, executed by the Borrower in favor of Lender evidencing the Loan.

"Person" shall mean any natural person, any unincorporated association, any corporation, any partnership, any joint venture, any limited liability company, any trust, any other legal entity, or any Governmental Authority.

"Plans and Specifications" shall mean the final plans and specifications for the improvements for the Project, as previously detailed in writing to the Lender, as may be amended in accordance herewith.

"Preliminary Title Report" shall mean that certain preliminary title report dated as of May 13, 2025, Order No. FBDO-2504451, and issued by the Title Company covering the Premises and showing all exceptions to title and accompanied by legible copies of all such recorded exceptions.

"Premises" shall mean the Lerch Property, the Yangtze Property and the Old Bridal Shop Property, collectively, as more particularly described on Exhibit A attached to the Deed of Trust.

"Project" shall mean the rehabilitation, structurally retrofitting for adaptive re-use, and construction of an additional multi-story, mixed-use residential and retail commercial development project on the Premises, as more particularly described in the DDA.

"Project Costs" shall mean the total, as estimated on the Budget, of all costs, expenses and fees relating to the Project.

"Request for Disbursement" shall have the same meaning as set forth in Section 4.2 herein below.

"Retainage" shall mean a holdback in an amount equal to ten percent (10%) of all amounts due the General Contractor and each Construction Contractor.

"Security Agreement" shall mean that portion of the Deed of Trust, as described therein.

"Soft Costs" or "Indirect Costs" shall mean all costs designated as "Soft Costs" on the Budget, or which are not Hard Costs.

"Stored Materials" shall mean materials purchased or to be purchased by Borrower, the General Contractor or a Construction Contractor, including, without limitation, materials to be fabricated (including initial deposits therefore) as contemplated by the Plans and Specifications, at the date of a request for disbursement, but not yet installed or incorporated into the Project.

"Subcontract" shall mean a contract relating to any work performed or to be performed for the Project executed or to be executed by General Contractor or a Construction Contractor with a Subcontractor.

"Subcontractor" shall mean any contractor who is a party to a Subcontract other than General Contractor or a Construction Contractor.

"Substantially Complete" or "Substantial Completion" shall mean that in Lender's reasonable judgment, all of the following conditions shall have been satisfied: (i) the Improvements shall have been constructed, completed, equipped and furnished in a good and workmanlike manner substantially in accordance with the Plans and Specifications, (ii) all notices of completion shall have been filed, all statutory lien periods shall have expired, and no outstanding mechanic's liens are of record (or if of record, bonded against in a manner reasonably approved by Lender), and (iii) a final inspection report from Lender's inspection service has been issued in a form approved by Lender.

"Title Company" shall mean Fidelity National Title Company.

"Title Insurance Policy" shall mean a title insurance policy in the form of an American Land Title Association Loan Policy-2021 extended coverage (without revision, modification or amendment) issued by Fidelity National Title Company, with such endorsements, with a liability equal to the Loan Amount, reflecting that the Deed of Trust is a first mortgage lien on the Property, and in form and substance satisfactory to Lender, subject only to those exceptions as Lender may require.

"Transfer" shall mean any transaction in violation of the restrictions contained in the Deed of Trust.

"Unconditional Lien Waiver and Release" shall mean a written unconditional waiver and release of mechanic's lien or bond rights in form and substance reasonably acceptable to Lender.

1.2 Accounting Terms. For purposes of this Agreement, all accounting terms not otherwise defined herein or in the Recitals shall have the meanings assigned to them in conformity with generally accepted accounting principles ("GAAP").

ARTICLE II. THE LOAN

2.1 Agreement to Lend and Borrow. Subject to the terms and conditions of this Agreement, Lender agrees to lend to Borrower and Borrower agrees to borrow from Lender up to the Loan Amount. The Loan proceeds shall be used solely for (a) the purposes of paying Project Costs as approved by Lender and as set forth in the Budget; (b) the payment of expenses, charges, costs and fees pursuant to Section 8.8 herein in accordance with the terms and conditions of this Agreement; and (c) the payment of costs incurred in connection with the Loan.

2.2 Evidence of Indebtedness. The Loan shall be evidenced by the Note. Disbursements of the Loan shall be charged and funded under the Note.

2.3 Interest Rate.

(a) Payment. Payment of interest on the Loan shall be payable in accordance with the terms of the Note.

(b) Rate after Default. Upon and during the continuance of an Event of Default hereunder or under any of the Loan Documents, including failure to pay upon final maturity, Lender, at its option, may do one or both of the following: (i) increase the Interest Rate on the Note to the Default Rate (as defined in the Note), and (ii) add any unpaid accrued interest to principal and such sum will bear interest therefrom until paid at the Default Rate. The interest rate will not exceed the maximum rate permitted by applicable law. The application of the Default Rate of interest shall not be interpreted or deemed to extend any cure period set forth in this Agreement or any Loan Document, if any, or otherwise limit any of Lender's remedies under this Agreement or the other Loan Documents.

(c) Computation of Interest. Interest shall be computed in the manner provided in the Note. If any payment of interest under the Note would otherwise be due on a day which is not a Business Day, the payment instead shall be due on the next succeeding Business Day.

(d) No Deductions. All payments of principal or interest under the Note shall be made (i) without deduction of any present and future taxes, levies, imposts, deductions, charges or withholdings, which amounts shall be paid by Borrower, and (ii) without any other set-off. Borrower will pay the amounts necessary such that the gross amount of the principal and interest received by Lender is not less than that required by the Note.

2.4 Payment of Principal. The outstanding principal balance of the Loan, together with all unpaid accrued interest thereon, and all other amounts payable by Borrower pursuant to the Note or pursuant to the terms of any other Loan Documents, shall be due and payable on the Maturity Date in lawful money of the United States of America at 303 East B Street, Ontario, CA 91764, or at such other place as the Lender shall designate in writing, in same day funds, not later than 1:00 p.m. (California time) in accordance with the Note.

2.5 Prepayment of Principal. Prepayment of the Note shall be subject to the terms and conditions of the Note.

2.6 Security. Payment of the Note shall be secured by the following:

(a) the Deed of Trust; and

(b) such other assignments, documents, agreements and/or instruments as the Lender shall reasonably require, as provided in this Agreement.

ARTICLE III. LOAN CLOSING

3.1 Conditions Precedent. Lender's obligation to perform the remainder of its obligations under this Agreement are expressly conditioned upon (in form and content approved by the Lender):

(i) Borrower's satisfaction of all of the conditions set forth in Exhibit C;

(ii) Borrower's satisfaction of the conditions for disbursement set forth in Article IV (as applicable);

(iii) Borrower's payment of the costs and expenses incurred by Lender, including the cost of the Title Insurance Policy;

(iv) the Title Company's unconditional commitment to issue the Title Insurance Policy;

(v) the representations and warranties as specified in Article V of this Agreement shall be true and correct as of the Closing Date;

(vi) no Event of Default exists under this Agreement or any of the other Loan Documents; and

(vii) Borrower's delivery to Lender of the following documents, in form and content satisfactory to Lender, duly executed (and acknowledged where necessary) by the appropriate parties thereto:

(a) This Agreement;

(b) The Note;

(c) The Deed of Trust, which shall be duly recorded in the Official Records of the County;

(d) The Environmental Indemnity Agreement; and

(e) Such other assignments, documents, subordinations and/or consents entered into by the Borrower and/or such other parties for the benefit of the Lender that Lender may require.

All of the foregoing are sometimes referred to as the "Loan Documents." Lender's approval of the recording of the Deed of Trust on the Closing Date shall establish the satisfaction of all conditions precedent set forth in this Section 3.1.

ARTICLE IV. DISBURSEMENTS OF THE LOAN[1]

4.1 Use of Disbursements; Revision of the Budget.

(a) Except as otherwise expressly permitted pursuant to Section 2.1, Borrower shall use disbursements of the Loan only for the payment of or reimbursement for Project Costs as shown on the Budget pursuant to subsections 4.1(b) and 4.1(c), as such Project Costs are incurred by Borrower. Project Costs shall be deemed to have been "incurred" by Borrower at the following times: (i) Hard Costs: when the labor has been performed or the materials have been supplied, delivered to, and/or incorporated into the Project, payment therefore has been requested by the contractor or supplier thereof, and such contractor or supplier is entitled thereto; and (ii)

Soft Costs: when such costs have been paid or are due and payable and the services relating thereto have been rendered or the value thereof has been received by Borrower. Lender shall have no obligation to make disbursements for Stored Materials except as provided in Section 4.7 hereof.

(b) The Budget shall be subject to revision from time to time as Lender may require or approve in accordance with this subsection 4.1(b). Lender shall have the right, in its discretion, to increase or decrease the allocation to the contingency, interest reserve and tax reserve categories and to determine whether any item of cost, expense or fee for which Borrower requests a disbursement constitutes a Project Cost and to which category such cost, expense or fee will be applied. The maximum amount that Lender shall be obligated to disburse for any item of Project Costs shall not exceed the amount designated for such category on the Budget as it may be amended from time to time by mutual agreement of Borrower and Lender, which agreement shall not be unreasonably withheld, pursuant to the last preceding sentence.

(c) All modifications to the Budget will be evidenced by a new Budget approved by Lender, subject to the provisions of Section 6.7 hereof.

(d) The Borrower acknowledges that this Agreement contains additional terms relating to the disbursement of the Loan which are supplemental to the terms of the DDA. Notwithstanding anything in this Agreement to the contrary, in the event of any direct conflict between any of the terms of disbursement as set forth in this Agreement and the terms of the DDA, the terms of the DDA shall prevail.

4.2 Requests for Disbursements.

(a) Borrower shall request disbursements of the Loan no more frequently than once each month. Advances shall be made upon requisitions in a form as may be reasonably prescribed by Lender from time to time, signed by an Authorized Representative of Borrower, and approved by such persons as Lender may direct (hereafter referred to as a "Request for Disbursement"), which approvals shall not be unreasonably withheld, conditioned or delayed and shall be promptly given if the Request for Disbursement complies with the terms and conditions of this Agreement. Except with respect to the final disbursement of Retainage, each disbursement must be for an amount which is not less than One Hundred Thousand Dollars ($100,000) (with any requests for disbursement of a lesser amount being held until a subsequent disbursement is approved, at which time such amounts will be combined and disbursed to the Borrower provided the combined amounts exceed the required disbursement amount minimum). Lender shall fund each approved requisition within ten (10) Business Days following receipt of all supporting invoices, instruments and documents that Lender may reasonably require. In connection with Advances, Lender may require, at Borrower's expense, on-site inspections and a review of construction (i) to verify completion of the work for which reimbursement is requested, and the estimated cost to complete the Improvements, and (ii) to certify disbursement requests. Any such inspections shall be for the sole use and benefit of Lender, and neither Borrower nor any third party shall be entitled to rely thereon for any purpose.

(b) Each such Request for Disbursement shall thereby constitute, without the necessity of specifically containing a written statement, a representation and warranty by

Borrower with respect to the item for which payment is requested that (i) subject to the provisions of Section 4.7 herein below, if the item is work or materials, it has been physically incorporated into or stored on the Premises, or has been custom ordered for the Project and deposit has been paid (i.e. elevators, electrical panels/gears, etc.)(provided that the amount requested for disbursement does not exceed the amount of the deposit until such time as the custom ordered item has been delivered to the Premises), free of all liens and encumbrances (except for those to be discharged in full with the proceeds of the requested advance), (ii) the item is included in the Budget or is subject to a Change Order, (iii) the cost of the item is as specified in the requisition and Budget (or if not, that Borrower has paid any excess), (iv) the work, materials or other item substantially conforms to the Plans and Specifications and/or Budget and all applicable statutes, laws, ordinances, administrative rules, regulations and other legal requirements, (v) the item has been approved by all zoning, building and other governmental officers, offices or departments having jurisdiction and whose approval is required, and (vi) except as set forth in the Request for Disbursement or any previous Request for Disbursement, the representations and warranties of Borrower contained in this Agreement are true and correct in all material respects as if made on the date of the request for disbursement.

(c) At the election of Lender, Lender, with input and approval from Borrower, which approval shall not be unreasonably withheld, may select a third-party construction fund control company (the "Fund Control Company") through which to fund disbursements of proceeds of the Loan. If Requests for Disbursement will be funded through a Fund Control Company, (i) Borrower shall submit each Request for Disbursement and all supporting documentation concurrently to Lender and to the Fund Control Company, (ii) the Fund Control Company and/or Lender's construction inspector may conduct construction inspections and monitor the work of construction and percentage of completion of construction and review all Requests for Disbursement and supporting items of information and documentation, and Lender shall have no duty to disburse any requested funds unless approved by the Fund Control Company and Lender's construction inspector, as applicable, after completion of such review.

4.3 Amount of and Conditions to Disbursements.

(a) Borrower shall not be entitled to any Advance unless:

(i) the representations and warranties as specified in subsection 4.2(b) shall be true and correct at the date of the Advance;

(ii) Lender has received copies of building permits issued by the City of Ontario for the construction of the Project;

(iii) the costs set forth in all prior requisitions have been duly paid by Borrower;

(iv) if required by Lender, the Title Company issues to Lender, at Borrower's expense, the endorsements to the Title Policy as may be reasonably required by Lender;

(v) the Borrower shall have furnished to Lender copies of receipts for the payment of bills and copies of Unconditional Lien Waivers and Releases covering work completed and/or materials furnished in connection with the work which was to have been paid

from the prior disbursement, and conditional lien waiver and releases with respect to the work to be paid from the current disbursement, each as requested by Lender;

(vi) no Event of Default exists under this Agreement or any of the other Loan Documents;

(vii) if required by Lender, Lender has received and approved, true, correct and complete copies of all Construction Contracts and Subcontracts executed since the last disbursement and not previously delivered to Lender, all construction bonds on those Construction Contracts and Subcontracts which have been obtained by such Construction Contractor or the General Contractor, and all Change Orders as required under Section 6.8 of this Agreement not previously delivered to Lender;

(viii) Borrower has satisfied the conditions of Section 4.8 with respect to the disbursement of Retainage (if applicable);

(ix) the Inspector has delivered to Lender written certification to Lender's reasonable satisfaction that work for which payment is being requested has been completed in substantial accordance with the Plans and Specifications; and

(ix) Borrower has furnished evidence to Lender that all required equity contribution funds have been expended toward Project Costs prior to disbursement of Loan proceeds.

Provided that the foregoing conditions are satisfied, Lender shall disburse (within the period set forth in subsection 4.2(a)), the amount of the Advance requested by Borrower in the Request for Disbursement, which amount shall not exceed the difference between (A) the cost of construction work in place, and any other costs, expenses and fees actually paid or payable by Borrower for approved Project Costs as of the date of the request for a disbursement, and (B) any required Retainage and any amounts previously disbursed hereunder..

(b) Each disbursement for Hard Costs shall be subject to the Retainage, which shall be disbursed upon satisfaction of the conditions in Section 4.8.

(c) At Lender's election, disbursements of the Loan may be made to a fund control account of a fund control agent selected by the Lender, for disbursement to the Borrower; provided, however, that during the continuance of an Event of Default or if Lender shall determine that Borrower is not paying the General Contractor or Construction Contractor or that the General Contractor of Construction Contractor is not paying any Subcontractors or other persons, as and when payments are due, Lender may, at its option, disburse such proceeds (i) directly to Borrower or to any Construction Contractor, (ii) jointly to Borrower, the General Contractor, and any Construction Contractor, (iii) directly to Persons supplying labor, materials and services in connection with the Improvements, or (iv) jointly to Borrower and said Persons.

4.4 Loan Balancing.

(a) As a material condition of the Loan and as a condition precedent to Lender's duty to disburse proceeds of the Loan, Borrower shall pay all Project Costs in excess of the Loan

Amount. Except for the payment of expenses, charges, costs and fees pursuant to Section 8.8, Lender shall be obligated to disburse proceeds of the Loan only when the Loan is "in balance". The Loan shall be "in balance" only at such times as Borrower has invested sufficient funds into the payment of Project Costs so that, in Lender's reasonable judgment, the undisbursed portion of the Loan shall be sufficient to complete fully the Project and pay all Project Costs until repayment in full of the Loan.

(b) The determination as to whether or not the Loan is "in balance" may be made by Lender at any time, including with each request for a disbursement of the Loan. Project Cost categories listed as "contingencies" on the Budget shall be deemed to be Project Costs for purposes of loan balancing.

(c) Borrower shall within ten (10) days after notice from Lender that the Loan is not "in balance," deposit with Lender, in cash, the amount necessary to put the Loan "in balance". No interest shall be paid by Lender on such deposited funds.

(d) All amounts deposited with the Lender pursuant to this Section 4.4 shall be disbursed toward Project Costs prior to any further Advances of the Loan.

4.5 [Intentionally Omitted].

4.6 Foundation Endorsement.

Upon completion of the construction of any foundation on the Premises, and as a condition precedent to any further disbursements under this Agreement, Borrower shall (if required by Lender), at Borrower's own cost and expense, deliver or cause to be delivered to Lender a foundation endorsement with respect to each such foundation, in form and substance reasonably satisfactory to Lender, to be attached to the Title Insurance Policy, which endorsement shall insure that such foundation is within the boundary lines of the Premises, does not violate any applicable covenants, conditions, restrictions or agreements affecting the Premises which are referred to in the Title Insurance Policy, and does not encroach upon any easements, rights or rights of way affecting or covering the Premises.

4.7 Stored Materials. Borrower shall have the right to obtain an Advance for Stored Materials subject to the provisions of Section 4.3 and the following:

As a condition precedent to the disbursement for Stored Materials, Borrower shall supply to Lender: (i) evidence satisfactory to Lender that the Stored Materials are included in the coverage of the insurance policies required by Section 6.18 or are otherwise adequately insured; (ii) evidence satisfactory to Lender from the seller or fabricator of the Stored Materials that, upon payment, ownership thereof will vest in Borrower free of any liens or claims of third parties; (iii)(A) evidence satisfactory to Lender that the Stored Materials are satisfactorily stored on the Premises to protect against theft or damage, or (B) if the Stored Materials are not stored on the Premises, (1) evidence satisfactory to Lender that the Stored Materials are stored in a bonded warehouse, storage yard or fabricator's premises approved by Lender, which approval shall not be unreasonably withheld, conditioned or delayed, and the warehouse or yard has been notified that Lender has a security interest in the subject Stored Materials, and (2) if available, Lender shall have received from Borrower the original warehouse receipt. With Lender's prior written

approval, Stored Materials may be stored in the yard or warehouse of the seller or fabricator, subject to satisfaction of conditions (i) and (ii) in this Section 4.7, and provided further that Lender receives satisfactory evidence that the Stored Materials are protected against theft or damage, have been suitably identified as belonging to Borrower for use in the Project to the extent commercially reasonable and that such seller or fabricator has been notified of the security interest of Lender therein.

4.8 Retainage Under any Construction Contracts and the General Contract. Retainage under a Construction Contract or the General Contract, as applicable, shall be released upon Borrower's delivery of the requisition documents described in Section 4.2 and Borrower's satisfaction of the conditions set forth in Section 4.3 and the following applicable conditions:

(a) The Project shall be Substantially Complete. Substantial Completion for purposes of this Section 4.8, shall be deemed to have occurred despite the existence of minor and immaterial punch-list items that require correction or completion, as determined by the Inspector and as approved by Lender; provided, however, that if such minor and immaterial punch-list items exist upon Substantial Completion, Lender shall have the right to withhold an amount equal to one hundred twenty five percent (125%) of the cost to complete all such punch-list items. The punch-list holdback will be disbursed upon lien-free completion of the punch-list items and reasonable approval thereof by the Lender and the Inspector;

(b) Lender shall have received (1) a Lien Waiver and Release (upon progress payment) from the General Contractor, each Construction Contractor and each Subcontractor covering the full amount of the disbursement for Direct Costs through the date of the previous disbursement request, subject only to (and conditioned only upon) the receipt of final payment; and (2) a Lien Waiver and Release (upon final payment) from each Construction Contractor and each Subcontractor who had completed the work covered by its Construction Contract or Subcontract, respectively, as of the previous disbursement request, covering the full amount due such Construction Contractor or Subcontractor, as the case may be, subject only to (and conditioned only upon) the receipt of final payment;

(c) With respect to the final release of Retainage under the General Contract, Lender shall have received appropriate approvals from (1) all Governmental Authorities regarding completion of the Improvements; (2) the local board of fire underwriters or its equivalent, if necessary; and (3) all other Governmental Authorities having jurisdiction over the contemplated uses, operation and occupancy of the Project;

(d) Borrower shall have submitted to Lender copies of all licenses, permits and agreements necessary for the use of the Project not previously delivered to Lender;

(e) Lender shall have received a satisfactory report as to the completion of the Improvements from the Inspector;

(f) A notice of completion on Lender's approved form has been executed by Borrower and duly recorded in the Official Records of the County; and

(g) Such other documentation, including, but not limited to, endorsements to the Title Insurance Policy, as Lender may reasonably require.

Notwithstanding the foregoing, at Lender's election, Lender may disburse the Retainage on a trade-by-trade basis, subject to Lender's reasonable verification that such work has been completed to Lender's reasonable satisfaction and in substantial compliance with the Plans and Specifications.

ARTICLE V. REPRESENTATIONS AND WARRANTIES

5.1 Consideration. As an inducement to Lender to execute this Agreement and to disburse the proceeds of the Loan, Borrower represents and warrants to Lender that the following statements set forth in this Article V are true, correct and complete in all material respects as of the date hereof and will be true, correct and complete in all material respects as of the Closing Date and until the Loan is repaid.

5.2 Organization, Powers and Good Standing.

(a) Organization and Powers. Borrower is a limited liability company, duly organized and validly existing under the laws of the State of California, and is qualified to transact business in the State of California and in each jurisdiction where it is required to conduct its operations. Borrower has all requisite power and authority, rights and franchises to own and operate its properties, to carry on its businesses as now conducted and as proposed to be conducted, and to enter into and perform this Agreement and the other Loan Documents.

(b) Good Standing. Borrower has made all filings and is in good standing in the State of California and/or each other jurisdiction in which the character of the property it owns or the nature of the business it transacts makes such filings necessary or where the failure to make such filings could have a materially adverse effect on the business, operations, assets or condition (financial or otherwise) of Borrower.

(c) Non-Foreign Status. Borrower is not a "foreign corporation", "foreign partnership", "foreign trust", or "foreign estate", as those terms are defined in the Internal Revenue Code and the regulations promulgated thereunder. Borrower's U.S. employer identification number previously provided to Lender is correct.

5.3 Authorization of Loan Documents.

(a) Authorization. The execution, delivery and performance of the Loan Documents by Borrower are within the Borrower's powers and have been duly authorized by all necessary action by Borrower.

(b) No Conflict. The execution, delivery and performance of the Loan Documents by Borrower will not violate (i) Borrower's Organizational Documents; (ii) any legal requirement affecting Borrower or any of its properties; or (iii) any agreement to which Borrower is bound or to which it is a party and will not result in or require the creation (except as provided in or contemplated by this Agreement) of any lien upon any of such properties.

(c) Governmental and Private Approvals. All governmental or regulatory orders, consents, permits, authorizations and approvals required for the commencement of construction of the Improvements have been obtained and are in full force and effect. No additional

governmental or regulatory actions, filings or registrations with respect to the Improvements, and no approvals, authorizations or consents of any trustee or holder of any indebtedness or obligation of Borrower are required for the due execution, delivery and performance by Borrower of the Loan Documents.

(d) Binding Obligations. This Agreement and the other Loan Documents have been duly executed by Borrower, and are legally valid and binding obligations of Borrower, enforceable against Borrower in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

5.4 No Material Defaults. There exists no material violation of or material default by Borrower and, to the best knowledge of Borrower, no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default by Borrower with respect to (a) the terms of any instrument evidencing or securing any indebtedness secured by the Premises, (b) any material lease or other agreement affecting the Premises to which Borrower is a party, (c) any material license, permit, statute, ordinance, law, judgment, order, writ, injunction, decree, rule or regulation of any Governmental Authority, or any determination or award of any arbitrator to which Borrower or the Premises may be bound, or (d) any mortgage, instrument, agreement or document by which Borrower, or any of its properties is bound: (i) which is a Loan Document, (ii) which involves the Premises and is not adequately covered by insurance, (iii) which could be reasonably expected to materially and adversely affect the ability of Borrower to perform its obligations under any of the Loan Documents, or (iv) which could be reasonably expected to adversely affect the first priority of the liens created by this Agreement or any of the Loan Documents.

5.5 Litigation; Adverse Facts. There is no action, suit, investigation, proceeding or arbitration (whether or not purportedly on behalf of the Borrower) at law or in equity or before or by any foreign or domestic court or other governmental entity (a "Legal Action"), pending or, to the knowledge of Borrower, threatened against or affecting Borrower or any of its assets which could reasonably be expected to result in any material adverse change in the business, operations, assets (including the Premises) or condition (financial or otherwise) of Borrower or would materially and adversely affect Borrower's ability to perform its obligations under the Loan Documents, except as may already have been disclosed in writing to the Lender as of the date of this Agreement. Borrower is not (a) in violation of any applicable law which violation materially and adversely affects or could reasonably be expected to materially and adversely affect the business, operations, assets (including the Premises) or condition (financial or otherwise) of Borrower, (b) subject to, or in default with respect to any other legal requirement that would have a materially adverse effect on the business, operations, assets (including the Premises) or condition (financial or otherwise) of Borrower, or (c) in default with respect to any agreement to which Borrower is a party or to which it is bound which could reasonably be expected to materially and adversely affect the business, operations, assets (including the Premises) or condition (financial or otherwise) of Borrower. There is no Legal Action pending or, to the knowledge of Borrower, threatened against or affecting Borrower questioning the validity or the enforceability of this Agreement or any of the other Loan Documents. Legal action will be deemed "material" if it involves the sum of more than fifty thousand dollars ($50,000.00).

5.6 Title to Properties; Liens. Borrower has good, sufficient and legal title to all properties and assets reflected in its most recent balance sheet delivered to Lender, except for assets disposed of in the ordinary course of business since the date of such balance sheet. Borrower is the sole owner of, and has good and marketable title to the fee interest in the Premises, the Improvements and all other real property described in the Deed of Trust, free from any adverse lien, security interest or encumbrance of any kind whatsoever, excepting only (a) liens and encumbrances shown on the Title Insurance Policy, (b) liens and security interests in favor of Lender, and (c) other matters which have been approved in writing by Lender.

5.7 Assets & Liens. Borrower has good, sufficient and legal title to the assets reflected in its most recent balance sheet delivered to Lender, except for assets disposed of in the ordinary course of business since the date of such balance sheet.

5.8 Disclosure. There is no fact known to Borrower that materially and adversely affects the business, operations, assets or condition (financial or otherwise) of Borrower which has not been disclosed in this Agreement or in other documents, certificates and written statements furnished to Lender in connection herewith.

5.9 Payment of Taxes. All tax returns and reports of Borrower required to be filed by it have been timely filed, and all taxes, assessments, fees and other governmental charges upon Borrower and upon its properties, assets, income and franchises which are due and payable have been paid when due and payable. Borrower knows of no proposed tax assessment against it that would be material to the condition (financial or otherwise) of Borrower, and Borrower has not contracted with any government entity in connection with such taxes.

5.10 Securities Activities. Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any margin stock (as defined within Regulations G, T and U of the Board of Governors of the Federal Reserve System), and not more than twenty-five percent (25%) of the value of Borrower's assets consists of such margin stock. No part of the Loan will be used to purchase or carry any margin stock or to extend credit to others for that purpose or for any other purpose that violates the provisions of Regulations U or X of said Board of Governors.

5.11 Government Regulations. Borrower is not subject to regulation under the Investment Company Act of 1940, the Federal Power Act, the Public Utility Holding Company Act of 1935, the Interstate Commerce Act or to any federal or state statute or regulation limiting its ability to incur indebtedness.

5.12 Rights to Project Agreements, Permits and Licenses. Borrower is the true owner of all rights in and to all existing agreements, permits and licenses relating to the Premises entered into by Borrower or issued in the name of Borrower, and will be the true owner of all rights in and to all future agreements, permits and licenses relating to the Premises. Borrower's interest in all such agreements, permits and licenses is not subject to any present claim (other than under the Loan Documents or as otherwise approved by Lender in its discretion), set-off or deduction other than in the ordinary course of business.

5.13 Utilities and Access. Telephone services, electric power, storm sewers, sanitary sewer, potable water facilities and all other utilities and services necessary for the construction, use, operation and maintenance of the Improvements are available to the Premises, are adequate to serve such improvements, and are not subject to any conditions limiting the use of such utilities, other than normal charges to the utility supplier. All streets and easements necessary for the operation and maintenance of the Improvements are available to the boundaries of the Premises.

5.14 Compliance with Laws. The Improvements and the Premises, and the uses to which the Improvements and the Premises are and will be put, comply in all material respects with such applicable laws and restrictive covenants.

5.15 Financial Condition. The financial statements and all financial data previously delivered to Lender by Borrower in connection with the Loan and/or relating to Borrower are true, correct and complete in all material respects. Such financial statements fairly present the financial position of the parties who are the subject thereof as of the date thereof. No material adverse change has occurred in such financial position and, except for this Loan and any other loans from Lender, no borrowings have been made by Borrower since the date thereof which are secured by, or might give rise to, a lien or claim against the Premises or the proceeds of this Loan.

5.16 Personal Property. After the Closing Date, Borrower will be the sole owner of the Collateral free from any adverse lien, security interest or adverse claim of any kind whatsoever, except for liens or security interests in favor of Lender.

5.17 No Condemnation. No condemnation proceedings or moratorium is pending or, to Borrower's knowledge, threatened against the Project or the Premises (or any portion thereof).

5.18 Other Loan Documents. Each of the representations and warranties of Borrower contained in any of the other Loan Documents is true and correct in all material respects. All of such representations and warranties are incorporated herein for the benefit of Lender.

ARTICLE VI. COVENANTS OF BORROWER

6.1 Consideration. As an inducement to Lender to execute this Agreement and to make each disbursement of the Loan, Borrower hereby covenants as set forth in this Article VI, which covenants shall remain in effect so long as the Note shall remain unpaid.

6.2 Compliance with Laws. Borrower will comply and, to the extent it is able, will use commercially reasonable efforts to require others to comply with all material laws and requirements of all Governmental Authorities having jurisdiction over the Premises or construction of the Improvements and will furnish Lender with reports of any official searches obtained by Borrower for violation of any requirements established by such Governmental Authorities. Borrower will comply and, to the extent it is able, will use commercially reasonable efforts to require others to comply in all material respects with applicable CC&Rs and all restrictive covenants and all obligations created by private contracts and leases which affect ownership, construction, equipping, fixturing, use or operation of the Premises. The Improvements, when completed, shall comply in all material respects with all applicable building, zoning and use laws, requirements, regulations and ordinances and will not violate any

restrictions of record against the Premises or the terms of any lease of all or any portion of the Premises.

6.3 Lender Inspections. Throughout the term of the Loan and during normal business hours, Borrower will permit Lender and Lender's representatives, inspectors and consultants to enter upon the Premises, to inspect the Improvements and materials to be used therein, to audit, examine and copy all contracts, records (including, but not limited to, financial and accounting records pertaining to the Loan or the Premises), plans and shop drawings which are kept at the construction site or at Borrower's offices, and to discuss the affairs, finances and accounts of Borrower with representatives of Borrower. Borrower will cooperate with and shall cause the General Contractor to cooperate with any such representatives, inspectors or consultants retained by Lender pursuant to the Loan Documents to enable them to perform their functions under this Agreement.

6.4 Commence and Continue Construction.

(a) Borrower acknowledges that construction of the Improvements has not begun and that construction of the Improvements shall commence promptly following the Closing Date and shall continue with diligence and continuity, in order that Substantial Completion of the Improvements shall occur on or before the Completion Date, subject to Force Majeure.

(b) Subject to the provisions of Section 6.9, on the Completion Date all construction shall be free and clear of material defects in and liens or claims for liens for materials supplied or labor or services performed in connection with the Improvements. The Improvements shall be in substantial conformity with the Plans and Specifications and, except for off-site improvements designated thereon, shall be contained wholly within the lot lines of the Premises and will not encroach on any other real estate, easements, building lines or set-back requirements.

6.5 Ownership of Personal Property. Borrower will be the sole owner of all Collateral acquired after the date hereof, free from any adverse lien, security interest or adverse claim of any kind whatsoever, except for security interests and liens in favor of the interest of a lessor pursuant to a lease of personal property reasonably approved by Lender and the liens and security interests approved by Lender pursuant to the Loan Documents.

6.6 Correction of Defects. Within five (5) days after notice thereof from Lender or any governmental agency, Borrower will proceed with diligence to correct all material defects in the Improvements and any departure from the Plans and Specifications except as approved by Lender or permitted under Section 6.7 below. The disbursement of any Loan proceeds shall not constitute a waiver of Lender's right to require compliance with this covenant with respect to any such defect or departure from the Plans and Specifications.

6.7 Changes and Change Orders.

(a) Borrower will not change or in any manner cause or seek a change in any laws, requirements of Governmental Authorities and obligations created by private contracts and leases which now or hereafter could be reasonably expected to materially, adversely and significantly affect the ownership, construction, equipping, fixturing, use or operation of the Premises without the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) Any Change Order must be submitted to Lender for review and approval. Borrower will not, without the prior written approval of Lender, which approval shall not be unreasonably withheld, conditioned or delayed, permit the performance of any work pursuant to, or request a disbursement for, any Change Orders which result in a material change in the Plans and Specifications, General Contract or any Construction Contract or will increase Project Costs. Proposed Change Orders requiring Lender's approval shall be submitted to Lender on a form reasonably acceptable to Lender containing such information as to the nature, scope and cost for such change as Lender may require together with a marked copy of the portion of the Plans and Specifications affected by the proposed change.

(c) Notwithstanding the provisions of this Section 6.7, Borrower shall not be required to obtain Lender's consent to any individual Change Order of $10,000.00 or less, provided the aggregate of all other Change Orders does not exceed $50,000.00.

6.8 Changes in Cost of Contracts. Subject to Section 6.7(c) above, Borrower shall not agree to any increases in the cost or amount of the General Contract or any Construction Contract without Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

6.9 Contesting Liens.

(a) Borrower shall promptly discharge or cause to be discharged any mechanics' or materialmen's liens or claims of lien filed or otherwise asserted against the Premises, the Improvements, the Project or any funds due the General Contractor or any Construction Contractor and any proceedings for the enforcement thereof; provided, however, that Borrower shall have the right to contest in good faith and with reasonable diligence the validity of any such liens or claims upon furnishing to the Title Company such security or indemnity as the latter may require to induce it to issue its Title Insurance Policy or an interim endorsement thereto insuring against all such claims or liens and, provided further, that Lender will not be required to make any further disbursements of the Loan until all such mechanics' or materialmens' liens or claims of lien shown on the title insurance commitment or any interim endorsement have been so insured against by the Title Company to Lender's reasonable satisfaction.

(b) If (i) Borrower fails either to promptly discharge or contest liens or claims of lien and provide the security or indemnity in the manner provided in subsection 6.9(a) or (ii) after having complied with the provisions of subsection 6.9(a) there is an adverse conclusion to any such contest and Borrower does not cause any final judgment or decree to be immediately satisfied and the lien to be discharged, then Lender may, but shall not be required to, procure the

release and discharge of any such lien and any judgment or decree thereon, and in furtherance thereof may, in its sole discretion, effect any settlement or compromise or furnish any security or indemnity as may be required by the Title Company. All amounts expended by Lender in connection with the provisions of this subsection 6.9(b) shall be deemed to constitute a disbursement of the Loan. In settling, compromising or arranging for the discharge of any liens under this subsection 6.9(b), Lender shall not be required to establish or confirm the validity or amount of the lien.

6.10 Compliance with Loan Documents. Borrower will comply with all conditions of this Agreement, whether or not a disbursement of the Loan is requested. It will comply and, to the extent it is able, will use its commercially reasonable efforts to cause compliance by parties thereto (other than Lender), with all other Loan Documents and with the General Contract and the Construction Contracts.

6.11 Trade Names. Borrower shall immediately notify Lender in writing of any change in the legal, trade or fictitious business names used by Borrower and shall, upon Lender's request, execute any additional financing statements and other certificates necessary to reflect the change in such legal, trade or fictitious business names.

6.12 Further Assurances. Borrower shall execute and deliver from time to time, promptly after any reasonable request therefor by Lender, any and all instruments, agreements and documents and shall take such other action as may be necessary or desirable in the reasonable opinion of Lender to maintain, perfect or insure Lender's security provided for herein and in the other Loan Documents, including, without limitation, the execution of UCC-1 renewal statements, the execution of such amendments to the Deed of Trust and the other Loan Documents and the delivery of such endorsements to the Title Insurance Policy, all as Lender shall reasonably require, and Borrower shall pay all fees and expenses (including reasonable attorneys' fees) related thereto. Promptly upon the request of Lender, Borrower shall execute and deliver a Certification of Non-Foreign Status.

6.13 Notice of Litigation. Borrower shall give, or cause to be given, prompt written notice to Lender of (a) any action or proceeding to the extent Borrower has knowledge thereof which is instituted by or against it in any Federal or state court or before any commission or other regulatory body, Federal, state or local, foreign or domestic, or any such proceedings which are threatened against it which, if adversely determined, could have a material and adverse effect upon its business, operations, properties, assets, management, ownership or condition (financial or otherwise), (b) any other action, event or condition of any nature which could reasonably be expected to have a material and adverse effect upon its business, operations, management, assets, properties, ownership or condition (financial or otherwise), or which, with notice or lapse of time or both, would constitute an Event of Default or a default under any other contract, instrument or agreement to which it is a party or to which it or any of its properties or assets may be bound or subject, and (c) any actions, proceedings or notices adversely affecting the Premises or Lender's interest therein by any zoning, building or other municipal officers, offices or departments having jurisdiction with respect to the Premises.

6.14 Financial Statements and Reports. Promptly, and from time to time, upon request of Lender, Borrower shall furnish to Lender such information concerning the Premises and Borrower's financial condition, business and affairs, as shall be reasonably requested by Lender.

6.15 Punctual Payments. Borrower shall punctually pay all principal, interest, fees or other liabilities due under any of the Loan Documents at the times and place and in the manner specified therein, and immediately upon demand by Lender, the amount by which the outstanding principal balance of the Loan at any time exceeds any limitation on borrowings applicable thereto.

6.16 Accounting Records. Borrower shall maintain adequate books and records in accordance with sound accounting principles consistently applied, and permit any representative of Lender, at any reasonable time, to inspect, audit and examine such books and records, to make copies of the same, and to inspect the properties of Borrower.

6.17 Amendments to Borrower's Organizational Documents. Borrower shall not allow any amendments to be made in the terms of Borrower's Organizational Documents without Lender's prior written consent, which consent shall not be unreasonably withheld.

6.18 Insurance Requirements. Prior to closing, and at all times during the term of this transaction, maintain in full force and effect such insurance covering the Premises as is required by this Agreement, by any of the other Loan Documents or by any law, and all such insurance shall be in such amounts and shall insure against such hazards and liabilities, as is customarily maintained by individuals or entities situated similarly to Borrower including, but not limited to, fire and extended coverage, comprehensive general liability, automobile liability and workmen's compensation insurance, and a course of construction/builders risk insurance protection during the construction phase of the Project. All such insurance shall be written by reputable, financially sound insurance companies acceptable to Lender. The limits of coverage, deductibles, and carriers shall be subject to Lender's reasonable approval. Any or all policies of insurance required hereby or by any of the Loan Documents shall be issued naming Lender as an additional insured and as loss payee or mortgagee. In addition such policies shall specify that the insurer must give at least thirty (30) days' notice to the Lender before canceling or modifying its policy for any reason. Borrower shall promptly notify Lender in the event any insurance shall be cancelled. Borrower shall furnish to the Lender, upon request of the Lender, reports on each existing insurance policy showing such information as the Lender may reasonably request.

6.19 Maintenance of Existence. Borrower shall maintain and preserve its existence and all rights and franchises material to its business.

6.20 Notice To Lender. Borrower shall promptly (but in no event more than five (5) days after the occurrence of each such event or matter) give written notice to Lender in reasonable detail of: (a) the occurrence of any Event of Default, or any condition, event or act which with the giving of notice or the passage of time or both would constitute an Event of Default; or (b) any termination or cancellation of any insurance policy which Borrower is required to maintain, or any uninsured or partially insured loss through liability or property damage, or through fire, theft or any other cause affecting Borrower's property in excess of an aggregate of $100,000.00.

6.21 Construction Materials. Borrower will not use, and will not permit the use of, any Hazardous Substance (as defined in the Environmental Indemnity) in the construction of the Improvements, other than Hazardous Substances used in compliance with applicable environmental laws and customarily employed, in accordance with industry practice, in construction of projects similar to the Project; provided that no use permitted hereunder shall have any effect of any kind on the Environmental Indemnity Agreement.

6.22 Appraisals. If deemed reasonably necessary by Lender or if required by law, Lender shall have the right to order Appraisals of the Premises from time to time from an appraiser selected by Lender, which Appraisals shall comply with all federal and state standards for Appraisals and otherwise shall be satisfactory to Lender in all respects. Borrower agrees to pay the cost and expense for any Appraisals and reviews as are required pursuant to a change in applicable law, or as deemed necessary by Lender in Lender's sole and absolute discretion during the continuance of an Event of Default.

6.23 Verification of Costs. At Lender's request, Borrower agrees to provide Lender with copies of all contracts, subcontracts and other agreements relating to the Project so that Lender can verify all costs set forth in the Budget, which contracts, subcontracts and other agreements shall be subject to Lender's review and approval. Based on its review, reasonable determination and verification of costs set forth in the Budget, Lender, with input and approval from Borrower, which approval shall not be unreasonably withheld, shall have the right to reduce the dollar amount of any line items in the Budget or reallocate between line items in the Budget.

6.24 Changes in Management. Borrower shall notify Lender in writing within thirty (30) days of any changes in the executive management, managing directors or officers of Borrower.

6.25 Compliance with DDA. Borrower and Lender shall comply with all of the terms and conditions of the DDA.

ARTICLE VII. EVENTS OF DEFAULT AND REMEDIES

7.1 Events of Default. The occurrence of any one or more of the following shall constitute an Event of Default under this Agreement:

(a) Failure by Borrower to pay any monetary amount when due under any Loan Document.

(b) Failure by Borrower to perform any of the other terms, provisions, and obligations of the Borrower pursuant to the Loan Documents within thirty (30) days from the receipt of written notice from the Lender (the "30 Day Notice") that such performance was due; provided, however that if such failure is not reasonably susceptible to cure within thirty (30) days from receipt of the 30 Day Notice and provided that (i) Borrower shall have in good faith undertaken such cure within said thirty (30) day period and (ii) Borrower shall have diligently prosecuted such cure thereafter, Borrower shall have additional time to prosecute such cure, such additional time not to exceed one hundred twenty (120) days, from receipt by Borrower of the 30 Day Notice.

(c) Any representation or warranty by Borrower in any Loan Document is materially false, incorrect, or misleading as of the date made.

(d) The occurrence of any event (including, without limitation, a change in the financial condition, business, or operations of Borrower for any reason whatsoever) that materially and adversely affects the ability of Borrower to perform any of its obligations under the Loan Documents.

(e) Borrower (i) admits in writing Borrower's inability to pay Borrower's monetary obligations as they become due, (ii) fails to pay when due any monetary obligation, whether such obligation be direct or contingent, to any person in excess of Fifty Thousand Dollars ($50,000), (iii) makes a general assignment for the benefit of creditors, or (iv) applies for, consents to, or acquiesces in, the appointment of a trustee, receiver, or other custodian for Borrower or the property of Borrower, or in the absence of such application, consent, or acquiescence, a trustee, receiver, or other custodian is appointed for Borrower or the property of Borrower or any part thereof, and such appointment is not discharged within sixty (60) days.

(f) Commencement of any case under the Bankruptcy Code, Title 11 of the United State Code, or commencement of any other bankruptcy arrangement, reorganization, receivership, custodianship, or similar proceeding under any federal, state, or foreign law by or against Borrower and with respect to any such case or proceeding that is involuntary, such case or proceeding is not dismissed within sixty (60) days of the filing thereof.

(g) Any litigation or proceeding which could reasonably be expected to materially and adversely affect the ability of Borrower to perform their respective obligations under the Loan Documents is commenced before any Governmental Authority against Borrower or the property of Borrower or any part thereof and such litigation or proceeding is not defended diligently and in good faith by Borrower.

(h) A final judgment or decree for monetary damages or a monetary fine or penalty (not subject to appeal or as to which the time for appeal has expired) is entered against Borrower by any Government Authority, which together with the aggregate amount of all other such judgments and decrees against Borrower that remain unpaid or that have not been discharged or stayed, exceeds Fifty Thousand Dollars ($50,000), is not paid and discharged or stayed within thirty (30) days after the entry thereof.

(i) Commencement of any action or proceeding which seeks as one of its remedies the dissolution of Borrower which is not being defended diligently and in good faith by Borrower, but in any event such action or proceeding must be terminated within ninety (90) days following its commencement.

(j) Except for taking a material portion of the property of Borrower is attached, levied upon, or otherwise seized by legal process, and such attachment, levy, or seizure is not quashed, stayed, or released within thirty (30) days of the date thereof.

(k) The occurrence of any Transfer, unless prior to such Transfer the holder of the Note has delivered to Borrower the written consent of such holder to such Transfer.

(l) The occurrence of any Event of Default, as such term is defined in any other Loan Document.

(m) The occurrence of any default in the payment or performance of a term or condition of any credit agreement, note, security agreement, mortgage, deed of trust, deed to secure debt, or other agreement or instrument evidencing or securing any other indebtedness, liabilities or obligations of Borrower to Lender, including, without limitation, any other loan now or in the future entered into between Borrower and Lender.

(n) Commencement of any case under the Bankruptcy Code, Title 11 of the United States Code, or commencement of any other bankruptcy arrangement, reorganization, receivership, custodianship, or similar proceeding under any federal, state, or foreign law by or against the General Contractor and/or termination of the General Contract and/or the permanent withdrawal of the General Contractor from proceeding with construction of the Project and the failure of Borrower to procure a contract at the same price, or, if at a higher price, to supply the additional funds thereby required with a new general contractor reasonably satisfactory to Lender within thirty (30) days from the occurrence of such bankruptcy, insolvency, termination or permanent withdrawal. Notwithstanding the foregoing, in the event that Borrower is unable to enter into an agreement with a new general contractor, and provided that construction activities with respect to the Project are continuing, Borrower shall have an additional thirty (30) days within which to enter into such an agreement with an additional general contractor.

(o) Failure to deposit with Lender in cash or cash equivalents the amount necessary to put the Loan "in balance" within ten (10) days of Lender's notice that the Loan is not "in balance".

(p) The occurrence of any event of default under the DDA beyond any applicable notice and cure period.

7.2 Remedies.

(a) Notwithstanding any provision to the contrary herein or any of the other Loan Documents, during a continuance of any Event of Default under this Agreement or any of the other Loan Documents: (i) Lender's obligation to make further disbursements of the Loan shall abate, and (ii) if the Event of Default shall not be cured within the applicable periods, then Lender shall, at its option, have the remedies provided in the Loan Document breached by Borrower, including, without limitation, the option to declare all outstanding indebtedness to be immediately due and payable without presentment, demand, protest or notice of any kind, and the following remedies: Lender's obligation to make further disbursements to Borrower shall terminate; Lender may, at its option, apply any of Borrower's funds in its possession to the outstanding indebtedness under the Note whether or not such indebtedness is then due; Lender may exercise all rights and remedies available to it under any or all of the Loan Documents; and Lender shall have the right to cause an independent contractor selected by Lender to enter into possession of the Premises and to perform any and all work and labor necessary for the completion of the Project substantially in accordance with the Plans and Specifications and to perform Borrower's obligations under this Agreement. All sums expended by Lender for such purposes shall be deemed to have been disbursed to and borrowed by Borrower and shall be secured by the Deed of Trust on the Premises.

(b) Effective upon the occurrence of an Event of Default, Borrower hereby constitutes and appoints Lender, or an independent contractor selected by Lender, as its true and lawful attorney-in-fact with full power of substitution for the purposes of completion of the Project and performance of Borrower's obligations under this Agreement in the name of the Borrower, and hereby empower said attorney-in-fact to do any or all of the following:

(i) to use any of the funds of Borrower, including any balance of the Loan, as applicable, and any funds which may be held by Lender for Borrower, for the purpose of effecting completion of the Improvements in the manner called for by the Plans and Specifications;

(ii) to make such additions, changes and corrections in the Plans and Specifications as shall be necessary or desirable to complete the Improvements in substantially the manner contemplated by the Plans and Specifications;

(iii) to employ any contractors, subcontractors, agents, architects and inspectors required for said purposes;

(iv) to employ attorneys to defend against attempts to interfere with the exercise of power granted hereby;

(v) to pay, settle or compromise all existing bills and claims which are or may be liens against the Premises, the Improvements or the Project or may be necessary or desirable for the completion of the Improvements or clearance of objections to or encumbrances on title;

(vi) to execute all applications and certificates in the name of Borrower, which may be required by the General Contract, any Construction Contract, any Subcontract or any other construction contract;

(vii) to prosecute and defend all actions or proceedings in connection with the Project and to take such action, require such performance and do any and every other act as is deemed necessary with respect to the completion of the Improvements which Borrower might do on its own behalf;

(viii) to let new or additional contracts with the same contractor(s) or others to the extent not prohibited by their existing contracts;

(ix) to employ watchmen and erect security fences to protect the Project from injury; and

(x) to take such action and require such performance as it deems necessary under any of the bonds or insurance policies to be furnished hereunder, to make settlements and compromises with the sureties or insurers thereunder, and in connection therewith to execute instruments of release and satisfaction.

It is understood and agreed that the foregoing power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked until repayment of the Loan.

7.3 Force Majeure. Whenever the performance of an act (or the forebearance therefrom) is required of Borrower, other than the payment of any monetary item (including, but not limited to payments of interest and/or principal on the Note, insurance premiums and/or impounds, real estate impositions and/or impounds, and/or any other monies that are to be paid by Borrower pursuant to the Loan Documents) and Borrower is unable to perform or forebear therefrom due to conditions beyond the reasonable control of Borrower, including but not limited to acts of God or the elements, fire, strikes, labor disputes, delays in delivery of materials (not caused by Borrower's or General Contractor's failure to make timely payments therefore), then in such event an Event of Default shall not exist, provided that: (i) Borrower gives Lender written notice of any claimed reason for Borrower's inability to perform or forebear within five (5) Business Days of the occurrence or the commencement of the event that forms the basis of that reason; (ii) the Borrower proceeds in good faith and with all reasonable due diligence in a commercially reasonable manner to perform (or forebear) as required; and (iii) the completion of the act or forbearance required of Borrower to the reasonable satisfaction of Lender is not delayed by more than one hundred twenty (120) days.

ARTICLE VIII. MISCELLANEOUS

8.1 Assignment. Borrower shall not assign any of its rights under this Agreement. Lender shall not assign any of its rights under this Agreement, except that Lender may assign its rights and delegate its duties under this Agreement to another public entity.

8.2 Notices. All notices (except notices relating to disbursement of funds, changes to the Budget or changes to the Plans and Specifications, each of which shall be delivered to Lender as directed in written instructions from Lender), requests, demands and consents to be made hereunder to the parties hereto shall be in writing and shall be delivered by hand or sent by registered mail or certified mail, postage prepaid, return receipt requested, through the United States Postal Service, or by overnight delivery by a nationally recognized delivery service (e.g., Federal Express) requiring a receipt, to the addresses shown below or such other address which

the parties may provide to one another in accordance herewith. Such notices, requests, demands and consents, if sent by mail shall be deemed given three (3) Business Days after deposit in the United States mail, one (1) Business Day after the date of sending via overnight delivery, and if delivered by hand, shall be deemed given when delivered:

To LENDER: CITY OF ONTARIO
Attn: City Manager
303 East B Street
Ontario, CA 91764

With a Copy to:

Best, Best & Krieger LLP
Attn: Ruben Duran
Ontario City Attorney
2855 E. Guasti Rd., Suite 400
Ontario, CA 91761

To BORROWER: A BLOCK LLC
109 Harvard Street, Suite 300
Glendale, CA 91205

8.3 Authority to File Notices. Effective upon the occurrence of an Event of Default, Borrower irrevocably appoints Lender as its attorney-in-fact, with full power of substitution, to file for record, at the Borrower's cost and expense and in Borrower's name, any notices of completion, notices of cessation of labor, or any other notices that Lender reasonably considers necessary or desirable to protect its security, and which are consistent with the terms of this Agreement.

8.4 Inconsistencies with the Loan Documents. In the event of any inconsistencies between the terms of the DDA and any terms of this Agreement and any of the Loan Documents, the terms of the DDA shall govern and prevail.

8.5 No Waiver. No disbursement of proceeds of the Loan shall constitute a waiver of any conditions to Lender's obligation to make further disbursements nor, in the event Borrower is unable to satisfy any such conditions, shall any such waiver have the effect of precluding Lender from thereafter declaring such inability to constitute a default or Event of Default under this Agreement.

8.6 Incorporation of Preamble, Recitals and Exhibits. The preamble, recitals and exhibits hereto are hereby incorporated into this Agreement.

8.7 Third-Party Consultants. Following Lender's prior notice to Borrower, Lender may hire such third-party consultants as it reasonably deems necessary, the costs of which shall be paid by Borrower, to provide the following services: (a) review final Plans and Specifications and

final construction cost breakdown; (b) conduct compliance inspections with respect to the progress of construction of the Project and approve each element of a request for disbursement relating to construction costs; and (c) perform such other services as may, from time to time, be required by Lender. This obligation on the part of Borrower shall survive the closing of the Loan and the repayment thereof. Borrower hereby authorizes Lender, in its discretion, to pay such expenses, charges, costs and fees at any time by a disbursement of the Loan.

8.8 Payment of Expenses. Borrower shall pay all taxes and assessments and all reasonable expenses, charges, costs and fees provided for in this Agreement or relating to the Loan or construction of the Improvements, including, without limitation, any fees incurred for recording or filing any of the Loan Documents, title insurance premiums and charges, tax service contract fees, fees of any consultants, fees and expenses of Lender's counsel incurred in connection with any enforcement of the Loan Documents, documentation and processing fees, printing, photostating and duplicating expenses, air freight charges, escrow fees, costs of surveys, premiums of hazard insurance policies and surety bonds and fees for any appraisal and appraisal review, market or feasibility study required by Lender. Borrower hereby authorizes Lender to disburse the proceeds of the Loan to pay such expenses, charges, costs and fees notwithstanding that Borrower may not have requested a disbursement of such amount. Lender shall make such disbursements notwithstanding the fact that the Loan is not "in balance" or that Borrower is in default under the terms of this Agreement or any other Loan Document. Such disbursement shall be added to the outstanding principal balance of the Note. The authorization hereby granted shall be irrevocable, and no further direction or authorization from Borrower shall be necessary for Lender to make such disbursements. However, the provision of this Section 8.8 shall not prevent Borrower from paying such expense, charges, costs and fees from its own funds. All such expenses, charges, costs and fees shall be Borrower's obligation regardless of whether or not Borrower has requested and met the conditions for a disbursement of the Loan. The obligations on the part of Borrower under this Section 8.8 shall survive the closing of the Loan and the repayment thereof. Borrower hereby authorizes Lender, in its discretion, to pay such expenses, charges, costs and fees at any time by a disbursement of the Loan. Borrower shall not be required to pay as an expense the general overhead of Lender.

8.9 Disclaimer by Lender. Lender shall not be liable to any contractor, subcontractor, supplier, laborer, architect, engineer or any other party for services performed or materials supplied in connection with the Project. Lender shall not be liable for any debts or claims accruing in favor of any such parties against Borrower or others or against the Premises or the Project. Borrower is not and shall not be an agent of Lender for any purpose. Lender is not a joint venture partner with Borrower or with any person having an ownership interest in Borrower in any manner whatsoever. Prior to default by Borrower under this Agreement and the exercise of remedies granted herein, Lender shall not be deemed to be in privity of contract with any contractor or provider of services to the Project, nor shall any payment of funds directly to a contractor, subcontractor, or provider of services be deemed to create any third party beneficiary status or recognition of same by Lender. Approvals granted by Lender for any matters covered under this Agreement shall be narrowly construed to cover only the parties and facts identified in any written approval or, if not in writing, such approvals shall be solely for the benefit of Borrower.

8.10 Indemnification. To the fullest extent permitted by law, Borrower agrees to protect, indemnify, defend and save harmless Lender, its directors, officers, agents and employees for, from and against any and all liability, expense or damage of any kind or nature and for, from and against any suits, claims or demands, including reasonable legal fees and expenses on account of any matter or thing or action or failure to act by Lender, whether in suit or not, arising out of this Agreement or in connection herewith, including, without limitation, any suit, claim or demand arising out of any default which may occur under the CC&Rs, provided, however, that the foregoing shall not apply to (i) Lender's gross negligence or willful misconduct, or (ii) a material breach of Lender's obligations contained within the Loan Documents. A breach by Lender shall be deemed to have occurred only after the following: (a) should Borrower claim a material breach by Lender, it shall give Lender written notice of such claimed breach, which notice shall set forth with reasonable specificity the nature of said breach; and (b) Lender shall not be deemed in breach of any Loan Documents unless said breach is not cured within sixty (60) days from receipt of said notice, or if said breach cannot be cured within said sixty (60) day period, the time for Lender to cure said breach shall be extended, so long as Lender is pursuing the cure thereof with all reasonable due diligence. Upon receiving knowledge of any suit, claim or demand asserted by a third party that Lender believes is covered by this indemnity, Lender shall give Borrower notice of the matter and an opportunity to defend it, at Borrower's sole cost and expense, with legal counsel reasonably satisfactory to Lender. Lender may also require Borrower to so defend the matter. The obligations on the part of Borrower under this Section 8.10 shall survive the closing of the Loan and the repayment thereof.

8.11 Titles and Headings. The headings at the beginning of each section of this Agreement are solely for convenience and are not part of this Agreement. Unless otherwise indicated, each reference in this Agreement to a section or an exhibit is a reference to the respective section herein or exhibit hereto.

8.12 Brokers. Borrower and Lender represent to each other that neither of them knows of any brokerage commissions or finders' fee due or claimed with respect to the transaction contemplated hereby. Borrower and Lender shall indemnify and hold harmless the other party for, from and against any and all loss, damage, liability, or expense, including costs and reasonable attorney fees, which such other party may incur or sustain by reason of or in connection with any misrepresentation by the indemnifying party with respect to the foregoing.

8.13 Change, Discharge, Termination, or Waiver. No provision of this Agreement may be changed, discharged, terminated, or waived except in writing signed by the party against whom enforcement of the change, discharge, termination, or waiver is sought. No failure on the part of Lender to exercise and no delay by Lender in exercising any right or remedy under the Loan Documents or under the law shall operate as a waiver thereof.

8.14 Choice of Law. EXCEPT AS EXPRESSLY PROVIDED IN THE DEED OF TRUST AND ANY OF THE OTHER LOAN DOCUMENTS, THIS AGREEMENT AND THE TRANSACTION CONTEMPLATED HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES.

8.15 Disbursements in Excess of Loan Amount. In the event the total disbursements by Lender exceed the amount of the Loan, to the extent permitted by the laws of the State of California, the total of all disbursements shall be secured by the Deed of Trust. All other sums expended by Lender pursuant to this Agreement or any other Loan Documents shall be deemed to have been paid to Borrower and shall be secured by, among other things, the Deed of Trust.

8.16 Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all such counterparts together shall constitute but one agreement.

8.17 Time is of the Essence. Time is of the essence for all purposes under this Agreement.

8.18 Attorneys' Fees. Borrower agrees to pay all costs of enforcement and collection and preparation for any Event of Default or any action taken by Lender (including, without limitation, reasonable attorneys' fees) whether or not any action or proceeding is brought (including, without limitation, all such costs incurred in connection with any bankruptcy, receivership, or other court proceedings (whether at the trial or appellate level)), together with interest thereon from the date of demand at the default interest rate; provided, however, if legal proceedings are initiated to enforce the rights, duties or obligations of the parties under the Loan Documents, then the prevailing party in such proceeding shall be entitled to collect its reasonable attorney fees and costs from the other party in addition to any other damages or relief obtained in such proceedings.

8.19 Jury Waiver. TO THE EXTENT PERMITTED BY LAW, BORROWER AND LENDER HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BORROWER AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT OR LOAN DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO PROVIDE THE FINANCING DESCRIBED HEREIN OR IN THE OTHER LOAN DOCUMENTS.

8.20 Integration. The Loan Documents contain the complete understanding and agreement of Borrower and Lender and supersede all prior representations, warranties, agreements, arrangements, understandings, and negotiations.

8.21 Binding Effect. The Loan Documents will be binding upon, and inure to the benefit of, Borrower and Lender and their respective successors and assigns. Subject to Section 8.1, neither Borrower nor Lender may delegate its obligations under the Loan Documents.

8.22 Survival. The representations, warranties, and covenants of the Borrower and the Loan Documents shall survive the execution and delivery of the Loan Documents and the making of the Loan.

8.23 Joint and Several Obligations. If this Agreement is executed by more than one party as Borrower, all obligations of Borrower herein shall be the joint and several obligations of each party executing this Agreement as Borrower.

8.24 Non-Discrimination. Borrower, for itself and its successors and assigns, agrees that, in performing the construction of the Project, it shall not discriminate against any employee or applicant for employment because of race, color, sexual orientation and/or gender identity, creed, religion, ancestry, political affiliation or opinion, national origin, sex, physical condition, medical condition, pregnancy or pregnancy-related condition, or condition of physical or mental disability or other handicap, age, marital status, or status with regard to public assistance. Borrower will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. Borrower agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

8.25 Conflict of Interest.

8.25.1 Borrower has disclosed to the Lender whether it has made any campaign contributions of more than $250 to any member of the City Council for the City of Ontario ("City") or other City elected officer, within the earlier of: (1) the date of the submission of Borrower's application for the Project, or (2) twelve (12) months before the date this Agreement was approved by the City Council. Borrower acknowledges that under Government Code section 84308, Borrower is prohibited from making campaign contributions of more than $250 to any member of the City Council or City elected officer for twelve (12) months after the Lender's consideration of the Agreement. In the event of a proposed amendment to this Agreement, Borrower will provide the Lender a written statement disclosing any campaign contribution(s) of more than $250 to any member of the City Council or other City elected officer within the preceding twelve (12) months of the date of the proposed amendment. Campaign contributions include those made by any agent/person/entity on behalf of the Borrower or by a parent, subsidiary or otherwise related business entity of Borrower.

8.25.2 Except for approved eligible administrative or personnel costs, no person described in Section 8.25.3 below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. Borrower shall exercise due diligence to ensure that the prohibition in this Section is followed

8.25.3 The conflict of interest provisions of this Section apply to any person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of the City, or any person related within the third (3rd) degree of such person.

8.25.4 In accordance with California Government Code Section 1090 and the Political Reform Act, California Government Code section 87100 et seq., no person who is a director,

officer, partner, trustee or employee or consultant of Borrower, or immediate family member of any of the preceding, may make or participate in a decision, made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Borrower. Interpretation of this Section is governed by the definitions and provisions used in the Political Reform Act, California Government Code Section 87100 et seq., its implementing regulations manual and codes, and California Government Code Section 1090.

ARTICLE IX.
EXHIBITS

The following exhibits to this Agreement are fully incorporated herein as if set forth at length:

Exhibit A - Property Description
Exhibit B - Budget
Exhibit C - Closing Requirements

[Signatures on Following Page]

IN WITNESS WHEREOF, Lender and Borrower have caused this Agreement to be duly executed and delivered as of the date first above written.

BORROWER: A BLOCK LLC,
a California limited liability company

By:_____
Name: _____
Its: _____

LENDER: CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO LEGAL FORM:
BEST BEST & KRIEGER LLP

_____
Ruben Duran, City Attorney

EXHIBIT A

PROPERTY DESCRIPTION

That certain real property commonly called the Lerch Building generally located at 120-122 North, APN 1048-553-15, (the "Lerch Property"), that certain real property commonly called the Yangtze Building generally located at 124-132 North Euclid Avenue, APN's 1048-553-16 and 1048-553-17, (the "Yangtze Property"), that certain real property commonly called the Old Bridal Shop generally located at 116-118 E. B Street, APN 1048-553-02, (the "Old Bridal Shop Property"), and all current and future improvements thereon.

EXHIBIT B

BUDGET

WORK ITEM	118 E. B STREET Old Bridal Shop 5,000 s.f.		124-132 N. EUCLID Yangtze Building 23,659 s.f.		122 N. EUCLID Lerch Building 7,725 s.f.	
	cost/sq. ft.	Total	cost/sq. ft.	Total	cost/sq. ft.	Total
Selected Demolition	$3.90	$19,500.00	$1.95	$46,135.05	$2.60	$20,085.00
Hazardous Materials Identification & Abatement	$4.55	$22,750.00	$1.95	$46,135.05	$2.60	$20,085.00
Remove Building Contents	$3.25	$16,250.00	$2.60	$61,513.40	$2.60	$20,085.00
Seismic Retrofit	$97.50	$487,500.00	$97.50	$2,306,752.50	$97.50	$753,187.50
New Stairways & Exiting	$0.00	$0.00	$1.95	$46,135.05	$2.60	$20,085.00
New Life Safety Upgrades to Accommodate New Use	$6.50	$32,500.00	$1.95	$46,135.05	$3.90	$30,127.50
ADA Compliance	$7.80	$39,000.00	$1.95	$46,135.05	$5.20	$40,170.00
New Elevators	$0.00	$0.00	$16.91	$400,073.69	$26.00	$200,850.00
New MEP	$57.20	$286,000.00	$67.60	$1,599,348.40	$62.40	$482,040.00
MEP Upgrades to Accommodate New Use	$6.50	$32,500.00	$6.50	$153,783.50	$13.00	$100,425.00
New Fire Sprinklers	$9.10	$45,500.00	$9.10	$215,296.90	$9.10	$70,297.50
New Roof & Drains	$11.54	$57,700.00	$2.60	$61,513.40	$6.29	$48,590.25
Façade Repair/Restoration	$72.80	$364,000.00	$48.10	$1,137,997.90	$70.20	$542,295.00
Façade Improvements to Accommodate New Use	$6.50	$32,500.00	$3.25	$76,891.75	$6.50	$50,212.50
Interior Shell Improvements & Repair	$52.00	$260,000.00	$52.00	$1,230,268.00	$52.00	$401,700.00
Interior Shell Improvement to Accommodate New Use	$13.00	$65,000.00	$13.00	$307,567.00	$13.00	$100,425.00
New Fire, Smoke, Knox, and Intrusion Systems	$2.60	$13,000.00	$0.98	$23,185.82	$2.60	$20,085.00
Total Cost/ Sq. Ft.	$354.74		$329.89		$378.09	
Total Area	5,000		23,659		7,725	
Subtotal Cost	$1,773,700.00		$7,804,867.51		$2,920,745.25	
P/OH/GC @ 26%	$461,162.00		$2,029,265.55		$759,393.77	
Contingency @ 20%	$354,740.00		$1,560,973.50		$584,149.05	
TOTAL COST	$2,589,602.00		$11,395,106.56		$4,264,288.07	

TOTAL (Structures)	$18,248,996.63
TOTAL (Common Areas/Court Yard)	$751,003.37
GRAND TOTAL	$19,000,000.00

EXHIBIT C

CLOSING REQUIREMENTS

The obligations of Lender to make the Loan to Borrower and to perform the remainder of its obligations under the Agreement are expressly conditioned upon the receipt and approval, in form and content acceptable to the Lender of each of the following items:

1. Budget. The Budget.

2. Construction Contracts. A copy of all Construction Contracts relating to the Project which Borrower has executed or intends to execute.

3. Title Report. The Preliminary Title Report and evidence satisfactory to Lender that the Title Company is prepared to issue the Title Insurance Policy.

4. Insurance. The policies of insurance required under Section 6.18 of the Loan Agreement.

5. Formation Documents. Complete copies of Borrower's Organizational Documents, together with good standing certificates from the State of California, and resolutions authorizing the transactions described herein.

6. Other Items. Such other items or documents as Lender may require.