



CITY OF ONTARIO

Regular City Council/Housing Authority Meeting NOVEMBER 1, 2022

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 DORST-PORADA AND RUBEN VALENCIA

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

WELCOME TO A MEETING OF THE ONTARIO CITY COUNCIL

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

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

Comments will be limited to 3 minutes. Speakers will be alerted when they have 1 minute remaining and when their time is up. Speakers are then to return to their seats and no further comments will be permitted.

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

Remarks from those seated or standing in the back of the chamber will not be 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 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. (EQUIPMENT FOR THE HEARING IMPAIRED AVAILABLE IN THE RECORDS MANAGEMENT OFFICE)

CALL TO ORDER (OPEN SESSION)

ROLL CALL

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

PLEDGE OF ALLEGIANCE

Council Member Dorst-Porada

INVOCATION

Pastor Mike Urciuoli, Calvary Chapel Ontario

SPECIAL CEREMONY

A SPECIAL CEREMONY AND PRESENTATION RECOGNIZING WINNERS OF RECREATION & COMMUNITY SERVICES PROGRAMMING

PUBLIC COMMENTS

6:30 P.M.

The Public Comment portion of the Council/Housing Authority meeting is limited to 30 minutes with each speaker given a maximum of 3 minutes. An opportunity for further Public Comment may be given at the end of the meeting. Under provisions of the Brown Act, Council is prohibited from taking action on oral requests.

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

AGENDA REVIEW/ANNOUNCEMENTS

The City Manager will go over all updated materials and correspondence received after the Agenda was distributed to ensure Council Members have received them. He will also make any necessary recommendations regarding Agenda modifications or announcements regarding Agenda items to be considered.

CONSENT CALENDAR

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

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

1. **APPROVAL OF MINUTES**

Minutes for the regular meetings of the City Council and Housing Authority of October 4, 2022 and approving same as on file in the Records Management Department.

ATTACHMENT: [20221004 \(Not official until approved\)](#)

2. **BILLS & PAYROLL**

Bills September 30, 2022 through October 13, 2022, and Payroll September 25, 2022 through October 8, 2022 when audited by the Finance Committee.

3. **AMENDMENTS TO DESIGN SERVICES AGREEMENTS FOR ON-CALL LANDSCAPE ARCHITECTURAL SERVICES FOR THE CELEBRATION PARK NORTH IMPROVEMENTS PROJECT, DE ANZA PARK SPLASH PAD IMPROVEMENTS PROJECT, ONTARIO TOWN SQUARE GREEN ROOM AND RESTROOM IMPROVEMENTS PROJECT, AND DE ANZA PARK SOCCER FIELD SYNTHETIC TURF PROJECT**

That the City Council take the following actions:

- A. Authorize the City Manager or his designee to execute Amendment No. 1 to the Design Services Agreement (on file in the Records Management Department) for contract No. PM 1819-1 with Community Works Design Group of Riverside, California, to provide On-call Landscape Architectural Services for the Celebration Park North Improvements, De Anza Park Splash Pad Improvements, and Ontario Town Square Green Room and Restroom Improvements Projects in a total not-to-exceed amount of \$200,000; and
- B. Authorize the City Manager or his designee to execute Amendment No. 1 to the Design Services Agreement (on file in the Records Management Department) for contract No.

PM 1819-1 with RJM Design Group of San Juan Capistrano, California, to provide On-call Landscape Architectural Services for the De Anza Park Soccer Field Synthetic Turf Project in a total not-to-exceed amount of \$200,000.

4. AMENDMENTS TO THE MAINTENANCE SERVICES AGREEMENT WITH MERCHANTS FOR LANDSCAPE MAINTENANCE SERVICES FOR EDENGLLEN/SCE WALKING TRAIL AND PARKWAYS IN THE ONTARIO RANCH AREA

That the City Council takes the following actions:

- A. Authorize the City Manager or his designee to execute Amendment No. 3 to the Maintenance Services Agreement (on file with Records Management) for contract No. PM 1617-12 with Merchants Landscape Services, Inc. of Rancho Cucamonga, California, for landscape maintenance services for the Edenglen/SEC Walking Trail in the amount of \$23,862 for a new not to exceed amount of \$1,563,922; and
- B. Authorize the City Manager or his designee to execute Amendment No. 4 to the Maintenance Services Agreement (on file with Records Management) for contract No. PM 1920-6 with Merchants Landscape Services, Inc. of Rancho Cucamonga, California, for landscape maintenance services for two parkway planter areas at Park Place located in the Ontario Ranch area in the amount of \$24,878 for a new not to exceed amount of \$640,209.

5. AMENDMENTS TO A PROFESSIONAL SERVICES AGREEMENT WITH KLEINFELDER, INC. FOR ON-CALL GEOTECHNICAL CONSULTING, AND MATERIALS TESTING SERVICES

That the City Council take the following actions:

- A. Authorize the City Manager or his designee to execute Amendment No. 19 to the On-call Professional Services Agreement (on file in the Records Management Department) with Kleinfelder, Inc. of Ontario, California, to provide on-call geotechnical consulting and materials testing for the City Hall Parking Structure Project in the amount of \$35,074 for a new not-to-exceed total of \$1,677,189; and
- B. Authorize the City Manager or his designee to execute Amendment No. 20 to the On-call Professional Services Agreement (on file in the Records Management Department) with Kleinfelder, Inc. of Ontario, California, to provide on-call geotechnical consulting and materials testing for the CNG Compressor Replacement Project in the amount of \$13,845 for a new not-to-exceed total of \$1,691,034.

6. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH GO2ZERO STRATEGIES FOR ON-CALL SOLID WASTE CONSULTING SERVICES

Authorize the City Manager or his designee to execute Amendment No. 1 to the Professional Services Agreement (on file in the Records Management Department) with Go2Zero Strategies of Irwindale, California to provide On-call Solid Waste Consulting Services in a total amount not to exceed \$300,000.

7. AN AMENDMENT TO ON-CALL DESIGN SERVICES AGREEMENT FOR FISCAL YEAR 2023-24 WATER MAIN REPLACEMENT AND DOWNTOWN WATER MAIN REPLACEMENT PROJECT

That the City Council approve and authorize the City Manager to execute Amendment No. 12 to the On-Call Design Services Agreement (on file in the Records Management Department) with Infrastructure Engineering Corporation, of Irvine, California, for a total not-to-exceed amount of \$587,136 for design services and a term from November 1, 2022 to May 6, 2023.

ATTACHMENT: [Exhibit A Water Main Improvements^01](#)

ATTACHMENT: [Exhibit B Downtown Water Main Improvements^02](#)

8. APPOINTMENT OF MEMBERS TO THE BUILDING APPEALS BOARD

That the City Council approve the appointment of members to the City's Building Appeals Board.

9. AUTHORIZE THE PURCHASE OF FLEET VEHICLES

That the City Council authorize the cooperative purchase of six Ford Police utility vehicles in the amount of \$330,000 and five Ford Expeditions vehicles for the Police Department in the amount of \$290,000 from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the Sourcewell Cooperative Contract No. 095121-NAF.

10. A RESOLUTION AUTHORIZING AN AMENDMENT TO AND RESTATEMENT OF AN ACQUISITION AND FUNDING AGREEMENT AND AN AMENDMENT AND RESTATEMENT OF A MEMORANDUM OF AGREEMENT WITH NMC BUILDERS LLC

That the City Council adopt a Resolution to:

- A. Authorize the execution of an Amended and Restated Acquisition and Funding Agreement between the City of Ontario and NMC Builders LLC to provide for the future acquisition of completed public facilities constructed by and/or funded directly by NMC Builders LLC members, both as individual members and jointly, with the proceeds of Community Facilities District (CFD) special tax bonds from recently formed and future CFDs; and
- B. Authorize the execution of an Amended and Restated Memorandum of Agreement between the City of Ontario and NMC Builders LLC regarding the application of the City's Local Goals and Policies for Community Facilities Districts and to provide a priority of uses for the proceeds of bonds issued pursuant to recently formed and future CFDs.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED ACQUISITION AND FUNDING AGREEMENT AND AN AMENDED AND RESTATED MEMORANDUM OF AGREEMENT.

ATTACHMENT: [Amended and Restated Acquisition K and Memo of K Ontario NMC Builders^01 RESO^RM.doc](#)

ATTACHMENT: [20221101 Amended and Restated Acquisition^02](#)

ATTACHMENT: [20221101 Amended & Restated Memo of Agreement^03](#)

11. [AN ORDINANCE APPROVING FILE NO. PZC19-001, A ZONE CHANGE AT 1063 EAST ELMA STREET](#)

That the City Council consider and adopt an Ordinance approving File No. PZC19-001, a Zone Change amending the zoning designation on 0.07-acres of land from MDR-11 (Low-Medium Density Residential - 5.11 to 11.0 du/ac) to MDR-18 (Medium Density Residential - 11.1 to 18.0 du/ac), for property located at 1063 East Elma Street.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PZC19-001, A ZONE CHANGE AMENDING THE ZONING DESIGNATION ON 0.07-ACRE OF LAND FROM MDR-11 (LOW-MEDIUM DENSITY RESIDENTIAL – 5.1 TO 11.0 DU/AC) TO MDR-18 (MEDIUM DENSITY RESIDENTIAL – 11.1 TO 18.0 DU/AC) TO ENABLE THE RESIDENTIAL DEVELOPMENT OF A 0.28-ACRE PROJECT SITE, AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 1048-491-23.

ATTACHMENT: [File No. PZC19-001^01 PC Backup](#)

ATTACHMENT: [File No. PZC19-001^02^ORD^RM](#)

PUBLIC HEARINGS

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

12. [A PUBLIC HEARING TO REVIEW INITIAL DRAFT DISTRICTING MAPS FOR THE DISTRICT-BASED ELECTIONS UNDER THE CALIFORNIA VOTING RIGHTS ACT AND INTRODUCE AN ORDINANCE TO ADOPT A MAP](#)

That the City Council open a Public Hearing, review, consider, and provide direction regarding the draft maps, and introduce an Ordinance to adopt a map.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADDING A NEW ARTICLE 3 TO TITLE 2 OF VOLUME 1 OF THE ONTARIO MUNICIPAL CODE TO CHANGE THE CITY'S ELECTORAL SYSTEM FROM AT-LARGE TO BY-DISTRICT ELECTIONS WITH RESPECT TO ELECTING CITY COUNCIL MEMBERS AND MAINTAINING AN ELECTIVE MAYOR, ESTABLISHING DISTRICT BOUNDARIES, SCHEDULING ELECTIONS WITHIN THE DISTRICTS, AND MAKING CERTAIN FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

ATTACHMENT: [Ordinance Changing to By-District Election^01^RM.doc](#)

13. [A PUBLIC HEARING REGARDING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT AND A FOURTH AMENDMENT TO THE OPERATING COVENANT AGREEMENT BETWEEN THE CITY](#)

OF ONTARIO AND MARK CHRISTOPHER CHEVROLET, INC. PURSUANT TO GOVERNMENT CODE SECTION 53083; CONSIDERATION OF RESOLUTIONS ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT, APPROVING THE OPERATING COVENANT AGREEMENT, AND MAKING RELATED FINDINGS

That the City Council take the following actions:

- A. Hold the Public Hearing; and
- B. Adopt a Resolution accepting the Economic Development Subsidy Report regarding a Fourth Amendment to the Operating Covenant Agreement ("Agreement"), (on file with the Records Management Department) by and between the City of Ontario and Mark Christopher, Inc., and authorizing the City Manager to execute the Agreement, and making related findings; and
- C. Adopt a Resolution approving the Agreement and authorizing the City Manager to execute the Agreement, and making related findings; and
- D. Direct City Staff to file a Notice of Exemption based upon the City Council's finding that the impacts for this Agreement is not a project and subject to environmental review and that there is no possibility that the activity in question may have a significant effect on the environment.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 53083 REGARDING AN OPERATING COVENANT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND MARK CHRISTOPHER CHEVROLET, INC.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE OPERATING COVENANT AGREEMENT BETWEEN THE CITY OF ONTARIO AND MARK CHRISTOPHER CHEVROLET, INC. AND MAKING RELATED FINDINGS.

ATTACHMENT: [Mark Christopher Chevrolet Economic Subsidy Report^01RESO^RM](#)

ATTACHMENT: [Mark Christopher Chevrolet Operating Covenant Extension^02RESO^RM](#)

ATTACHMENT: [Mark Christopher Chevrolet Operating Covenant Agreement Amend^03](#)

STAFF MATTERS

City Manager Ochoa

COUNCIL MATTERS

Mayor Leon
Mayor pro Tem Wapner
Council Member Bowman

Council Member Dorst-Porada
Council Member Valencia

ADJOURNMENT

**ONTARIO CITY COUNCIL/
ONTARIO HOUSING AUTHORITY
MINUTES
OCTOBER 4, 2022
(Not official until approved)**

JOINT MEETINGS

The Regular Joint Meetings of the Ontario City Council and the Ontario Housing Authority scheduled for October 4, 2022, were cancelled due to the observance of Yom Kippur.

Respectfully submitted,

CLAUDIA Y. ISBELL, MMC,
ASSISTANT CITY CLERK/SECRETARY

APPROVED

PAUL S. LEON, MAYOR/CHAIRMAN

CITY OF ONTARIO

Agenda Report
November 1, 2022

SECTION:
CONSENT CALENDAR

Department: Public Works
Prepared By: Bonnie Tam
Staff Member Presenting:
Tito Haes, Executive Director Public Works
Reviewed By: Bonnie Tam
Approved By: 

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 3

SUBJECT: AMENDMENTS TO DESIGN SERVICES AGREEMENTS FOR ON-CALL LANDSCAPE ARCHITECTURAL SERVICES FOR THE CELEBRATION PARK NORTH IMPROVEMENTS PROJECT, DE ANZA PARK SPLASH PAD IMPROVEMENTS PROJECT, ONTARIO TOWN SQUARE GREEN ROOM AND RESTROOM IMPROVEMENTS PROJECT, AND DE ANZA PARK SOCCER FIELD SYNTHETIC TURF PROJECT

RECOMMENDATION: That the City Council take the following actions:

- A. Authorize the City Manager or his designee to execute Amendment No. 1 to the Design Services Agreement (on file in the Records Management Department) for contract No. PM 1819-1 with Community Works Design Group of Riverside, California, to provide On-call Landscape Architectural Services for the Celebration Park North Improvements, De Anza Park Splash Pad Improvements, and Ontario Town Square Green Room and Restroom Improvements Projects in a total not-to-exceed amount of \$200,000; and
- B. Authorize the City Manager or his designee to execute Amendment No. 1 to the Design Services Agreement (on file in the Records Management Department) for contract No. PM 1819-1 with RJM Design Group of San Juan Capistrano, California, to provide On-call Landscape Architectural Services for the De Anza Park Soccer Field Synthetic Turf Project in a total not-to-exceed amount of \$200,000.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

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

FISCAL IMPACT: These recommended amendments for the On-call Landscape Architectural Services for the Celebration Park North Improvements Project, De Anza Park Splash Pad Improvements Project, Ontario Town Square Green Room and Restroom Improvements Project, and De Anza Park Soccer Field Synthetic Turf Project would require an increase in appropriations of \$400,000 from the Facility Maintenance Fund that will be included in the Fiscal Year 2022-23 First Quarter Budget Update.

BACKGROUND & ANALYSIS:

Celebration Park North Improvements Project

The estimated cost proposal for the On-call Landscape Architectural Services from Community Works Design Group for the Celebration Park North Improvements Project is in the amount of \$23,285. The design services will include schematic planning, construction plans, specifications, cost estimates, bidding support, and construction administration for the hook-up area for a mobile performance stage at the Park and associated electrical improvements, including any site work needed to rehabilitate the areas affected by the construction.

De Anza Park Splash Pad Improvements Project

The estimated cost proposal for the On-call Landscape Architectural Services from Community Works Design Group for the De Anza Park Splash Pad Improvements Project is in the amount of \$93,715. The design services will include schematic planning, construction plans, specifications, cost estimates, bidding support, and construction administration for the addition of a splash pad and associated support improvements required as part of San Bernardino County Department of Public Health / Environmental Health Services review, including any site work needed to rehabilitate the areas affected by the construction.

Ontario Town Square Green Room and Restroom Improvements Project

The estimated cost proposal for the On-call Landscape Architectural Services from Community Works Design Group for the Ontario Town Square Green Room and Restroom Improvements Project is in the amount of \$79,945. The design services will include schematic planning, construction plans, specifications, cost estimates, bidding support, and construction administration for the addition of a pre-fabricated restroom building, a pre-fabricated green room, and associated electrical improvements, including any site work needed to rehabilitate the areas affected by the construction.

De Anza Park Soccer Field Synthetic Turf Project

The estimated cost proposal for the On-call Landscape Architectural Services from RJM Design Group for the De Anza Park Soccer Field Synthetic Turf Project is in the amount of \$182,910. The design services will include schematic planning, conceptual design plans, construction drawings, cost estimates, bidding support, and construction administration for the new synthetic turf sports field at De Anza Park.

CITY OF ONTARIO

Agenda Report
November 1, 2022

SECTION:
CONSENT CALENDAR

Department: Parks & Maintenance
Prepared By: Alfredo Banuelos
Staff Member Presenting:
Tito Haes, Executive Director Public Works
Reviewed By: Bonnie Tam
Approved By: 

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 4

SUBJECT: AMENDMENTS TO THE MAINTENANCE SERVICES AGREEMENT WITH MERCHANTS FOR LANDSCAPE MAINTENANCE SERVICES FOR EDENGLLEN/SCE WALKING TRAIL AND PARKWAYS IN THE ONTARIO RANCH AREA

RECOMMENDATION: That the City Council takes the following actions:

- A. Authorize the City Manager or his designee to execute Amendment No. 3 to the Maintenance Services Agreement (on file with Records Management) for contract No. PM 1617-12 with Merchants Landscape Services, Inc. of Rancho Cucamonga, California, for landscape maintenance services for the Edenglen/SEC Walking Trail in the amount of \$23,862 for a new not to exceed amount of \$1,563,922; and
- B. Authorize the City Manager or his designee to execute Amendment No. 4 to the Maintenance Services Agreement (on file with Records Management) for contract No. PM 1920-6 with Merchants Landscape Services, Inc. of Rancho Cucamonga, California, for landscape maintenance services for two parkway planter areas at Park Place located in the Ontario Ranch area in the amount of \$24,878 for a new not to exceed amount of \$640,209.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

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

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

FISCAL IMPACT: The recommended amended costs for the Maintenance Services Agreements are as follows:

- A. The recommended amendment increases the authorized contract amount by \$23,862 for Fiscal Years 2022-24. The recommended amendment would bring the total contract amount to a new not to exceed contract amount of \$1,563,922 from October 1, 2022 through June 30, 2024. The Fiscal Year 2022-23 Adopted Budget includes appropriations in the General Fund for the maintenance cost for Edenglen/SEC Walking Trail landscape services.

- B. The recommended amendment increases the authorized contract amount by \$24,878 for Fiscal Years 2022-24. The recommended amendment would bring the total contract amount to a new not to exceed contract amount of \$640,209 from January 1, 2023 through June 30, 2024. The Fiscal Year 2022-23 Adopted Budget includes appropriations in the General Fund for the maintenance cost for Park Place landscape services.

BACKGROUND & ANALYSIS:

Edenglen/SCE Walking Trail

In March 2017, the City solicited bids for landscape maintenance services for the Edenglen/SCE Walking Trail, which starts on Riverside Drive, west of Milliken Avenue. Two proposals were received that met the criteria and standards necessary to perform this work. Merchants Landscape Services, Inc. located in Rancho Cucamonga, California, submitted the lowest responsible bid for a five-year total of \$1,074,460. Based on credentials, pricing, and favorable reference checks, the City Council awarded a Maintenance Services Agreement to Merchants Landscape Services, Inc. at its regular City Council meeting on June 20, 2017. On June 7, 2022, the City Council approved the optional two one-year extensions to the Agreement. The total not to exceed contract amount is \$1,540,060.

The City is responsible for landscape maintenance of public parkways and median throughout the Ontario Ranch area. This Amendment is to add landscape maintenance services for a newly acquired Community Facilities District (CFD) located at the northwest corner of Haven and Chino Parkway in the Edenglen/SEC Walking Trail landscape services area in the Ontario Ranch.

Park Place

In March 2020, the City solicited bids for landscape maintenance services for Park Place in the Ontario Ranch area. Six bids were received, five of them met the criteria and standards necessary to perform this work. Merchants Landscape Services, Inc. located in Rancho Cucamonga, California, submitted the lowest responsible bid for a three-year total of \$367,200. Based on credentials, pricing, and favorable reference checks, the City Council awarded a Maintenance Services Agreement to Merchants Landscape Services, Inc. at its regular City Council meeting on May 19, 2020. On June 7, 2022, the City Council approved an Amendment to maintain two new CFD areas for the final year of the three-year term from July 1, 2022 through June 30, 2023. The total not to exceed contract amount is \$615,331.

The City is responsible for landscape maintenance of public parkway and medians throughout the Ontario Ranch area. This Amendment is to add landscape maintenance services for two CFDs located on the northwest corner of Archibald and Eucalyptus Parkway planter areas at Park Place in the Ontario Ranch area.

CITY OF ONTARIO

Agenda Report
November 1, 2022

SECTION:
CONSENT CALENDAR

Department: Municipal Services
Prepared By: Daniel P Beers
Staff Member Presenting:
Tito Haes, Executive Director Public Works
Reviewed By: Bonnie Tam
Approved By: 

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 5

SUBJECT: AMENDMENTS TO A PROFESSIONAL SERVICES AGREEMENT WITH KLEINFELDER, INC. FOR ON-CALL GEOTECHNICAL CONSULTING, AND MATERIALS TESTING SERVICES

RECOMMENDATION: That the City Council take the following actions:

- A. Authorize the City Manager or his designee to execute Amendment No. 19 to the On-call Professional Services Agreement (on file in the Records Management Department) with Kleinfelder, Inc. of Ontario, California, to provide on-call geotechnical consulting and materials testing for the City Hall Parking Structure Project in the amount of \$35,074 for a new not-to-exceed total of \$1,677,189; and
- B. Authorize the City Manager or his designee to execute Amendment No. 20 to the On-call Professional Services Agreement (on file in the Records Management Department) with Kleinfelder, Inc. of Ontario, California, to provide on-call geotechnical consulting and materials testing for the CNG Compressor Replacement Project in the amount of \$13,845 for a new not-to-exceed total of \$1,691,034.

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 amended costs for the Professional Services Agreements are as follows:

- A. The recommended Amendment No. 19 increases the authorized contract amount by \$35,074. The recommended amendment would bring the total contract amount to a new not to exceed contract amount of \$1,677,189. The Fiscal Year 2022-23 Adopted Budget includes appropriations in the Capital Projects Fund for the on-call geotechnical consulting and materials testing for the City Hall Parking Structure Project.
- B. The recommended Amendment No. 20 increases the authorized contract amount by \$13,845. The recommended amendment would bring the total contract amount to a new not to

exceed contract amount of \$1,691,034. The Fiscal Year 2022-23 Adopted Budget includes appropriations in the Integrated Waste and Mobile Source Air Funds for the geotechnical consulting and materials testing for the CNG Compressor Replacement Project.

BACKGROUND & ANALYSIS:

City Hall Parking Structure Project

The City Hall Expansion Project includes a new Fire Station (Fire Station 1), Fire Administration Building, new City Hall Annex, and a parking structure. In order to begin work on the parking structure, a Phase 1 Geotechnical Survey needs to be completed. This survey is part of Amendment No. 19 and not to exceed \$35,074.

CNG Compressor Replacement Project

The City has owned and operated the CNG fueling facility at the Corporate Yard since 1995. Over the years, this facility has reduced the community's collective carbon footprint, improved air quality, lowered dependency on fossil fuels and foreign oil, and enabled compliance with the South Coast Air Quality Management District Rule 1193 "Clean On-Road Residential and Commercial Refuse Collection Vehicles." The facility provides CNG for 91 City vehicles, Ontario-Montclair School District buses, and a public fueling station located at 1440 South Cucamonga Avenue for those citizens and local companies that own or operate CNG vehicles. Amendment No. 20 will provide special inspections for the CNG compressor to ensure the new CNG station will be operational by November 2022 and not to exceed \$13,845.

CITY OF ONTARIO

Agenda Report
November 1, 2022

SECTION: CONSENT CALENDAR

Department: Public Works
Prepared By: Bonnie Tam
Staff Member Presenting:
Tito Haes, Executive Director Public Works
Reviewed By: Bonnie Tam
Approved By: 

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 6

SUBJECT: AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH GO2ZERO STRATEGIES FOR ON-CALL SOLID WASTE CONSULTING SERVICES

RECOMMENDATION: Authorize the City Manager or his designee to execute Amendment No. 1 to the Professional Services Agreement (on file in the Records Management Department) with Go2Zero Strategies of Irwindale, California to provide On-call Solid Waste Consulting Services in a total amount not to exceed \$300,000.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

Operate in a Businesslike Manner

Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: The Fiscal Year 2022-23 Adopted Budget includes appropriations from the Integrated Waste Fund for the On-call Solid Waste Consulting Services for customer outreach and compliance for State mandates AB 341, AB 1826, and SB 1383. The recommended Amendment increases the authorized contract amount by \$200,000, for a new total not to exceed contract amount of \$300,000. The recommended Amendment would require an increase in appropriations of \$200,000 in the Integrated Waste Fund that will be included in the Fiscal Year 2022-23 First Quarter Budget Update.

BACKGROUND & ANALYSIS: California adopted SB 1383 that requires communities to reduce organic waste disposal in landfills, such as food waste, by 75% by 2025. Effective January 1, 2022, the SB 1383 regulations to meet the organic waste reduction and the edible food recovery targets take effect, including penalties for non-compliance issued by the state.

Staff anticipated that additional solid waste consulting services would be needed in order for the City to provide additional program implementation review, tracking, reporting, and analysis for SB 1383 compliance obligations. On September 2, 2021, the City solicited request for proposals (RFPs) for On-call Solid Waste Consulting Services and received two responses from the following firms:

<u>Company</u>	<u>Location</u>
GHD, Inc.	Irvine, California
Go2Zero Strategies	Irwindale, California

Using a qualifications-based selection process, the proposals were reviewed and scored by City Staff from the Public Works Agency according to the scoring criteria outlined in the RFP. The criteria consisted of the firm's profile, staffing, project experience, and references. The two firms GHD, Inc. and Go2Zero Strategies were judged to be qualified firms. As such, they were recommended based on their broad range of expertise as demonstrated by their services provided to municipal agencies and capability to perform the work in a timely manner.

On December 13, 2021, the City entered into an Agreement with Go2Zero Strategies for SB 1383 program implementation review, tracking, reporting, and analysis for compliance obligations. Since then, Go2Zero Strategies has assisted the Environmental Programs and Compliance Office in business-to-business outreach and completed numerous waste assessments to ensure the City's commercial waste accounts establish minimum service levels for landfill, recycling, and organics collection. This effort helps monitor the effectiveness of organic waste reduction and recycling programs and demonstrates that the City complies with the SB 1383 regulations. In order to move the City into full SB 1383 regulatory compliance, Staff recommends increasing the total authorized contract amount by \$200,000 for Fiscal Year 2022-23 to ensure the Public Works Agency can continue to improve and monitor the effectiveness of the organic and food waste recycling programs for the City of Ontario.

CITY OF ONTARIO

Agenda Report
November 1, 2022

SECTION:
CONSENT CALENDAR

Department: Utilities
Prepared By: Jonathan Yang
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: 7

SUBJECT: AN AMENDMENT TO ON-CALL DESIGN SERVICES AGREEMENT FOR FISCAL YEAR 2023-24 WATER MAIN REPLACEMENT AND DOWNTOWN WATER MAIN REPLACEMENT PROJECT

RECOMMENDATION: That the City Council approve and authorize the City Manager to execute Amendment No. 12 to the On-Call Design Services Agreement (on file in the Records Management Department) with Infrastructure Engineering Corporation, of Irvine, California, for a total not-to-exceed amount of \$587,136 for design services and a term from November 1, 2022 to May 6, 2023.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

Operate in a Businesslike Manner

Invest in the Growth and Evolution of the City's Economy

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

FISCAL IMPACT: The Fiscal Year (FY) 2021-22 Adopted Capital Improvement Program includes appropriations from the Water Capital Fund for these projects. The proposed Amendment in the amount of \$587,136 will increase the current total not-to-exceed authorization from \$1,713,163 to \$2,300,299. The City and Infrastructure Engineering Corporation have agreed to fixed billing rates and Infrastructure Engineering Corporation will be compensated for completion of the scope of work at approved billing rates. There is no impact to the General Fund.

BACKGROUND & ANALYSIS: The City's potable water system includes approximately 614 miles of pipeline. The Water Master Plan calls for an ongoing Capital Improvement Program to replace aged, fire flow deficient, and undersized pipelines throughout the City. Additionally, Staff has identified areas of concern in the potable water system that have historically required extensive maintenance and repair. Using the Water Master Plan in conjunction with maintenance data, Staff developed a large-scale scope including two separate design projects, the FY 2023-24 Water Main Improvement Project and the Downtown Water Main Improvement Project.

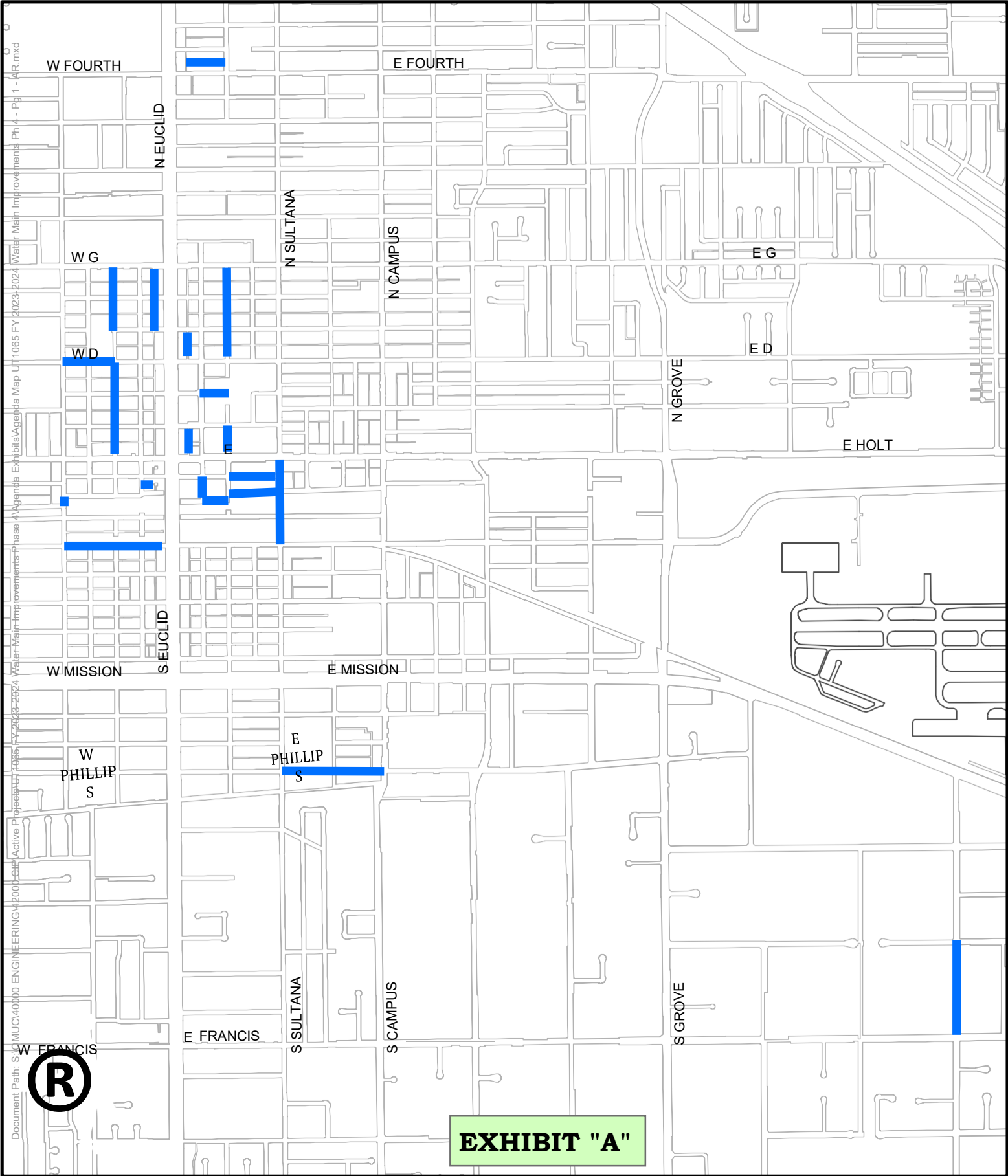
These water main improvements will provide more efficient and reliable water service to customers, as well as to enhance fire flow service capabilities. The scope of the design services will be separated into two design and construction packages for FY 2023-24 Water Main Improvement Project and the Downtown Water Main Improvement Project. Each project scope will include utility research, preliminary engineering, design, development of bid packages for construction, and bid support services.

The FY 2023-24 Water Main Improvement Project consists of replacement of approximately 14,724 linear feet of water distribution mains, including appurtenances and service laterals (see Exhibit "A"). The Downtown Water Main Improvement Project addresses the replacement of undersized and aging water mains and consists of the replacement and of upsizing approximately 3,850 linear feet of water distribution mains, including appurtenances and service laterals (see Exhibit "B").

In May of 2019 the City Council awarded on-call design services with Infrastructure Engineering Corporation and two other consultants. Infrastructure Engineering Corporation and the other consultants were selected using a qualification-based selection process. The Agreements were awarded as three-year Agreements with two (2) additional one (1) year periods consistent with Council approved budgets. As projects arise, Staff will request proposals from the consultants and amend the original aAgreement with revised scopes of works and costs.

On July 18, 2022, Staff solicited proposals from these on-call Consultants for design services for the FY 2023-24 Water Main Improvement Project and the Downtown Water Main Improvement Project. A review team consisting of Staff reviewed the proposals and recommends award to Infrastructure Engineering Corporation Inc. based upon their understanding of the project scope, the City's needs, and criteria specified in the Request for Proposal.

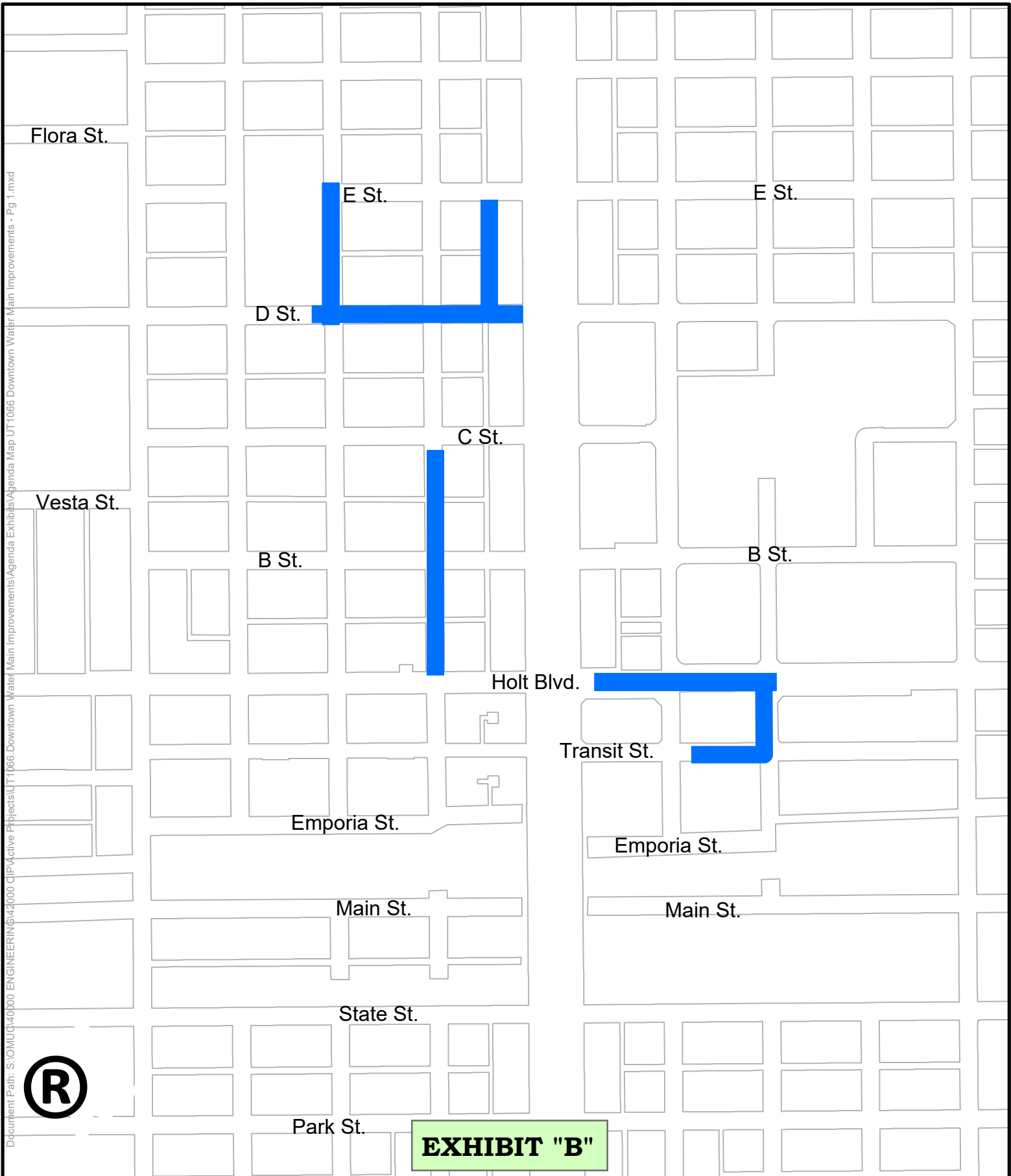
OMUC CONTRACT NO. UT1065
CITY OF ONTARIO
FY 2023-2024 WATER MAIN
IMPROVEMENTS



Document Path: S:\MUC\40000 ENGINEERING\42000 City Active Projects\UT 1065 FY 2023-2024 Water Main Improvements Phase 4\Agenda Exhibits\Agenda Map UT 1065 FY 2023-2024 Water Main Improvements Ph 4 - Pg 1 - AR.mxd



OMUC CONTRACT NO. UT1066
CITY OF ONTARIO
DOWNTOWN WATER MAIN
IMPROVEMENTS



CITY OF ONTARIO

Agenda Report
November 1, 2022

SECTION:
CONSENT CALENDAR

Department: Development Administration
Prepared By: Scott Murphy
Staff Member Presenting:
Scott Murphy, Executive Director Community
Development
Approved By: 

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 8

SUBJECT: APPOINTMENT OF MEMBERS TO THE BUILDING APPEALS BOARD

RECOMMENDATION: That the City Council approve the appointment of members to the City's Building Appeals Board.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

Maintain the Current High Level of Public Safety

Operate in a Businesslike Manner

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

BACKGROUND & ANALYSIS: The California Building Code ("CBC") requires the creation of a board of appeals to hear and decide appeals of orders, decisions or determinations made by the Building Official relative to application and interpretation of the CBC. While the Board meets infrequently, there are instances that require convening of the Board to hear appeals of the Building Official's applications/interpretations/determinations. Section 113 of the CBC states that "the board of appeals shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction and are not employees of the jurisdiction." The CBC does not specify the number of members required for the Board. Typically, such boards should be odd numbers, such as three or five members, to review an appeal.

In November 2019, the City Council adopted its Ordinance No. 3148, establishing a five-member Building Appeals Board to be comprised of members recommended by the City Manager and approved by the City Council. The membership was previously approved by the City Council, but several members could not be reached to serve on the Board and the remaining members have indicated their desire to no longer serve in that capacity. As a result, an insufficient amount of members are available to constitute a quorum and conduct meetings. Therefore, the City Manager is recommending that the following members be appointed to the Building Appeals Board:

- 1) Building Official from the City of Montclair;
- 2) Building Official from the City of Fontana;
- 3) Building Official from the City of San Dimas;

- 4) Tom Donahue, a local construction consultant; and
- 5) Doug Andreasen, a local architect.

CITY OF ONTARIO

Agenda Report
November 1, 2022

SECTION:
CONSENT CALENDAR

Department: Municipal Services
Prepared By: Manuel Rebolledo
Staff Member Presenting:
Tito Haes, Executive Director Public Works
Reviewed By: Bonnie Tam
Approved By: 

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 9

SUBJECT: AUTHORIZE THE PURCHASE OF FLEET VEHICLES

RECOMMENDATION: That the City Council authorize the cooperative purchase of six Ford Police utility vehicles in the amount of \$330,000 and five Ford Expeditions vehicles for the Police Department in the amount of \$290,000 from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the Sourcewell Cooperative Contract No. 095121-NAF.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

Maintain the Current High Level of Public Safety

Operate in a Businesslike Manner

FISCAL IMPACT: The Fiscal Year 2022-23 Adopted Budget includes appropriations of \$620,000 in the Equipment Services Fund for the purchase of replacement vehicles.

BACKGROUND & ANALYSIS: The vehicles recommended for replacement have outlived their useful life; it is no longer cost effective to maintain them. They are scheduled for replacement pursuant to ongoing efforts to reduce expenses, maximize useful life expectancy and extend replacement cycles of fleet equipment, while ensuring safe and reliable operations.

Provisions of Government Code Section 54201 through 54204, of the Ontario Municipal Code Section 2-6.29 allows for the purchase of supplies and equipment through cooperative purchasing programs. Cooperative purchasing allows the City to pool its procurement power with other public agencies to obtain lower pricing. Additionally, this procurement action will result in the replaced vehicles being available to surplus, with any auction sale proceeds returning to the Equipment Service Fund.

Quantity	Type	Department	Price
6	Ford Police Utility Vehicle	Police	\$330,000
5	Ford Expeditions	Police	\$290,000
11		Total	\$620,000

CITY OF ONTARIO

Agenda Report
November 1, 2022

SECTION:
CONSENT CALENDAR

Department: Financial Services
Prepared By: Cecilia House
Staff Member Presenting:
Armen Harkalyan, Executive Director of Finance
Reviewed By: Armen Harkalyan, Cecilia House
Approved By: 

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 10

SUBJECT: A RESOLUTION AUTHORIZING AN AMENDMENT TO AND RESTATEMENT OF AN ACQUISITION AND FUNDING AGREEMENT AND AN AMENDMENT AND RESTATEMENT OF A MEMORANDUM OF AGREEMENT WITH NMC BUILDERS LLC

RECOMMENDATION: That the City Council adopt a Resolution to:

- A. Authorize the execution of an Amended and Restated Acquisition and Funding Agreement between the City of Ontario and NMC Builders LLC to provide for the future acquisition of completed public facilities constructed by and/or funded directly by NMC Builders LLC members, both as individual members and jointly, with the proceeds of Community Facilities District (CFD) special tax bonds from recently formed and future CFDs; and
- B. Authorize the execution of an Amended and Restated Memorandum of Agreement between the City of Ontario and NMC Builders LLC regarding the application of the City's Local Goals and Policies for Community Facilities Districts and to provide a priority of uses for the proceeds of bonds issued pursuant to recently formed and future CFDs.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

Operate in a Businesslike Manner

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

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

FISCAL IMPACT: The proposed Amendments to the Acquisition and Funding Agreement and the Memorandum of Agreement (on file with the Records Management Department) provide the terms, priorities and projects for the use of special tax bond proceeds that are to be repaid from special taxes on residential development projects in the eastern portion of Ontario Ranch (formerly the New Model Colony) to acquire public facilities built by parties other than the City. The projects that have been included in the Amended and Restated Acquisition and Funding Agreement to serve the Easterly portion of Ontario Ranch consist of two categories. The first category is Backbone Facilities, including City parks, that have been funded and/or constructed directly by the NMC Builders LLC.

The second is those that have been or will be constructed by an individual member - developers of NMC Builders, and their assigns. Since CFD bond financing (Mello-Roos bonds) does not represent a direct financial obligation of the City and is paid from special taxes levied on each taxable parcel within a given CFD, there is no General Fund impact from the use of CFD bond financing to acquire these public facilities.

BACKGROUND & ANALYSIS: The City and NMC Builders LLC have entered into a series of Agreements to provide funding for, and to construct public infrastructure facilities required for the development of the eastern portion of Ontario Ranch (formerly New Model Colony).

The Mello-Roos Community Facilities Act of 1982 provides local government, with the approval of the property owners, the authority to establish community facilities districts for the purpose of levying special taxes to fund governmental services and to finance various kinds of public facilities. The provisions of the various Agreements between the City and the NMC Builders LLC provide for the City to cooperate with NMC Builders LLC members in the formation of CFDs, with the intent to acquire the completed facilities constructed and /or financed by the NMC Builders LLC with special tax bond proceeds, when such bond proceeds become available.

In 2015, the City entered into an Acquisition and Funding Agreement with NMC Builders LLC. The Agreement provides the mechanism and terms for the purchase of completed public facilities with special tax bond proceeds; these improvements include public facilities constructed and/or funded by NMC Builders LLC as well as those to be constructed and/or funded by NMC Builders LLC members in the future.

Additionally, the City and NMC Builders LLC agreed to a Memorandum of Agreement that outlines a set of adopted Local Goals and Policies for the use of Mello-Roos (CFD) financing and how they will be applied to the facilities being constructed by NMC Builders LLC and its members. The Memorandum of Agreement provides additional clarifications regarding the application of the Local Goals and Policies, as well as specific priorities for the use of special tax bond proceeds.

Requested Amendments

NMC Builders LLC requested changes to the Acquisition Agreement and the Memorandum of Agreement. These proposed changes generally revolve around the definition of what is eligible for funding with CFD bonds as outlined in the acquisition price for public improvements and realigning the priority for funding of the Great Park and other improvements. The proposed Amendments to the Acquisition and Financing Agreement and the Memorandum of Agreement implement the following changes:

1. Acquisition Price equals Actual Reasonable and Necessary Costs. Initially, it was expected that the actual cost of the improvements would be equal to or lesser than the estimated cost identified in the City's Development Impact Fee (DIF) program. As such, the purchase price was originally calculated to be equal to that estimated cost (or lesser if the actual costs were lower than expected). However, it has been found that many additional, reasonable and necessary costs are incurred to complete certain improvements. These additional costs are related to a number of variables, including but not limited to; increased material and labor costs, the need for temporary connections, the need for overbuilding in certain areas to make it functional for initial phases of

development and the increase of soft costs (design, engineering, project management, etc.) for the project.

The Amended and Restated Acquisition and Financing Agreement modifies the purchase price from the DIF program estimate to include the actual, reasonable and necessary costs to build the improvement as approved by the City. This allows the full cost of the improvement, as identified in plans approved by the City, to be financed through the CFD while giving the City (through the City Engineer) the ability to reject unreasonable or unnecessary costs. The Agreement requires the developer to notify the City Engineer as soon as possible when there is a cost that is anticipated to exceed the DIF estimate and gain approval prior to construction where practicable.

Of note is the higher allowance (up to 30%) for soft costs, consistent with the industry norm, to be financed through the CFD. On occasion, soft costs could exceed 30% of the cost of the project. In those cases, the developer may request a waiver from the City Engineer to allow the higher costs. These higher costs must be justified to the satisfaction of the City Engineer and approved by him or her as reasonable and necessary.

2. Priorities for Funding. As noted, the Memorandum of Agreement outlined the priorities for funding public infrastructure. It listed the following priorities of improvement that could be funded by CFD bonds:

- a. First Priority: All local improvements built by individual developers to serve their specific development; and
- b. Second priority: Larger, regional improvements built by NMC Builders LLC; and
- c. Third Priority: In-lieu park fees; and
- d. Fourth Priority: Refunding of DIF Fees and Credits that had been earned; and
- e. Fifth Priority: Street, sewer, water and storm drain facilities that are backbone facilities to be owned or operated by the City that are not already included in an infrastructure master plan or the City's DIF program.

Given the anticipated scope of necessary improvements, it was not originally anticipated that funding would extend past Second Priority improvements. However, with the majority of the required improvements complete and additional financing capacity available, it is now known that Third Priority improvements could also be funded. To capture the full benefit of the funding capacity and provide for more efficiently financed improvements with CFD bonds, the Amended and Restated Memorandum of Agreement provides for Third Priority improvements to be advanced and be eligible for financing with or ahead of Second Priority improvements. This will have the effect of making more funds available to finance public parks and backbone improvements through the CFDs without raising the tax levy on property owners or eroding funds available for key, critical Second Priority improvements. In addition, it may provide for the City to receive funds sooner that can be used to construct public parks. The City believes that Fifth Priority improvements may never be realized, and therefore the Amendments to the Memorandum of Agreement delete those improvements making them ineligible for CFD funding.

Additionally, the Amendments to the Acquisition Agreement will be effective for any project that has not already been paid for by the City. Amendments to the Memorandum of Agreement will be for

any Community Facilities Districts that do not currently have bonds funded.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED ACQUISITION AND FUNDING AGREEMENT AND AN AMENDED AND RESTATED MEMORANDUM OF AGREEMENT.

WHEREAS, certain real property within the boundaries of the City located generally south of State Route 60 is commonly known as the New Model Colony;

WHEREAS, the City has approved a General Plan Amendment for the New Model Colony (the "General Plan Amendment") and has certified an Environmental Impact Report in connection with the General Plan Amendment (the "Environmental Impact Report");

WHEREAS, the City has specified in the General Plan Amendment and the Environmental Impact Report the major backbone transportation, water, sewer, storm drainage, parks and public safety infrastructure required to serve the New Model Colony;

WHEREAS, the New Model Colony is now commonly referred to as Ontario Ranch;

WHEREAS, the members (the "Members") of NMC Builders, LLC ("NMC Builders") own and intend to develop certain of the property within Ontario Ranch;

WHEREAS, in order to provide a mechanism to fund, in a timely manner, the costs of certain of such major backbone infrastructure required to serve Ontario Ranch (the "Facilities") so that such development may occur, the City and NMC Builders entered into the Acquisition Agreement and Funding Agreement, dated as of July 21, 2015 (the "Original Acquisition Agreement");

WHEREAS, pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982 (the "Act"), the City is, subject to the provisions of the Act, authorized to establish community facilities districts ("Community Facilities Districts") in order to finance certain types of public facilities described in the Act;

WHEREAS, Section 53312.7 of the Act provides that a local agency may initiate proceedings to establish a community facilities district pursuant to the Act only if it has first considered and adopted local goals and policies concerning the use of the Act, which policies must include the statements described in said Section;

WHEREAS, in accordance with Section 53312.7 of the Act, the City has adopted its Mello-Roos Community Facilities Act of 1982 Local Goals and Policies (the "Policies");

WHEREAS, the Policies include policies regarding project eligibility, priorities for facilities to be financed through the City's use of the Act and the maximum total tax burden for parcels within community facilities districts established by the City under the Act;

WHEREAS, the Policies provide that the City may, in its discretion and to the extent provided by law, waive any of the policies set forth in the Policies in particular cases;

WHEREAS, in order to, among other things, finance the costs of certain of the Facilities, the City has previously established a number of Community Facilities Districts pursuant to the provisions of the Act;

WHEREAS, the property included within the boundaries of each previously established Community Facilities District has included only property that is within Ontario Ranch and that is subject to a development agreement between the City and a Member;

WHEREAS, pursuant to the Act, the proceedings of the City Council of the City and an election held within each previously established Community Facilities District, each such Community Facilities District has been authorized to issue special tax bonds (the "Bonds") secured by special taxes ("Special Taxes") levied within such previously established Community Facilities District to finance certain of the Facilities;

WHEREAS, from time to time, Bonds have been issued by certain of the previously established Community Facilities Districts;

WHEREAS, in accordance with the terms set forth in the Original Acquisition Agreement and the First Amended and Restated Agreement for Financing and Construction of Limited Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony, made as of August 21, 2012, by and between the City and NMC Builders, NMC Builders has constructed, or has caused to be constructed, certain of the Facilities, the City has acquired the same and taken title thereto and NMC Builders has been paid the purchase price thereof, determined as set forth therein, from the proceeds of certain of the Bonds and Special Taxes;

WHEREAS, the City and NMC Builders desire to change, supplement or otherwise modify certain provisions of the Original Acquisition Agreement;

WHEREAS, Section 6.4 of the Original Acquisition Agreement provides that the Original Acquisition Agreement may be amended by an instrument in writing executed and delivered by the City and NMC Builders;

WHEREAS, the City and NMC Builders desire to amend and restate the Original Acquisition Agreement in order to reflect such changes, supplements and modifications to the Original Acquisition Agreement, pursuant to an Amended and Restated Acquisition and Funding Agreement by and between the City and NMC Builders (such Amended and Restated Acquisition and Funding Agreement, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Amended and Restated Acquisition Agreement");

WHEREAS, pursuant to the Memorandum of Agreement, dated as of July 21, 2015 (the "Original Memorandum of Agreement"), by and between the City and NMC Builders,

the City and NMC Builders set forth their mutual understanding and agreement as to how certain of the policies in the Policies were to be applied to the Community Facilities Districts, the order of priority in which proceeds of the Special Taxes and Bonds were to be applied to the costs of the Facilities and certain other matters;

WHEREAS, subsequent to the date of the Original Memorandum of Agreement, the City and NMC have had ongoing discussions regarding how certain of the policies in the Policies are being applied to the Community Facilities Districts, the order of priority in which proceeds of the Special Taxes and Bonds are being applied to the costs of the Facilities and certain other matters, and the City and NMC desire to amend and restate the Original Memorandum of Agreement in order to reflect their current mutual understanding and agreement as to how certain of the policies in the Policies are to be applied to the Community Facilities Districts, the order of priority in which proceeds of the Special Taxes and Bonds of such Community Facilities Districts are to be applied to the costs of the Facilities and certain other matters;

WHEREAS, Section 9 of the Original Memorandum of Agreement provides that the Original Memorandum of Agreement may be amended by an instrument in writing executed and delivered by the City and NMC Builders; and

WHEREAS, the City and NMC Builders desire to set forth their mutual understanding and agreement as to how certain of the policies in the Policies are to be applied to the Community Facilities Districts, the order of priority in which proceeds of the Special Taxes and Bonds will be applied to the costs of the Facilities and certain other matters, pursuant to an Amended and Restated Memorandum of Agreement by and between the City and NMC Builders (such Amended and Restated Memorandum of Agreement, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Amended and Restated Memorandum of Agreement");

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.

SECTION 2. The Amended and Restated Acquisition Agreement, in substantially the form submitted to this meeting and made a part hereof as though set forth herein, be and the same is hereby approved. Each of the Mayor of the City, and such other member of the City Council as the Mayor may designate, the City Manager of the City and the Executive Director of Finance of the City, and such other officer or employee of the City as the City Manager may designate (the "Authorized Officers") is hereby authorized, and any one of the Authorized Officers is hereby directed, for and in the name of the City, to execute and deliver the Amended and Restated Acquisition Agreement in the form submitted to this meeting, with such changes, insertions and omissions as the Authorized Officer executing the same may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Amended and Restated Acquisition Agreement by such Authorized Officer.

SECTION 3. The Amended and Restated Memorandum of Agreement, in substantially the form submitted to this meeting and made a part hereof as though set forth herein, be and the same is hereby approved. Each of the Authorized Officers is hereby authorized, and any one of the Authorized Officers is hereby directed, for and in the name of the City, to execute and deliver the Amended and Restated Memorandum of Agreement in the form submitted to this meeting, with such changes, insertions and omissions as the Authorized Officer executing the same may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Amended and Restated Memorandum of Agreement by such Authorized Officer.

SECTION 4. All actions heretofore taken by the officers, employees and agents of the City with respect to the Amended and Restated Acquisition Agreement and the Amended and Restated Memorandum of Agreement, or in connection with or related to any of the matters referred to herein, are hereby approved, confirmed and ratified.

SECTION 5. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things which 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 6. 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 1st day of November 2022.

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. 2022- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 1, 2022 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. 2022- duly passed and adopted by the Ontario City Council at their regular meeting held November 1, 2022.

SHEILA MAUTZ, CITY CLERK

(SEAL)

**AMENDED AND RESTATED
ACQUISITION AND FUNDING AGREEMENT**

by and between

CITY OF ONTARIO

and

NMC BUILDERS, LLC

Dated as of _____, 2022

**City of Ontario
Ontario Ranch
Community Facilities Districts**

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ACQUISITION AND FUNDING AGREEMENT

THIS ACQUISITION AND FUNDING AGREEMENT (this “Acquisition Agreement”), dated as of _____, 2022, is by and between the CITY OF ONTARIO, a general law city organized and existing under the laws of the State of California (the “City”), and NMC BUILDERS, LLC, a limited liability company organized and existing under the laws of the State of California (“NMC Builders”).

W I T N E S S E T H:

WHEREAS, certain real property within the boundaries of the City located generally south of State Route 60 is commonly known as the New Model Colony;

WHEREAS, the City has approved a General Plan Amendment for the New Model Colony (the “General Plan Amendment”) and has certified an Environmental Impact Report in connection with the General Plan Amendment (the “Environmental Impact Report”);

WHEREAS, the City has specified in the General Plan Amendment and the Environmental Impact Report the major backbone transportation, water, sewer, storm drainage, parks and public safety infrastructure required to serve the New Model Colony;

WHEREAS, the New Model Colony is now commonly referred to as Ontario Ranch;

WHEREAS, the members of NMC Builders (the “Members”) own and intend to develop certain of the property within Ontario Ranch;

WHEREAS, in order to provide a mechanism to fund, in a timely manner, the costs of certain of such major backbone infrastructure required to serve Ontario Ranch (the “Facilities”) so that such development may occur, the City and NMC Builders entered into the Acquisition Agreement and Funding Agreement, dated as of July 21, 2015 (the “Original Acquisition Agreement”);

WHEREAS, pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982 (the “Act”), the City is, subject to the provisions of the Act, authorized to establish community facilities districts (“Community Facilities Districts”) in order to finance certain types of public facilities described in the Act;

WHEREAS, in order to, among other things, finance the costs of certain of the Facilities, the City has previously established a number of Community Facilities Districts pursuant to the provisions of the Act;

WHEREAS, the property included within the boundaries of each previously established Community Facilities District has included only property that is within Ontario Ranch and that is subject to a development agreement between the City and a Member;

WHEREAS, pursuant to the Act, the proceedings of the City Council of the City and an election held within each previously established Community Facilities District, each such Community Facilities District has been authorized to issue special tax bonds (the “Bonds”)

secured by special taxes (“Special Taxes”) levied within such previously established Community Facilities District to finance certain of the Facilities;

WHEREAS, from time to time, Bonds have been issued by certain of the previously established Community Facilities Districts;

WHEREAS, in accordance with the terms set forth in the Original Acquisition Agreement and the First Amended and Restated Agreement for Financing and Construction of Limited Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony (the “Construction Agreement”), made as of August 21, 2012, by and between the City and NMC Builders, NMC Builders has constructed, or has caused to be constructed, certain of the Facilities, the City has acquired the same and taken title thereto and NMC Builders has been paid the purchase price thereof, determined as set forth therein, from the proceeds of certain of the Bonds and Special Taxes;

WHEREAS, the City and NMC Builders desire to change, supplement or otherwise modify certain provisions of the Original Acquisition Agreement;

WHEREAS, Section 6.4 of the Original Acquisition Agreement provides that the Original Acquisition Agreement may be amended by an instrument in writing executed and delivered by the City and NMC Builders;

WHEREAS, the City and NMC Builders desire to amend and restate the Original Acquisition Agreement in order to reflect such changes, supplements and modifications to the Original Acquisition Agreement;

WHEREAS, the City anticipates that it will, subject to the provisions of the City of Ontario Mello-Roos Community Facilities Act of 1982 Local Goals and Policies, establish one or more additional Community Facilities Districts pursuant to the Act;

WHEREAS, it is anticipated that each additional Community Facilities District will include only property that is within Ontario Ranch and that is subject to a development agreement between the City and a Member;

WHEREAS, it is anticipated that, pursuant to the Act, the proceedings of the City Council of the City and an election held within each additional Community Facilities District, each such additional Community Facilities District will be authorized to issue Bonds secured by Special Taxes levied within such additional Community Facilities District to finance certain of the Facilities;

WHEREAS, it is anticipated that, from time to time, Bonds will be issued by certain of the additional Community Facilities Districts;

WHEREAS, it is anticipated that, in accordance with the terms set forth in this Acquisition Agreement and the Construction Agreement, NMC Builders will construct, or cause to be constructed, certain of the Facilities not previously acquired pursuant to the Original Acquisition Agreement, that, upon satisfaction of the conditions specified herein and the Construction Agreement, the City will acquire the same and take title thereto and that NMC

Builders will be paid the purchase price thereof, determined as set forth herein, from the proceeds of the Bonds and Special Taxes;

WHEREAS, Section 53313.5 of the Act provides that a community facilities district may only finance the purchase of facilities whose construction has been completed, as determined by the legislative body, before the resolution of formation to establish the community facilities district is adopted pursuant to Section 53325.1 of the Act, except that a community facilities district may finance the purchase of facilities completed after the adoption of the resolution of formation if the facility was constructed as if it had been constructed under the direction and supervision, or under the authority of, the local agency; and

WHEREAS, the Facilities are to be acquired by the City under this Acquisition Agreement pursuant to the Act and, specifically, pursuant to the provisions of Sections 53313.5 thereof;

NOW, THEREFORE, the Original Acquisition Agreement is hereby amended and restated to read in full as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. Unless the context otherwise requires, the terms defined in this Article I shall have the meanings herein specified.

“Acceptable Title” means title to land, or an easement therein, delivered free and clear of all liens, taxes, assessments, leases, easements and encumbrances, whether any such item is recorded or unrecorded, except those non-monetary items which are reasonably determined by the City not to interfere with the intended use of such land or easement and therefore are not required to be cleared from title.

“Acceptance Date” means (a) with respect to a Segment, the date on which such Segment is accepted by the City pursuant to Section 2.2(e) hereof, and (b) with respect to a Component, the date on which the last Segment that is part of such Component is accepted by the City pursuant to Section 2.2(e) hereof.

“Acquisition Agreement” means this Amended and Restated Acquisition and Funding Agreement, dated as of _____, 2022, by and between the City and NMC Builders, as originally executed or as the same may be amended from time to time in accordance with its terms.

“Act” means the Mello-Roos Community Facilities Act of 1982, constituting Section 53311 *et seq.* of the California Government Code.

“Actual Cost” means, with respect to a Segment, as the description thereof is reflected in the then current Plans therefor, an amount equal to the sum of (a) the actual, reasonable cost of constructing such Segment (including grading for such construction), including labor, material and equipment costs and professional services directly related to materials testing, (b) the actual, reasonable cost of designing and preparing the Plans for such Segment, including engineering services provided in connection with designing and preparing such Plans, (c) the actual, reasonable cost of any performance and maintenance bonds and insurance, including title insurance, required hereby for such Segment, (d) the actual, reasonable cost of any real property or interest therein, other than any such real property or interest therein to be conveyed with a Circulation System Segment, which real property or interest therein is either necessary for the construction of such Segment (*e.g.*, temporary construction easements, haul roads, etc.) or is required to be conveyed with such Segment in order to convey Acceptable Title thereto to the City or its designee, (e) the actual, reasonable cost of environmental evaluations required in the City’s reasonable determination specifically for such Segment, (f) the amount of any fees actually paid to governmental agencies in order to obtain permits, licenses or other necessary governmental approvals and reviews for such Segment, including City plan check, processing and inspection fees for such Segment, (g) the actual, reasonable cost for construction management services for such Segment, which cost shall not exceed 5% of the cost of constructing such Segment, as determined pursuant to clause (a) of this definition, and (h) the actual, reasonable cost for professional services directly related to the construction of such Segment, including engineering, inspection, construction staking and similar professional

services, all as specified in a Payment Request that has been reviewed and approved by the City Engineer; provided, however, that (i) no item of cost relating to a Segment shall be included in more than one category of cost specified in clauses (a) through (h) of this definition, (ii) except with respect to items of cost for construction management services specified in clause (g) that are provided by NMC Builders, Members or Affiliates of NMC Builders or Members rather than a third party, each item of cost shall include only amounts actually paid to parties other than NMC Builders, Members or Affiliates of NMC Builders or Members, and shall not include overhead or other internal expenses, and (iii) the aggregate cost of items specified in clauses (e) through (h) shall not exceed 30% of the cost of constructing such Segment, as determined pursuant to clause (a) of this definition.

“Affiliate” of another Person means (a) each Person that, directly or indirectly, owns or controls, whether beneficially or as trustee, guardian, or other fiduciary, 50% or more of any class of equity securities of such other Person, and (b) each Person that controls, is controlled by or is under common control with or by such Person or any Affiliate of such Person. For the purpose of this definition, “control” of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.

“Bonds” means, with respect to a Community Facilities District, bonds, notes or other obligations of such Community Facilities District payable from the Special Taxes of such Community Facilities District and issued under the Indenture of such Community Facilities District.

“Circulation System Segments” means Segment Nos. ST-1 through ST-81, inclusive.

“City” means the City of Ontario, a general law city organized and existing under the laws of the State, and its successors.

“City Council” means the City Council of the City.

“City Engineer” means the City Engineer of the City.

“City Event of Default” means any event or circumstance specified in Section 5.3 hereof.

“Community Facilities District” means a community facilities district established pursuant to the Act (a) all of the property within the boundaries of which is within Ontario Ranch, and (b) all of the property within the boundaries of which is subject to a Development Agreement.

“Complete” means, with respect to a Segment, that the construction of such Segment (including all ancillary, non-essential items included in such Segment) is, in the reasonable judgment of the City Engineer, in all respects complete.

“Components” means the related groups of Segments identified as such and described in Exhibit A hereto; each Component is comprised of the Segments listed thereunder in Exhibit A.

“Conditions of Approval” means, with respect to any portion of the Property, the conditions of approval of all land use entitlements approved by the City for such portion of the Property and the conditions of any Development Agreement, subdivision improvement agreement or other agreement between a Member and the City relating to such portion of the Property, which conditions such Member must satisfy or cause to be satisfied in order to develop such portion of the Property.

“Construction Agreement” means the First Amended and Restated Agreement for Financing and Construction of Limited Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony, made as of August 21, 2012, by and between the City and NMC Builders, as originally executed or as the same may be amended from time to time in accordance with its terms.

“Development Agreement” means a statutory development agreement between the City and a Member, entered into pursuant to California Government Code Section 65864 *et seq.*, relating to the development of a portion of the Property.

“Effective Date” means _____, 2022.

“Facilities” means the facilities described in Exhibit A hereto, each of which constitutes an “Improvement,” as defined in the Construction Agreement.

“General Prevailing Wage Rates” means those rates as determined by the Director of the Department of Industrial Relations of the State of California.

“Hazardous Material” means any hazardous or toxic substance, material or waste which is regulated by any local governmental authority, the State or the United States Government, including, without limitation, any material or substance which is (a) designated as a “hazardous substance” pursuant to Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (33 U.S.C. § 1321), (b) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (42 U.S.C. § 6903), (c) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*, (d) petroleum, or (e) asbestos.

“Indenture” means, with respect to a Community Facilities District, the indenture, trust agreement, fiscal agent agreement or similar instrument, howsoever denominated, pursuant to which Bonds of such Community Facilities District are issued, as originally executed or as the same may from time to time be supplemented or amended pursuant to the provisions thereof.

“Member” means a member of NMC Builders.

“Memorandum of Agreement” means the Memorandum of Agreement, dated as of July 21, 2015, by and between the City and NMC Builders, as amended and restated by the Amended and Restated Memorandum of Agreement, dated as of _____, 2022, by and between the City and NMC Builders, and as the same may be further amended from time to time in accordance with its terms.

“Net Proceeds” means, with respect to a Community Facilities District (a) the proceeds of Special Taxes of such Community Facilities District received prior to the initial issuance of Bonds of such Community Facilities District and remaining after the payment or setting aside of, or provision for, administrative expenses of such Community Facilities District, and (b) the proceeds of Bonds of such Community Facilities District remaining after the payment or setting aside of, or provision for (i) the underwriter’s discount for such Bonds, (ii) the costs of issuance of such Bonds, including the costs of formation of such Community Facilities District, (iii) any required reserve fund deposit for such Bonds, (iv) capitalized interest on such Bonds, and (v) pre-funded administrative expenses of such Community Facilities District.

“NMC Acquisition Account” means, with respect to a Community Facilities District, the fund or account established and held by the Trustee with respect to such Community Facilities District under the Indenture with respect to such Community Facilities District, howsoever denominated, into which proceeds of Bonds of such Community Facilities District and, in certain circumstances, Special Taxes of such Community Facilities District available to pay the Purchase Price of the Segments are to be deposited.

“NMC Builders” means NMC Builders, LLC, a limited liability company organized and existing under the laws of the State of California, and its successors and assigns.

“NMC Builders Event of Default” means any event or circumstance specified in Section 5.1 hereof.

“NMC Builders Representative” means the person or persons designated as such in a certificate signed by NMC Builders and delivered to the City, which certificate shall contain an original or specimen signature of each person so designated.

“Ontario Ranch” means the area within the boundaries of the City located generally south of State Route 60, previously commonly known as the New Model Colony and as of the date hereof commonly known as Ontario Ranch and described in the General Plan Amendment for the New Model Colony, approved by Resolution No. 98-09, adopted by the City Council on January 7, 1998.

“Original Acquisition Agreement” means the Acquisition and Funding Agreement, dated as of July 21, 2015, by and between the City and NMC Builders.

“Payment Request” means the document to be provided by NMC Builders to substantiate the Purchase Price of one or more Segments, which shall be substantially in the form of Exhibit B attached hereto.

“Person” means an individual, a corporation, a partnership, an association, a limited liability company, a joint stock company, a trust, any unincorporated organization or a government or political subdivision thereof.

“Plans” means the plans and specifications for the Facilities prepared or to be prepared by or on behalf of NMC Builders pursuant to Section 3.1 hereof.

“Program Costs” or **“DIF Program Costs”** has the meaning ascribed to such terms in the Construction Agreement.

“Property” means the real property located within Ontario Ranch.

“Purchase Price” means, with respect to a Segment, subject to the provisions of Section 2.3 hereof, the Actual Cost of such Segment.

“Rate and Method” means, with respect to a Community Facilities District, the rate and method of apportionment of the Special Taxes of such Community Facilities District approved by the qualified electors of such Community Facilities District.

“Related Property” means, with respect to a Segment, the property on, in or over which such Segment is located, which property, or an easement thereon or other interest therein, is dedicated or otherwise conveyed to the City as provided in Section 2.2(d) hereof.

“Segments” means the discrete portions of the Components identified as such and described in Exhibit A hereto; provided, however, that (a) if, after the date hereof, a Segment is described in an acquisition agreement entered into by the City and a Member and such acquisition agreement provides that such Segment is to be acquired by the City from such Member pursuant thereto, then, as of the date such acquisition agreement is entered into, such Segment shall be deemed to be deleted from Exhibit A hereto and, for purposes hereof, such portion shall no longer constitute a part of the Facilities, and (b) if, after the date hereof, a portion of a Segment is described in an acquisition agreement entered into by the City and a Member and such acquisition agreement provides that such portion of such Segment is to be acquired by the City from such Member pursuant thereto, then, as of the date such acquisition agreement is entered into, such portion of such Segment shall be deemed to be excluded from the description of such Segment in Exhibit A hereto and, for purposes hereof, such portion shall no longer constitute a part of such Segment. Upon any deemed deletion of a Segment pursuant to clause (a), above, the City may modify Exhibit A hereto to reflect such deletion, and such modification shall not constitute an amendment of this Acquisition Agreement for purposes of Section 6.4 hereof. Upon any deemed exclusion of a portion of a Segment pursuant to clause (b), above, the City may modify the description of such Segment in Exhibit A hereto to reflect such exclusion, and such modification shall not constitute an amendment of this Acquisition Agreement for purposes of Section 6.4 hereof.

“Special Taxes” means, with respect to a Community Facilities District, the special taxes approved by the qualified electors of such Community Facilities District to be levied therein.

“State” means the State of California.

“Substantially Complete” means, with respect to a Circulation System Segment, that the construction of such Circulation System Segment by NMC Builders has, in the reasonable judgment of the City Engineer, reached a stage of completion sufficient to allow such Circulation System Segment to be utilized for the purpose for which it is intended and that only the construction of ancillary, non-essential items remains incomplete; provided, however, that a Circulation System Segment shall not be deemed to be Substantially Complete if, in the reasonable judgment of the City Engineer, the cost to complete the construction of such

ancillary, non-essential items would exceed 15% of the Purchase Price of such Circulation System Segment.

“Trustee” means, with respect to a Community Facilities District, the commercial bank or trust company initially designated as trustee under the Indenture with respect to such Community Facilities District, or any successor thereto as trustee thereunder substituted in its place as provided in such Indenture.

Section 1.2. Rules of Construction. (a) The terms defined herein expressed in the singular shall, unless the context otherwise indicates, include the plural and vice versa.

(b) The use herein of the masculine, feminine or neuter gender is for convenience only and shall be deemed and construed to include correlative words of the masculine, feminine or neuter gender, as appropriate.

(c) References herein to a document shall include all amendments, supplements or other modifications to such document, and any replacements, substitutions or novation of, that document.

(d) Any term defined herein by reference to another document shall continue to have the meaning ascribed thereto whether or not such other document remains in effect.

(e) The use herein of the words “including” and “includes,” and words of similar import, shall be deemed to be followed by the phrase “without limitation.”

(f) Headings of Articles and Sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(g) All references herein to designated “Articles,” “Sections,” “Exhibits,” “subsections,” “paragraphs,” “clauses,” and other subdivisions are to the designated Articles, Sections, Exhibits, subsections, paragraphs, clauses, and other subdivisions of this Acquisition Agreement.

(h) The words “hereof” (except when preceded by a specific Section or Article reference) “herein,” “hereby,” “hereunder,” “hereinabove,” “hereinafter,” and other equivalent words and phrases used herein refer to this Acquisition Agreement and not solely to the particular portion hereof in which any such word is used.

(i) Any reference to a Person, or a Person in a specified capacity, shall be construed to include such Person’s successors or such Person’s successors in such capacity, as the case may be.

ARTICLE II

ACQUISITION OF FACILITIES

Section 2.1. Acquisition of Facilities; Limited Source of Payments. (a) Subject to the terms and conditions hereof, NMC Builders hereby agrees to sell to the City, and the City hereby agrees to purchase from NMC Builders, each Segment for the Purchase Price thereof.

(b) The parties hereto expect that from time to time after the execution hereof, a petition to establish a Community Facilities District will be submitted to the City Council by the developer or one or more merchant builders that own property to be included within the boundaries thereof, such Community Facilities District will be established and such Community Facilities District will levy Special Taxes and issue Bonds. The Net Proceeds of each Community Facilities that are to be applied pursuant to the Second Priority set forth in Section 4 of the Memorandum of Agreement shall be deposited in the NMC Acquisition Account with respect to such Community Facilities District. The Purchase Price of the Segments is to be paid from amounts deposited in the NMC Acquisition Accounts. Notwithstanding anything to the contrary contained herein, the City shall not be obligated to pay the Purchase Price of any Segment except from such amounts so deposited in the NMC Acquisition Accounts. The City makes no warranty, either express or implied, that Bonds of any Community Facilities District will be able to be issued and sold or that the amounts deposited in the NMC Acquisition Accounts and available for the payment of the Purchase Price of the Segments will be sufficient for such purpose.

Section 2.2. Segment Review; Payment Requests. (a) When NMC Builders has concluded that the construction of a Segment is in all respects complete, NMC Builders shall deliver to the City Engineer (i) a Payment Request for such Segment, together with all attachments and exhibits to be included therewith, (ii) a copy of the documents conveying, or which previously conveyed, to the City Acceptable Title to the Related Property of such Segment, as described in subsection (d) of this Section, and (iii) a copy of the Notice of Completion of such Segment which will be filed in accordance with Section 3093 of the California Civil Code, if applicable; provided, however, that, if, during the process of designing a Segment, obtaining bids for construction of a Segment or during construction of a Segment, NMC Builders determines that, because of changed conditions or circumstances, the actual cost of constructing such Segment may materially exceed NMC Builders' originally estimated cost thereof, NMC Builders shall, in order to facilitate and expedite the City Engineer's review and verification with respect to such Segment pursuant to subsection (b) of this Section, as soon as practicable, deliver to the City Engineer a written statement describing (i) such changed conditions or circumstances, (ii) the Developer's original estimated cost of constructing such Segment, (iii) the anticipated effect of such changed conditions or circumstances on the Actual Cost of such Segment, and (iv) an explanation as to why including the increased cost resulting from such changed conditions or circumstances would result in the Actual Cost of such Segment being no greater than the actual, reasonable cost thereof, determined in accordance with the provisions of the definition of Actual Cost set forth herein.

(b) Upon receipt of a completed Payment Request (and accompanying documentation) for a Segment, the City Engineer shall conduct a review in order to confirm that

such Segment is Complete and was constructed in accordance with the Plans therefor and to verify and approve the Actual Cost of such Segment specified in such Payment Request. As a reference in determining the reasonable cost of constructing such Segment, the City Engineer may use the most recently updated DIF Program Costs of such Segment, which reflect the City Engineer's determination, as of the date of such update, of the reasonable cost of constructing such Segment, recognizing that, depending on the date of such most recent update, such DIF Program Costs may not reflect the reasonable cost of constructing such Segment at the time it was constructed. NMC Builders agrees to cooperate with the City Engineer in conducting each such review and to provide the City Engineer with such additional information and documentation as is reasonably necessary for the City Engineer to conclude each such review. The City agrees to cause the City Engineer to conduct such review without unreasonable delay. If the City Engineer determines that the Actual Cost specified in such Payment Request as initially submitted exceeds the actual, reasonable cost of constructing such Segment, NMC Builders shall resubmit such Payment Request, with the Actual Cost specified therein modified so as to take into account such determination by the City Engineer. Upon confirmation that such Segment is Complete and has been constructed in accordance with the Plans therefor, and verification and approval of the Actual Cost of such Segment, the City Engineer shall sign the Payment Request, indicating thereon that such Segment is Complete and that the full amount of the Purchase Price of such Segment is eligible for payment, and forward the same to the City.

(c) With respect to a Circulation System Segment, if, as a result of the review described in subsection (b) of this Section, the City Engineer (i) determines that such Circulation System Segment, while not Complete, is Substantially Complete, (ii) confirms that such Circulation System Segment has been constructed in accordance with the Plans therefor, and (iii) verifies and approves the Actual Cost of such Circulation System Segment, the City Engineer shall sign the Payment Request, indicating thereon that such Circulation System Segment is Substantially Complete and that an amount equal to 85% of the Actual Cost is eligible for payment, and forward the same to the City.

When NMC Builders completes or causes to be completed all work with respect to such Circulation System Segment and concludes that such Circulation System Segment is Complete, NMC Builders shall deliver to the City Engineer (i) if as-built drawings or similar plans and specifications for such Circulation System Segment have not previously been submitted to the City Engineer, such drawings or plans and specifications, together with a certification of NMC Builders that such drawings or plans and specifications are true, correct and complete, and (ii) such information and documentation as is reasonably required by the City Engineer in order for the City Engineer to determine whether such Circulation System Segment is Complete. Upon receipt of such information and documentation, the City Engineer shall conduct a review in order to confirm that such Circulation System Segment is Complete. If, as a result of such review, the City Engineer determines that such Circulation System Segment is Complete, the City Engineer shall sign a copy of the original Payment Request therefor, indicating thereon that such Circulation System Segment is Complete and that the full amount of the Purchase Price of such Segment is eligible for payment, and forward the same to the City.

(d) Acceptable Title to all property on, in or over which each Segment will be located shall be conveyed to the City by way of grant deed, quitclaim, or dedication of such property, or easement thereon, if such easement is approved by the City as being a sufficient interest therein

to permit the City to properly own, operate and maintain such Segment located therein, thereon or thereover, and to permit NMC Builders to perform its obligations as set forth in this Acquisition Agreement.

Upon the request of the City, NMC Builders shall furnish to the City a title report for such property not previously dedicated or otherwise conveyed to the City or its designee, for review and approval at least 20 calendar days prior to the transfer of Acceptable Title to a Segment to the City or its designee. The City shall approve the title report unless it reveals a matter which, in the reasonable judgment of the City, could materially affect the City's or its designee's use and enjoyment of any part of the property or easement covered by the title report. In the event the City does not approve the title report, the City shall not be obligated to accept title to such Segment until such objections to title have been cured to the reasonable satisfaction of the City.

(e) Upon (i) the execution by the City Engineer of a Payment Request for a Segment indicating that such Segment is Complete, and (ii) the City's determination that Acceptable Title to the property on, in or over which each Segment is located has been or is being conveyed to the City, such Segment shall be accepted by the City. NMC Builders shall transfer or cause to be transferred to the City title to each Segment accepted by the City pursuant hereto by appropriate instrument in accordance with the Construction Agreement or the Conditions of Approval, as applicable; provided, however, that notwithstanding such transfer, as provided in Section 3.6 hereof, NMC Builders shall be responsible for maintaining or causing such Segment to be maintained until the Acceptance Date of the Component of which such Segment is a part.

Section 2.3. Payment of Purchase Price. (a) Upon receipt of a reviewed and fully signed Payment Request pursuant to Section 2.2(b) hereof indicating that a Segment is Complete and that the Purchase Price of such Segment is eligible for payment, the City shall, within five business days of the approval and confirmation thereof by the City Engineer, by written request, direct the Trustee with respect to a Community Facilities District to pay from the NMC Acquisition Account with respect to such Community Facilities District the Purchase Price of such Segment. If, on the date the City submits to such Trustee a written request directing that the Purchase Price of a Segment be paid, there are insufficient moneys in such NMC Acquisition Account to pay such Purchase Price in full, the City shall, if and to the extent that moneys in other NMC Acquisition Accounts are sufficient, or as and when moneys in other NMC Acquisition Accounts become sufficient, to pay the remainder of such Purchase Price, by written request, direct one or more of the Trustees that holds any such NMC Acquisition Account to pay from such NMC Acquisition Account all or a portion, as specified in such written request, of such remaining amount of such Purchase Price; provided, however, that the aggregate amount of the moneys so directed by the City to be paid shall not exceed the amount of such Purchase Price. If the Payment Request for a Segment requests that the Purchase Price requested to be paid pursuant thereto be paid to the Person or Persons, in the amounts, set forth in the completed Purchase Price Payment Instructions attached thereto as Attachment B, the City shall direct each Trustee with respect to a Community Facilities District that is directed by the City pursuant to the provisions hereof to pay all or a portion of such Purchase Price, to pay from the NMC Acquisition Account with respect to such Community Facilities District such Purchase Price or portion thereof to such Person or Persons.

(b) Upon receipt of a reviewed and fully signed Payment Request pursuant to Section 2.2(c) hereof indicating that a Circulation System Segment is Substantially Complete and that an amount equal to 85% of the Purchase Price of such Circulation System Segment is eligible for payment, the City shall, within five business days of the approval and confirmation thereof by the City Engineer, by written request, direct the Trustee with respect to a Community Facilities District to pay from the NMC Acquisition Account with respect to such Community Facilities District 85% of the Purchase Price of such Circulation System Segment. If, on the date the City submits to such Trustee a written request directing that 85% of the Purchase Price of such Circulation System Segment be paid, there are insufficient moneys in such NMC Acquisition Account to pay 85% of the Purchase Price of such Circulation System Segment in full, the City shall, if and to the extent that moneys in other NMC Acquisition Accounts are sufficient, or as and when moneys in other NMC Acquisition Accounts become sufficient, to pay the remainder of such 85% of such Purchase Price of such Circulation System Segment, by written request, direct one or more of the Trustees that holds any such NMC Acquisition Account to pay from such NMC Acquisition Account all or a portion, as specified in such written request, of such remaining amount of such 85% of such Purchase Price of such Circulation System Segment; provided, however, that the aggregate amount of the moneys so directed by the City to be paid shall not exceed the amount of such 85% of such Purchase Price of such Circulation System Segment. If the Payment Request for a Circulation System Segment requests that the 85% of the Purchase Price of such Circulation System Segment requested to be paid pursuant thereto be paid to the Person or Persons, in the amounts, set forth in the completed Purchase Price Payment Instructions attached thereto as Attachment B, the City shall direct each Trustee with respect to a Community Facilities District that is directed by the City pursuant to the provisions hereof to pay all or a portion of such 85% of the Purchase Price of such Circulation System Segment, to pay from the NMC Acquisition Account with respect to such Community Facilities District such 85% of the Purchase Price of such Circulation System Segment or portion thereof to such Person or Persons.

Section 2.4. Amendments Apply only to Segments for which Purchase Price Has Not Previously Been Paid. The amendments made to the Original Acquisition Agreement by this Acquisition Agreement, including the amendment of the definition of the term “Purchase Price,” shall apply only to Segments for which the Purchase Price has not been paid prior to the Effective Date.

ARTICLE III

CONSTRUCTION OF FACILITIES

Section 3.1. Preparation and Approval of Plans and Specifications. NMC Builders shall cause Plans to be prepared for the Facilities to be acquired pursuant hereto in accordance with the Construction Agreement. NMC Builders shall obtain or cause to be obtained the written approval of the Plans from all appropriate departments of the City or from any other public agency or public utility from which such approval must be obtained. NMC Builders shall provide or cause to be provided copies of all such Plans to the City Engineer. The Plans for a Segment shall be updated from time to time to reflect changed conditions or circumstances with respect thereto, NMC Builders shall obtain or cause to be obtained the written approval of such updated Plans from all appropriate departments of the City and NMC Builders shall provide or cause to be provided copies of all such updated Plans to the City Engineer.

Section 3.2. Duty of NMC Builders to Construct. NMC Builders shall construct or cause to be constructed the Segments in accordance with the Construction Agreement and the approved Plans. NMC Builders shall perform all of its obligations hereunder and shall conduct or cause to be conducted all operations with respect to the construction of the Segments in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing commercially reasonable efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. Notwithstanding the foregoing, NMC Builders shall not be required to construct any Facilities or cause such Facilities to be constructed other than at the time required by, and in accordance with, the Construction Agreement or the Conditions of Approval, as applicable, or to perform any work requiring a contractor's license, nor shall NMC Builders be deemed to be performing construction services pursuant to this Acquisition Agreement.

Section 3.3. Public Works Requirements. (a) In order to insure that the Segments that are acquired by the City pursuant to this Acquisition Agreement are constructed as if they had been constructed under the direction and supervision, or under the authority of, the City, so that they may be acquired pursuant to California Government Code Section 53313.5, NMC Builders shall comply with or cause to be complied with all of the requirements of this Section for each Segment for which NMC Builders submits a Payment Request.

(b) Notice inviting sealed bids for the construction of each Segment shall be given as required for public works projects in conformance with the California Public Contracts Code.

(c) The contract for the construction of each Segment shall be awarded to the responsible bidder submitting the lowest responsive bid for the construction of such Segment.

(d) NMC Builders shall require, and the specifications and bid and contract documents shall require, all contractors, subcontractors, vendors, equipment operators and owner operators, in each such case to the extent such Persons are engaged to perform work on a Segment, to pay at least General Prevailing Wage Rates to all workers employed in the execution of the contract, to post a copy of the General Prevailing Wage Rates at the job-site in a

conspicuous place available to all employees and applicants for employment, and to otherwise comply with applicable provisions of the California Labor Code, the California Government Code and the California Public Contracts Code relating to public works projects of cities.

NMC Builders shall require, and the specifications and bid and contract documents shall require, for all contracts involving in excess of \$30,000 or 20 working days, all contractors, subcontractors, vendors, equipment operators and owner operators, in each such case to the extent such Persons are engaged to perform work on a Segment, to comply with the provisions of Section 1777.5 of the California Labor Code with respect to all apprenticeable occupations upon the project.

(e) In performing its obligations under this Acquisition Agreement, NMC Builders shall comply with or cause to be complied with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State and the City. In performing its obligations under this Acquisition Agreement, NMC Builders shall not discriminate in its employment practices against any employee, or applicant for employment, because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status or medical condition. NMC Builders shall require that any contract for the construction of any Segment constructed by or on behalf of NMC Builders subject the contractor thereunder to the provisions of this paragraph.

(f) NMC Builders shall require that each contractor, subcontractor, vendor, equipment operator and owner operator, in each such case to the extent such Person is engaged to perform work on a Segment, provide proof of insurance coverage satisfying the requirements of Section 3.7 hereof throughout the term of the construction of such Segment; provided, however, that, rather than requiring such contractors, subcontractors, vendors, equipment operators and owner operators to provide such insurance, NMC Builders may provide or cause to be provided the same for the benefit of such contractors, subcontractors, vendors, equipment operators and owner operators.

(g) NMC Builders shall comply, and shall cause each contractor, subcontractor, vendor, equipment operator and owner operator, in each such case to the extent such Person is engaged to perform work on a Segment, to comply, with such other requirements relating to the construction of the Segments as the City may impose by written notification delivered to NMC Builders, to the extent legally required as a result of changes in applicable federal, State or City laws.

(h) NMC Builders shall require, and the specifications and bid and contract documents shall require, all contractors, subcontractors, vendors, equipment operators and owner operators, in each such case to the extent such Persons are engaged to perform work on a Segment, to submit certified weekly payroll records to NMC Builders for inspection by the City, and to furnish certified payroll records to the City promptly upon request.

NMC Builders shall provide or cause to be provided proof to the City, at such intervals and in such form as the City may reasonably require, that the foregoing requirements have been satisfied as to all of the Segments for which a Payment Request is submitted pursuant hereto.

Section 3.4. Bonding Requirements. Prior to the commencement of construction of a Segment to be constructed by or on behalf of NMC Builders, NMC Builders shall secure or cause to be secured, or shall cause each contractor, subcontractor, vendor, equipment operator and owner operator, in each such case to the extent such Person is engaged to perform work on such Segment to secure, appropriate bonds for the construction and completion of construction of such Segment, a faithful performance bond and a bond for the security of laborers and materialmen, each in an amount that is equal to 100% of the contract price for such Segment. If any such bonds for a Segment are provided by such a contractor, subcontractor, vendor, equipment operator or owner operator, the City shall be named as an additional insured on such bonds. Each issuer of any such bond shall be duly authorized to issue such bond in the State. Each such bond shall comply with the provisions of California Government Code Sections 66499.1 and 66499.2.

Section 3.5. Inspection; Completion of Construction. The City shall have primary responsibility for providing inspection of the work of construction of the Segments to insure that the work of construction is accomplished in accordance with the Plans. The City's personnel shall have access to the site of the work of construction at all reasonable times for the purpose of accomplishing such inspection. Upon the completion of the construction of a Segment to the satisfaction of the City's inspectors, NMC Builders shall notify the City and the City Engineer in writing that the construction of such Segment has been completed in accordance with the Plans.

No later than ten days after receiving notification pursuant to Section 2.2(b) or Section 2.2(c) hereof that a Segment was constructed in accordance with the Plans therefor, NMC Builders shall forthwith file or cause to be filed with the San Bernardino County Recorder a Notice of Completion, in form acceptable to the City Engineer, pursuant to the provisions of Section 3093 of the California Civil Code, if applicable. NMC Builders shall furnish to the City a duplicate copy of each such Notice of Completion showing thereon the date of filing with said County Recorder.

Section 3.6. Maintenance of Facilities; Warranties. NMC Builders shall maintain or cause to be maintained each Segment in good and safe condition until the Acceptance Date of the Component of which such Segment is a part. Prior to the Acceptance Date of the Component of which such Segment is a part, NMC Builders shall be responsible for maintaining such Segment or causing such Segment to be maintained in proper operating condition, and shall perform or cause to be performed such maintenance on such Segment as the City Engineer reasonably determines to be necessary. NMC Builders shall provide or cause to be provided a warranty bond, or other appropriate form of warranty, as provided in the Construction Agreement. As of the Acceptance Date of the Component of which a Segment is a part, NMC Builders shall assign or cause to be assigned to the City all of NMC Builders' or the applicable Member's rights in any warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third Persons with respect to such Segment.

Section 3.7. Insurance Requirements. NMC Builders shall, at all times prior to the final Acceptance Date of all Segments, maintain, deliver to the City and keep in full force and effect, the following insurance policies, cause the same to be so maintained, delivered and kept in full force and effect or, pursuant to Section 3.3(f) hereof, shall cause each contractor, subcontractor, vendor, equipment operator and owner operator, in each such case to the extent

such Person is engaged to perform work on a Segment, to so maintain, deliver and keep the same in full force and effect:

(a) a protective liability policy providing for not less than the following amounts:

Bodily Injury	\$1,000,000 each person \$2,000,000 each occurrence \$1,000,000 each accident for products and completed operations
Property Damage	\$1,000,000 each accident
Workers' Compensation	Statutory, with a waiver of subrogation in favor of the City

(b) Automobile Liability Insurance to include all owned, non-owned or non-hired vehicles, including loading and unloading thereof:

Automobile Bodily Injury	\$1,000,000 each person \$2,000,000 each occurrence
Automobile Property Damage	\$1,000,000 each accident

All liability insurance policies shall bear an endorsement or shall have attached a rider whereby it is provided that, in the event of expiration or proposed cancellation of such policies for any reason whatsoever, the City shall be notified by registered mail, return receipt requested, giving a sufficient time before the date thereof to comply with any applicable law or statute, but in no event less than 30 days before expiration or cancellation is effective.

The following statement shall be included on the insurance certificate:

Additional Insured: The insurer agrees that the City, its City Council, and/or all City Council appointed groups, committees, boards and any other City Council appointed body, and/or elective and appointive officers, servants, agents or employees of the City, when acting as such, are additional insureds hereunder, for the acts of the insured, and such insurance shall be primary to any insurance of the City.

NMC Builders may effect or cause to be effected such coverage under blanket insurance policies, provided, however, that (a) such policies are written on a per occurrence basis, (b) such policies comply in all other respects with the provisions of this Section, and (c) the protection afforded the City under any such policy shall be no less than that which would be available under a separate policy relating only to the Segments. All policies of insurance shall be with companies licensed or approved by the California Commissioner of Insurance and rated A-VII or better in the most recent edition of Best's Insurance Guide and shall be issued and delivered in accordance with State law and regulations.

If NMC Builders fails to maintain or cause to be maintained any insurance required hereby, the City may, but shall not be obligated to, procure such insurance and recover the amount of the premiums therefor from NMC Builders or retain such amount from any monies due to NMC Builders under this Acquisition Agreement. The failure of the City to procure any

such insurance shall in no way relieve NMC Builders of any of its obligations under this Acquisition Agreement.

Section 3.8. Ownership of Facilities. Notwithstanding the fact that some or all of the Facilities may be constructed in dedicated street rights-of-way or on property which has been or will be dedicated to the City, the Facilities shall be and remain the property of NMC Builders or such other Person as may be the owner thereof until title thereto is conveyed to and accepted by the City as provided herein and in the Construction Agreement or any applicable Conditions of Approval. Such ownership by NMC Builders or such other Person shall likewise not be affected by any agreement which NMC Builders or any Member may have entered into or may enter into with the City pursuant to the provisions of the Subdivision Map Act, Section 66410 *et seq.* of the California Government Code, and the provisions of this Section and the Construction Agreement or the Conditions of Approval, as applicable, shall control.

ARTICLE IV

REPRESENTATIONS, WARRANTIES AND COVENANTS; INDEMNIFICATION

Section 4.1. Representations and Warranties of NMC Builders. NMC Builders makes the following representations and warranties for the benefit of the City:

(a) *Organization.* NMC Builders represents and warrants that NMC Builders is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California, is authorized to conduct business and is in good standing under the laws of the State, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

(b) *Authority.* NMC Builders represents and warrants that NMC Builders has the power and authority to enter into this Acquisition Agreement, and has taken all action necessary to cause this Acquisition Agreement to be executed and delivered, and this Acquisition Agreement has been duly and validly executed and delivered on behalf of NMC Builders.

(c) *Binding Obligation.* NMC Builders represents and warrants that this Acquisition Agreement is a valid and binding obligation of NMC Builders and is enforceable against NMC Builders in accordance with its terms, subject to bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(d) *Environmental Matters Relating to Segments.* NMC Builders represents and warrants that neither NMC Builders nor any Member, nor any subcontractor, agent or employee of either thereof, has used, generated, manufactured, procured, stored, released, discharged or disposed of (whether accidentally or intentionally) any Hazardous Material on, under or in any Segment or the Related Property of such Segment, or transported (whether accidentally or intentionally) any Hazardous Material to or from such Segment or such Related Property, in violation of any federal, state or local law, ordinance, regulation, rule or decision regulating Hazardous Material.

NMC Builders represents and warrants that, as of the Acceptance Date of each Segment, there will not be present on, under or in such Segment or the Related Property of such Segment, or any portion thereof, any Hazardous Materials, except for (i) any types or amounts that do not require remediation or mitigation under federal, state or local laws, ordinances, regulations, rules or decisions, (ii) those that have been remediated or mitigated in full compliance with applicable federal, state or local laws, ordinances, regulations, rules or decisions, or (iii) those with respect to which ongoing remediation or mitigation is being performed in full compliance with applicable federal, state or local laws, ordinances, regulations, rules or decisions.

NMC Builders represents and warrants that NMC Builders has not received notice of, and, to the best of NMC Builders' knowledge, there is not, any proceeding or formal

inquiry by any governmental authority, body or agency with respect to the presence of Hazardous Materials on, under or in any Segment or the Related Property of such Segment, or any portion thereof, or any structure, fixtures, equipment or other objects thereon, or the migration thereof from or to other property.

Section 4.2. Covenants of NMC Builders. NMC Builders makes the following covenants for the benefit of the City:

(a) *Completion of Segments.* NMC Builders covenants that it will use its reasonable and diligent efforts to do all things which may be lawfully required of it in order to cause the Segments to be completed in accordance with this Acquisition Agreement and the Construction Agreement or Conditions of Approval, as applicable.

(b) *Compliance with Laws.* NMC Builders covenants that, while the Facilities are owned by NMC Builders or required pursuant to this Acquisition Agreement to be maintained by NMC Builders, it will not commit, suffer or permit any of its agents, employees or contractors to commit any act to be done in, upon or to the Facilities in violation in any material respect of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the Property or the Facilities.

(c) *Payment Requests.* NMC Builders covenants that (i) it will not request payment from under this Acquisition Agreement for the acquisition of any improvements that are not part of a Segment, and (ii) it will diligently follow all procedures set forth in this Acquisition Agreement with respect to Payment Requests.

(d) *Financial Records.* Until the Acceptance Date of the last Segment accepted by the City pursuant hereto, NMC Builders covenants to maintain proper books of record and account for the Facilities and all costs related thereto. NMC Builders covenants that such accounting books will be maintained in accordance with generally accepted accounting principles, and will be available for inspection by the City within a reasonable time after the City submits a written request to NMC Builders requesting that such books be made available for inspection.

(e) *Environmental Matters Relating to Segments.* NMC Builders covenants that neither NMC Builders, nor any subcontractor, agent or employee thereof, will use, generate, manufacture, procure, store, release, discharge or dispose of (whether accidentally or intentionally) at any time on or prior to the Acceptance Date of each Segment any Hazardous Material on, under or in such Segment or the Related Property of such Segment, or transport (whether accidentally or intentionally) any Hazardous Material to or from such Segment or such Related Property, in violation of any federal, state or local law, ordinance, regulation, rule or decision regulating Hazardous Material in effect at the time of such use, generation, manufacturing, procurement, storage, release, discharge, disposal or transportation.

(f) *Permits.* NMC Builders covenants that it will obtain or cause to be obtained all governmental or other permits required to proceed with the construction of

the Facilities, and that it will pay all fees relating thereto that are required to be paid, in accordance with the Construction Agreement or the Conditions of Approval, as applicable.

Section 4.3. Covenants of the City. The City makes the following covenants for the benefit of NMC Builders:

(a) *Completion of Segments.* The City covenants that it will use its reasonable and diligent efforts to take all actions which may be lawfully required of it in issuing permits, processing and approving Plans and inspecting the Segments in accordance with this Acquisition Agreement.

(b) *Payment Requests.* The City covenants that it will diligently follow all procedures set forth in this Acquisition Agreement with respect to Payment Requests.

(c) *NMC Acquisition Accounts.* The City covenants to provide NMC Builders, within 30 days following NMC Builders' written request, an accounting of an NMC Acquisition Account, showing the current balance therein and all deposits thereto and disbursements therefrom since the last such accounting. NMC Builders shall not make more than two such written requests with respect to any NMC Acquisition Account in any calendar year.

Section 4.4. Indemnification. NMC Builders agrees to protect, indemnify, defend and hold the City and each Community Facilities District, and its respective officers, employees and agents (the "Indemnified Parties"), and each of them, harmless from and against any and all claims, losses, expenses, suits, actions, decrees, judgments, awards, attorney's fees, and court costs which any Indemnified Party may suffer or which may be sought against or recovered or obtained from any Indemnified Party as a result of or by reason of or arising out of or in consequence of (a) the acquisition, construction, installation or financing of the Facilities, (b) the untruth or inaccuracy of any representation or warranty made by NMC Builders in this Acquisition Agreement or in any certifications delivered by NMC Builders pursuant hereto or in connection with the issuance of any Bonds, (c) the release, threatened release, storage, treatment, transportation or disposal (as such terms are defined in applicable law) of any Hazardous Materials on, under, in, from or to any portion of the Property while such portion of the Property is owned by NMC Builders, a Member or an Affiliate thereof, and (d) any act or omission of NMC Builders or any of its subcontractors, or their respective officers, employees or agents, in connection with the Facilities, including noncompliance with any covenants made by NMC Builders in this Acquisition Agreement. If NMC Builders fails to do so, the Indemnified Party shall have the right, but not the obligation, to defend the same and charge all of the direct or incidental costs of such defense, including any fees or costs, to and recover the same from NMC Builders.

Upon receipt by an Indemnified Party of notice of any claim, loss, expense, suit, action, decree, judgment or award for which NMC Builders is obligated to protect, indemnify, defend and hold such Indemnified Party harmless pursuant to this Section, such Indemnified Party shall promptly notify NMC Builders in writing of such claim, loss, expense, suit, action, decree, judgment or award. Neither NMC Builders nor an Indemnified Party shall, without the other's

written consent, settle, compromise or consent to the entry of judgment with respect to any claim, suit or action for which NMC Builders is obligated to protect, indemnify, defend and hold such Indemnified Party harmless pursuant to this Section.

No indemnification is required to be paid by NMC Builders for any claim, loss or expense (a) arising from the willful misconduct or negligence of an Indemnified Party, or (b) arising from the use or operation of a Segment after the Acceptance Date of the Component of which such Segment is a part, unless such claim, loss or expense results from the defective or improper design, construction or installation of such Segment.

The provisions of this Section shall survive the termination of this Acquisition Agreement.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES; FORCE MAJEURE

Section 5.1. NMC Builders Events of Default. The following shall be NMC Builders Events of Default:

(a) NMC Builders shall voluntarily file for reorganization or other relief under any Federal or state bankruptcy or insolvency law;

(b) NMC Builders shall have any involuntary bankruptcy or insolvency action filed against it, or shall suffer a trustee in bankruptcy or insolvency or receiver to take possession of the assets of NMC Builders, or shall suffer an attachment or levy of execution to be made against its property unless, in any of such cases, such action, possession, attachment or levy shall have been terminated or released within 60 days after the commencement thereof;

(c) except to the extent that NMC Builders' obligation to construct or cause to be constructed the Facilities is excused pursuant to Section 5.5 hereof, NMC Builders shall abandon construction of the Facilities that, as of the time of such abandonment, NMC Builders is required to construct or cause to be constructed in accordance with the Construction Agreement or the Conditions of Approval, as applicable (failure for a period of three consecutive months or failure for two periods of two consecutive months to undertake substantial work related to the construction of the Facilities shall constitute a non-exclusive example of such abandonment);

(d) NMC Builders shall breach any covenant or default in the performance of any obligation under this Acquisition Agreement or the Construction Agreement and such breach or default shall have continued for a period of 60 days after written notice thereof, specifying such breach or default and requiring the same to be remedied, shall have been given to NMC Builders by the City; provided, however, that, if in the reasonable opinion of the City such breach or default can be corrected, but not within such 60 day period, such breach or default shall not constitute an NMC Builders Event of Default if corrective action is instituted by NMC Builders within such 60 day period and NMC Builders thereafter diligently and in good faith cures such breach or default in such extended period of time, or any representation or warranty of NMC Builders set forth herein or in any certifications delivered by NMC Builders hereunder shall prove to have been false or misleading in any material respect when made or deemed made;

(e) NMC Builders shall transfer any of its rights or obligations under this Acquisition Agreement, without the prior written consent of the City as provided in Section 6.3 hereof;

(f) NMC Builders shall have made any material misrepresentation or material omission in any written materials furnished in connection with any preliminary official statement, official statement or bond purchase contract which has not been corrected and is used in connection with the sale of any Bonds;

(g) NMC Builders or any Affiliate of NMC Builders or any permitted assign or successor-in-interest under this Acquisition Agreement shall at any time bring any action, suit, proceeding, inquiry or investigation at law or in equity, before any court, regulatory agency, public board or body which in any way seeks to challenge or overturn a Community Facilities District, the levy of the Special Tax of such Community Facilities District in accordance with the Rate and Method therefor or the validity of the Bonds thereof or the proceedings leading up to their issuance; provided, however, that NMC Builders or any Affiliate of NMC Builders or any permitted assign or successor-in-interest under this Acquisition Agreement that owns any of the Property may bring an action or suit contending that the Special Tax of a Community Facilities District has not been levied in accordance with the methodology contained in the Rate and Method therefor;

(h) NMC Builders shall materially fail to complete or cause to be completed the Facilities as contemplated by this Acquisition Agreement and the Construction Agreement or the Conditions of Approval, as applicable, and such failure shall have continued for a period of 60 days after written notice thereof, specifying such failure and requiring the same to be remedied, shall have been given to NMC Builders by the City; provided, however, that, if in the reasonable opinion of the City such failure can be corrected, but not within such 60 day period, such failure shall not constitute an NMC Builders Event of Default if corrective action is instituted by NMC Builders within such 60 day period and NMC Builders thereafter diligently and in good faith cures such breach or default in such extended period of time; or

(i) NMC Builders or any Affiliate of NMC Builders or any permitted assign or successor-in-interest under this Acquisition Agreement that owns any of the Property on which Special Taxes have been levied shall fail to pay such Special Taxes as and when due and such failure shall have continued for a period of 60 days after written notice thereof, specifying such failure and requiring the same to be remedied, shall have been given to NMC Builders by the City.

Section 5.2. Remedies for NMC Builders Events of Default. (a) If an NMC Builders Event of Default described in subsection (a), (b) or (g) of Section 5.1 hereof occurs, this Acquisition Agreement shall automatically terminate.

(b) If an NMC Builders Event of Default described in subsection (c), (d), (e), (f), (h) or (i) of Section 5.1 hereof occurs and is continuing, the City may terminate this Acquisition Agreement by delivering a written notice of such termination to NMC Builders.

(c) If an NMC Builders Event of Default occurs and is continuing, the City may pursue any other remedy at law or equity available with respect thereto.

(d) If this Acquisition Agreement is terminated pursuant to this Section, the City may, but shall not be obligated to, complete the acquisition, construction and installation of any Segments not theretofore acquired from NMC Builders pursuant hereto, and the City may use all or any portion of the monies in the NMC Acquisition Accounts to pay for such acquisition,

construction and installation. In the event of such termination, NMC Builders shall have no claim or right to any further payment of the Purchase Price of any Segment.

Section 5.3. City Events of Default. The following shall be City Events of Default:

(a) the City shall voluntarily file for reorganization or other relief under any Federal or state bankruptcy or insolvency law;

(b) the City shall have any involuntary bankruptcy or insolvency action filed against it, or shall suffer a trustee in bankruptcy or insolvency or receiver to take possession of the assets of the City, or shall suffer an attachment or levy of execution to be made against its property, in any of such cases, such action, possession, attachment or levy shall have been terminated or released within 60 days after the commencement thereof;

(c) the City shall breach any covenant or default in the performance of any obligation under this Acquisition Agreement and such breach or default shall have continued for a period of 60 days after written notice thereof, specifying such breach or default and requiring the same to be remedied, shall have been given to the City by NMC Builders; provided, however, that, if in the reasonable opinion of NMC Builders such breach or default can be corrected, but not within such 60 day period, such breach or default shall not constitute a City Event of Default if corrective action is instituted by the City within such 60 day period and the City thereafter diligently and in good faith cures such breach or default in such extended period of time, or any representation or warranty of the City set forth herein shall prove to have been false or misleading in any material respect when made; and

(d) the City shall transfer any of its respective rights or obligations under this Acquisition Agreement without the prior written consent of NMC Builders as provided in Section 6.3 hereof;

Section 5.4. Remedies for City Events of Default. (a) If a City Event of Default occurs and is continuing, NMC Builders may terminate this Acquisition Agreement by delivering a written notice of such termination to the City.

(b) If a City Event of Default occurs and is continuing, NMC Builders may pursue any other remedy at law or equity available with respect thereto; provided, however, that the City shall not be liable in damages to NMC Builders. In light of the foregoing, NMC Builders covenants not to sue for or claim any damages for any alleged breach of, or dispute which arises out of, this Acquisition Agreement.

(c) NMC Builders acknowledges that the City would not have entered into this Acquisition Agreement if it were to be liable in damages under or with respect to this Acquisition Agreement. Any and all obligations of the City hereunder shall be payable only from amounts on deposit in the NMC Acquisition Accounts. The City shall have no pecuniary liability under this Acquisition Agreement for any act or omission of the City, except as set forth in this Section.

Section 5.5. Force Majeure. (a) Except as may be specifically provided in this Acquisition Agreement, the performance by the City or NMC Builders of its respective obligations hereunder shall be excused during, and the period of time for performance of its respective obligations hereunder shall be extended for a period of time equal to, any period of delay caused by reason of (i) acts of God or civil commotion, (ii) riots, strikes, picketing or other labor disputes, (iii) shortages of materials or supplies, (iv) damage to work in progress by reason of fire, floods, earthquakes or other casualty, (v) enactment of laws which prevent or preclude compliance by the City or NMC Builders with a material provision of this Acquisition Agreement, (vi) administrative proceedings challenging a Community Facilities District, any Bonds, this Acquisition Agreement, a Payment Request or a Payment Request brought by Persons other than the City or NMC Builders, or any Affiliate thereof, (vii) litigation (including the pendency thereof), brought by Persons other than the City or NMC Builders, or any Affiliate thereof, including, without limitation, litigation challenging a Community Facilities District, the development of the Property, any Bonds, this Acquisition Agreement, a Payment Request, (viii) pendency of initiatives or referenda affecting a Community Facilities District, the development of the Property, the Bonds, this Acquisition Agreement, a Payment Request, or (ix) any other cause beyond the reasonable control of the City or NMC Builders, respectively; provided, however that, as to any party (A) the financial inability of such party itself to perform under this Acquisition Agreement, and (B) the negligence or willful misconduct of such party shall not constitute a permitted delay for purposes of this Section and, provided, further, that any action, omission, or failure to approve a Payment Request, or the imposition of additional requirements or restrictions in connection therewith by the City, caused by NMC Builders' actual failure to comply with applicable laws or regulations or the provisions of this Acquisition Agreement (other than an actual failure to comply that results from the enactment of laws which prevent or preclude compliance by a party with a material provision of this Acquisition Agreement, administrative proceedings challenging a Community Facilities District, any Bonds, this Acquisition Agreement, a Payment Request, litigation brought by persons other than a party, or an Affiliate of a party, including without limitation, litigation challenging a Community Facilities District, the development of the Property, any Bonds, this Acquisition Agreement, a Payment Request, or initiative or referenda affecting a Community Facilities District, the development of the Property, any Bonds, this Acquisition Agreement, a Payment Request), shall not constitute a permitted delay for NMC Builders for purposes of this Section.

(b) If the City or NMC Builders shall claim that performance of its respective obligations hereunder is excused by a permitted delay pursuant to this Section, such party shall give the other party hereto written notice of the commencement of such permitted delay within 30 days after first gaining knowledge of such permitted delay.

(c) If the City or NMC Builders shall claim that performance of its respective obligations hereunder is excused by a permitted delay pursuant to this Section, such party's performance shall only be excused during, and the period of time for performance of its obligations hereunder shall only be extended for a period of time equal to, the period of time for which the cause of such permitted delay is in effect and is actually causing a delay in performance by such party of its obligations hereunder.

(d) The City and NMC Builders shall act diligently and in good faith to avoid foreseeable delays in performance and to remove the cause of any permitted delay under this

Section or develop a reasonable alternative means of performance of its respective obligations hereunder.

ARTICLE VI

MISCELLANEOUS

Section 6.1. NMC Builders as Independent Contractor. The City and NMC Builders hereby acknowledge and agree that NMC Builders, in performing its obligations under this Acquisition Agreement, is acting as an independent contractor, and not an agent of the City. The City shall not have any responsibility for payment to any contractor, subcontractor or supplier of NMC Builders.

Section 6.2. Other Agreements. The City and NMC Builders acknowledge that (a) this Acquisition Agreement is entered into in connection with the Construction Agreement, and (b) this Acquisition Agreement provides a financing mechanism for certain of the Facilities constructed pursuant to the Construction Agreement. Nothing contained herein shall be construed as affecting the City's, NMC Builders' or any Member's respective duty to perform its respective obligations under other agreements, land use regulations or subdivision requirements relating to the development of the Property, which obligations are and shall remain independent of NMC Builders' rights and obligations, and the City's rights and obligations, under this Acquisition Agreement; provided, however, that NMC Builders shall use its reasonable and diligent efforts to perform, and to cause each Member to perform, each and every covenant to be performed by it under any lien or encumbrance, instrument, declaration, covenant, condition, restriction, license, order, or other agreement, the nonperformance of which could reasonably be expected to materially and adversely affect the acquisition, construction and installation of the Segments. If there shall be any conflict between the terms of this Acquisition Agreement and the terms of the Memorandum of Agreement, dated as of July 21, 2015, by and between the City and NMC Builders, as originally executed or as the same may amended from time to time in accordance with its terms, the terms of this Acquisition Agreement shall prevail.

Section 6.3. Binding on Successors and Assigns. Neither this Acquisition Agreement nor the duties and obligations of NMC Builders hereunder may be assigned to any Person without the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Neither this Acquisition Agreement nor the duties and obligations of the City hereunder may be assigned to any Person, without the written consent of NMC Builders, which consent shall not be unreasonably withheld, conditioned or delayed. The agreements and covenants included herein shall be binding on and inure to the benefit of any partners, permitted assigns, and successors-in-interest of the parties hereto.

Section 6.4. Amendments. This Acquisition Agreement may be amended by an instrument in writing executed and delivered by the City and NMC Builders.

Section 6.5. Waivers. No waiver of, or consent with respect to, any provision of this Acquisition Agreement by a party hereto shall in any event be effective unless the same shall be in writing and signed by such party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 6.6. Third-Party Beneficiaries. Each Member is and, upon the establishment thereof, each Community Facilities District shall be, a third-party beneficiary of this Acquisition

Agreement. Nothing in this Acquisition Agreement (either express or implied) is intended to confer upon any person or entity, other than the City, NMC Builders, the Members and such Community Facilities Districts (and their respective successors and assigns), any rights, remedies, obligations or liabilities under or by reason of this Acquisition Agreement.

Section 6.7. Notices. Any written notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication to be given hereunder shall be given to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other party in writing from time to time, namely:

City: City of Ontario
303 East “B” Street
Ontario, California 91764
Attention: Executive Director of Finance

NMC Builders: NMC Builders, LLC
c/o SC Ontario Development Corporation
1156 North Mountain Avenue
Upland, California 91786
Attention: Administrative Member

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the party to whom it is addressed (a) if given by courier or delivery service or if personally served or delivered, upon delivery, (b) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, (c) if given by electronic mail, on the date sent, but only if confirmation of the receipt of such electronic mail is received or if notice is concurrently sent by another means specified herein, and (d) if given by any other means, upon delivery at the address specified in this Section.

Section 6.8. Attorneys’ Fees. If any action is instituted to interpret or enforce any of the provisions of this Acquisition Agreement, the party prevailing in such action shall be entitled to recover from the other party thereto reasonable attorney’s fees and costs of such suit (including both prejudgment and postjudgment fees and costs) as determined by the court as part of the judgment.

Section 6.9. Jurisdiction and Venue. Each of the City and NMC Builders (a) agrees that any suit, action or other legal proceeding arising out of or relating to this Acquisition Agreement shall be brought in a state or local court in the County of San Bernardino or in the Courts of the United States of America in the district in which said county is located, (b) consents to the jurisdiction of each such court in any such suit, action or proceeding, and (c) waives any objection that it may have to the laying of venue of any suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. Each of the City and NMC Builders agrees that a final and non-appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 6.10. Usage of Words. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

Section 6.11. Governing Law. This Acquisition Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State.

Section 6.12. Effective Date. This Acquisition Agreement has been dated for convenience purposes only. Notwithstanding the stated date of this Acquisition Agreement, this Acquisition Agreement shall be effective on the Effective Date.

Section 6.13. Counterparts. This Acquisition Agreement may be executed in counterparts, each of which shall be deemed an original.

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

CITY OF ONTARIO

By: _____

NMC BUILDERS, LLC, a California
limited liability company

By: SC Ontario Development Company
LLC, its Administrative Member

By: _____

EXHIBIT A

FACILITIES

Water and Recycled Water System Facilities			
Segment No.	DIF Program Project No.	Component	Segment
WT-1	WT-007	Water Wells - Design and Construction of 7 Water wells to serve the Francis Water Zone	Water Well - Design and Construction of 1 Water well to serve the Francis Water Zone
WT-2	WT-007	Water Wells - Design and Construction of 7 Water wells to serve the Francis Water Zone	Water Well - Design and Construction of 1 Water well to serve the Francis Water Zone
WT-3	WT-009	Phillips Street Zone Master Planned Pipelines	Completed Edenglen Portion of Phillips Zone Master Planned Pipelines in Mill Creek and Chino Avenues
WT-4	WT-010	Francis Street Zone Master Planned Pipelines	Francis Zone Transmission Lines - Milliken Transmission Lines (From 925 Zone Reservoir to Riverside Drive)
WT-5	WT-013	Three Pressure Reducing Stations (Potable Water System 925' to 1010' Zone)	Pressure Reducing Stations 925 to 1010 Zone - Two Pressure Reducing Stations
WT-6	WT-014	Francis Zone Water Reservoirs	One 6 MG Water Reservoir and Site Acquisition and Improvements
WT-7	WT-015	Phillips Zone Water Reservoirs	One 9 MG Water Reservoir and Site acquisition and improvements
WT-8	WT-016	NMC Recycled Water System	4,700 linear feet of Recycled Water System Master Planned Pipelines
WT-9	WT-017	Back up - Power Supply Equipment for Water Wells	Back-up Power Supply for One Water Well
WT-10	WT-029	Ontario-JCSD Water Supply Interconnection Facilities	Ontario-JCSD Water Supply Interconnection Facilities
WT-11	WT-030	Chino Desalter Authority Facility Modifications	Booster Station Modifications Escrow Account
WT-12	WT-031	Joint Ontario-JCSD Reservoir	Joint Ontario-JCSD Reservoir- Completed
WT-13	WT-033	Milliken Transmission Main	Milliken Transmission Mains - Phillips Zone

Water and Recycled Water System Facilities			
Segment No.	DIF Program Project No.	Component	Segment
WT-14	WT-007	Water Wells - Design and Construction of 7 Water wells to serve the Francis Water Zone	Water Well - Completion of Design and Construction Well No. 43 an existing, non-functioning water well to serve the Francis Water Zone
WT-15	WT-010	Francis Zone Extension Transmission Lines	Francis Zone Water Loop - Milliken Transmission Line - Francis Zone; From Riverside Avenue to Eucalyptus Avenue
WT-16	WT-010	Francis Zone Extension Transmission Lines	Francis Zone Water Loop - Transmission line in Eucalyptus from Milliken Avenue to Archibald Avenue
WT-17	WT-010	Francis Zone Extension Transmission Lines	Francis Zone Water Loop - Transmission line in Archibald from Eucalyptus Avenue to Schaefer Avenue
WT-18	WT-016	NMC Recycled Water System	Recycled Water System Master Planned pipelines from RP-1 to Riverside Drive
WT-19	WT-016	NMC Recycled Water System	Recycled Water System Master Planned pipelines in Riverside Drive from CC Channel to Archibald Avenue
WT-20	WT-016	NMC Recycled Water System	Recycled Water System Master Planned pipelines in Riverside Drive from Archibald Avenue to Haven Avenue
WT-21	WT-016	NMC Recycled Water System	Recycled Water System Master Planned pipelines in Archibald Avenue from Riverside Drive to Merrill Avenue
WT-22	WT-016	NMC Recycled Water System	Recycled Water System Master Planned pipelines in Edison Avenue from Milliken Avenue to Haven Avenue
WT-23	WT-016	NMC Recycled Water System	Recycled Water System Master Planned pipelines in Edison Avenue from connection at Archibald Avenue to BrookCal New Haven Phase 1 Project limits - 3,024 linear feet
WT-24	WT-016	NMC Recycled Water System	Recycled Water System Master Planned pipelines in Archibald Avenue from Eucalyptus Avenue to SL Ontario Project limits
WT-25	WT-009	Phillips Street Zone Master Planned Pipelines	Water Main in Chino Avenue from Haven Avenue to Archibald Avenue
WT-26	WT-009	Phillips Street Zone Master Planned Pipelines	Water Main in Haven Avenue From Chino Avenue to Riverside Drive

Water and Recycled Water System Facilities			
Segment No.	DIF Program Project No.	Component	Segment
WT-27	WT-011	Francis Zone Extension Distribution Lines	Francis Street 925' Zone Distribution Mains - Various locations in NMC East -Designed by NMC Builders and constructed by others
WT-28	WT-009	Phillips Street 1010' Zone Extension Mains	1010 Zone 18-inch Water Main in Riverside Drive From Mill Creek Ave to Haven Ave
WT-29	WT-010	Francis Zone Extension Transmission Lines	Water Main in Chino Avenue from Archibald Avenue to Cucamonga Creek Channel
WT-30	WT-016	NMC Recycled Water System	Recycled Water System Master Planned pipelines in Chino Avenue from Archibald to CC Channel
WT-31	WT-011	Francis Zone Extension Distribution Lines	Water Main in Edison Avenue from Archibald to Haven Avenue
WT-32	WT-011	Francis Zone Extension Distribution Lines	Water Main in Haven from Edison Avenue to Schaefer Avenue
WT-33	WT-011	Francis Zone Extension Distribution Lines	Water Main in Haven from Edison Avenue to BrookCal New Haven South Project Limit
WT-34	WT-016	NMC Recycled Water System	Recycled Water System Master Planned Pipelines in Schaefer from Haven Avenue to Archibald Avenue
WT-35	WT-016	NMC Recycled Water System	Recycled Water Main in Schaefer from Haven to Phase 1 BrookCal-New Haven Phase 1 limits
WT-36	WT-016	NMC Recycled Water System	Recycled Water System Master Planned pipelines in Haven from Edison to Schaefer
WT-37	WT-016	NMC Recycled Water System	Recycled Water System Master Planned pipelines in Haven from Schaefer to Chino Avenue Pressure Reduction Station
WT-38	WT-016	NMC Recycled Water System	Recycled Water System Master Planned pipelines in Haven Avenue from Edison Avenue to South BrookCal-New Haven Project Limit
WT-39	WT-016	NMC Recycled Water System	Recycled Water System Master Planned pipelines in Haven from Riverside Drive to Chino Avenue and Pressure Reduction Station
WT-40	WT-011	Francis Zone Extension Distribution Lines	Water Main in Schaefer Avenue from Haven to BrookCal New Haven Phase 1 limits
WT-41	WT-011	Francis Zone Extension Distribution Lines	Water Main in Schaefer Avenue from BrookCal New Haven Phase 1 limits to Archibald Avenue
WT-42	WT-016	NMC Recycled Water System	Recycled Water System Master Planned pipelines various Streets within NMC East - Designed by NMC Builders

Sewer System Facilities			
Segment No.	DIF Program Project No.	Component	Segment
SW-1	SW-001	Eastern Trunk Sewer	Eastern Trunk Sewer in Archibald Avenue from Riverside Drive to City limits
SW-2	SW-004	Edison Trunk Sewer	Sewer line in Edison Avenue from Haven Avenue to Archibald (Eastern Trunk Sewer)
SW-3	SW-005	Haven Trunk Sewer	Sewer line in Haven Avenue from Haven Avenue pump station to Edison Trunk Sewer
SW-4	SW-006	Mill Creek Trunk Sewer	Sewerline in Mill Creek from Chino Avenue to Bellegrave/Merrill Avenue
SW-5	SW-029	Carpenter Trunk Sewer	Sewerline in Carpenter Avenue from Schaefer Avenue to Merrill Avenue

Streets and Traffic Circulation System Facilities			
Segment No.	DIF Program Project No.	Component	Segment
ST-1	ST-006	Mill Creek Avenue from Riverside to Bellegrave	Completed Edenglen Portion of Improvements to Mill Creek -Riverside to Bellegrave
ST-2	ST-019	Riverside Drive from Euclid to Milliken	Completed Edenglen Portion of Improvements on Riverside Drive - from Mill Creek to Edison Easement
ST-3	ST-024	NMC Traffic Control System	Completed Edenglen Portion of Modification of 1 Signal
ST-4	ST-025	SCE/Socalf Right of Way and required Street Frontage	Right of Way acquisitions funded by NMC Builders
ST-5	ST-001	Archibald Avenue from Riverside Drive to Edison	Archibald Avenue from Chino Avenue to Edison Avenue (2 lanes each direction and raised center median)
ST-6	ST-002	Archibald Avenue from Edison to south City Limits	Archibald Avenue from Edison Avenue to south City limits (2 lanes each direction and raised center median)
ST-7	ST-002	Archibald Avenue from Edison to south City Limits	Remaining lanes of Archibald Avenue from north Phase I limit to southern City limits

Streets and Traffic Circulation System Facilities			
Segment No.	DIF Program Project No.	Component	Segment
ST-8	ST-009	Edison Avenue from Vineyard to Mill Creek	Edison Avenue (2 lanes each direction and raised center median) from CC Channel Bridge to Mill Creek Avenue
ST-9	ST-010	Edison Avenue from Mill Creek to Milliken	Edison Avenue (2 lanes each direction and raised center median) from Mill Creek to Milliken Avenue
ST-10	ST-123	Edison Avenue Bridge over CC	One half of Bridge over CC Channel at Edison Avenue
ST-11	ST-024	NMC Traffic Control System	Construction of 7 Signalized Intersections and modification of 2 Signalized Intersections:
ST-12	ST-011	Eucalyptus Avenue from Euclid to Milliken	Full Width Improvements on Eucalyptus Avenue from Archibald to easterly limit of Richland Subarea 29 Project area
ST-13	ST-024	NMC Traffic Control System	Signalized Intersection of Eucalyptus Avenue and Archibald Avenues
ST-14	ST-119	Riverside Drive Bridge over Cucamonga Creek Channel	Improvements and Widening of Riverside Drive Bridge over Cucamonga Creek Channel
ST-15	ST-120	Chino Avenue Bridge over Cucamonga Creek Channel	Construction of half of required Bridge Improvements for Chino Avenue Bridge over the Cucamonga Creek Channel
ST-16	ST-003	Merrill/Bellegrave Avenue, Archibald Avenue to Milliken Avenue	Remaining lanes of Merrill Avenue (1 westbound lane and shoulder) from easterly SL Ontario Phase I limits to Haven Avenue and Merrill/Bellegrave Avenue from Haven Avenue to Milliken Avenue
ST-17	ST-006	Mill Creek Avenue from Riverside to Bellegrave	Mill Creek Avenue Street Improvements from Esperanza Project Limits south to Bellegrave Avenue
ST-18	ST-001	Archibald Avenue from Riverside Drive to Eucalyptus	Remaining lanes of Archibald Avenue from Riverside Drive to Edison Avenue

Streets and Traffic Circulation System Facilities			
Segment No.	DIF Program Project No.	Component	Segment
ST-19	ST-014	Haven Avenue from Riverside to Bellegrave	Haven Avenue Street Improvements from Riverside Avenue to Schaefer Avenue and from South Project Limits of BrookCal New Haven Phase 4F to Bellegrave/Merrill Avenue
ST-20	ST-014	Haven Avenue from Riverside to Bellegrave	Haven Avenue Street Improvements - From Edison Avenue to Schaefer Avenue - 1 lane on West side, raised median and 1 lane with paved shoulder on East Side
ST-21	ST-014	Haven Avenue from Riverside to Bellegrave	Haven Avenue Street Improvements - From Edison Avenue to south BrookCal New Haven project limits - Full width improvements (2 lanes) on West side, raised median and 1 lane with paved shoulder on East Side
ST-22	ST-010	Edison Avenue from Mill Creek to Milliken	Remaining lanes of Edison Avenue from Mill Creek to Milliken Avenue
ST-23	ST-015	Merrill Avenue from Euclid to Archibald	Merrill Avenue Street Improvements from Hellman to Archibald Avenue (excluding bridge improvements)
ST-24	ST-020	Schaefer Avenue from Euclid to Haven	Schaefer Avenue Street Improvements from Hellman Avenue to Western BrookCal New Haven Phase 1 Project limits
ST-25	ST-020	Schaefer Avenue from Euclid to Haven	Schaefer Avenue Street Improvements - From Haven Avenue to western Phase 1 limits - Full width improvements both sides - 2 lanes each direction with painted median
ST-26	ST-020	Schaefer Avenue from Euclid Avenue to Haven Avenue	Schaefer Avenue Street Improvements - From BrookCal New Haven western Phase 1 limit to BrookCal New Haven western Phase 2 limits - Full width improvements both sides - 2 lanes each direction with painted median
ST-27	ST-124	Eucalyptus Avenue Bridge over Cucamonga Creek Channel	Portion of Eucalyptus Avenue Bridge over Cucamonga Creek Channel
ST-28	ST-124	Eucalyptus Avenue Bridge over Cucamonga Creek Channel	Portion of Eucalyptus Avenue Bridge over Cucamonga Creek Channel

Streets and Traffic Circulation System Facilities			
Segment No.	DIF Program Project No.	Component	Segment
ST-29	ST-005	Chino Avenue from Euclid Avenue to Milliken Avenue	Chino Avenue Street Improvements from Hellman Avenue to Archibald Avenue and from west of Haven Avenue to Mill Creek Avenue
ST-30	ST-009	Edison Avenue from Vineyard to Mill Creek	Remaining lanes of Edison Avenue from Vineyard Avenue to Mill Creek Avenue
ST-31	ST-011	Eucalyptus Avenue from Euclid to Milliken	Remaining lanes and extension of Eucalyptus Avenue Street Improvements from Carpenter Avenue to Archibald Avenue and from Archibald to Milliken Avenue
ST-32	ST-018	Hellman Avenue from Riverside to Merrill Avenue (was Bellegrave)	Hellman Avenue Street Improvements from Riverside Drive to Merrill Avenue
ST-33	ST-121	Schaefer Avenue Bridge over Cucamonga Creek Channel	Construction of portion of Bridge Improvements for Schaefer Avenue Bridge over the Cucamonga Creek Channel
ST-34	ST-121	Schaefer Avenue Bridge over Cucamonga Creek Channel	Construction of portion of Bridge Improvements for Schaefer Avenue Bridge over the Cucamonga Creek Channel
ST-35	ST-122	Schaefer Avenue Bridge over Cucamonga Creek Spillway	Construction of portion of Bridge Improvements for Schaefer Avenue Bridge over the Cucamonga Creek Spillway
ST-36	ST-122	Schaefer Avenue Bridge over Cucamonga Creek Spillway	Construction of portion of Bridge Improvements for Schaefer Avenue Bridge over the Cucamonga Creek Spillway
ST-37	ST-125	Merrill Avenue Bridge over Cucamonga Creek Channel	Construction of portion of Bridge Improvements for Merrill Avenue Bridge over the Cucamonga Creek Spillway
ST-38	ST-125	Merrill Avenue Bridge over Cucamonga Creek Channel	Construction of portion of Bridge Improvements for Merrill Avenue Bridge over the Cucamonga Creek Spillway
ST-39	ST-016	Milliken Avenue from Riverside to Edison	Milliken Avenue Street Improvements from Riverside to Edison Avenue

Streets and Traffic Circulation System Facilities			
Segment No.	DIF Program Project No.	Component	Segment
ST-40	ST-017	Milliken Avenue from Edison to Bellegrave	Milliken Avenue Street Improvements from Edison Avenue to Bellegrave Avenue
ST-41	ST-019	Riverside Drive from Euclid to Milliken	Riverside Drive Improvements from Hellman to Mill Creek Avenue
ST-42	ST-025	SCE/Socalf Right of Way and required Street Frontage and SCE Pole Relocations	Right of Way acquisitions and Street frontage improvements on SCE and other public-owned property within the NMC East area and SCE Pole relocations on DIF Program Streets
ST-43	ST-025	SCE/Socalf Right of Way and required Street Frontage and SCE Pole Relocations	Relocation of 1 SCE Pole
ST-44	ST-025	SCE/Socalf Right of Way and required Street Frontage and SCE Pole Relocations	SCE Pole Relocations on Edison and Archibald Avenues - 55 total
ST-45	ST-117	NMC Street/Trails Grade Separations	NMC Street/Trails Grade Separations in NMC East Area
ST-46	ST-117	NMC Street/Trails Grade Separations	NMC Street/Trails Grade Separations - Trails on Edison and Schaefer Avenue at intersections
ST-47	ST-123	Edison Avenue Bridge over Cucamonga Creek Channel	Remainder of Edison Avenue Bridge over Cucamonga Creek Channel
ST-48	ST-024	NMC Traffic Control System	Signalized Intersection - 3 way at Haven and Schaefer Avenues
ST-49	ST-024	NMC Traffic Control System	Remainder of Signalized Intersections; Signal Modifications; and Various Signalized Intersection Improvements on DIF Program Streets in the Eastern portion of Ontario Ranch
ST-50	Last Lane	Archibald Avenue from Park View Avenue to south City Limits	Eastern Curb Adjacent Lane with Curb, Gutter, Sidewalk and Street lighting Improvements on Archibald Avenue along project limits (3,020 LF- Per LF cost of \$278.71)
ST-51	Last Lane	Edison Avenue from Haven Avenue to Turner Avenue	Curb Adjacent Lanes including curb, gutter, sidewalk and street lighting improvements on Edison Avenue along BrookCal New Haven Project limits

Streets and Traffic Circulation System Facilities			
Segment No.	DIF Program Project No.	Component	Segment
ST-52	Last Lane	Haven Avenue from Schaefer Avenue to Edison Avenue	Curb Adjacent Lane on Haven Avenue along BrookCal New Haven Phase 1 Project limits
ST-53	Last Lane	Haven Avenue from Edison Avenue south New Haven Phase 4 Project limits	Curb Adjacent Lane on Archibald Avenue along project limit of BrookCal New Haven Phase 4F
ST-54	Last Lane	Schaefer Avenue from Haven Avenue to western limit of phase 1	Curb Adjacent Lanes on Schaefer Avenue along BrookCal New Haven Phase 1 Project limits
ST-55	Last Lane	Schaefer Avenue from western limit of phase 1 to western limit of phase 2	Curb Adjacent Lanes on Schaefer Avenue along BrookCal New Haven Phase 2 Project Limits
ST-56	Last Lane	Schaefer Avenue Frontage adjacent to Lennar Project and Phase 1 of BrookCal New Haven Project	Curb Adjacent Lane on Schaefer Avenue, including curb, gutter, sidewalk and street lighting adjacent to Lennar Project and Phase 1 of BrookCal New Haven Project
ST-57	Last Lane	Schaefer Avenue Frontage adjacent to Stratham West Haven Project and Phase 1 of BrookCal New Haven Project	Curb Adjacent Lane on Schaefer Avenue, including curb, gutter, sidewalk and street lighting adjacent to Stratham West Haven Project and Phase 1 of BrookCal New Haven Project
ST-58	Last Lane	Remaining Last Lane Improvements to be constructed by NMC Builders and NMC Builders Members on Street Segments included in the City's DIF Program	Curb Adjacent Lanes, including curb, gutter, sidewalk and street lighting on DIF Program Street Segments
ST-59	Parkway	Archibald Avenue East side Parkway from Parkview Avenue to south City Limits	Neighborhood edge landscaping and related public improvements on Archibald Avenue from Park View Avenue to south City Limits (3,020LF – Per LF cost of \$351.06 which includes Parkway & Neighborhood Edge Landscape totaling 45' of Landscape)
ST-60	Parkway	Haven Avenue from Schaefer Avenue to Edison Avenue	Neighborhood edge landscaping and public improvements

Streets and Traffic Circulation System Facilities			
Segment No.	DIF Program Project No.	Component	Segment
ST-61	Parkway	Edison Avenue from Haven Avenue to Turner Avenue	Neighborhood edge landscaping and public improvements
ST-62	Parkway	Remaining Parkway Improvements to be constructed by NMC Builders and NMC Builders Members on Street Segments included in the City's DIF Program	Neighborhood edge landscaping and public improvements in the public ROW on DIF Program Street Segments

Storm Drain Collection System Facilities			
Segment No.	DIF Program Project No.	Component	Segment
SD-1	SD-004	County Line Channel in Bellegrave Avenue	County Line Channel along Bellegrave Avenue from Cucamonga Channel to Milliken Avenue
SD-2	SD-032	Mill Creek, Riverside Ave to County Line Channel	Completed Portion of Storm Drain along Mill Creek from - Riverside Drive to Chino Avenue
SD-3	SD-021	Storm Drain in Archibald Avenue, from Schaefer Avenue to County line Channel	Storm Drain along Archibald Avenue, from Schaefer Avenue to County line Channel (Bellegrave Avenue)
SD-4	SD-023	Storm Drain in Edison Ave., Archibald Avenue to 2500' East of Archibald Avenue	Storm Drain along Edison Ave., from Archibald Avenue to 2500' East of Archibald Avenue
SD-5	SD-026	Lateral Storm Drains in Edison Avenue; Merrill Avenue and North of Eucalyptus Avenue to Storm Drain in Turner Avenue	Storm Drain system (Laterals) west of Turner Avenue between Schaefer and Bellegrave Avenue (Storm Drain Master Plan designation as Laterals x-4)
SD-6	SD-028	Lateral Storm Drain in Edison Ave., from east of Haven Avenue to Haven Avenue Mill Creek Avenue - HAVn x-3	Lateral Storm Drain along Edison Ave., from Haven Avenue to 1,000 feet east of Haven Avenue -(Storm Drain Master Plan designation as HAVn x-3)

Storm Drain Collection System Facilities			
Segment No.	DIF Program Project No.	Component	Segment
SD-7	SD-035	Lateral Storm Drain in Edison Avenue to Mill Creek Avenue Storm Drain (MLCR-X-4)	Lateral Storm Drain along Edison Avenue from Mill Creek Avenue to 1,700 feet east of Mill Creek Avenue and 1,000 west of Mill Creek Avenue to Mill Creek Avenue (Storm Drain Master Plan designation as MLCR-X-4)
SD-8	SD-039	Lateral Storm Drain in Edison from west of Archibald Avenue to Cucamonga Creek	Lateral Storm Drain in Edison from west of Archibald Avenue to Cucamonga Creek
SD-9	SD-051	Offsite Walker Avenue Storm Drain and Treatment Basins	Mill Creek Wetlands - Phase 1A and 1B
SD-10	SD-025	Turner, South of Riverside to County line Channel - Trnr-X-1	Portion of Storm Drain through Park Place Phase I area (extension of Turner Avenue Storm Drain) from Merrill Avenue to County line Channel
SD-11	SD-025	Turner, South of Riverside to County line Channel - Trnr-X-1	Portion of Storm Drain through Park Place Phase II area (extension of Turner Avenue Storm Drain) from Park View Avenue to Merrill Avenue
SD-12	SD-025	Turner, South of Riverside to County line Channel - Trnr-X-1	Turner Storm Drain in Turner Avenue from Eucalyptus Avenue to Edison Avenue
SD-13	SD-025	Turner, South of Riverside to County line Channel - Trnr-X-1	Turner Storm Drain in Turner Avenue from Edison Avenue to Schaefer Avenue
SD-14	SD-025	Turner, South of Riverside to County line Channel - Trnr-X-1	Turner Storm Drain in Schaefer Avenue from Turner Avenue east and north to Riverside Drive
SD-15	SD-025	Turner, South of Riverside to County line Channel - Trnr-X-1	Portion of Storm Drain through Park Place Phase III area (extension of Turner Avenue Storm Drain) from Park View Avenue to Merrill Avenue
SD-16	SD-032	Mill Creek, Riverside Avenue to County Line Channel	Remainder of Mill Creek Storm Drain from Chino Avenue south to Bellegrave (Countyline Channel)
SD-17	SD-033	Eucalyptus Avenue Storm Drain Between Mill Creek and Milliken Avenues	2,300 linear feet of Storm Drain along Eucalyptus Avenue from Mill Creek Avenue to 2,300 feet east of Mill Creek Avenue

Storm Drain Collection System Facilities			
Segment No.	DIF Program Project No.	Component	Segment
SD-18	SD-034	Eucalyptus Avenue between Haven Avenue and Mill Creek Avenue	1,360 linear feet of Storm Drain along Eucalyptus Avenue from 1,360 feet west of Mill Creek Avenue to Mill Creek Avenue
SD-19	SD-027	Haven, Riverside to County line Channel - HAVN X-1	Haven Storm Drain from County line Channel north to Eucalyptus Avenue
SD-20	SD-048	Chino; Cucamonga Creek to north of Chino Avenue	Storm Drain in Chino Avenue and north of Chino Avenue
SD-21	SD-027	Haven, Riverside to County line Channel - HAVN X-1	Haven Storm Drain from Riverside Drive to Chino Avenue and from Chino Avenue south to Eucalyptus Avenue
SD-22	SD-029	Haven Avenue Laterals E/O Haven Avenue and N/O Schaefer Avenue (Haven X-3)	Haven Avenue Laterals 4,300 linear feet of Storm Drain north of Schaefer Avenue and east of Haven Avenue (identified as HAVN X-3 in the Storm Drain Master Plan)
SD-23	SD-030	Haven Avenue Lateral in Chino Avenue (HAVN X-4)	720 linear feet of Storm Drain along Chino Avenue from Haven Avenue to 720 feet east of Chino Avenue (identified in the Storm Drain Master Plan as HAVN X-4)
SD-24	SD-037	Hellman Avenue, Schaefer to Edison and Laterals (HLMN-XI-2b,4,5)	Hellman Avenue, Schaefer to Edison and Laterals
SD-25	SD-039	Edison/Vineyard, Hellman - Edison/Merrill to Cucamonga Creek	Edison/Vineyard to Hellman - Edison/Merrill to Cucamonga Creek
SD-26	SD-040	Eucalyptus Ave. Hellman to Cucamonga Creek	Storm Drain in Eucalyptus Avenue from west of Hellman to Cucamonga Creek
SD-27	SD-045	Eucalyptus Ave. Cucamonga Channel to West of Archibald Avenue	Storm Drain in Eucalyptus Avenue from west of Archibald Avenue to Cucamonga Creek
SD-28	SD-046	Edison Avenue Laterals east of Cucamonga Channel	Storm Drain along Edison Avenue north of Edison Avenue east of Cucamonga Creek Channel (identified as EDSN-X-1 in the Storm Drain Master Plan)
SD-29	SD-049	Milliken Avenue Storm Drain from Riverside Drive to County line Channel	Storm Drain in Milliken Avenue from Riverside Drive to Countyline Channel
SD-30	SD-036	Schaefer Avenue between Mill Creek Avenue and Milliken Avenue (MLCR X-6)	1,600 linear feet of Storm Drain along Schaefer Avenue from Mill Creek Avenue to 1,600 feet east of Mill Creek Avenue (identified in the Storm Drain Master Plan as MLCR X-6)

Storm Drain Collection System Facilities			
Segment No.	DIF Program Project No.	Component	Segment
SD-31	SD-020	Hellman Avenue, Chino to 1,500' N/O Chino (CHIN-XI-2)	Hellman Avenue, Chino to 1,500' N/O Chino

Fiber Optic System Facilities			
Segment No.	DIF Program Project No.	Component	Segment
F-1	FO-02	Core Network	NOC Equipment, Core Electronics, Distribution Electronics, Network Backbone, Labor & Materials
F-2	FO-04	Fiber Optic Distribution Network	Completed Edenglen Portion of Distribution Network in Mill Creek Avenue, and Riverside Drive
F-5	FO-04	Fiber Optic Distribution Network	Construction of Fiber Optic System Distribution Network in NMC East Area
F-6	FO-04	Fiber Optic Distribution Network	Construction of Distribution Network in NMC East area – Remainder of Turner Avenue

Other – Fire Protection Facilities			
Segment No.	DIF Program Project No.	Component	Segment
FR-1	FS-002	Vehicles For Fire Station Number 9	Purchase of 1 Fire Vehicle
FR-2	FS-002	Vehicles For Fire Station Number 9	Early Truck Replacement
FR-3	FS-001	Construct New Station Number 9	Design and Construct Fire Station Number 9; including Site Acquisition costs
FR-4	FS-014	Equipment for Additional Fire Personnel	Equip New Fire Station #9 - 24 additional fire personnel

Other – Library Facilities			
Segment No.	DIF Program Project No.	Component	Segment
L-1	LB-01	Library Expansion	Expansion of Public Library Branch at Colony High School

Other – Public Park Facilities			
Segment No.	DIF Program Project No.	Component	Segment
PK-1	PK-1	NMC East Public Parks	Construction of Phase 1 consisting of 14.00 acres of Great Park in Parkside Specific Plan Area
PK-2	PK-2	NMC East Public Parks	Construction of Phase 2 consisting of 14.00 acres of Great Park in Parkside Specific Plan Area
PK-3	PK-3	NMC East Public Parks	Construction of Phase 3 consisting of 14.00 acres of Great Park in Parkside Specific Plan Area
PK-4	PK-4	NMC East Public Parks	Construction of Phase 4 consisting of 13.00 acres of Great Park in Parkside Specific Plan Area
PK-5	PK-5	NMC East Public Parks	Acquisition of Great Park area - 19.33 acres of Great Park area at the Southwest corner of Haven and Eucalyptus Avenues
PK-6	PK-6	NMC East Public Parks	Acquisition of Great Park area - Parcel 5 of Parcel Map 19560 (RCCD-Ontario-Schaefer LLC) 28.08 acres
PK-7	PK-7	NMC East Public Parks	Acquisition of Great Park area - described as Assessor's Parcel Number 0218-241-22-0-000 (Richland) 19.28 acres
PK-8	PK-8	NMC East Public Parks	Acquisition of Great Park area- remainder of High School site property - approximately 16.5 acres

EXHIBIT B

FORM OF PAYMENT REQUEST

City of Ontario Ontario Ranch Colony

Community Facilities Districts

The City of Ontario (the City”) and NMC Builders, LLC (“NMC Builders”) are parties to the Amended and Restated Acquisition and Funding Agreement, dated as of _____, 2022 (the “Acquisition Agreement”). Capitalized undefined terms use herein shall have the meanings ascribed thereto in the Acquisition Agreement. Pursuant to the Acquisition Agreement, NMC Builders hereby requests confirmation that the Segment described in Attachment A attached hereto (the “Segment”) is [Complete] [Substantially Complete] and hereby further requests approval of the Purchase Price of the Segment. In connection with this Payment Request, NMC Builders hereby represents and warrants to the City as follows:

(a) The person executing this Payment Request on behalf of NMC Builders is an NMC Builders Representative, qualified to execute this Payment Request on behalf of NMC Builders and knowledgeable as to the matters set forth herein.

(b) NMC Builders has submitted or submits herewith to the City Engineer as-built drawings or similar plans and specifications for the Segments for which payment is requested, and such drawings or plans and specifications, as applicable, are true, correct and complete; provided, however, that if such Segment is a Circulation System Segment, and certification is being requested that such Segment is Substantially Complete but not Complete, such drawings or plans and specifications need not be submitted to the City Engineer until certification is being requested that such Segment is Complete.

(c) Each of the Segments described in Attachment A has been constructed in accordance with the Plans therefor, and in accordance with all applicable City standards and the requirements of the Acquisition Agreement, and the as-built drawings or similar Plans and specifications referenced in paragraph 2 above.

(d) The true and correct Actual Cost of each Segment is set forth in Attachment A.

(e) NMC Builders has submitted or submits herewith to the City Engineer invoices, receipts, worksheets and other evidence of costs which are in sufficient detail to allow the City Engineer to verify the Actual Cost of each Segment for which payment is requested.

(f) There are no liens, rights to lien or attachment upon, or claims affecting the right to receive the payment requested herein which has not been released or will not be released simultaneously with the payment of such obligation, other than materialmen’s or mechanics’ liens accruing by operation of law. Copies of lien releases for all work for which payment is requested hereunder are attached hereto.

(g) No NMC Builders Event of Default has occurred and is continuing.

(h) The representations and warranties of NMC Builders set forth in Section 4.1 of the Acquisition Agreement are true and correct on and as of the date hereof with the same force and effect as if made on and as of the date hereof (except that no certification is made with respect to the representations and warranties contained in subsection (d) of said Section 4.1).

(i) As of the date hereof, there is not present on, under or in the Segment or the Related Property of the Segment, or any portion thereof, any Hazardous Materials, except for (i) any types or amounts that do not require remediation or mitigation under federal, state or local laws, ordinances, regulations, rules or decisions, (ii) those that have been remediated or mitigated in full compliance with applicable federal, state or local laws, ordinances, regulations, rules or decisions, (iii) those with respect to which ongoing remediation or mitigation is being performed in full compliance with applicable federal, state or local laws, ordinances, regulations, rules or decisions, or (iv) any types or amounts that do not present a human health risk or hazard to the public.

NMC Builders hereby declares under penalty of perjury that the above representations and warranties are true and correct.

[NMC Builders hereby requests that the Purchase Price be paid to the Person or Persons, in the amounts, set forth in Attachment B hereto.] [NMC Builders hereby requests that such Purchase Price be paid to the Person or Persons, in the amounts, to be set forth in Purchase Price Payment Instructions to be submitted to one or more Trustees as and when amounts become available in one or more NMC Acquisition Accounts to pay such Purchase Price.]

Date:

NMC BUILDERS, LLC

By: _____
Name: _____
Title: _____

CONFIRMATION AND APPROVAL BY THE CITY ENGINEER

[The City Engineer has (a) confirmed that the Segment described in Attachment A is Complete and was constructed in accordance with the Plans therefor, and (b) reviewed, verified and approved the Actual Cost of such Segment described in Attachment A. Such Segment is Complete and the Purchase Price therefor described in Attachment A is eligible for payment to NMC Builders pursuant to the Acquisition Agreement.]

[The City Engineer has (a) confirmed that the Segment described in Attachment A, which is a Circulation System Segment, is Substantially Complete and was constructed in accordance with the Plans therefor, and (b) reviewed, verified and approved the Actual Cost of such Segment described in Attachment A. Such Segment is Substantially Complete and \$_____, an amount equal to 85% of the Purchase Price therefor described in Attachment A, is eligible for payment to NMC Builders pursuant to the Acquisition Agreement.]

[The City Engineer previously confirmed that the Segment described in Attachment A was Substantially Complete, and previously indicated that \$_____, an amount equal to 85% of the Purchase Price therefor described in Attachment A, was eligible for payment to NMC Builders pursuant to the Acquisition Agreement. The City Engineer has (a) now confirmed that such Segment is Complete and was constructed in accordance with the Plans therefor, and (b) reviewed, verified and approved the Actual Cost of such Segment described in Attachment A. Such Segment is Complete and \$_____, an amount equal to the remaining 15% of the Purchase Price therefor described in Attachment A is eligible for payment to NMC Builders pursuant to the Acquisition Agreement.]

Date:

**CITY ENGINEER OF THE CITY OF
ONTARIO**

By: _____

ATTACHMENT A

<u>Segment</u>	<u>Purchase Price*</u>
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ATTACHMENT B

PURCHASE PRICE PAYMENT INSTRUCTIONS

NMC Builders hereby requests that the Purchase Price be paid to the Person or Persons, in the amounts, set forth below:

Payee No. 1: Pay \$_____/__% of the Purchase Price to _____ by wire transfer in accordance with the following instructions:

[Insert wire transfer instructions]

Date:

NMC BUILDERS, LLC

By: _____

Name: _____

Title: _____

**AMENDED AND RESTATED
MEMORANDUM OF AGREEMENT**

by and between

CITY OF ONTARIO

and

NMC BUILDERS, LLC

Dated as of _____, 2022

**City of Ontario
Ontario Ranch
Community Facilities Districts**

AMENDED AND RESTATED MEMORANDUM OF AGREEMENT

THIS AMENDED AND RESTATED MEMORANDUM OF AGREEMENT (this “Agreement”), dated as of _____, 2022, is by and between the CITY OF ONTARIO, a general law city organized and existing under and by virtue of the laws of the State of California (the “City”), and NMC BUILDERS, LLC, a limited liability company organized and existing under the laws of the State of California (“NMC Builders”).

W I T N E S S E T H:

WHEREAS, certain real property within the boundaries of the City located generally south of State Route 60 is commonly known as the New Model Colony;

WHEREAS, the City has approved a General Plan for the New Model Colony (the “General Plan”) and has certified an Environmental Impact Report in connection with the General Plan (the “Environmental Impact Report”);

WHEREAS, the City has specified in the General Plan and the Environmental Impact Report the major backbone transportation, water, sewer, storm drainage, parks and public safety infrastructure required to serve the New Model Colony;

WHEREAS, the New Model Colony is now commonly referred to as Ontario Ranch;

WHEREAS, the members of NMC Builders (the “Members”) own and intend to develop certain of the property within Ontario Ranch;

WHEREAS, in order to provide a mechanism to fund, in a timely manner, the costs of certain of such major backbone infrastructure required to serve Ontario Ranch (the “Facilities”) so that such development may occur, the City has, pursuant to the Mello-Roos Community Facilities Act of 1982 (the “Act”), established, and the City anticipates that it will, pursuant to the Act, establish, community facilities districts, each of which has and will include only property that is within Ontario Ranch and that is subject to a development agreement between the City and a Member (each, a “Community Facilities District”)

WHEREAS, pursuant to the Act, the proceedings of the City Council of the City and an election held within each existing Community Facilities District, each such Community Facilities District is authorized to issue special tax bonds (the “Bonds”) secured by special taxes (“Special Taxes”) levied within such Community Facilities District to finance certain of the Facilities and it is anticipated that, pursuant to the Act, the proceedings of the City Council of the City and an election held within each future Community Facilities District, each such Community Facilities District will be authorized to issue Bonds secured by Special Taxes levied within such Community Facilities District to finance certain of the Facilities;

WHEREAS, from time to time, Bonds have been issued by certain of the existing Community Facilities Districts and it is anticipated that, from time to time, Bonds will be issued by existing and future Community Facilities Districts;

WHEREAS, pursuant to the First Amended and Restated Agreement for Financing and Construction of Limited Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony (the “Construction Agreement”), made as of August 21, 2012, by and between the City and NMC Builders, the City and NMC Builders have agreed that the City shall be the sole and exclusive lead agency in the formation of any community facilities district, assessment district or other public financing mechanism within the Property (as defined in the Construction Agreement); provided however, that the proceeds of any such community facilities district, 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;

WHEREAS, Section 53312.7 of the Act provides that a local agency may initiate proceedings to establish a community facilities district pursuant to the Act only if it has first considered and adopted local goals and policies concerning the use of the Act, which policies must include the statements described in said Section;

WHEREAS, in accordance with Section 53312.7 of the Act, the City has adopted its Mello-Roos Community Facilities Act of 1982 Local Goals and Policies (the “Policies”);

WHEREAS, the Policies include policies regarding project eligibility, priorities for facilities to be financed through the City’s use of the Act and the maximum total tax burden for parcels within community facilities districts established by the City under the Act;

WHEREAS, the Policies provide that the City may, in its discretion and to the extent provided by law, waive any of the policies set forth in the Policies in particular cases;

WHEREAS, pursuant to the Memorandum of Agreement, dated as of July 21, 2015 (the “Original Agreement”), by and between the City and NMC Builders, the City and NMC Builders set forth their mutual understanding and agreement as to how certain of the policies in the Policies were to be applied to the Community Facilities Districts, the order of priority in which proceeds of the Special Taxes and Bonds were to be applied to the costs of the Facilities and certain other matters;

WHEREAS, subsequent to the date of the Original Agreement, the City and NMC have had ongoing discussions regarding how certain of the policies in the Policies are being applied to the Community Facilities Districts, the order of priority in which proceeds of the Special Taxes and Bonds are being applied to the costs of the Facilities and certain other matters, and the City and NMC desire to amend and restate the Original Agreement in order to reflect their current mutual understanding and agreement as to how certain of the policies in the Policies are to be applied to the Community Facilities Districts, the order of priority in which proceeds of the Special Taxes and Bonds of such Community Facilities Districts are to be applied to the costs of the Facilities and certain other matters; and

WHEREAS, Section 9 of the Original Agreement provides that the Original Agreement may be amended by an instrument in writing executed and delivered by the City and NMC Builders;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

Section 1. Definitions. Unless otherwise provided herein, capitalized undefined terms used herein have the meanings ascribed thereto in the NMC Acquisition Agreement. In addition, the following term shall have the meaning specified below.

“Actual Cost” shall have the meaning ascribed to such term in the NMC Acquisition Agreement; provided, however, that, with respect to Actual Costs for Eligible CFD Facilities that are not intended to be acquired pursuant to the NMC Acquisition Agreement but, rather, are intended to be acquired pursuant to an acquisition agreement between the City and a Member or other owner of property within a Community Facilities District, references in such definition to NMC Builders, Members or Affiliates of NMC Builders or Members, Payment Requests, Plans and Segments shall be deemed to be references to the correlative terms that would be defined in and applicable to such acquisition agreement between the City and a Member or other owner of property within a Community Facilities District.

“Effective Date” means _____, 2022.

“Member Specific Improvements” means, with respect to a Community Facilities District (a) the Facilities that, pursuant to a Development Agreement to which property within the boundaries of such Community Facilities District is subject, the Member that is party to such Development Agreement is obligated to construct or cause to be constructed as a condition of development of such property, and (b) which Facilities are constructed by or on behalf of such Member singly and not jointly or in conjunction with another Member or NMC Builders.

“NMC Acquisition Agreement” means the Acquisition and Funding Agreement, dated as of July 21, 2015, by and between the City and NMC Builders, as amended and restated by the Amended and Restated Acquisition and Funding Agreement, dated as of _____, 2022, by and between the City and NMC Builders, and as the same may be further amended from time to time in accordance with its terms.

Section 2. Applicability. The provisions of this Agreement apply only to Community Facilities Districts, as defined herein, which are community facilities districts established by the City under the Act, each of which includes only property that is within Ontario Ranch and that is subject to a development agreement between the City and a Member.

Section 3. Eligibility. An application to the City for Community Facilities District financing, the property within which Community Facilities District is being developed by a single landowner, will be considered by the City if such property is proposed to be developed with at least 175 residential units. An application to the City for Community Facilities District financing, the property within which Community Facilities District is being developed by multiple landowners, will be considered by the City if the property being developed by all such landowners is (a) within the same general area, (b) has substantially equivalent estimated development timelines, and (c) is proposed to be developed with at least 175 residential units.

Section 4. Eligible CFD Facilities. With respect to the Community Facilities Districts, “backbone infrastructure,” for purposes of the Policies, shall mean (a) fire suppression facilities,

vehicles and equipment, (b) streets, signals and bridges, (c) water source, storage and distribution facilities, (d) storm drainage collection system facilities, (e) sewer collection system facilities, (f) library facilities and collection, (g) fiber optic communications system facilities, (h) public park facilities, (i) pavement, curb and gutter, sidewalks and street lighting improvements for the lane adjacent to the curb on public street segments, which public street segments are included in the DIF Program (as defined in the Construction Agreement), and (j) landscaped parkways and neighborhood edge facilities on public street segments, which public street segments are included in the DIF Program (collectively, “Eligible CFD Facilities”). Eligible CFD Facilities shall not include any facilities that constitute in-tract infrastructure.

Section 5. Financing Priorities. (a) The Net Proceeds of each Community Facilities District shall be applied in the following order of priority:

First Priority. To pay, or to provide for the payment of, the Actual Costs of Eligible CFD Facilities that are Member Specific Improvements with respect to such Community Facilities District and that are intended to be acquired by the City pursuant to an acquisition agreement between the City and a Member or other owner of property within such Community Facilities District, in an amount equal to the lesser of (i) the estimated amount of such Actual Costs, and (ii) the amount of such Net Proceeds.

If Net Proceeds remain after being applied pursuant to the first paragraph of this First Priority, such Net Proceeds shall be applied to pay, or to provide for the payment of, costs of public improvements constructed by or on behalf of the City, in an amount equal to the lesser of (i) an amount equal to the remainder of (A) the amount of the Parkland Acquisition and Facilities Fee imposed with respect to the development of the property within such Community Facilities District (the “Subject Property”) pursuant to the DIF Program (the “Park Fee”), minus (B) the amount, if any, of such Park Fee against which a credit has previously been granted, and (ii) the amount of such remaining Net Proceeds (such lesser amount being referred to as the “Available Park Fee Credit Amount”). Upon such application of such remaining Net Proceeds pursuant to the preceding sentence (i) if all or a portion of such Park Fee has previously been paid (other than by way of a deemed payment resulting from a credit previously granted), the City shall refund to the payor of such Park Fee an amount equal to the lesser of (A) the amount of the Park Fee so paid, and (B) the Available Park Fee Credit Amount, and (ii) the Subject Property shall receive a credit against the Park Fee in an amount equal to the remainder of (A) the Available Park Fee Credit Amount, minus (B) the amount so refunded to such payor.

Second Priority. If Net Proceeds remain after satisfying the requirements of the First Priority, such Net Proceeds shall be applied to pay, or to provide for the payment of, the Actual Costs of Eligible CFD Facilities that are intended to be acquired by the City from NMC Builders pursuant to the NMC Acquisition Agreement, including Eligible CFD Facilities, the costs of which have been advanced by a single Member or group of Members, in an amount equal to the lesser of (i) the estimated amount of such Actual Costs, and (ii) the amount of such remaining Net Proceeds.

Third Priority. If (i) Net Proceeds remain after satisfying the requirements of the Second Priority, and (ii) all Conditions of Approval for the property within such

Community Facilities District have been fully satisfied, other than subdivision improvement agreement conditions for specific units, the construction of which has not been completed, and other than such other conditions of such Conditions of Approval that the City has agreed in writing need not be satisfied for purposes of this Third Priority, such Net Proceeds shall be applied to pay, or to provide for the payment of, costs of Eligible CFD Facilities constructed by or on behalf of the City, in an amount equal to the lesser of (A) the remainder of (I) the amount of the development impact fees, other than Park Fees, imposed with respect to the development of the property within such Community Facilities District pursuant to the DIF Program (the “DIF Fees), minus (II) the amount, if any, of such DIF Fees against which a credit has previously been granted, and (B) the amount of such remaining Net Proceeds (such lesser amount being referred to as the “Available DIF Fees Credit Amount”). Upon such application of such remaining Net Proceeds (i) if all or a portion of such DIF Fees has previously been paid (other than by way of a deemed payment resulting from a credit previously granted), an amount equal to the lesser of (A) the amount of the DIF Fees so paid, and (B) the Available DIF Fees Credit Amount shall be refunded by the City to the payor of such DIF Fees, and (ii) such property shall receive a credit against the DIF Fees in an amount equal to the remainder of (A) the Available DIF Fees Credit Amount, minus (B) the amount so refunded to such payor.

(b) The amendments to the Original Agreement made by this Section shall apply only to Community Facilities Districts that have not issued Bonds prior to the Effective Date.

Section 6. Purchase Prices. (a) The purchase price of Eligible CFD Facilities to be acquired by the City, whether pursuant to the NMC Acquisition Agreement or pursuant to an acquisition agreement between the City and a Member or other owner of property within a Community Facilities District, shall be equal to the Actual Cost thereof.

(b) The amendments to the Original Agreement made by this Section shall apply only to segments of Eligible CFD Facilities for which the Purchase Price has not been paid prior to the Effective Date.

Section 7. Total Tax Burden. (a) An application to the City for Community Facilities District financing will be considered by the City if the Total Tax Burden (as defined in the Policies) on any parcel in such Community Facilities District on which a for-sale detached residential unit has been, is being or is to be constructed does not exceed 1.95% of the estimated base sales price of such parcel upon completion of the public and private improvements relating thereto.

(b) An application to the City for Community Facilities District financing will be considered by the City (i) if the sum of (A) the Total Tax Burden, plus (B) the anticipated annual property owners’ association fee or charge on any parcel in a Community Facilities District on which a for-sale detached residential unit has been, is being or is to be constructed (the amount of which anticipated fee or charge shall be demonstrated to the reasonable satisfaction of the City), may exceed 2.15% of the estimated base sales price of such parcel upon completion of the public and private improvements relating thereto, and (ii) if and to the extent that the City determines that the enhanced level of amenities to be provided by the property owners’

association in such Community Facilities District justifies allowing such sum to exceed said 2.15%.

(c) An application to the City for Community Facilities District financing will be considered by the City (i) if the sum of (A) the Total Tax Burden, plus (B) the anticipated annual property owners' association fee or charge on any parcel in a Community Facilities District on which a for-sale attached residential unit has been, is being or is to be constructed (the amount of which anticipated fee or charge shall be demonstrated to the reasonable satisfaction of the City), may exceed 2.55% of the estimated base sales price of such parcel upon completion of the public and private improvements relating thereto, and (ii) if and to the extent that the City determines that the enhanced level of amenities to be provided by the property owners' association in such Community Facilities District justifies allowing such sum to exceed said 2.55%.

Section 8. Policies Amendments. The City shall not arbitrarily or capriciously amend the Policies (as in effect on the date of this Agreement).

Section 9. Binding on Successors and Assigns. Neither this Agreement nor the duties and obligations of NMC Builders hereunder may be assigned to any person without the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Neither this Agreement nor the duties and obligations of the City hereunder may be assigned to any person, without the written consent of NMC Builders, which consent shall not be unreasonably withheld, conditioned or delayed. The agreements and covenants included herein shall be binding on and inure to the benefit of any partners, permitted assigns, and successors-in-interest of the parties hereto.

Section 10. Amendments. This Agreement may be amended by an instrument in writing executed and delivered by the City and NMC Builders.

Section 11. Waivers. No waiver of, or consent with respect to, any provision of this Agreement by a party hereto shall in any event be effective unless the same shall be in writing and signed by such party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 12. Third-Party Beneficiaries. Each Member is a third-party beneficiary of this Agreement.

Section 13. Notices. Any written notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication to be given hereunder shall be given to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other party in writing from time to time, namely:

City:	City of Ontario
	303 East "B" Street
	Ontario, California 91764
	Attention: Executive Director of Finance

NMC Builders: NMC Builders, LLC
c/o SC Ontario Development Corporation
1156 North Mountain Avenue
Upland, California 91786
Attention: Administrative Member

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the party to whom it is addressed (a) if given by courier or delivery service or if personally served or delivered, upon delivery, (b) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, (c) if given by electronic mail, on the date sent, but only if confirmation of the receipt of such electronic mail is received or if notice is concurrently sent by another means specified herein, and (d) if given by any other means, upon delivery at the address specified in this Section.

Section 14. Attorneys' Fees. If any action is instituted to interpret or enforce any of the provisions of this Agreement, the party prevailing in such action shall be entitled to recover from the other party thereto reasonable attorney's fees and costs of such suit (including both prejudgment and postjudgment fees and costs) as determined by the court as part of the judgment.

Section 15. Jurisdiction and Venue. Each of the City and NMC Builders (a) agrees that any suit, action or other legal proceeding arising out of or relating to this Agreement shall be brought in a state or local court in the County of San Bernardino or in the Courts of the United States of America in the district in which said county is located, (b) consents to the jurisdiction of each such court in any such suit, action or proceeding, and (c) waives any objection that it may have to the laying of venue of any suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. Each of the City and NMC Builders agrees that a final and non-appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 16. Usage of Words. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

Section 17. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

Section 18. Effective Date. This Agreement has been dated for convenience purposes only. Notwithstanding the stated date of this Agreement, this Agreement shall be effective on the Effective Date.

Section 19. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

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

CITY OF ONTARIO

By: _____

NMC BUILDERS, LLC, a California
limited liability company

By: SC Ontario Development Company
LLC, its Administrative Member

By: _____

CITY OF ONTARIO

Agenda Report
November 1, 2022

SECTION:
CONSENT CALENDAR

Department: Planning
Prepared By: Alexis Vaughn
Department: Planning
Prepared By: Edmelynne V Hutter
Staff Member Presenting:
Scott Murphy, Executive Director Community
Development
Approved By:



Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 11

SUBJECT: AN ORDINANCE APPROVING FILE NO. PZC19-001, A ZONE CHANGE AT 1063 EAST ELMA STREET

RECOMMENDATION: That the City Council consider and adopt an Ordinance approving File No. PZC19-001, a Zone Change amending the zoning designation on 0.07-acres of land from MDR-11 (Low-Medium Density Residential - 5.11 to 11.0 du/ac) to MDR-18 (Medium Density Residential - 11.1 to 18.0 du/ac), for property located at 1063 East Elma Street.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

Operate in a Businesslike Manner

Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: The proposed Zone Change would facilitate the future construction of five multiple-family residential units. This subsequent Development would result in the one-time collection of Building plan check and permitting fees, development impact fees, as well as on-going increased property tax.

BACKGROUND & ANALYSIS: On September 20, 2022, the City Council introduced and waived further reading of an ordinance approving the Zone Change. On October 18, 2022, the second reading of the ordinance was scheduled for City Council consideration. The City Council voted two in favor of the application, and two opposed to the application. Since, three votes are required to approve the application, City Council directed Staff to schedule the application for City Council consideration at a future date.

The Applicant is requesting the approval of a Zone Change, amending the zoning designation on a 0.07-acre parcel of land from MDR-11 (Low-Medium Density Residential – 5.1 to 11.0 du/ac) to MDR-18 (Medium Density Residential – 11.1 to 18.0 du/ac). It is the intent of the Applicant to merge, by Lot Line Adjustment, the subject site with the neighboring 0.21-acre property to the west, to create a 0.28-acre project site. The Zone Change will facilitate the Development Plan (File No. PDEV19-028) approval of a 6,649-square-foot apartment building consisting of five residential units with enclosed

garages. The proposed development will replace an existing 1,880-square-foot, three-unit apartment building that was likely constructed in or near 1948. The existing building is not considered a historic resource. In conjunction with the Development Plan, a Variance (File No. PVAR19-004) is necessary to increase the maximum allowable percentage of tandem parking spaces from 12 percent (one tandem space) to 23 percent (three tandem spaces). This will allow for the requisite number of covered parking stalls to be provided for the Project.

The proposed Zone Change is in the interest of good planning practice as it will:

- Bring the entire project site's zoning into conformance with The Ontario Plan 2050 General Plan Update (File No. PGPA20-002), which changed the site's Policy Plan land use designation from LMDR (Low-Medium Density Residential) to MDR (Medium Density Residential);
- Make zoning designation of the smaller subject parcel consistent with the zoning designation of the majority of the project site; and
- Allow for the development of five multiple-family dwelling units on the overall 0.28-acre Project site.

On August 23, 2022, the Planning Commission conducted a public hearing to consider the Zone Change, along with the Development Plan and Variance, and unanimously voted (6-0) to recommend approval of the Zone Change. Additionally, the Development Plan and Variance were approved, subject to the City Council's approval of the Zone Change.

HOUSING ELEMENT COMPLIANCE: The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

AIRPORT LAND USE COMPATIBILITY PLAN (ALUCP) COMPLIANCE: The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. The proposed project is located within the Airport Influence Area of Ontario International Airport and was evaluated and found to be consistent with the policies and criteria of the Ontario International Airport Land use Compatibility Plan. Any special conditions of approval associated with uses in close proximity to the airport are included in the conditions of approval provided with the attached Planning Commission Resolutions.

ENVIRONMENTAL REVIEW: The environmental impacts specific to this project were previously reviewed in conjunction with File No. PGPA20-002, a General Plan update for which an Environmental Impact Report (State Clearing House No. 2021070364) was certified by the City Council on August 16, 2022. This application introduces no new significant environmental impacts.

The City's "Guidelines for the Implementation of the California Environmental Quality Act" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. The previously adopted mitigation measures will be a condition of subsequent Development Plan approval.

FILE NOS.: PZC19-001, PVAR19-004, and PDEV19-028

SUBJECT: A Zone Change (File No. PZC19-001) amending the zoning designation on 0.07-acre of land from MDR-11 (Low-Medium Density Residential – 5.1 to 11.0 du/ac) to MDR-18 (Medium Density Residential – 11.1 to 18.0 du/ac), to enable development of a 0.28-acre project site, in conjunction with a Variance to deviate from the maximum Development Code standard for percentage of tandem parking spaces, from 12 percent to 23 percent, and a Development Plan (File No. PDEV19-028) to construct five multiple-family residential units located at 1063 East Elma Street, within the MDR-18 (Medium Density Residential – 11.1 to 18.0 du/ac) zoning district (APNs: 1048-461-17 and 1048-491-23); **submitted by Maria G. Oseguera. City Council action is required for File No. PZC19-001.**

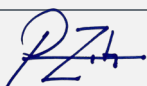
PROPERTY OWNER: Maria G. Oseguera

RECOMMENDED ACTION: That the Planning Commission consider and approve File Nos. PDEV19-028 and PVAR19-004, and consider and recommend to the City Council for approval File No. PZC19-001, pursuant to the facts and reasons contained in the staff report and attached resolutions, and subject to the conditions of approval contained in the attached departmental reports.

PROJECT SETTING: The Project site is comprised of 0.28-acre of land located at 1063 East Elma Street, within the MDR-11 (Low-Medium Density Residential – 5.1 to 11.0 du/ac) and MDR-18 (Medium Density Residential – 11.1 to 18.0 du/ac) zoning districts, and is depicted in Figure 1: Project Location. The site is currently developed with a three-



Figure 1: Project Location

Case Planner:	Alexis Vaughn
Planning Director Approval:	
Submittal Date:	05/14/2019

Hearing Body	Date	Decision	Action
DAB	08/15/22	Approval	Recommend
PC	08/23/22	Approval	Final
CC	09/20/22		ZC - Final

unit multiple-family residence, which will be razed to accommodate the development of the Project site.

The land use surrounding the Project site is residential and includes a mix of single-family and multiple-family dwellings. The land to the north of the Project site is zoned LDR-5 (Low-Density Residential – 2.1 to 5.0 du/ac), the land to the east is zoned MDR-18, the land to the west is zoned MDR-11, and the land to the south is a mix of both MDR-11 and MDR-18 zoning districts. The existing surrounding land uses, zoning, and general plan and specific plan land use designations are summarized in the “Surrounding Zoning & Land Uses” table located in the Technical Appendix of this report.

PROJECT ANALYSIS:

(1) Background — The Applicant is requesting to construct a 6,649-square-foot apartment building, consisting of five residential units with enclosed garages, as well as a detached trash enclosure and recreational patio with trellis. A Variance is being processed in conjunction with the Development Plan to increase the maximum allowable percentage of tandem parking spaces (refer to Development Code Section 6.03.025.C.3), from 12 percent to 23 percent, which will allow for the requisite covered parking stalls to be provided for the Project. The Project site currently consists of two parcels, and the applicant will file a Lot Line Adjustment to create one contiguous Project site.

In order to facilitate the Project, a Zone Change (File No. PZC19-001) has also been requested for the smaller, 0.07-acre parcel, from MDR-11 (Low-Medium Density Residential – 5.1 to 11.0 du/ac) to MDR-18 (Medium Density Residential – 11.1 to 18.0 du/ac). The Zone Change is reviewed by the Planning Commission for recommendation to the City Council and will:

- Bring the full Project site's zoning into conformance with The Ontario Plan 2050 General Plan Update (File No. PGPA20-002, which changed the site's Policy Plan land use designation from LMDR (Low-Medium Density Residential) to MDR (Medium Density Residential));
- Make the smaller parcel consistent with the zoning designation of the remainder of the Project site; and
- Allow for the development of five dwelling units on the overall 0.28-acre Project site.

While the existing residential structure does not have a building permit on file, it is likely it was constructed in or near 1948, based on the Building Department's permit history records. The building is not considered a historic resource.

On August 15, 2022, the Development Advisory Board conducted a hearing to consider the Variance and the Development Plan, and concluded the hearing on that date, and

unanimously voted to recommend that the Planning Commission approve the Applications.

(2) Zone Change (File No. PZC19-001) — The westerly portion of the Project site is a 0.07-acre parcel making up approximately one quarter of the overall Project area and is currently zoned MDR-11 (Medium-Density Residential – 5.1 to 11.0 du/ac). The westerly parcel is 23.6 feet wide and unbuildable as a stand-alone parcel. As such, the applicant filed a Zone Change request to rezone this parcel to be consistent with the main Project parcel, which is zoned MDR-18 (Medium-Density Residential – 11.1 to 18.0 du/ac, and the current underlying TOP land use designation (Medium Density Residential (11.1-25 du/ac)). Once the Zone Change is approved, the Applicant will submit a Lot Line Adjustment application to merge the Project site into one parcel. As conditioned, Project approval is contingent on City Council approval of the Zone Change application.

(3) Variance (File No. PVAR19-004) — The Applicant is requesting approval of a Variance to exceed the maximum allowable percentage of tandem parking spaces within a multiple-family residential project, from 12 percent to 23 percent. The Project site's dimensions, in combination with an unbuildable sewer easement, and surrounding existing one-story development, impose substantial limitations on development that would preclude the Project from attaining the maximum percent of tandem parking spaces allowed, while at the same time providing the required landscaping and recreation improvements, meeting building setbacks and drive aisle dimensions, meeting the minimum density requirement, and limiting potential impacts to the surrounding neighborhood, such as excessive building height, in a neighborhood consisting of predominantly one- and two-story structures.

Staff believes that the Variance request is consistent with TOP Goal LU3, which promotes flexibility in order to respond to special conditions and circumstances in order to achieve the Vision. The Variance request to increase the number of tandem parking spaces, each pair of which have been conditioned to be assigned to a single dwelling unit, will result in a superior development that will achieve the following:

- Allow for the residential building, accessory buildings, outdoor parking stalls, and central drive aisle to meet all current Development Code standards.
- Allow for the required landscape improvements to be provided.
- Allow for the installation of a recreational area for the Project's residents.
- Prevent the building from increasing in height to three or more stories, which could negatively impact the predominantly one- and two-story neighborhood.
- Allow for first-floor dwelling units that provide an additional option for residents who may require accessibility accommodations.

In acting on a Variance request, the Planning Commission must consider and clearly establish certain findings of fact, which are prescribed by State law and the City's Development Code. The facts and findings have been provided in the attached

resolution for Variance File No. PVAR19-004, as basis for approval of the requested Variance.

(4) Development Plan (File No. PDEV19-028)

(a) Site Design/Building Layout — The Project site currently consists of two parcels, the smaller of which is generally undevelopable as a stand-alone lot due to the lot's narrow width (approximately 23.6 feet). As conditioned, the Applicant will pursue a Lot Line Adjustment to incorporate the smaller lot into the Project site to allow for more flexibility in development of the site. The apartment building will be sited along the eastern portion of the Project site and the ancillary recreational facility, outdoor parking, and trash enclosure will be sited along the western portion of the Project site. The access drive will occupy the center of the Project site and allow for vehicular access to the enclosed and unenclosed parking spaces. Pedestrian access to the site will be provided via a walkway that connects from the apartment building to the public sidewalk (see Exhibit B—Site Plan). The current residential building and ancillary structures will be demolished to accommodate construction of the proposed Project.

The two dwelling units on the first floor will have a private, enclosed patio between the building and the eastern property line. The three dwelling units on the second floor will each have a private balcony, also facing east. Two exterior stairwells provide access to the second-floor units and are located along the northern and southern ends of the building. One one-bedroom and four two-bedroom units will be provided, ranging from approximately 500 to 1,140 square feet in area (see Exhibit D—Floor Plans).

(b) Site Access/Circulation — The apartment complex will be served by one centrally-located vehicular drive aisle. Enclosed garages for each unit will be situated at ground level and accessed by the drive aisle. Additional open parking spaces will be provided opposite the garages.

(c) Parking — The Development Code requires multiple-family residential land uses to provide 1.75 parking spaces for each one-bedroom dwelling, including one space in a garage or carport, and 2.0 spaces for each two-bedroom dwelling, including one space in a garage or carport, in addition to guest parking spaces at the rate of 0.25 space for each dwelling. The Development Code thus requires 13 on-site parking spaces, and 13 spaces have been provided, as demonstrated in Figure 2: Parking Table, below.

Figure 2: Parking Table

Type of Use	No. Dwellings	Parking Ratio	Spaces Required	Spaces Provided
One-Bedroom Unit	1	1.75 parking spaces, including one space in a garage or carport	1.75	2
Two-Bedroom Unit	4	2.0 parking spaces, including one space in a garage or carport	8	8

Guest Parking		0.25 spaces per dwelling (minimum 3 spaces)	3	3
TOTAL	5		13	13

Garage spaces have been provided with a 60 to 65-square-foot storage area, having an approximate volume of 480 to 520 cubic feet. A minimum of 240 cubic feet of storage area is required by the Development Code.

The Development Code limits the amount of tandem parking for a multiple-family-dwelling project to 12 percent of the required parking. Given the development constraints on the site, the applicant filed for a Variance to increase the percentage of tandem spaces from 12 to 23 percent. Two units will have one enclosed garage space and one outdoor parking space, and three units will have two enclosed garage spaces in a tandem configuration. The Project has been conditioned such that tandem parking spaces within an enclosed garage will be assigned to one dwelling unit. Further, the project has been conditioned such that the storage of personal items may occur in a garage only to the extent that such storage does not impede vehicle parking nor reduce the number or required minimum size of the required garage space; and, no dwelling or home occupation activities shall be allowed to occur within the garage spaces, which will serve to ensure that adequate on-site parking remains in place.

(d) Architecture — The proposed building has a contemporary architectural design with Spanish influences, using arches as a key element (see Exhibit C—Exterior Elevations). The exterior walls will be treated with white stucco and furnished with wood outlookers, shutters, gable end detailing, wrought-iron elements, decorative Spanish-style arched garage and front doors, and enhanced window trim. Spanish roof tile will be provided, in addition to a decorative wrought-iron porch and arcade railing. The second floor's private balconies will feature an open trellis to provide partial shade. Additional screening will be provided for any outdoor mechanical equipment.

A small recreational facility has been proposed to the rear of the lot, at the northwest corner of the Project site. The facility will be comprised of a picnic area with overhead trellis and decorative chimney feature, as well as a small lawn area and dog run.

(e) Landscaping — The Project provides landscaping improvements throughout the site, including areas along the building frontage and perimeter of the property (See Exhibit E—Conceptual Landscape Plan). For multiple-family residential projects, the Development Code requires all areas not occupied by buildings and hardscape, such as sidewalks or parking stalls, to be fully landscaped. The Project proposes a total of 3,290 square feet of landscaped areas (26.4 percent of the Project site), and will utilize a variety of trees, shrubs, vines, and groundcovers such as Valley Oak, Brisbane Box, Mexican Redbud, Crape Myrtle, True Green Elm, Dwarf Strawberry Tree, Southern Moon Hawthorn, Parry's Agave, Flax Lily, Cleveland Sage, Creeping Fig, Dymondia, and St. Augustine Grass.

The front setback will be fully landscaped, as will a small greenspace area toward the northeast corner of the Project site. Additionally, a small lawn will be provided next to the picnic area. Beyond the picnic area, the applicant has proposed a small dog run, as no major plantings or structures may occupy this area due to a sewer easement.

(f) Signage — All signage and addressing for the site will need to meet Development Code, Building Code, and Municipal Code standards and will be reviewed in the Plan Check process.

(g) Utilities (drainage, sewer) — Public utilities (water and sewer) are available to serve the Project. Furthermore, the Applicant has submitted a Preliminary Water Quality Management Plan ("PWQMP") which establishes the Project's compliance with storm water discharge/water quality requirements. The PWQMP includes site design measures that capture runoff and pollutant transport by minimizing impervious surfaces and maximizes low impact development ("LID") best management practices ("BMPs"), such as retention and infiltration. The proposed development will not substantially alter the existing drainage pattern.

A sewer easement exists to the rear of the Project site, which impacts placement of substantial landscaping and does not permit the construction of permanent features or wall footings. The main area impacted by this easement is the northwest corner of the Project site. As such, simple plantings and a moveable wrought iron fence have been proposed for this area to accommodate the easement.

(5) Senate Bill 18 (SB-18) — At the time of project submittal, a General Plan Amendment was attributed to the file, which was later absorbed by The Ontario Plan 2050 Update, approved by the City Council on August 16, 2022. Tribal notification was required for the project pursuant to the requirements of SB-18, which requires cities and counties to consult with Native American tribes when adopting and amending general plans and specific plans. Staff received responses from two Tribes:

- The San Manuel Band of Mission Indians (SMBMI) stated that the Project site is located outside of their ancestral territory and as such no consultation would be required.
- The Morongo Band of Mission Indians stated that the area is located within the Tribe's aboriginal territory and requested to be provided future notices but declined to initiate a consultation.

Pursuant to SB-18, staff provided The Morongo Band of Mission Indians with notification of the Planning Commission public hearing a minimum of ten days prior to the hearing.

(6) Code Enforcement Case — The Project site has an active Community Improvement (previously Code Enforcement) case for several issues. Since the Applicant has been actively pursuing redevelopment of the site, the Community Improvement

Department has granted deadline extensions for code compliance improvements and actions, which will be eliminated with redevelopment and construction activities.

COMPLIANCE WITH THE ONTARIO PLAN: The proposed project is consistent with the principles, goals and policies contained within the Vision, Governance, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan (TOP). More specifically, the goals and policies of TOP that are furthered by the proposed project are as follows:

(1) City Council Goals.

- Operate in a Businesslike Manner
- Focus Resources in Ontario's Commercial and Residential Neighborhoods

(2) Vision.

Distinctive Development:

- Commercial and Residential Development
 - Development quality that is broadly recognized as distinctive and not exclusively tied to the general suburban character typical of much of Southern California.

(3) Governance.

Decision Making:

- Goal G1: Sustained decision-making that consistently moves Ontario towards its Vision by using The Ontario Plan as a framework for assessing choices.
 - G1-2 Long-term Benefit. We require decisions to demonstrate and document how they add value to the community and support the Ontario Vision

(4) Policy Plan (General Plan)

Land Use Element:

- Goal LU1: A community that has a spectrum of housing types and price ranges that match the jobs in the City and that make it possible for people to live and work in Ontario and maintain a quality of life.
 - LU1-6 Complete Community: We incorporate a variety of land uses and building types in our land use planning efforts that result in a complete community where residents at all stages of life, employers, workers and visitors have a wide spectrum of

choices of where they can live, work, shop and recreate within Ontario. (Refer to Complete Community Section of Community Economics Element).

- Goal LU2: Compatibility between a wide range of uses.

Housing Element:

- Goal H2: Diversity of types of quality housing that are affordable to a range of household income levels, accommodate changing demographics, and support and reinforce the economic sustainability of Ontario.

- H2-5 Housing Design. We require architectural excellence through adherence to City design guidelines, thoughtful site planning, environmentally sustainable practices and other best practices.

Goal H5: A full range of housing types and community services that meet the special housing needs for all individuals and families in Ontario, regardless of income level, age or other status.

Community Economics Element:

- Goal CE1: A complete community that provides for all incomes and stages of life.

- CE1-6 Diversity of Housing. We collaborate with residents, housing providers and the development community to provide housing opportunities for every stage of life; we plan for a variety of housing types and price points to support our workforce, attract business and foster a balanced community.

- CE2-1 Development Projects. We require new development and redevelopment to create unique, high-quality places that add value to the community.

- CE2-2 Development Review. We require those proposing new development and redevelopment to demonstrate how their projects will create appropriately unique, functional and sustainable places that will compete well with their competition within the region.

- CE2-4 Protection of Investment. We require that new development and redevelopment protect existing investment by providing architecture and urban design of equal or greater quality.

- CE2-5 Private Maintenance. We require adequate maintenance, upkeep, and investment in private property because proper maintenance on private property protects property values.

Safety Element:

- Goal S1: Minimized risk of injury, loss of life, property damage and economic and social disruption caused by earthquake-induced and other geologic hazards.

- S1-1 Implementation of Regulations and Standards. We require that all new habitable structures be designed in accordance with the most recent California Building Code adopted by the City, including provisions regarding lateral forces and grading.

Community Design Element:

- CD1-3 Neighborhood Improvement. We require viable existing residential and non-residential neighborhoods to be preserved, protected, and enhanced in accordance with our land use policies.

- Goal CD2: A high level of design quality resulting in public spaces, streetscapes, and developments that are attractive, safe, functional and distinct.

- CD2-1 Quality Architecture. We encourage all development projects to convey visual interest and character through:

- Building volume, massing, and height to provide appropriate scale and proportion; and
- A true architectural style which is carried out in plan, section and elevation through all aspects of the building and site design and appropriate for its setting; and
- Exterior building materials that are visually interesting, high quality, durable, and appropriate for the architectural style.

- CD2-8 Safe Design. We incorporate defensible space design into new and existing developments to ensure the maximum safe travel and visibility on pathways, corridors, and open space and at building entrances and parking areas by avoiding physically and visually isolated spaces, maintenance of visibility and accessibility, and use of lighting.

- CD2-9 Landscape Design. We encourage durable landscaping materials and designs that enhance the aesthetics of structures, create and define public and private spaces, and provide shade and environmental benefits.

- CD2-13 Entitlement Process. We work collaboratively with all stakeholders to ensure a high degree of certainty in the efficient review and timely processing of all development plans and permits.

- CD3-3 Building Entrances. We require all building entrances to be accessible and visible from adjacent streets, sidewalks or public open spaces.

➤ CD3-5 Paving. We require sidewalks and road surfaces to be of a type and quality that contributes to the appearance and utility of streets and public spaces.

➤ CD3-6 Landscaping. We utilize landscaping to enhance the aesthetics, functionality and sustainability of streetscapes, outdoor spaces and buildings.

▪ Goal CD5: A sustained level of maintenance and improvement of properties, buildings and infrastructure that protects the property values and encourages additional public and private investments.

➤ CD5-1 Maintenance of Buildings and Property. We require all public and privately owned buildings and property (including trails and easements) to be properly and consistently maintained.

HOUSING ELEMENT COMPLIANCE: The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

AIRPORT LAND USE COMPATIBILITY PLAN (ALUCP) COMPLIANCE: The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan ("ALUCP"), establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. The proposed project is located within the Airport Influence Area of Ontario International Airport and was evaluated and found to be consistent with the policies and criteria of the ALUCP. Any special conditions of approval associated with uses in close proximity to the airport are included in the conditions of approval provided with the attached Resolution.

ENVIRONMENTAL REVIEW: The environmental impacts specific to this project were previously reviewed in conjunction with File No. PGPA20-002, a General Plan update for which an Environmental Impact Report (State Clearing House No. 2021070364) was certified by the City Council on August 16, 2022. This application introduces no new significant environmental impacts. The City's "Guidelines for the Implementation of the California Environmental Quality Act ("CEQA")" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. The previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by this reference.

CONDITIONS OF APPROVAL: See attached department reports.

TECHNICAL APPENDIX:

Surrounding Zoning and Land Use:

	Existing Land Use	General Plan Designation	Zoning Designation	Specific Plan Land Use
Site:	Vacant and single-family residential	LMDR (Low-Medium Density, 5.1-11 du/ac) and MDR (Medium-Density, 11.1-25 du/ac)	MDR-11 (Medium Density, 5.1-11 du/ac) and MDR-18 (Medium-Density, 11.1-18 du/ac)	N/A
North:	Single-family residential	LDR (Low-Density Residential, 2.1-5 du/ac)	LDR-5 (Low-Density, 2.1-5 du/ac)	N/A
South:	Multi-family residential	LMDR (Low-Medium Density, 5.1-11 du/ac) and MDR (Medium-Density, 11.1-25 du/ac)	MDR-11 (Medium Density, 5.1-11 du/ac) and MDR-18 (Medium-Density, 11.1-18 du/ac)	N/A
East:	Multi-family residential	MDR (Medium-Density, 11.1-25 du/ac)	MDR-18 (Medium-Density, 11.1-18 du/ac)	N/A
West:	Single-family residential	LMDR (Low-Medium Density, 5.1-11 du/ac)	MDR-11 (Medium Density, 5.1-11 du/ac)	N/A

General Site & Building Statistics

Item	Required Min./Max.	Provided (Ranges)	Meets Y/N
Project area (in acres):	0.23-acre min.	0.28 acres	Y
Maximum project density (dwelling units/ac):	11.1-18 du/ac	18 du/ac	Y
Maximum coverage (in %):	60%	27%	Y
Front yard setback (in FT):	20 FT	20FT	Y
Side yard setback (in FT):	5	10	Y
Rear yard setback (in FT):	5	10	Y
Parking setback (in FT):	5 FT (interior), 10 FT (front)	5 FT (interior), 40 FT (front)	Y
Maximum height (in FT):	45 FT	26'	Y
Parking – resident:	10 spaces	10 spaces	Y
Parking – guest:	3 spaces	3 spaces	Y
Open space – private:	200 SF/unit	257.5 SF/unit avg	Y
Open space – common:	300 SF/unit	473.4 SF/unit	Y

Dwelling Unit Statistics:

<i>Unit Type</i>	<i>Size (in SF)</i>	<i>No. Bedrooms</i>	<i>No. Bathrooms</i>	<i>No. Stories</i>	<i>Private Open Space (in SF)</i>
1	500	1	1	1	390
2	1,140	2	1	1	135 - 390

Exhibit A—PROJECT LOCATION MAP



Exhibit B—SITE PLAN

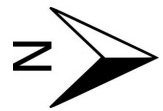
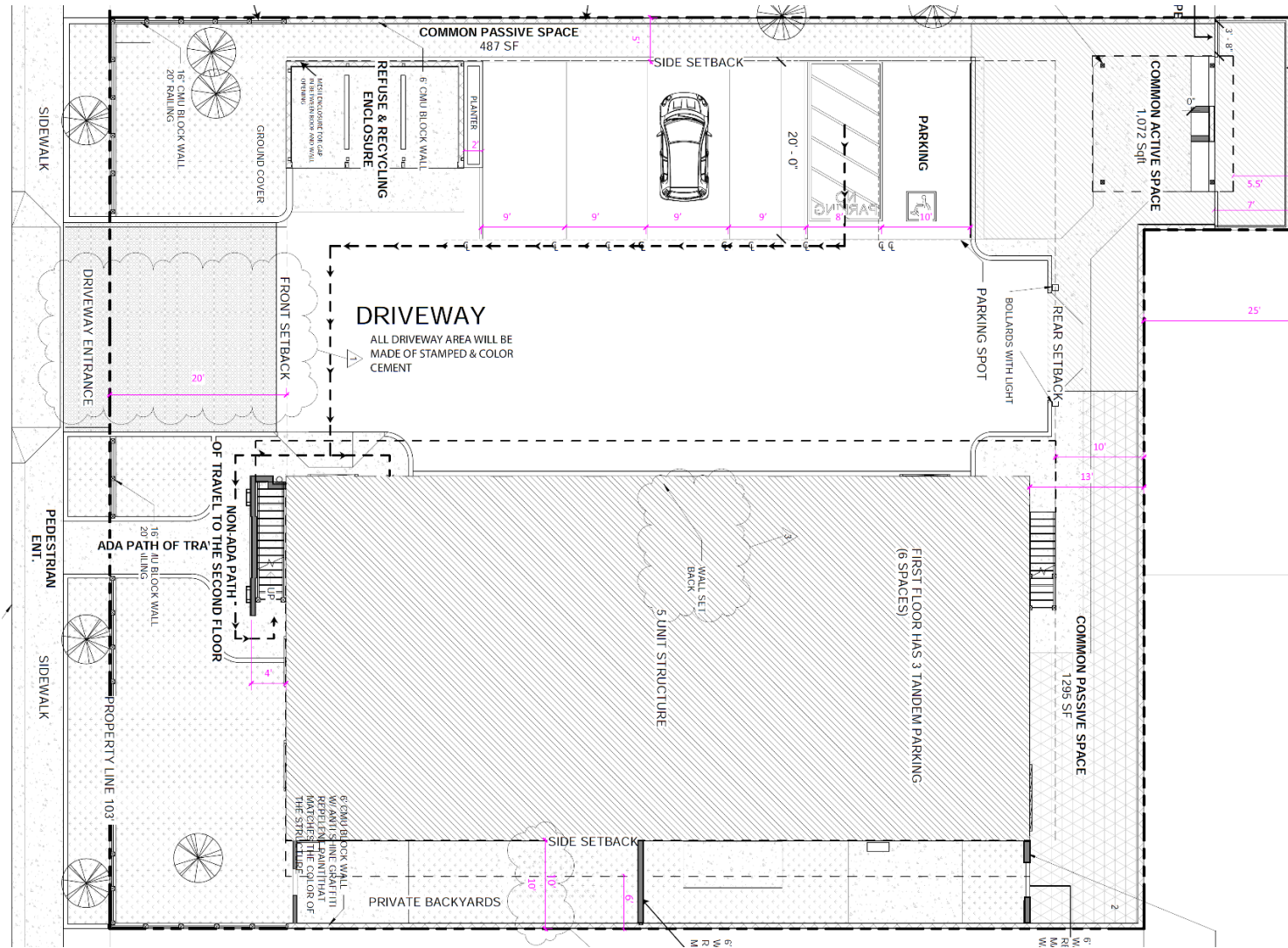
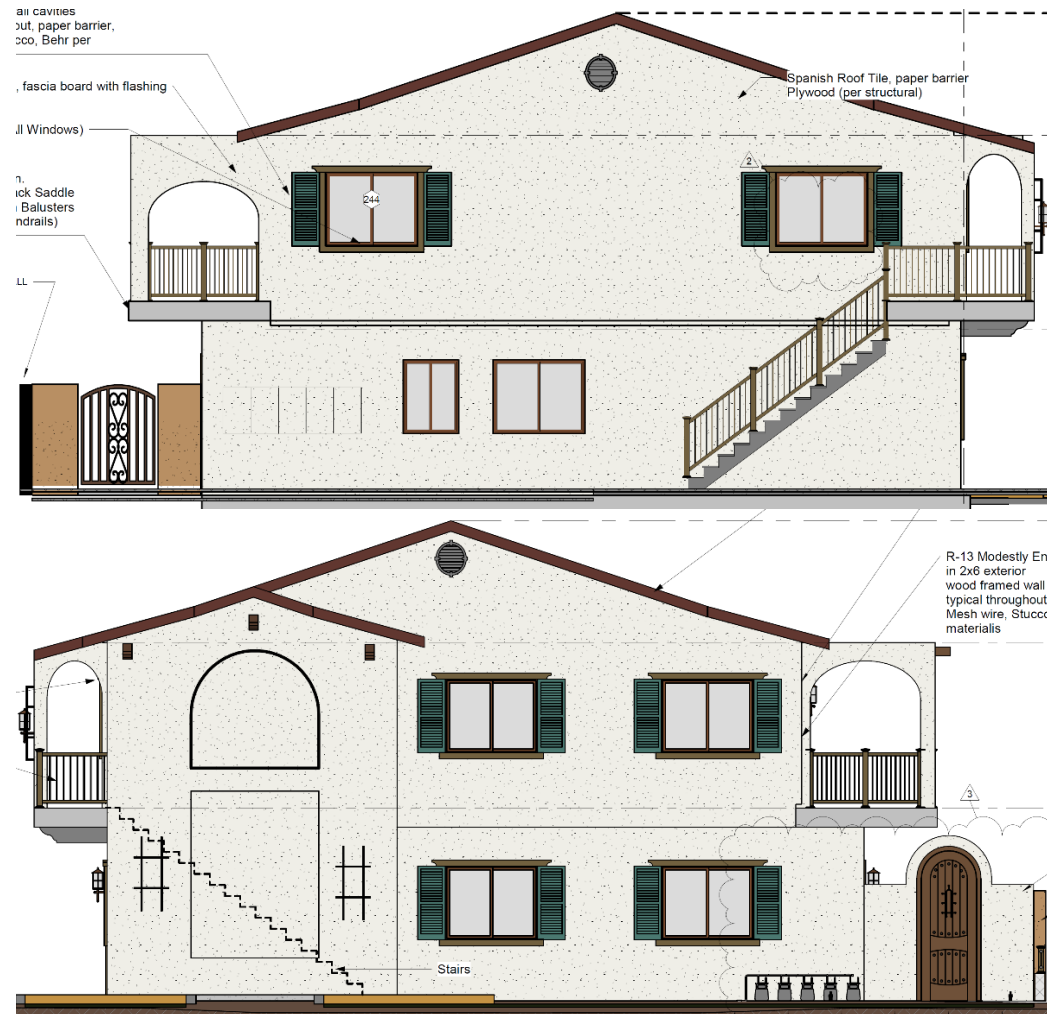


Exhibit C—EXTERIOR ELEVATIONS



East and West Elevations

Exhibit C—EXTERIOR ELEVATIONS (CONTINUED)



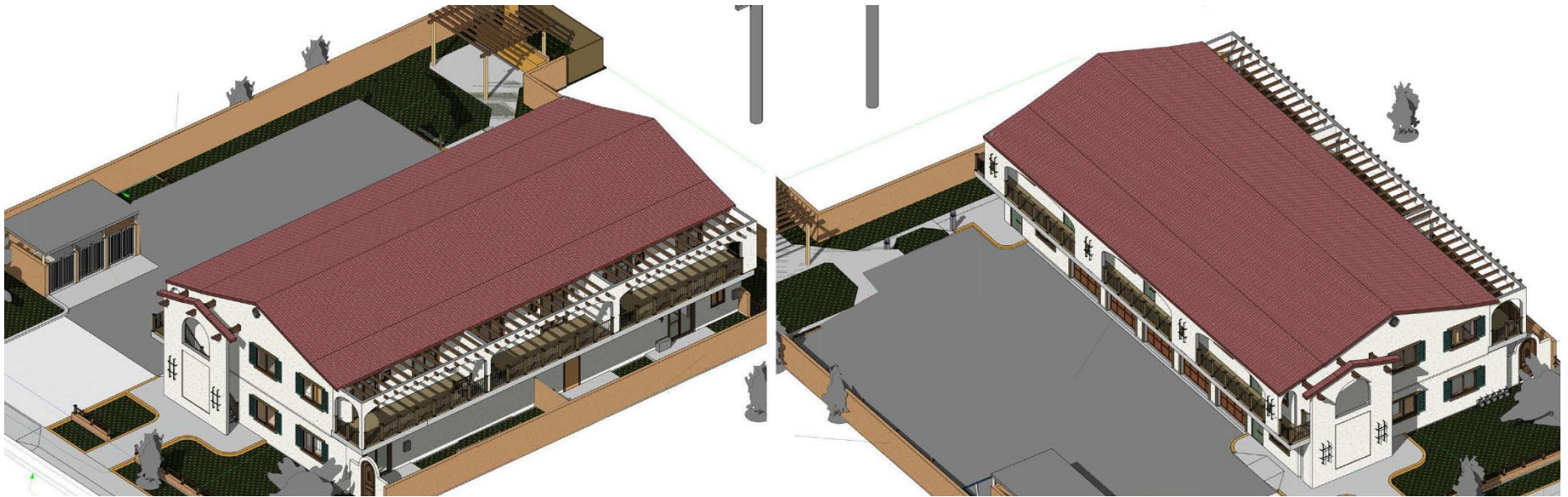
North and South Elevations

Exhibit C—EXTERIOR ELEVATIONS (CONTINUED) – RENDERINGS



Rear Project View: East-Facing and West-Facing Elevations

Exhibit C—EXTERIOR ELEVATIONS (CONTINUED) – RENDERINGS



Front Project View: West-Facing and East-Facing Elevations

Exhibit D—FLOOR PLANS

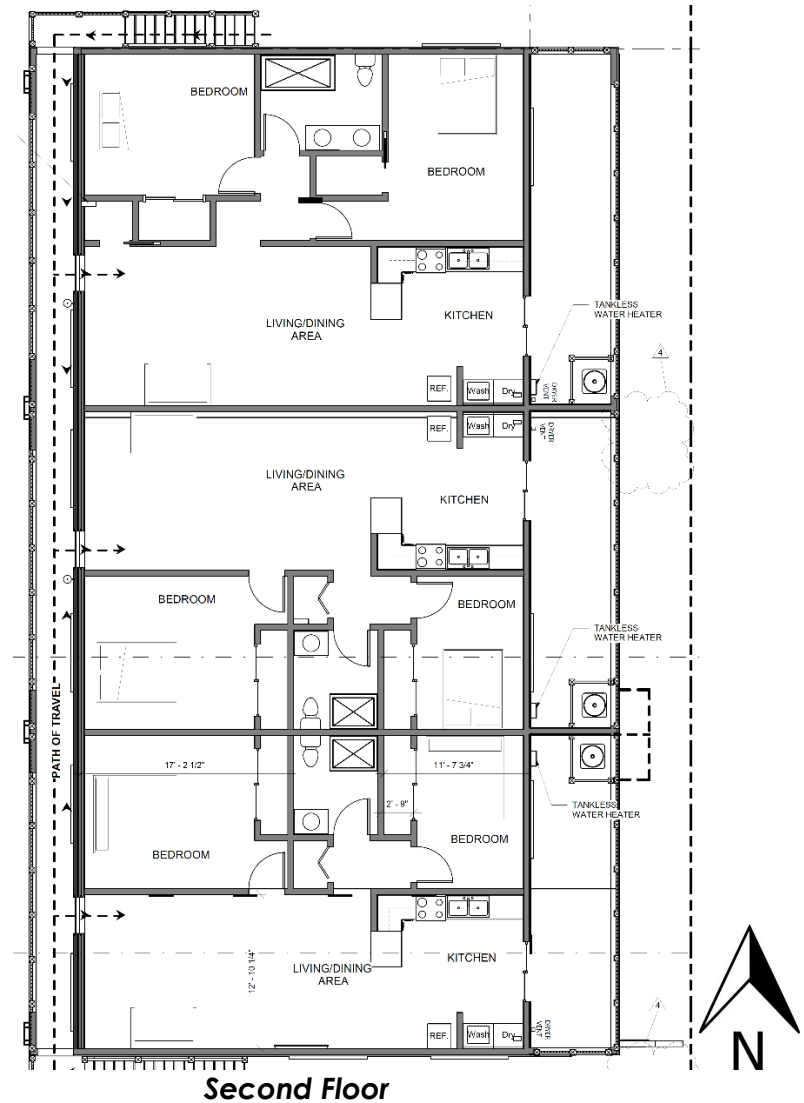
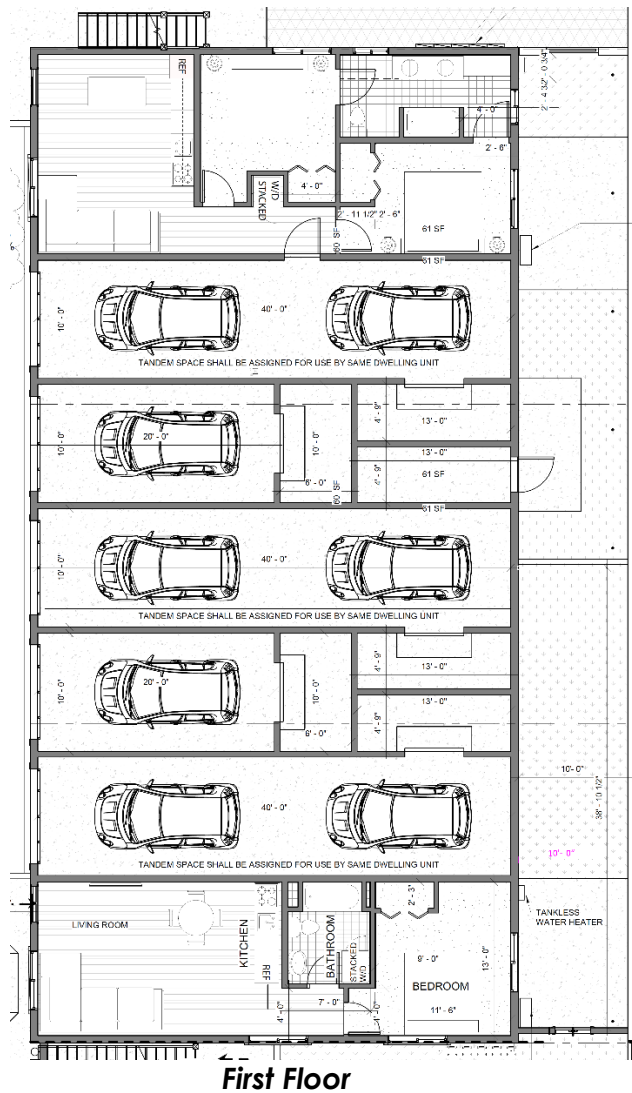
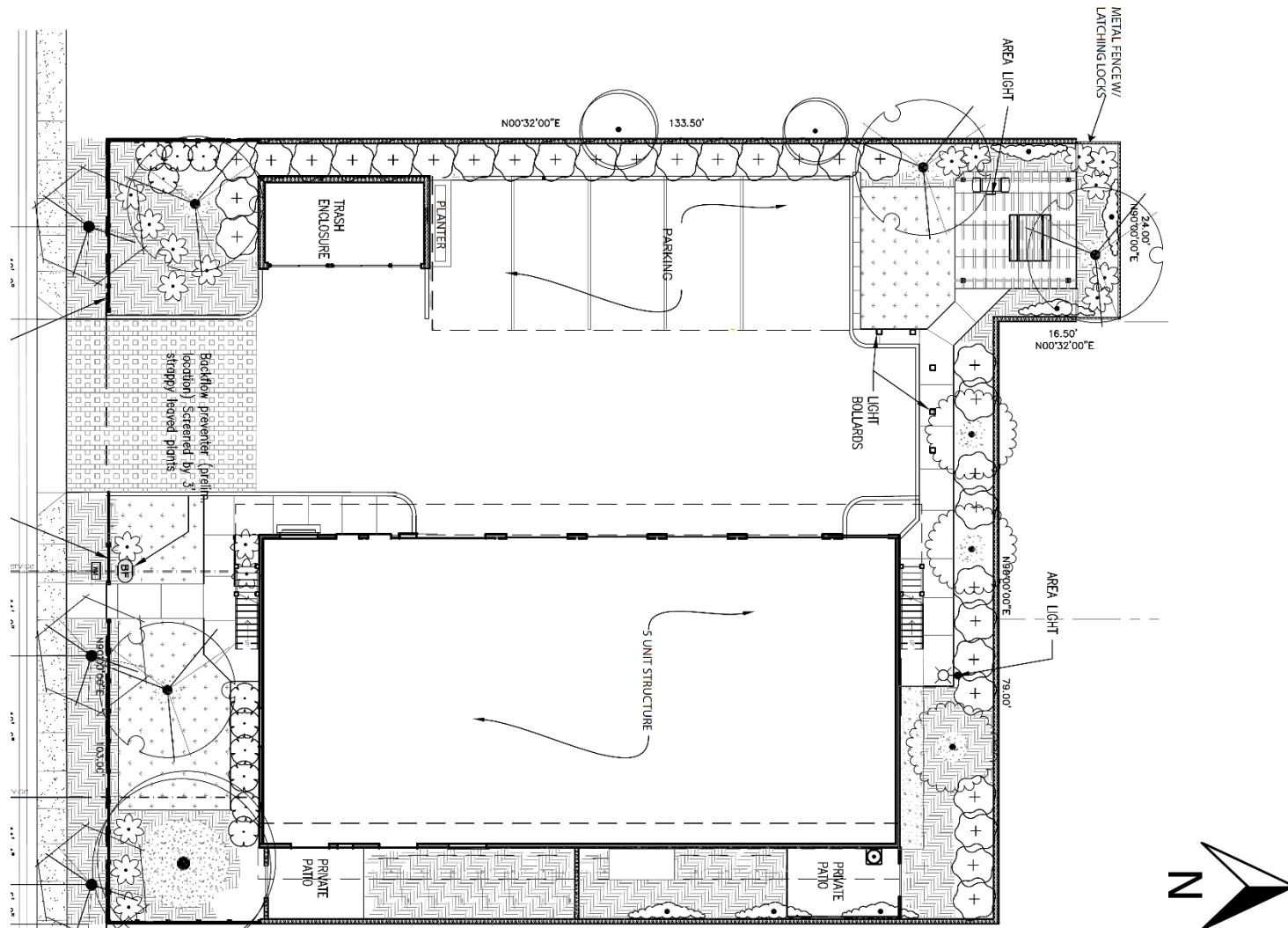


Exhibit E—CONCEPTUAL LANDSCAPE PLAN



RESOLUTION NO. PC22-049

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING APPROVAL FOR FILE NO. PZC19-001, A ZONE CHANGE AMENDING THE ZONING DESIGNATION ON 0.07-ACRE OF LAND FROM MDR-11 (LOW-MEDIUM DENSITY RESIDENTIAL – 5.1 TO 11.0 DU/AC) TO MDR-18 (MEDIUM DENSITY RESIDENTIAL – 11.1 TO 18.0 DU/AC) TO ENABLE DEVELOPMENT OF A 0.28-ACRE PROJECT SITE, AND MAKING FINDINGS IN SUPPORT THEREOF— APNS: 1048-461-17 AND 1048-491-23.

WHEREAS, MARIA G. OSEGUERA ("Applicant") has filed an Application for a Zone Change, File No. PZC19-001, as described in the title of this Resolution. The term "Project" or "Project parcel" shall refer to the subject Zone Change Application and the referenced 0.07-acre site, and the term "development project" refers to the greater 0.28-acre development project site tied to and inclusive of the Zone Change Application; and

WHEREAS, the Application applies to 0.07 acres of land located at 1063 East Elma Street, within the MDR-11 (Medium-Density Residential – 5.1 to 11.0 du/ac) zoning district, and is presently vacant; and

WHEREAS, the Application proposes to modify the zoning district of the Project site, from MDR-11 (Medium Density Residential – 5.1 to 11.0 du/ac) to MDR-18 (Medium Density Residential – 11.1 to 18.0 du/ac); and

WHEREAS, the Application has been filed in conjunction with File Nos. PDEV19-028 and PVAR19-004, and will facilitate the orderly development of the adjacent approximately 0.21-acre parcel with a five-unit apartment complex; and

WHEREAS, the property to the north of the Project site is within the LDR-5 (Low-Density Residential – 2.1 to 5.0 du/ac) zoning district and is developed with single-family homes. The property to the east is within the MDR-18 (Medium Density Residential – 11.1 to 18.0 du/ac) zoning district and is developed with multiple-family dwellings. The property to the south is within the MDR-11 (Medium Density Residential – 5.1 to 11.0 du/ac) zoning district and is developed with multiple-family dwellings. The property to the west is within the MDR-11 (Medium Density Residential – 5.1 to 11.0 du/ac) zoning district and is developed with a single-family dwelling; and

WHEREAS, the Zone Change Project's parcel is currently unbuildable due to its shallow width. As such, the Applicant has filed for a Zone Change to make the zoning of this parcel consistent with the adjacent 0.21-acre parcel and the underlying TOP Land Use Designation (Medium Density Residential (11.1-25 du/ac) – Exhibit "A" proposed Zone Change included in this Resolution), in order to facilitate a lot line adjustment to create one cohesive developable parcel; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act — Public Resources Code Section 21000 et seq. — (hereinafter referred to as "CEQA") and an initial study has been prepared to determine possible environmental impacts; and

WHEREAS, the environmental impacts of this Project were previously reviewed in conjunction with File No. PGPA20-002, a General Plan update for which an Environmental Impact Report (State Clearing House No. 2021070364) was certified by the City Council on August 16, 2022. This application introduces no new significant environmental impacts. The City's "Guidelines for the Implementation of the California Environmental Quality Act ("CEQA")" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. The previously adopted mitigation measures shall be a condition of Project approval, and are incorporated herein by this reference; and

WHEREAS, the City's "Local Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and make recommendation to the City Council on the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan ("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 August 23, 2022, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the Planning Commission of the City of Ontario, as follows:

SECTION 1: Environmental Determination and Findings. As the recommending authority for the Project, the Planning Commission has reviewed and considered the information contained in the previous Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the Planning Commission finds as follows:

(1) The environmental impacts specific to this Project were previously reviewed in conjunction with File No. PGPA20-002, update to the City's General Plan for which a Certified EIR (State Clearinghouse No. 2021070364) was adopted by the City Council on August 16, 2022.

(2) The previous Certified EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Certified EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Certified EIR reflects the independent judgment of the Planning Commission; and

(5) The proposed Project will introduce no new significant environmental impacts beyond those previously analyzed in the previous Certified EIR, and all mitigation measures previously adopted with the Certified EIR, are incorporated herein by this reference.

SECTION 2: Subsequent or Supplemental Environmental Review Not Required. Based on the information presented to the Planning Commission, and the specific findings set forth in Section 1, above, the Planning Commission finds that the preparation of a subsequent or supplemental Certified EIR is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the Certified EIR that will require major revisions to the Certified EIR due to the involvement of new significant

environmental effects or a substantial increase in the severity of previously identified significant effects; and

(2) Does not constitute substantial changes with respect to the circumstances under which the Certified EIR was prepared, that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and.

(3) Does not contain new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Certified EIR was certified/adopted, that shows any of the following:

(a) The Project will have one or more significant effects not discussed in the Certified EIR; or

(b) Significant effects previously examined will be substantially more severe than shown in the Certified EIR; or

(c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the City declined to adopt such measures; or

(d) Mitigation measures or alternatives considerably different from those analyzed in the Certified EIR would substantially reduce one or more significant effects on the environment, but which the City declined to adopt.

SECTION 3: *Housing Element Compliance.* Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending authority for the Project, the Planning Commission finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the Project site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

SECTION 4: *Ontario International Airport Land Use Compatibility Plan ("ALUCP") Compliance.* The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the ALUCP, establishing the Airport Influence Area for Ontario International Airport (hereinafter referred to as "ONT"), which encompasses lands

within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the recommending authority for the Project, the Planning Commission has reviewed and considered the facts and information contained in the Application and supporting documentation against the ALUCP compatibility factors, including [1] Safety Criteria (ALUCP Table 2-2) and Safety Zones (ALUCP Map 2-2), [2] Noise Criteria (ALUCP Table 2-3) and Noise Impact Zones (ALUCP Map 2-3), [3] Airspace protection Zones (ALUCP Map 2-4), and [4] Overflight Notification Zones (ALUCP Map 2-5). As a result, the PLANNING COMMISSION, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ALUCP.

SECTION 5: Concluding Facts and Reasons. Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 4, above, the Planning Commission hereby concludes as follows:

(1) ***The proposed Zone Change is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan.*** The Project parcel is currently unbuildable, and is not consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan) and City Council Priorities components of The Ontario Plan. The proposed Zone Change will enable consistency and compatibility with these items, by creating consistency with the underlying The Ontario Plan Policy Plan Land Use Designation (Medium Density Residential, 11.1-25 du/ac), which envisions a variety of well-designed medium-density housing options. Further, the Zone Change will allow for flexible redevelopment of the overall development project site with approval of the related Development Plan (File No. PDEV19-028) and Variance (File No. PVAR19-004) application requests. Without approval of the Zone Change, the Project parcel will remain vacant and underutilized, and the development project area will remain in poor condition and underutilized.

(2) ***The proposed Zone Change would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.*** The proposed Zone Change Project will not be detrimental to the public interest, health, safety, convenience, or general welfare of the City. With approval of the related Development Plan (File No. PDEV19-028) and Variance (File No. PVAR19-004) application requests, the Project will enable orderly redevelopment of the overall development project site and will provide a public benefit for both the Project site and development project site, by allowing for public right-of-way improvements, an increase in landscaping in the neighborhood, and elimination of public nuisances and Community Improvement (Code Enforcement) infractions. The development project will also provide visual improvements

from public view, including cleaning up and redesigning the deteriorating site. The Project site and development project site are located within a residential neighborhood, surrounded by existing single-family and multiple-family developments and will neither expose others nor be exposed to any impacts not typically found in residential neighborhoods. Without approval of the Zone Change, the Project parcel will remain vacant and underutilized, and the development project area will remain in poor condition and underutilized.

(3) ***The proposed Zone Change will not adversely affect the harmonious relationship with adjacent properties and land uses.*** The Zone Change Application will bring the subject Project parcel into compliance with The Ontario Plan's General Plan Land Use Plan. Further, the proposed zoning designation is the same as the adjacent neighborhood to the east and is complementary to and compatible with the zoning designations of the neighborhoods to the north, west, and south. As the overall development project's site is currently developed with a three-unit multiple-family dwelling that does not meet Development Code standards (including setbacks, landscaping, and parking), the Zone Change will allow for redevelopment of the site that meets major development standards and the multiple-family development intent for the overall zoning district.

(4) ***The subject site is physically suitable, including, but not limited to, parcel size, shape, access, and availability of utilities, for the request and anticipated development.*** The current Project site is not physically suitable for development, as the dimensions of the subject Project parcel are substandard for residential development. As such, the Applicant has requested a Zone Change application in order to make the Project parcel consistent with the adjacent 0.21-acre parcel to the east. The consistency will allow the Applicant to apply for a Lot Line Adjustment to facilitate the orderly development of a five-unit apartment complex on the overall development project site. The Zone Change will thus enable the subject Project parcel to be physically suitable for development. With approval of the Zone Change Application, access and utilities will be available to serve the overall development project site.

SECTION 6: Planning Commission Action. Based upon the findings and conclusions set forth in Sections 1 through 5, above, the Planning Commission hereby RECOMMENDS THE CITY COUNCIL APPROVES the herein described Application.

SECTION 7: Indemnification. The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 8: *Custodian of Records.* The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 9: *Certification to Adoption.* The Secretary shall certify to the adoption of the Resolution.

The Secretary Pro Tempore for the Planning Commission of the City of Ontario shall certify as to the adoption of this Resolution.

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 23rd day of August, 2022, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.



Jim Willoughby
Planning Commission Chairman

ATTEST:



Rudy Zeledon
Planning Director and
Secretary to the Planning Commission

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

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC22-049, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on August 23, 2022 by the following roll call vote, to wit:

AYES: Anderson, Dean, Gage, Lampkin, Ricci, Willoughby

NOES: None

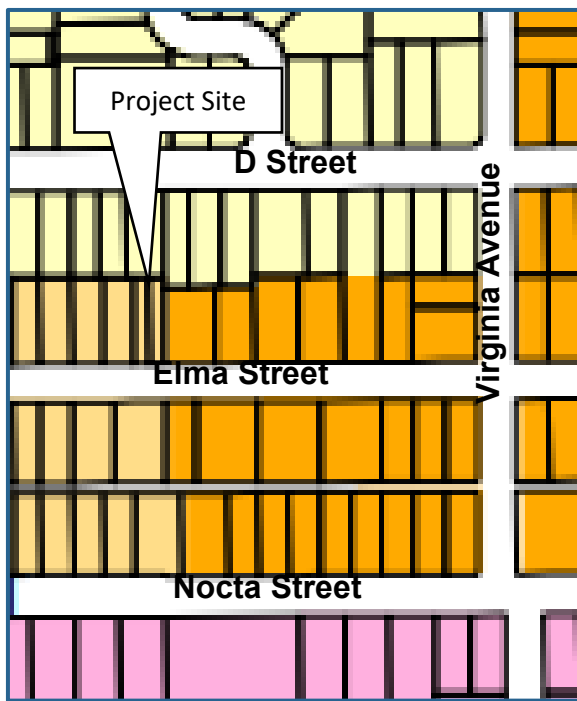
ABSENT: DeDiemar

ABSTAIN: None

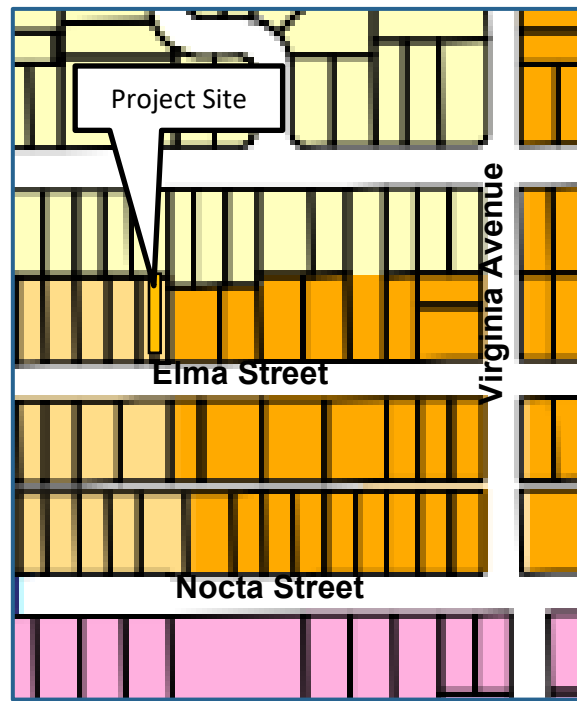


Gwen Berendsen
Secretary Pro Tempore

Exhibit "A" – Proposed Zone Change



Existing Zoning:
MDR -11, Low Medium Density Residential



Proposed Zoning:
MDR -18, Medium Density Residential

LEGEND

Overlays

- AG, Agricultural
- CA, Local Avenue
- MTD, Multimodal Transit Center
- OC, Interim Community Commercial
- ES, Emergency Shelter

Zones

- AR-2, Residential-Agricultural
- RE-2, Rural Estate
- RE-4, Residential Estate
- LDR-5, Low Density Residential
- MDR-11, Low-Medium Density Residential
- MDR-18, Medium Density Residential
- MDR-25, Medium-High Density Residential
- HDR-45, High Density Residential
- PLD, Planned Unit Development
- MR-P, Mobile Home Park
- ML-1, Downtown Mixed Use
- ML-2, East Hill Mixed Use
- ML-11, Euclid/France Mixed Use
- CS, Corner Store
- CH, Neighborhood Commercial
- CC, Community Commercial
- CH, Regional Commercial
- COS, Convention Center Support Commercial
- C, Low Intensity Office
- CH, High Intensity Office
- BP, Business Park
- P, Industrial Park
- L, Light Industrial
- G, General Industrial
- H, Heavy Industrial
- OVT, Ontario International Airport
- GV, Civic
- OS-R, Open Space-Recreation
- OS-C, Open Space-Cemetery
- UC, Utilities Corridor
- SP, Specific Plan
- RC, Rail Corridor

N

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PZC19-001, A ZONE CHANGE AMENDING THE ZONING DESIGNATION ON 0.07-ACRE OF LAND FROM MDR-11 (LOW-MEDIUM DENSITY RESIDENTIAL – 5.1 TO 11.0 DU/AC) TO MDR-18 (MEDIUM DENSITY RESIDENTIAL – 11.1 TO 18.0 DU/AC) TO ENABLE DEVELOPMENT OF A 0.28-ACRE PROJECT SITE, AND MAKING FINDINGS IN SUPPORT THEREOF – APN: 1048-491-23.

WHEREAS, MARIA G. OSEGUERA ("Applicant") has filed an Application for the approval of a Zone Change, File No. PZC19-001, as described in the title of this Ordinance. The term "Project" or "Project parcel" shall refer to the subject Zone Change Application and the referenced 0.07-acre site, and the term "development project" refers to the greater 0.28-acre development project site tied to and inclusive of the Zone Change Application; and

WHEREAS, the Application applies to 0.07 acre of land generally located 1063 East Elma Street, within the MDR-11 (Medium-Density Residential – 5.1 to 11.0 du/ac), and is presently vacant; and

WHEREAS, the Application proposes to modify the zoning district of the Project site from MDR-11 (Medium Density Residential – 5.1 to 11.0 du/ac) to MDR-18 (Medium Density Residential – 11.1 to 18.0 du/ac); and

WHEREAS, the Application has been filed in conjunction with File Nos. PDEV19-028 and PVAR19-004, and will facilitate the orderly development of the adjacent approximately 0.21-acre parcel with a five-unit apartment complex; and

WHEREAS, the property to the north of the Project site is within the LDR-5 (Low-Density Residential – 2.1 to 5.0 du/ac) zoning district and is developed with single-family homes. The property to the east is within the MDR-18 (Medium Density Residential – 11.1 to 18.0 du/ac) zoning district and is developed with multiple-family dwellings. The property to the south is within the MDR-11 (Medium Density Residential – 5.1 to 11.0 du/ac) zoning district and is developed with multiple-family dwellings. The property to the west is within the MDR-11 (Medium Density Residential – 5.1 to 11.0 du/ac) zoning district and is developed with a single-family dwelling; and

WHEREAS, the Zone Change Project's parcel is currently unbuildable due to its shallow width. As such, the Applicant has filed for a Zone Change to make the zoning of this parcel consistent with the adjacent 0.21-acre parcel and the underlying TOP Land Use Designation (Medium Density Residential (11.1-25 du/ac) – Exhibit "A" proposed Zone Change included in this Ordinance), in order to facilitate a lot line adjustment to create one cohesive developable parcel; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act — Public Resources Code Section 21000 et seq. — (hereinafter referred to as "CEQA") and an initial study has been prepared to determine possible environmental impacts; and

WHEREAS, the environmental impacts of this Project were previously reviewed in conjunction with File No. PGPA20-002, a General Plan update for which a Subsequent Environmental Impact Report (State Clearing House No. 2021070364) was certified by the City Council on August 16, 2022. This application introduces no new significant environmental impacts. The City's "Guidelines for the Implementation of the California Environmental Quality Act ("CEQA")" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. The previously adopted mitigation measures shall be a condition of Project approval, and are incorporated herein by this reference; and

WHEREAS, the City's "Local Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") and an initial study has been prepared to determine possible environmental impacts; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

WHEREAS, the Project 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 ("ONT"), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan ("ONT 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 August 15, 2022, the Development Advisory Board of the City of Ontario conducted a hearing to consider the related Variance (File No. PVAR19-004) and Development Plan (File No. PDEV19-028), and concluded said hearing on that date, voting to issue Decision Nos. DAB22-031 and DAB22-032 recommending the Planning Commission approve the Variance and Development Plan; and

WHEREAS, on August 23, 2022, the Planning Commission of the City of Ontario conducted a hearing to consider the related Variance (File No. PVAR19-004) and Development Plan (File No. PDEV19-028), and concluded said hearing on that date, voting (6-0-1) to issue Decision Nos. PC22-050 and PC22-051, approving the related Variance and Development Plan, respectively; and

WHEREAS, on August 23, 2022, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting (6 – 0) to issue Resolution No. PC22-049, recommending the City Council approve the Application; and

WHEREAS, on September 20, 2022, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario, as follows:

SECTION 1. *Environmental Determination and Findings.* As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the 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. PGPA20-002, an update to the City's General Plan for which a Subsequent Environmental Impact Report (State Clearinghouse No. 2021070364) was certified by the City Council on August 16, 2022.

(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 decision-making 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, as the Project site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

SECTION 4. *Ontario International Airport Land Use Compatibility Plan ("ALUCP") Compliance.* The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted

Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan ("ALUCP"), establishing the Airport Influence Area for Ontario International Airport ("ONT"), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the decision-making body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the ALUCP compatibility factors, including [1] Safety Criteria (ALUCP Table 2-2) and Safety Zones (ALUCP Map 2-2), [2] Noise Criteria (ALUCP Table 2-3) and Noise Impact Zones (ALUCP Map 2-3), [3] Airspace protection Zones (ALUCP Map 2-4), and [4] Overflight Notification Zones (ALUCP Map 2-5). As a result, the City Council, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ALUCP.

SECTION 5. *Concluding Facts and Reasons.* Based upon the substantial evidence presented to the City Council during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 4, above, the City Council hereby concludes as follows:

(1) *The proposed Zone Change is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan.* The Project parcel is currently unbuildable, and is not consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan) and City Council Priorities components of The Ontario Plan. The proposed Zone Change will enable consistency and compatibility with these items, by creating consistency with the underlying The Ontario Plan Policy Plan Land Use Designation (Medium Density Residential, 11.1-25 du/ac), which envisions a variety of well-designed medium-density housing options. Further, the Zone Change will allow for flexible redevelopment of the overall development project site with approval of the related Development Plan (File No. PDEV19-028) and Variance (File No. PVAR19-004) application requests. Without approval of the Zone Change, the Project parcel will remain vacant and underutilized, and the development project area will remain in poor condition and underutilized.

(2) *The proposed Zone Change would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.* The proposed Zone Change Project will not be detrimental to the public interest, health, safety, convenience, or general welfare of the City. With approval of the related Development Plan (File No. PDEV19-028) and Variance (File No. PVAR19-004) application requests, the Project will enable orderly redevelopment of the overall development project site and will provide a public benefit for both the Project site and development project site, by allowing for public right-of-way improvements, an increase in landscaping in the neighborhood, and elimination of public nuisances and Community Improvement (Code Enforcement) infractions. The development project will also provide visual improvements from public view, including cleaning up and redesigning the deteriorating site. The Project site and development project site are located within a residential neighborhood, surrounded by existing single-family and multiple-family developments and will neither expose others nor

be exposed to any impacts not typically found in residential neighborhoods. Without approval of the Zone Change, the Project parcel will remain vacant and underutilized, and the development project area will remain in poor condition and underutilized.

(3) *The proposed Zone Change will not adversely affect the harmonious relationship with adjacent properties and land uses.* The Zone Change Application will bring the subject Project parcel into compliance with The Ontario Plan's General Plan Land Use Plan. Further, the proposed zoning designation is the same as the adjacent neighborhood to the east and is complementary to and compatible with the zoning designations of the neighborhoods to the north, west, and south. As the overall development project's site is currently developed with a three-unit multiple-family dwelling that does not meet Development Code standards (including setbacks, landscaping, and parking), the Zone Change will allow for redevelopment of the site that meets major development standards and the multiple-family development intent for the overall zoning district.

(4) *The subject site is physically suitable, including, but not limited to, parcel size, shape, access, and availability of utilities, for the request and anticipated development.* The current Project site is not physically suitable for development, as the dimensions of the subject Project parcel are substandard for residential development. As such, the Applicant has requested a Zone Change application in order to make the Project parcel consistent with the adjacent 0.21-acre parcel to the east. The consistency will allow the Applicant to apply for a Lot Line Adjustment to facilitate the orderly development of a five-unit apartment complex on the overall development project site. The Zone Change will thus enable the subject Project parcel to be physically suitable for development. With approval of the Zone Change Application, access and utilities will be available to serve the overall development project site.

SECTION 6. *City Council Action.* Based upon the findings and conclusions set forth in Sections 1 through 5, above, the City Council hereby APPROVES the herein described Zone Change, attached hereto as "Exhibit A," and incorporated herein by this reference.

SECTION 7. *Indemnification.* The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 8. *Custodian of Records.* The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 9. *Severability.* If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not

affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 10. *Effective Date.* This Ordinance shall become effective 30 days following its adoption.

SECTION 11. *Publication and Posting.* The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within 15 days following the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 1st day of November 2022.

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. 3223 was duly introduced at a regular meeting of the City Council of the City of Ontario held September 20, 2022 and adopted at the regular meeting held November 1, 2022 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

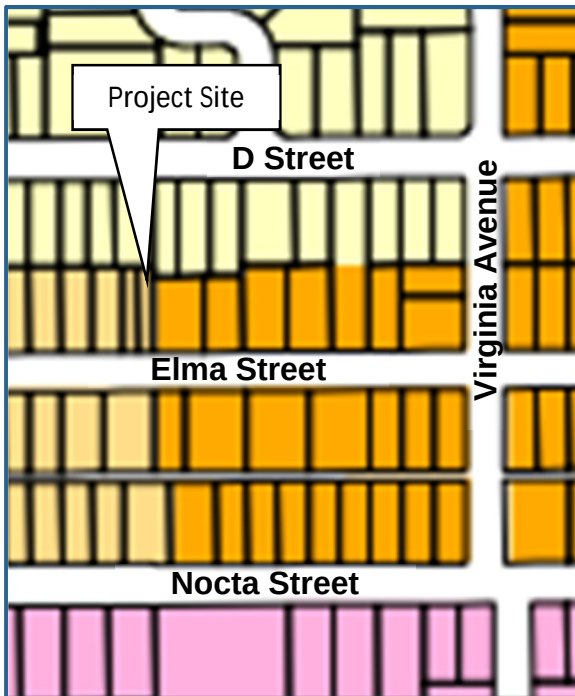
I hereby certify that the foregoing is the original of Ordinance No. 3223 duly passed and adopted by the Ontario City Council at their regular meeting held November 1, 2022, and that Summaries of the Ordinance were published on September 27, 2022 and November 8, 2022, in the Inland Valley Daily Bulletin newspaper.

SHEILA MAUTZ, CITY CLERK

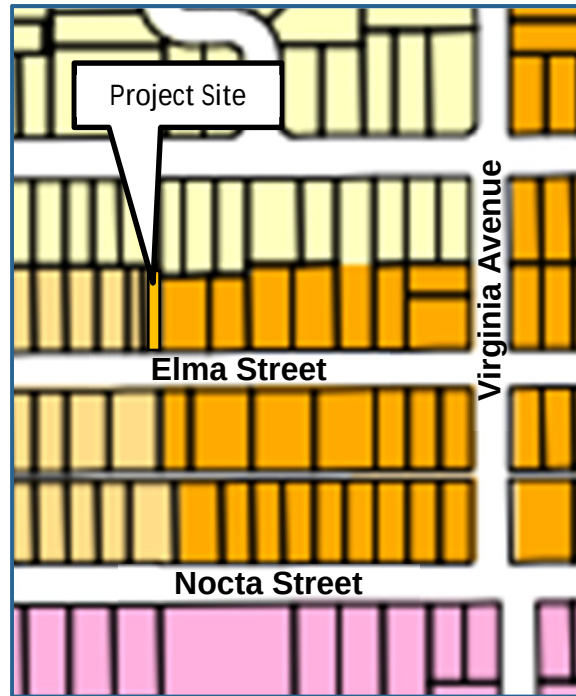
(SEAL)

EXHIBIT A:

File No. PZC19-001; Zone Change for 1063 East Elma Street



Existing Zoning:
MDR -11, Low Medium Density Residential



Proposed Zoning:
MDR -18, Medium Density Residential

LEGEND	
Overlays	
AO, Agricultural	
LA, Local Avenue	
MTD, Multimodal Transit Center	
OC, Interim Community Commercial	
LS, Emergency Shelter	
Zones	
AR-2, Residential/Agricultural	
RE-2, Rural Estate	
RE-4, Residential/Estate	
LDR-5, Low Density Residential	
MDR-11, Low-Medium Density Residential	
MDR-18, Medium Density Residential	
MDR-25, Medium-High Density Residential	
MDR-45, High Density Residential	
FUD, Planned Unit Development	
MHP, Mobile Home Park	
MU-1, Downtown Mixed Use	
MU-2, East Hill Mixed Use	
MU-1', Buckhorn/Travis Mixed Use	
CS, Corner Store	
CH, Neighborhood Commercial	
CC, Community Commercial	
CK, Regional Commercial	
CCS, Convention Center Support Commercial	
O-L, Low Intensity Office	
O-H, High Intensity Office	
BP, Business Park	
P, Industrial Park	
L, Light Industrial	
G, General Industrial	
H, Heavy Industrial	
OVI, Ontario International Airport	
CIU, Civic	
OS-R, Open Space-Recreation	
OS-C, Open Space-Cemetery	
UC, Utilities Corridor	
SP, Specific Plan	
RC, Rail Corridor	

CITY OF ONTARIO

Agenda Report
November 1, 2022

SECTION:
PUBLIC HEARINGS

Department: Records Management
Prepared By: Claudia Y Isbell
Staff Member Presenting:
Ruben Duran, City Attorney
Approved By: 

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 12

SUBJECT: A PUBLIC HEARING TO REVIEW INITIAL DRAFT DISTRICTING MAPS FOR THE DISTRICT-BASED ELECTIONS UNDER THE CALIFORNIA VOTING RIGHTS ACT AND INTRODUCE AN ORDINANCE TO ADOPT A MAP

RECOMMENDATION: That the City Council open a Public Hearing, review, consider, and provide direction regarding the draft maps, and introduce an Ordinance to adopt a map.

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: There is no direct fiscal impact associated with this Public Hearing.

BACKGROUND & ANALYSIS: On April 19, 2022, the City Council conducted the first of five public hearings to receive community input regarding communities of interest. The second public hearing took place on May 10, 2022, at which time Staff introduced and provided a demonstration of the mapping tool that was subsequently released to the public. At that public hearing, the City Council also received input regarding communities of interest. Ten initial draft maps were made available on the City's district website on June 13, 2022, for public review. Six additional draft maps were posted on the City's district website on June 30, 2022.

On June 21, 2022, the City conducted the third Public Hearing where the City demographer presented and the City Council received input from the community. On July 5, 2022, the City conducted its fourth public hearing in the districting process. The City Attorney's Office evaluated publicly submitted comments and maps for compliance with the California Voting Rights Act and Federal Voting Rights Act, and initial draft maps were presented to Council for consideration at the fourth public hearing.

On July 19, 2022, the City conducted the fifth public hearing. At the fifth public hearing, the City Council provide direction to Staff and the City's demographers to advance certain maps for further consideration (Map 4, Map 6, and Map 10) and to conduct additional public outreach and community engagement regarding proposed maps.

To that end, the City continued to encourage public comments on the transition to districts process and the proposed district maps. In an effort to engage Ontario residents in the districting process, five community workshops were initially held in various areas of the City to provide background and specific directions on creating maps. These workshops were held in English and Spanish. There were four additional community workshops to specifically go over the mapping tool. The four additional community workshops were also held in English and Spanish. In addition, Staff distributed paper map kits at the Ontario Senior Center and during the City's Concerts in the Park events.

Following the fifth public hearing on July 19th, the City held seven additional community engagement meetings, three virtually (including one in Spanish), two at community centers, and two in conjunction with the Route 66 Cruisin' Reunion event. During the additional community outreach, a seventeenth map was submitted by Mr. Chris Robles, plaintiff in the California Voting Rights Act demand to transition to district-based elections. Mr. Robles worked collaboratively with the Center for Community Action and Environmental Justice and the Black and Brown Alliance in creating a seventeenth map, "Map 17".

The City's demographic consultant has examined each of the seventeen maps and determined that the districts drawn in the draft maps are within the population deviation of 10% or less, are contiguous, and compact, albeit to varying degrees. Map 17, submitted on September 6, 2022, is very compact, with contiguous districts, and respects the communities of interests identified through the public hearing process. Additionally, Map 17 respects the geographic integrity of the City's historical district in the northwest quadrant of the City and the Ontario Ranch area in the southern portion of the City. In fact, Map 17 is extremely similar to maps the City Council advanced for further consideration at the July 19th public hearing and in particular, Map 6, which was submitted by the City's demographic consultant. As such, in an effort to promote a collaborative design approach with various community stakeholders, Map 17 emerges as not only a legally compliant map option, but one that represents the community's interests and desires.

The proposed election sequence for Map 17 includes District 1 and 2 in 2024 and Districts 3 and 4 in 2026. Each District is a majority minority Hispanic voting district and the proposed sequencing is consistent with community input.

Information on the districting process, the community workshop presentations, and the paper map kits can be found on the City's district website at ontarioca.gov/districts. Information on the website is available in both English and Spanish.

In conclusion, Staff recommends the City Council conduct the sixth public hearing, consider the draft maps submitted, and introduce an Ordinance approving Map 17 as the final district map. Alternatively, the City Council may conduct the sixth public hearing, consider the draft maps selected, and direct Staff and the City's demographic consultant to revise any draft map as requested.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADDING A NEW ARTICLE 3 TO TITLE 2 OF VOLUME 1 OF THE ONTARIO MUNICIPAL CODE TO CHANGE THE CITY'S ELECTORAL SYSTEM FROM AT-LARGE TO BY-DISTRICT ELECTIONS WITH RESPECT TO ELECTING CITY COUNCIL MEMBERS AND MAINTAINING AN ELECTIVE MAYOR, ESTABLISHING DISTRICT BOUNDARIES, SCHEDULING ELECTIONS WITHIN THE DISTRICTS, AND MAKING CERTAIN FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

WHEREAS, the City of Ontario, California ("City") is a general law city, duly organized under the constitution and laws of the State of California; and

WHEREAS, the City and its legislative body, the City Council, supports the full participation of all eligible and registered voters in electing Members of the City Council; and

WHEREAS, four of the members of the Ontario City Council are currently elected in at-large elections, in which each City Councilmember is elected by all registered voters of the entire City, with the Mayor being separately elected by all registered voters of the entire City, pursuant to California Government Code sections 34871 and 34900 et seq.; and

WHEREAS, on September 28, 2016, Governor Edmund G.. Brown, Jr. signed Assembly Bill 2220 ("AB 2220"), which became effective January 1, 2017, and amended California Government Code section 34886 to authorize the City Council of any city, regardless of population size, to adopt an ordinance change to a by-district system of electing City Councilmembers, including with an elective mayor, without the need to submit such an ordinance to voters for approval; and

WHEREAS, on September 28, 2016, Governor Edmund G.. Brown, Jr. also signed Assembly Bill 350 ("AB 350"), which became effective January 1, 2017, which requires a City that changes to district-based elections to hold public hearings before and after drawing a preliminary map or maps of the proposed district boundaries, and to publish and make available for release at least one draft map and the potential sequencing of elections; and

WHEREAS, on or about March 5, 2020, the City received a complaint asserting that the City's current at-large electoral system violates the California Voting Rights Act of 2001 ("CVRA"); and

WHEREAS, the complaint does not contain sufficient evidence of a violation of the CVRA, but the cost of defending against a lawsuit under the CVRA is extremely high, even if the City is successful, and such an expensive defense would severely burden the City's budget and curtail the City's ability to provide needed services to its residents; and

WHEREAS, on or about June 2, 2021, in order to avoid spending additional taxpayer dollars in the defense of a potentially extremely expensive lawsuit, the City Council determined that it is in the best interest of the City to enter into a settlement agreement and move from its current at-large electoral system to a by-district election for members of the City Council, with an elective mayor pursuant to California Government Code section 34886 and in furtherance of the purposes of CVRA, and to that end, the City Council has undertaken an extensive public outreach effort, including multiple workshops and public hearings, at which time the public was invited to participate and provide input as to the proposed boundaries, content and composition of the districts and the potential sequencing of elections; and

WHEREAS, under the provisions of California Election Code section 10010, a City that changes from an at-large method of election to a district-based election must do all of the following before a public hearing at which the City Council votes to approve or defeat an ordinance establishing district-based elections:

- Before drawing a draft map or maps of the proposed boundaries of the districts, the City must hold at least two public hearings over a period of no more than 30 days, at which the public is invited to provide input regarding the composition of the districts.
- After all draft maps are drawn, the City must publish and make available for release at least one draft map and the potential sequence of the elections.
- The City must hold at least two additional hearings over a period of no more than 45 days, at which the public is invited to provide input regarding the content of the draft map(s) and the proposed sequence of elections. The first version of a draft map must be published at least seven days before consideration at a hearing; and

WHEREAS, on February 27, 2020, the City Council adopted a Resolution of Intention, outlining the City Council's intention to transition from at-large to district-based elections, specific steps the City Council will undertake to facilitate this transition, and an estimated time frame for doing so; and

WHEREAS, on April 5, 2022 and May 10, 2022, the City Council conducted two (2) public hearings for the purpose of soliciting public input and comments on the composition of the proposed election districts; and

WHEREAS, the City Council also conducted public workshops on April 4, 6, 11, 12, and 13, 2022, at which time the City provided information on the districting process and informed the public on ways to become involved; and

WHEREAS, on May 14, 2022 and June 4, 2022, the City conducted four (4) additional public workshops, to instruct the public in the use of the online and paper mapping tools; and

WHEREAS, ten (10) draft election district maps were placed on the City's public webpage for public review on June 14, 2022; and

WHEREAS, six (6) additional draft election district maps were placed on the City's public webpage for public review on June 28, 2022; and

WHEREAS, on September 8, 10, 16, 17, 24, 2022 and October 8, 12, 22, 2022 the City conducted additional outreach in the form of community engagement meetings both in person and virtually; and

WHEREAS, as a result of the additional public meetings and community engagement, one (1) additional draft election district map was submitted by the plaintiff in the aforementioned California Voting Rights Act action to transition to by-district elections, labeled Map 17 and drafted in collaboration with the Black and Brown Alliance and the Center for Community Action and Environmental Justice; and

WHEREAS, Map 17 is population balanced, draws compact, contiguous districts, respects the communities of interest identified by various speakers during the public hearing process, and recognizes the geographic integrity of the historic district in the northwest quadrant of the City and the Ontario Ranch area located in the southern portion of the City; and

WHEREAS, Map 17 was placed on the City's public webpage for public review on October 24, 2022; and

WHEREAS, on June 21, July 5, July 19, 2022, and November 1, 2022, the City Council conducted four (4) additional public hearings, at which time all interested persons were afforded an opportunity to provide input regarding the content of the draft maps and the proposed sequence of elections, and at which time the City Council did hear and consider such public input regarding the content of the draft maps and the proposed sequence of elections; and

WHEREAS, the purpose of this ordinance is to enact, pursuant to California Government Code section 34886, an ordinance providing for election of the Members of the City Council of the City of Ontario by-district in four (4) single-member districts as reflected in Exhibit A to this ordinance, and providing for the election of an elective Mayor of the City of Ontario to be elected City-wide; and

WHEREAS, pursuant to California Government Code section 34886, it is declared the change in the method of electing members of the City Council of the City of Ontario made by this ordinance is being made in furtherance of the purposes of the California Voting Rights Act of 2001 (Chapter 1.5 (commencing with Section 14025) of Division 14 of the Elections Code) and to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. A new Article 3 is hereby added to Title 2 of Volume 1 of the Ontario Municipal Code with the title "City Council Electoral System" to read as follows:

“Sec. 2-1-301 City Council Electoral System

(a) At-large election—Mayor. Pursuant to California Government Code section 34886, the mayor shall be voted on at-large.

(b) City Council districts established. Four City Council districts are hereby established in the City of Ontario. The boundaries and identifying number of each district shall be as described on the Council District Map 17 attached hereto as Exhibit “A” and incorporated herein by this reference.

(c) Election of members of the City Council by district.

 A. Following the effective date of the ordinance codified in this section and upon the commencement of “by district” elections in the order established in section (d) of this section 2-42, members of the City Council shall be elected “by district” as defined in California Government Code Section 34871 or any successor statute. Except for the Mayor, a person shall not be eligible to be elected to be a member of the City Council unless he or she is otherwise qualified as required by law and resided in the district, and both resided in the geographical area making up the district from which he or she is nominated to be elected and was a registered voter of the City of Ontario at the time nomination papers are issued to the candidate as provided for in Section 10227 of the California Elections Code. It is the intent of the City Council, in enacting this ordinance, that no term of any member of the City Council that commences on or prior to the effective date of the ordinance codified in this section shall be affected prior to its expiration date.

 B. Registered voters signing nomination papers or voting for a member of the City Council shall be residents of the geographical area making up the district from which the member is to be elected.

 C. The terms of the office of each member elected to the City Council, including the Mayor, shall remain four years.

(d) Commencement of district elections. It is the intent of the City Council, in enacting this ordinance, that this section shall not affect any term of office in existence or commencing on or before the effective date of the ordinance codified in this section. Commencing with the general municipal election in November of 2024 and thereafter, the voters in districts 1 (one) and 2 (two) shall elect members of the City Council by district shall be elected at large for full four-year terms. At the general municipal election in 2026 and thereafter, the voters in districts 3 (three) and 4 (four) shall elect members of the City Council and the Mayor by district for full four-year terms.

(e) Adjustment of boundaries.

A. Pursuant to Elections Code Section 21601, as it may be amended, the City Council shall, by ordinance or resolution, adjust the boundaries of any or all of the districts following each decennial federal census. Using the census as a basis, the City Council shall adjust the boundaries so that the districts shall be as nearly equal in population as practicable and in compliance with all applicable provisions of law. Any adjustment of district boundaries shall be made by ordinance or resolution, adopted by the City Council before the first day of November of the year following the year in which each decennial federal census is taken. Prior to the public hearing approving the adjustment of the district boundaries, the City Council shall hold at least one public hearing on the proposed district boundaries as required by Election Code Section 21607.

B. At the time of any annexation of territory to the City, the City Council shall designate, by resolution adopted by a vote of at least a majority of the City Council, the contiguous district to which the annexed territory shall be a part and shall amend the district boundaries if necessary in accordance with Election Code Section 21603, as it may be amended.

C. Pursuant to Elections Code Section 21606, the term of office of any Council member who has been elected and whose term of office has not expired shall not be affected by any change in the boundaries of the district from which he or she was elected. At the first election for Council following adjustment of the boundaries of the districts, a person meeting the requirements of Government Code Section 34882 shall be elected to the City Council for each district under the readjusted district plan that has the same district number as a district whose incumbent's term on the Council is due to expire.

(f) Implementation. If necessary to facilitate the implementation of this Ordinance, the City Clerk is authorized to make technical adjustments to the district boundaries that do not substantively affect the populations in the districts, the eligibility of candidates, or the residence of elected officials within any district. The City Clerk shall consult with the City Manager and City Attorney concerning any technical adjustments deemed necessary and shall advise the City Council of any such adjustments required in the implementation of the districts."

SECTION 2. Effective Date. This Ordinance shall become effective thirty (30) days after its adoption.

SECTION 3. Inconsistencies. To the extent the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City

ordinance, motion, resolution, rule or regulation government the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof.

SECTION 4. Interpretation. In interpreting this Ordinance or resolving any ambiguity, this Ordinance shall be interpreted in a manner that effectively accomplishes its state purposes.

SECTION 5. CEQA. Pursuant to Section 15320 of the Guidelines for the Implementation of the California Environmental Quality Act ("CEQA"), further review under CEQA is not required because the City Council action in establishing district-based elections consists of a change in the organization or reorganization of a local governmental agency where the change does not change the geographical area in which previously existing powers are exercised. Therefore, the City Council finds that it can be seen with certainty that there is no possibility that this action will result in any environmental effect. The City Clerk is hereby directed to file a Notice of Exemption with the County Clerk within three (3) days following the date of this Ordinance.

SECTION 6. Publication. The City Clerk shall certify to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this Ordinance, the Ordinance, or a summary thereof, along with the names of the City Council members voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City of Ontario.

SECTION 7. Severability. If any section, subsection, subdivision, sentence, clause phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court or competent jurisdiction, then such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Ontario hereby declares it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

PASSED, APPROVED AND ADOPTED on this day of _____ 2022.

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 November 1, 2022 and adopted at the regular meeting held by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

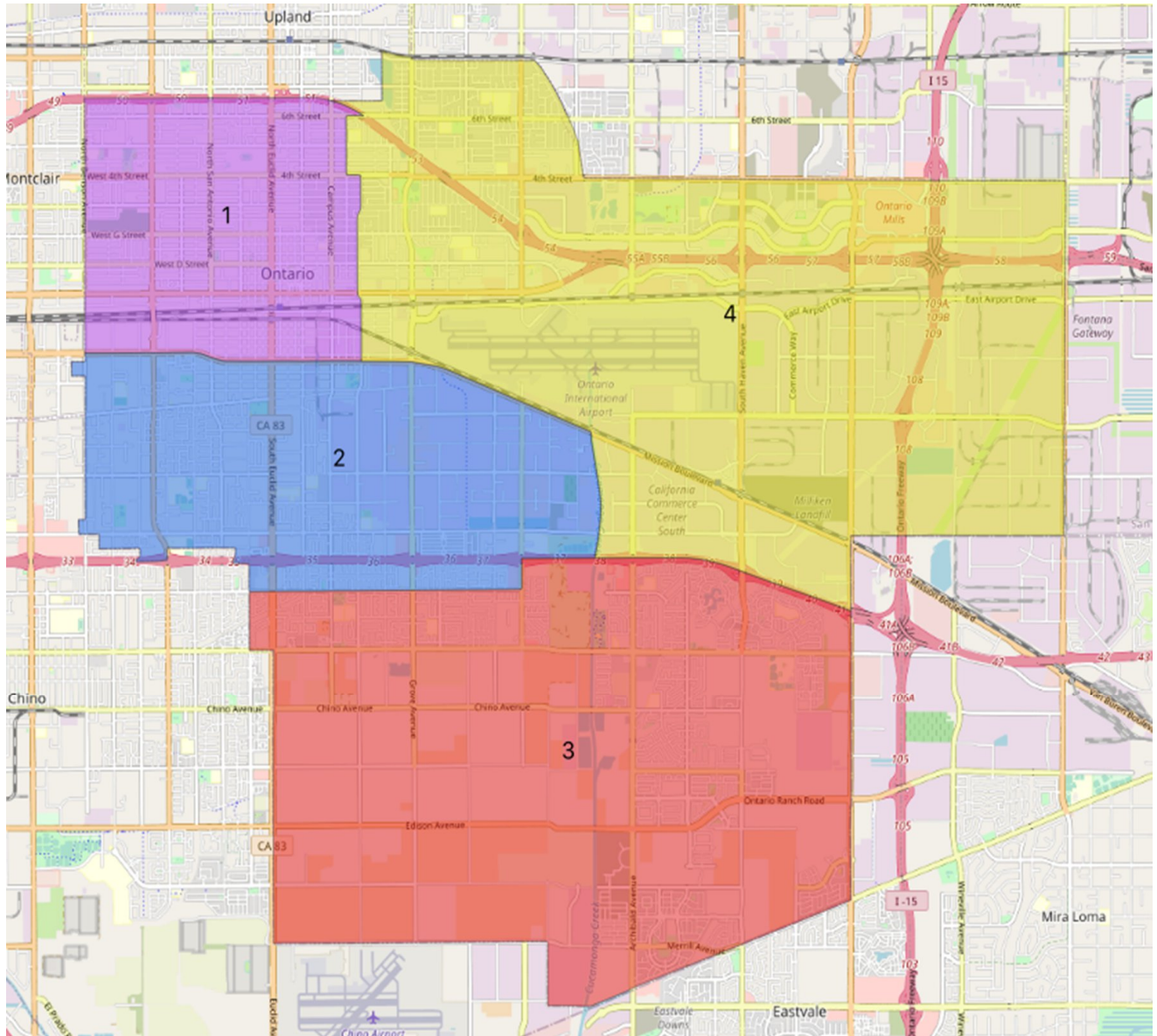
I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held _____ and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper..

SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A ELECTION DISTRICT MAP

Map 17 – Submitted by Plaintiff Chris Robles, CCAEJ, & Brown and Black Coalition



CITY OF ONTARIO

Agenda Report
November 1, 2022

SECTION: PUBLIC HEARINGS

Department: Economic Development
Prepared By: Karla Tavera
Staff Member Presenting:
Jennifer McLain Hiramoto, Economic
Development Director
Approved By: 

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 13

SUBJECT: A PUBLIC HEARING REGARDING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT AND A FOURTH AMENDMENT TO THE OPERATING COVENANT AGREEMENT BETWEEN THE CITY OF ONTARIO AND MARK CHRISTOPHER CHEVROLET, INC. PURSUANT TO GOVERNMENT CODE SECTION 53083; CONSIDERATION OF RESOLUTIONS ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT, APPROVING THE OPERATING COVENANT AGREEMENT, AND MAKING RELATED FINDINGS

RECOMMENDATION: That the City Council take the following actions:

- A. Hold the Public Hearing; and
- B. Adopt a Resolution accepting the Economic Development Subsidy Report regarding a Fourth Amendment to the Operating Covenant Agreement ("Agreement"), (on file with the Records Management Department) by and between the City of Ontario and Mark Christopher, Inc., and authorizing the City Manager to execute the Agreement, and making related findings; and
- C. Adopt a Resolution approving the Agreement and authorizing the City Manager to execute the Agreement, and making related findings; and
- D. Direct City Staff to file a Notice of Exemption based upon the City Council's finding that the impacts for this Agreement is not a project and subject to environmental review and that there is no possibility that the activity in question may have a significant effect on the environment.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

Operate in a Businesslike Manner

Invest in the Growth and Evolution of the City's Economy

FISCAL IMPACT: This Amendment will change the base amount of the Agreement from \$700,000 to \$600,000 in addition to extending the term of the Dealer's Operating Covenant under the Agreement through year 2041. An amount of 50% of Sales Tax Revenues, which are in excess of \$600,000 will be reimbursed to Mark Christopher.

BACKGROUND & ANALYSIS: The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law. The City of Ontario receives one percent (1%) of all taxable sales generated within the City under this law. Sales and Use Tax revenues are an important source of revenue for the City, which are used to provide essential city services, such as police, fire, infrastructure maintenance and community facilities.

The City of Ontario and Mark Christopher Chevrolet, Inc. the "Dealer", entered into an Operating Covenant Agreement dated May 6, 1997, to assist with the expansion of their dealership on Convention Center Way. Previously, the Dealer had been operating in the City for more than 20 years at their original location on west Holt Boulevard. This Agreement was first amended on June 19, 2001, then again on May 24, 2010, and a third time on February 2, 2016. This Agreement, and the two subsequent amendments, are collectively referred to as the Original Operating Covenant Agreement ("Original OCA").

Pursuant to the recommended Fourth Amendment, the parties now wish to amend the Original OCA to extend the term of the Dealer's operating covenant under the Agreement through the year 2041 so that the term is co-terminus with a lease agreement. The Original OCA provides for a reimbursement of 50% of Sales Tax Revenues in excess of \$700,000 annually. The Fourth Amendment will also change the base amount of the Original OCA from \$700,000 to \$600,000 annually.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 53083 REGARDING AN OPERATING COVENANT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND MARK CHRISTOPHER CHEVROLET, INC.

WHEREAS, the City of Ontario ("City") and Mark Christopher Chevrolet, Inc. ("Mark Christopher") have negotiated an Operating Covenant Agreement ("Agreement") for the retention of an auto dealership within the City; and

WHEREAS, pursuant to that Agreement, Mark Christopher is committed to continue operating an auto dealership in the City for an additional thirteen year period; and

WHEREAS, Mark Christopher is also covenanted to, among other things, designate the City as the point of sale for certain transactions; and

WHEREAS, the City has agreed to purchase those covenants through quarterly payments equal to fifty percent (50%) of the sales tax, above a base sales tax amount, generated by transactions allocated to the auto dealership; and

WHEREAS, based on information provided by City staff, and other such written and oral evidence, as presented to the City, the City finds and determines that the allocation of funds to Mark Christopher pursuant to the Agreement is reasonably related to a legitimate governmental purpose in that the retention of the auto dealership will provide numerous public benefits including:

- 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; and
- Mark Christopher is a highly successful auto dealership who will be committed to maintaining the auto dealership in the City of Ontario which will ensure the retention and creation of jobs and provide opportunity for additional job growth throughout the term of this Agreement; and
- Entering into this Agreement and retaining the auto dealership may attract additional businesses and investment in the community due to increased services and economic activity in the area; and
- Retaining this business within the City will create jobs, maintain economic diversity in the community and stimulate the economic recovery of the Inland Empire by generating new opportunities for economic growth within the region; and
- Retaining Mark Christopher's operations within the City will generate substantial revenue for the City, allow for the retention of jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the COVID-19 Pandemic, and result in community

and public improvements that might not otherwise be available to the community for many years; and

WHEREAS, in accordance with Government Code Section 53083, the City provided certain information in written form to the public and on its website, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, and held a noticed public hearing on November 1, 2022 to consider all written and oral comments on the Economic Development Subsidy Report; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

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

SECTION 1. Incorporation of Recitals. The foregoing recitals are true and correct, and are incorporated herein and made an operative part of this Resolution.

SECTION 2. Findings. The City Council additionally finds and determines that (a) there are identifiable public purposes fulfilled by the Agreement, as set forth in the Recitals, that outweigh the benefit to private persons; and (b) the findings set forth in this Resolution are based upon substantial written and oral evidence presented to the City Council.

SECTION 3. CEQA. The City Council hereby finds that pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14 § 15000 et seq.), approval of the Agreement and acceptance of the Economic Development Subsidy Report is not a "project" for purposes of CEQA and therefore is not subject to CEQA review. The Agreement and acceptance of the Economic Development Subsidy Report is not a project pursuant to State CEQA Guidelines section 15378(b)(4), which states that government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant environmental impact are not subject to CEQA. Further, the Agreement and acceptance of the Economic Development Subsidy Report is not a project under State CEQA Guidelines section 15061(b)(3), which states that CEQA does not apply where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

In addition, the City Council will direct staff to file a categorical exemption with the County of San Bernardino for this location upon adoption of this Resolution.

SECTION 4. Acceptance of Economic Development Subsidy Report. The City Council finds and determines that this Economic Development Subsidy Report is in compliance with applicable law and specifically Government Code Section 53083.

SECTION 5. Severability. If any provision of this Resolution is held invalid, the remainder of this Resolution shall not be affected by such invalidity, and the provisions of this Resolution are severable.

SECTION 6. Effective Date. This Resolution shall become effective immediately upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 1st day of November 2022.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL 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. 2022- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 1, 2022 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. 2022- duly passed and adopted by the Ontario City Council at their regular meeting held November 1, 2022.

SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A
ECONOMIC DEVELOPMENT SUBSIDY REPORT

[Attached behind this cover page]

**ECONOMIC DEVELOPMENT SUBSIDY REPORT
PURSUANT TO GOVERNMENT CODE SECTION 53083**

**FOR AN OPERATING COVENANT AGREEMENT
BY AND BETWEEN
CITY OF ONTARIO
AND
MARK CHRISTOPHER CHEVROLET, INC.**

Pursuant to Government Code Section 53083, the City Council of the City of Ontario must hold a noticed public hearing and, prior to the public hearing, provide all of the following information in written form and available to the public and through the City's website, regarding a proposed economic development subsidy to be provided by the City pursuant to an Operating Covenant Agreement by and between the City of Ontario and Mark Christopher Chevrolet, Inc. ("Agreement"). Notice was published in the local newspaper for a public hearing to be held on November 1, 2022.

The purpose of this report is to provide the information required pursuant to Government Code Section 53083 in regards to the Agreement. This report shall remain available to the public and posted on the City's website until the end date of the economic development subsidy, as further described in number 2 below.

1. The name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy.

The Agreement is with Mark Christopher Chevrolet, Inc., a Delaware corporation. Mark Christopher Chevrolet, Inc. is the sole beneficiary of the economic development subsidy.
Mark Christopher Chevrolet, Inc.
2131 E. Convention Center Way
Ontario, CA 91764

2. The start and end dates and schedule, if applicable, for the economic development subsidy.

If the Agreement is approved by the City Council, the start date of the economic development subsidy for the Fourth Amendment to Agreement for Purchase of Operating Covenant and Operating Covenant will be for the period commencing November 1, 2022 and ending March 31, 2041 ("Fifth Covenant Period"), unless extended pursuant to the terms of the Agreement.

The economic development subsidy will be paid quarterly (every 3 months), within 120 days of the end of each Computation Quarter. Computation Quarters run from January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

3. A description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy.

The economic development subsidy is calculated based on Mark Christopher Chevrolet, Inc.'s sales tax revenue received by the City during a Covenant Period in an amount equal to the sum of fifty percent (50%) of the Sales Tax Revenues attributable to annual taxable sales to the location in excess of the base, \$600,000 per year, sales tax amount for each year during the eligibility period of the Fifth Covenant Period.

The City estimates that the total amount of the expenditure of public funds as a result of the economic development subsidy will be approximately \$15,000,000.

4. A statement of the public purposes for the economic development subsidy.

Mark Christopher Chevrolet, Inc. ("Mark Christopher") is a highly successful auto dealership, which generates substantial annual sales tax for the City. Mark Christopher has been and remains one of the City's top sales tax generators on a yearly basis. The continued growth and prosperity of this auto center is of most importance to the City. Through this additional revenue, the City is able to fund necessary public services and facilities, including but not limited to, public safety services and facilities, public improvements and recreation opportunities that otherwise may not be available to the community for many years. Through this Agreement, Mark Christopher will be committed to retaining and operating their auto dealership in the City for transacting auto sales.

The public purpose of the economic development subsidy includes, but is not limited to, maintaining and creating jobs and stimulating the economic recovery of the Inland Empire. Mark Christopher has agreed to retain the auto dealership within the City for a period of not less than 13 years. The City has determined that the retention of the auto dealership within the City will continue to generate substantial revenue for the City, retain jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the COVID-19 Pandemic, and result in community and public improvements that might not otherwise be available to the community for many years. Additionally, by having a company like Mark Christopher remain in the City, the City will be adding diversity to and generating new opportunities for economic growth.

Further, the commitment to stay in Ontario serves the additional public purpose of fostering a business and civic environment that may attract additional businesses and investment in the community due to the availability of the increased public and private services and economic activity resulting therefrom, thereby assisting the City in its goal of furthering the development of the community.

5. The projected tax revenue to the local agency as a result of the economic development subsidy.

The City anticipates that the retention of the auto dealership within the City will result in an approximate increase of sales tax revenue by \$1.5 million per year, minus the

covenant payments to be paid to Mark Christopher Chevrolet, Inc., as set forth in number 2 above.

There will also be an increase in other taxes including business license tax and real property taxes, in an approximate amount of \$50,000.

6. The estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.

The estimated number of jobs created by the economic development subsidy is approximately 15-20 full-time jobs for the Fifth Covenant Period.

7. The net number of jobs created by the economic development subsidy, broken down by full time, part-time and temporary positions.

To date, the net number of jobs created by the economic development subsidy is approximately 15 full-time jobs. Despite the COVID-19 Pandemic, Mark Christopher currently maintains 158 full-time jobs.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO,
CALIFORNIA, APPROVING THE OPERATING COVENANT AGREEMENT
BETWEEN THE CITY OF ONTARIO AND MARK CHRISTOPHER
CHEVROLET, INC. AND MAKING RELATED FINDINGS.

WHEREAS, Mark Christopher Chevrolet, Inc. ("Mark Christopher"), a Delaware Corporation and an auto dealership with a location in the City of Ontario ("City") are parties to that certain "Agreement for Purchase of Operating Covenant and Operating Covenant" ("Original Agreement") dated May 6, 1997 for reference purposes; and

WHEREAS, Mark Christopher and the City entered into that certain "First Amendment to Agreement for Purchase of Operating Covenant and Operating Covenant" dated June 19, 2011 for reference purposes where the Parties extended the term of Mark Christopher's operating covenant by six (6) years in exchange for the City's agreement to extend by six (6) years the period during which Mark Christopher may receive financial incentive payments from the City; and

WHEREAS, Mark Christopher and the City entered into that certain "Second Amendment to Agreement for Purchase of Operating Covenant and Operating Covenant" dated May 24, 2010, for reference purposes where the Parties extended the term of Mark Christopher's operating covenant by five (5) years in exchange for the City's agreement to extend by five (5) years the period during which Mark Christopher may receive financial incentive payments from the City; and

WHEREAS, Mark Christopher and the City entered into that certain "Third Amendment to Agreement for Purchase of Operating Covenant and Operating Covenant" dated February 2, 2016, for reference purposes where the Parties extended the term of Mark Christopher's operating covenants by ten (10) years in exchange for the City's agreement to extend by ten (10) years the period during which Mark Christopher may receive financial incentive payments from the City; and

WHEREAS, to ensure that Mark Christopher remains in the City and continues to do business in the City after the expiration of the Agreement, Mark Christopher and the City have negotiated a Fourth Amendment ("Agreement"), which provides incentives to ensure Mark Christopher maintains the existing auto dealership within the City; and

WHEREAS, the City has determined that the retention of the Mark Christopher auto dealership within the City will generate substantial revenue for the City, allow for the retention of and the creation of new jobs, revitalize an area of the City that suffered a loss of jobs and businesses during the COVID-19 Pandemic, and result in community and public improvements that might not otherwise be available to the community for many years; and

WHEREAS, the Parties now desire to extend the term of the Dealership's operating covenant by thirteen (13) years in exchange for Ontario's agreement to extend by thirteen (13) years the period during which the Dealership may receive financial incentive payments from Ontario; and

WHEREAS, on November 1, 2022, the City Council of the City of Ontario conducted a public hearing to consider the Agreement and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

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

SECTION 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

SECTION 2. Findings. The City Council hereby finds that:

(a) Entering into this Agreement will serve the following public purposes:

1. Mark Christopher is a highly successful auto dealership who will be committed to retaining the auto dealership in the City of Ontario.
2. Retaining this business within the City will create jobs, maintain economic diversity in the community and stimulate the economic recovery of the Inland Empire by generating new opportunities for economic growth within the region.
3. Retaining Mark Christopher's auto dealership within the City will generate substantial revenue for the City, allow for the retention of jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the COVID-19 Pandemic, and result in community and public improvements that might not otherwise be available to the community for many years.
4. Entering into this Agreement and ensuring the retention of the auto dealership may attract additional businesses and investment in the community due to increased services and economic activity in the area.

(b) Based upon these and other public benefits the public purposes of the Agreement outweigh any private benefit to private persons or entities.

(c) Contingent Obligations. The City finds that each City obligation is contingent upon separate consideration by Mark Christopher including but not limited to quarterly sales tax generation.

SECTION 3. CEQA Compliance. The City Council hereby finds that pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14 § 15000 et seq.), approval of the Agreement is not a "project" for purposes of CEQA and therefore is not subject to CEQA review. The Agreement is not a project pursuant to State CEQA Guidelines section 15378(b)(4), which states that government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant environmental impact are not subject to CEQA. Further, the Agreement is not a project under State CEQA Guidelines section 15061(b)(3), which states that CEQA does not apply where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

In addition, the City Council will direct staff to file a categorical exemption with the County of San Bernardino for this location upon adoption of this Resolution.

SECTION 4. Approve Agreement. The City Council hereby approves the Fourth Amendment to Agreement for Purchase of Operating Covenant and Operating Covenant in the form attached to this Resolution as Exhibit A. The City Council hereby authorizes the City Manager, with the concurrence of the City Attorney, to execute said Agreement. City Manager is hereby authorized to take any additional steps necessary to facilitate the intent of this action.

SECTION 5. Implementation. The City Manager or his or her designee is hereby authorized and directed to, on behalf of the City, execute any and all documents in accordance with this Resolution and applicable law.

SECTION 6. 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 it would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

SECTION 7. Effective Date. This Resolution shall become effective immediately upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 1st day of November 2022.

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. 2022- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 1, 2022 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. 2022- duly passed and adopted by the Ontario City Council at their regular meeting held August 16, 2022.

SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A
OPERATING COVENANT AGREEMENT

[Attached behind this cover page]

**FOURTH AMENDMENT TO AGREEMENT FOR PURCHASE OF
OPERATING COVENANT AND OPERATING COVENANT**

between

**THE CITY OF ONTARIO
a municipal corporation**

and

**MARK CHRISTOPHER CHEVROLET, INC.
a Delaware corporation**

[Dated as of _____ for reference purposes only]

1. PARTIES AND EFFECTIVE DATE.

46700.00120\40810202.1

This Fourth Amendment to Agreement for Purchase of Operating Covenant and Operating Covenant (“Fourth Amendment”) is entered into between (i) the City of Ontario (“Ontario”), a municipal corporation, and (ii) Mark Christopher Chevrolet, Inc. (“Dealership”), a Delaware corporation. This Amendment shall not become effective until the date (“Effective Date”) on which all of the following are true:

- (i) This Fourth Amendment has been approved by the Dealership and executed by its authorized representatives, and
- (ii) This Fourth Amendment has been approved by the City Council, following all legally required hearings, and executed by its authorized representative.

This Fourth Amendment may be recorded by Ontario against the Property (defined below) at any time following the Effective Date.

2. RECITALS AND REPRESENTATIONS.

2.1. Ontario and Dealership are parties to that certain “Agreement for Purchase of Operating Covenant and Operating Covenant” (“Original Agreement”) dated May 6, 1997 for reference purposes. All initially capitalized terms used, but not otherwise defined, herein shall have the meaning for such terms as set forth in the Original Agreement.

2.2 The Original Agreement provided for, among other things, the Dealership’s covenant to operate in Ontario and to generate sales tax revenues for Ontario in exchange for Ontario’s payment to Dealership of certain financial incentive payments described in the Original Agreement.

2.3 The Parties entered into that certain “First Amendment to Agreement for Purchase of Operating Covenant and Operating Covenant” dated June 19, 2001 for reference purposes where the Parties extended the term of the Dealership’s operating covenant by six (6) years in exchange for Ontario’s agreement to extend by six (6) years the period during which the Dealership may receive financial incentive payments from Ontario.

2.4 The Parties entered into that certain “Second Amendment to Agreement for Purchase of Operating Covenant and Operating Covenant” dated May 24, 2010, for reference purposes where the Parties extended the term of the Dealership’s operating covenant by five (5) years in exchange for Ontario’s agreement to extend by five (5) years the period during which the Dealership may receive financial incentive payments from Ontario. That Second Amendment will terminate on March 31, 2018.

2.5 The Parties entered into that certain “Third Amendment to Agreement for Purchase of Operating Covenant and Operating Covenant” dated February 2, 2016, for reference purposes where the Parties extended the term of the Dealership’s operating covenant by ten (10) years in exchange for Ontario’s agreement to extend by ten (10) years the period during which the Dealership may receive financial incentive payments from Ontario. That Third Amendment will terminate on March 31, 2028.

2.6 Dealership has been an important part of the community during the term of the Agreement. With the termination of the Agreement, Dealership may relocate to another jurisdiction resulting in a loss of jobs and community involvement by the Dealership. To avoid that, the Parties now desire to extend the term of the Dealership’s operating covenant by thirteen (13) years in exchange for Ontario’s agreement to extend by thirteen (13) years the period during which the Dealership may receive financial incentive payments from Ontario.

2.7 Entering into this Fourth Amendment and giving Dealership an incentive to continue to conduct operations in the City will generate substantial revenue for the City, enable the Owner to retain the existing workforce on the Property, create the potential for additional job growth on the Property, and continue to stimulate the economy in an area of the City of Ontario which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000’s, and result in community and public improvements that might not otherwise be available to the community for many years.

2.8 Dealership represents and warrants that the Agreement, as amended, is not subject to California Government Code Section 53084.5 because the Agreement, as amended, will not result in a reduction in the amount of revenue received by another local agency from Dealership that is located within the territorial jurisdiction of that other local agency from the tax proceeds collected under the Bradley-Burns Uniform Local Sales and Use Tax Law.

2.9 Additionally, Dealership represents and warrants that the Agreement, and specifically this Fourth Amendment, is not subject to California Government Code Section 53084.5 because this Agreement, as amended, will not result in a reduction in the amount of revenue under the Bradley-Burns Uniform Local Sales and Use Tax Law (“Tax”) that would be received by another local agency and Dealership does not maintain a physical presence within the territorial jurisdiction of another local agency that might experience a reduction in Tax.

3. TERMS.

3.1 Amended Section 3.1.6 The following shall be added to Section 3.1.6 of the Original Agreement:

“Sales Tax Revenue shall include any ‘New Tax.’ ‘New Tax’ means any increase in tax adopted or imposed by the City which is payable directly to the City, or indirectly to the extent the City receives a direct financial benefit, as a result of any of the following: (a) the adoption or taking effect of any law; (b) any change in any law or in the administration, interpretation, implementation or application thereof by the City; or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by the City.”

3.2 Amended Section 3.2 The following shall be added to the first paragraph of Section 3.2 of the Original Agreement:

“The Dealership covenants and agrees for itself and all voluntary and involuntary successors and assigns to, that, commencing on

November 1, 2022 and continuing until March 31, 2041, unless this Agreement is terminated sooner pursuant to specific provision of this Agreement, the Dealership shall operate, or cause to be operated, upon the Property the entirety of the Dealership Facilities in a commercially reasonable business manner, consistent with all applicable provisions of Federal, State and local laws and regulations. Subject to Section 3.17, the Dealership Facilities shall be operated in accordance with the reasonable and customary automobile dealership practices in the surrounding communities.”

3.3 Amended Section 3.3.1. Section 3.3.1 of the Original Agreement is amended to include:

“This paragraph sets forth the parties’ intent with respect to Ontario’s acquisition of the Operating Covenant set forth in Section 3.2. It is the parties’ intent that the consideration to be paid to the Dealership in exchange for the Operating Covenant shall consist of Ontario’s payment to the Dealership of the following amount during the period commencing November 1, 2022 and ending March 31, 2041 (“Fifth Covenant Period”), an amount equal to fifty percent (50%) of Sales Tax Revenues which are in excess of Six Hundred Thousand Dollars (\$600,000) per twelve (12) month period of the Fifth Covenant Period;

It is expressly agreed that Ontario’s obligations under this Section 3.3 are contingent on a year-to year basis and, for each Computation Year (hereinafter defined), Ontario’s obligations to make any payments hereunder are expressly contingent upon the satisfaction of the following conditions precedent in each such Computation Year: (i) Dealership having, for the entirety of such Computation Year, completely fulfilled its material obligations under

this Agreement, including, without limitation, the Operating Covenant; (ii) Dealership having generated Sales Tax Revenues during each Computation Year within the Fifth Covenant Period of no less than Six Hundred Thousand Dollars (\$600,000). Should any of the foregoing conditions precedent not be satisfied as to any Computation Year, then Ontario shall have no obligation under this Section 3.3 to make any payments to Dealership in such Computation Year. In any action or proceeding brought by either party to interpret or enforce the provisions of this Section 3.3, the trier of fact in such action or proceeding may refer to this paragraph to ascertain and give effect to the intention of the parties hereto.”

3.4 Amended Section 3.3.2. Section 3.3.2 of the Agreement is amended as to include the following:

“For purposes of this Section 3.3, the term “Eligibility Period” includes the period commencing November 1, 2022 and ending March 31, 2041, and consists of the Fifth Covenant Period.

3.5 Amended Section 3.3.3. Section 3.3.3 of the Original Agreement is amended to read as follows:

“Within thirty (30) days following the end of each of the first three (3) Computation Periods during each Computation Year, Dealership shall submit to Ontario a certified copy of its report to the State of California Board of Equalization (“BOE”), which sets forth the amount of sales tax paid to the BOE during that Computation Period arising from Dealership Activities conducted at the Dealership Facilities on the Property. Within twenty (20) days from the Dealership’s submission of the aforementioned report, Ontario shall determine the amount of Sales Tax Revenue for the subject

Computation Period. Within twenty (20) days following Ontario's determination of the Sales Tax Revenue for the subject Computation Period, and contingent upon Ontario's determination that, as applicable: (1) during any subject Computation Period in the First Covenant Period, the Dealership generated no less than One Hundred Twelve Thousand Five Hundred Dollars (\$112,500) in Sales Tax Revenues during such Computation Period, or (2) during any subject Computation Period during the Second Covenant Period, Third Covenant Period, or Fourth Covenant Period, as applicable, the Dealership generated no less than One Hundred Seventy-Five Thousand Dollars (\$175,000) in Sales Tax Revenues during such Computation Period, or (3) during any subject Computation Period during the Fifth Covenant Period, the Dealership generated no less than One Hundred Fifty Thousand Dollars (\$150,000) in Sales Tax Revenues during such Computation Period, then Ontario shall pay to Dealership an amount equal to: (A) fifty percent (50%) of the Sales Tax Revenues generated during any subject Computation Period within the First Covenant Period which exceed the sum of One Hundred Twelve Thousand Five Hundred Dollars (\$112,500) ("First Covenant Period Quarterly Payment"), or (B) fifty percent (50%) of the Sales Tax Revenues generated during any subject Computation Period within the Second Covenant Period, Third Covenant Period, or Fourth Covenant Period, as applicable, which exceed the sum of One Hundred Seventy Five Thousand Dollars (\$175,000) ("Second Covenant Period Quarterly Payment", "Third Covenant Period Quarterly Payment", and "Fourth Covenant Period Quarterly Payment", respectively), or (C) fifty percent (50%) of the Sales Tax Revenues generated during any subject Computation Period within the Fifth Covenant Period which exceed the sum of One Hundred

Fifty Thousand Dollars (\$150,000) (“Fifth Covenant Period Quarterly Payment”). The fourth Computation Period of each Computation Year shall be used as an adjustment period as described in the immediately following Section 3.3.4.

3.6 Amended Section 3.3.4. Section 3.3.4 of the Agreement is hereby amended as follows:

“Within sixty (60) days following the end of each Computation Year within the First Covenant Period, Ontario will determine, based upon information furnished by Dealership and from the BOE, whether Dealership has generated a minimum of Four Hundred Fifty Thousand Dollars (\$450,000) in Sales Tax Revenues for such First Covenant Period Computation Year. Contingent upon Ontario’s determination that the Sales Tax Revenue generated during such First Covenant Period Computation Year is equal to or greater than Four Hundred Fifty Thousand Dollars (\$450,000), then Ontario will then determine an amount (“First Covenant Period Computation Year Compensation”) which will be equal to fifty percent (50%) of the Sales Tax Revenues in excess of Four Hundred Fifty Thousand Dollars (\$450,000) for the subject Computation Year.

Within sixty (60) days following the end of each Computation Year within the Second Covenant Period, Third Covenant Period, or Fourth Covenant Period as applicable, Ontario will determine, based upon information furnished by Dealership and from the BOE, whether Dealership has generated a minimum of Seven Hundred Thousand Dollars (\$700,000) in Sales Tax Revenues for such Second Covenant Period Computation Year, Third Covenant Period Computation Year, or Fourth Covenant Period, as applicable. Contingent upon Ontario’s determination that the Sales Tax Revenue

generated during the Second Covenant Period Computation Year, Third Covenant Period Computation Year, or Fourth Covenant Period Computation Year as applicable, is equal to or greater than Seven Hundred Thousand Dollars (\$700,000), then Ontario will then determine an amount (“Second Covenant Period Computation Year Compensation,” “Third Covenant Period Computation Year Compensation,” or “Fourth Covenant Period Computation Year Compensation,” respectively) which shall be equal to fifty percent (50%) of the Sales Tax Revenues in excess of Seven Hundred Thousand Dollars (\$700,000) for the subject Computation Year.

Within sixty (60) days following the end of each Computation Year within the Fifth Covenant Period, Ontario will determine, based upon information furnished by Dealership and from the BOE, whether Dealership has generated a minimum of Six Hundred Thousand Dollars (\$600,000) in Sales Tax Revenues for such Fifth Covenant Period Computation Year. Contingent upon Ontario’s determination that the Sales Tax Revenue generated during such Fifth Covenant Period Computation Year is equal to or greater than Six Hundred Thousand Dollars (\$600,000), then Ontario will then determine an amount (“Fifth Covenant Period Computation Year Compensation”), which will be equal to fifty percent (50%) of the Sales Tax Revenues in excess of Six Hundred Thousand Dollars (\$600,000) for the subject Computation Year.

If, as applicable, the First, Second, Third, Fourth or Fifth Covenant Period Computation Year Compensation is equal to the total amount of the Quarterly Payments made by Ontario to Dealership during the subject Computation Year, then no adjustment shall be necessary.

If, as applicable, the First, Second, Third Fourth and/or Fifth Covenant Period Computation Year Compensation is greater than the total amount of any Quarterly Payment made by Ontario to Dealership during the subject Computation Year, then, within one hundred (100) days following the end of that Computation Year, Ontario shall pay to Dealership an amount (“Adjustment Payment”) equal to the difference between that Computation Year Compensation and the total amount of any Quarterly Payments made by Ontario to Dealership during that Computation Year. If, as applicable, the First, Second, Third Fourth and/or Fifth Covenant Period Computation Year Compensation is less than the total amount of any Quarterly Payments made by Ontario to Dealership during that Computation Year, then the difference between the respective First, Second, Third, Fourth and/or Fifth Covenant Period Computation Year Compensation and the total of any Quarterly Payments made by Ontario to Dealership during that Computation Year shall be an obligation of Dealership to Ontario. Such obligation shall be hereinafter referred to as the “Sales Tax Deficit.”

If the Sales Tax Revenues generated for: (1) any First Covenant Period Computation Year are less than Four Hundred Fifty Thousand Dollars (\$450,000), or (2) for any Second Covenant Period Computation Year, Third Covenant Period Computation Year or Fourth Covenant Period Computation Year, as applicable, are less than Seven Hundred Thousand Dollars (\$700,000), or (3) any Fifth Covenant Period Computation Year are less than Six Hundred Thousand Dollars (\$600,000), then the total of any Quarterly Payments which may have been paid by Ontario to Dealership during such Computation Year shall be an obligation of Dealership to

Ontario and shall also be hereinafter referred to as a Sales Tax Deficit.

Sales Tax Deficits may be aggregated and carried over from one Computation Year to the next Computation Year. The term “Sales Tax Deficit” means the aggregate of any Sales Tax Deficit generated in the subject Computation Year and any Sales Tax Deficit carried over from a previous Computation Year or Years.

Sales Tax Deficits shall be applied to offset any Quarterly Payment or Adjustment Payment which Ontario may owe to Dealership in any subsequent Computation Period or Computation Year, i.e. any amounts which Ontario may owe Dealership pursuant to provisions of this Section 3.3 in any Computation Period shall be first credited to reduce the amount of any then existing Sales Tax Deficit, and, once that Sales Tax Deficit has been eliminated, Ontario shall again commence making Quarterly Payments or Adjustment Payments to Dealership if and as warranted in future Computation Periods or Computation Years.

3.7 Commencement Date; Ratification; Absence of Defaults. The Dealership and Ontario each hereby ratify, reaffirm and reauthorize each and every one of their obligations as set forth in the Original Agreement, as modified by the First Amendment, Second Amendment, and this Third Amendment.

The Dealership and Ontario each represent to the other that there have been no events that, with the passage of time, the giving of notice, or both, would constitute an Event of Default under the Original Agreement. Except as expressly modified herein, the terms, covenants, conditions and obligations of the Original Agreement, as modified by the First and Second Amendments, remain in full force and effect. From and after the Effective Date of this Third Amendment, wherever the term “Agreement” appears in the Original Agreement, it shall be read and understood to mean the

Original Agreement as amended by the First Amendment, Second Amendment and this Third Amendment.

3.8 Counterparts. This Third Amendment maybe executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one in the same instrument.

SIGNATURE PAGE TO
FOURTH AMENDMENT TO AGREEMENT FOR
PURCHASE OF OPERATING COVENANT AND OPERATING COVENANT

ONTARIO:

CITY OF ONTARIO
a municipal corporation

By: _____

Scott Ochoa
City Manager

ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney

DEALERSHIP:

MARK CHRISTOPHER CHEVROLET, INC.
a Delaware corporation

By: _____
Its: _____

APPROVED AS TO LEGAL FORM:

Attorney for Dealership

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