CITY OF ONTARIO

Regular City Council/Housing Authority Meeting
JUNE 7, 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 permitted. All those wishing to speak including Council and Staff need to be recognized by the Chair before speaking.

WEARING A MASK DURING THE PUBLIC MEETING IS STRONGLY ENCOURAGED.

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 Bowman

INVOCATION

Dr. Sylvia Lee Mann, Bethel Congregational Church

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.

SPECIAL CEREMONIES

HONORING THE AMERICAN YOUTH SOCCER ORGANIZATION (AYSO) REGION 583 FROM SOUTH ONTARIO

ONTARIO 5K REINDEER RUN & RUDOLPH'S DASH CHECK PRESENTATION TO ONTARIO-MONTCLAIR SCHOOLS FOUNDATION

That the City Council present the Ontario-Montclair Schools Foundation with a check from the proceeds of the 2021 Ontario 5K Reindeer Run & Rudolph's DASH.

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 May 3, 2022 and Special Meeting of May 10, 2022, and approving the same as on file in the Records Management Department.

ATTACHMENT: 20220503 (Not official Until Approved).pdf
ATTACHMENT: 20220510 (Not official Until Approved).pdf

2. BILLS & PAYROLL

Bills April 29, 2022 through May 19, 2022, and Payroll April 24, 2022 through May 7, 2022 when audited by the Finance Department.

3. AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT WITH YUNEX LLC

That the City Council approve an amendment to the Maintenance Services Agreement (on file in the Records Management Department) with Yunex LLC, of Austin, Texas, to provide maintenance services for the City's traffic signals and traffic signal system for Fiscal Year 2022-23 in the amount of $760,000, for a revised total expenditure of $3,601,945; and authorize the City Manager to execute said amendment and future amendments within the authorization limits.

4. **APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH PHOENIX GROUP INFORMATION SYSTEMS REFERENCE PROCESSING SERVICES FOR POLICE PARKING CITATIONS, FIRE AND COMMUNITY IMPROVEMENT ADMINISTRATIVE CITATIONS, AND FALSE ALARM PROGRAM**

That City Council authorizes the City Manager to execute a new Professional Services Agreement with Phoenix Group Information Systems from Santa Ana, California, for services involving the processing of Ontario Police Department parking citations, Ontario Fire Department and Ontario Community Improvement Department administrative citations, and false alarm program fees.

5. **PRE-AUTHORIZED LIST OF VENDORS TO PROVIDE SPECIALIZED PARTS AND EQUIPMENT FOR CITY FIBER OPTICS NETWORK**

That the City Council approve a pre-authorized list of vendors to provide specialized parts and equipment for the construction and maintenance of the City Fiber Optics Network.

6. **ACCEPT A WRITTEN PETITION REQUESTING COMMENCEMENT OF CHANGE PROCEEDINGS TO CHANGE THE RATE AND METHOD OF APPORTIONMENT (RMA) OF THE EXISTING SPECIAL TAX OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 35 (COUNTRYSIDE PHASE 2 SOUTH-FACILITIES); ADOPT A RESOLUTION OF CONSIDERATION TO CHANGE THE RMA OF THE EXISTING SPECIAL TAX AND ACCEPT A WRITTEN PETITION REQUESTING TO INCREASE THE MAXIMUM AGGREGATE AMOUNT OF BONDED INDEBTEDNESS OF COMMUNITY FACILITIES DISTRICT NO. 35 (COUNTRYSIDE PHASE 2 SOUTH-FACILITIES) THAT IS AUTHORIZED TO INCUR TO $45,000,000; ADOPT A RESOLUTION OF INTENTION TO AMEND RESOLUTION NO. 2017-124 IN ORDER TO INCREASE THE MAXIMUM AGGREGATE AMOUNT OF BONDED INDEBTEDNESS.**

That the City Council consider and:

A. Accept a written petition requesting commencement of change proceedings (on file in the Records Management Department) from Lennar Homes of California, LLC ("Lennar"), to consider a change to the Rate and Method of Apportionment of the existing special tax of the City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South-Facilities) (the "Community Facilities District") and waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982 (the "Act");
B. Adopt a Resolution of Consideration to change the Rate and Method of Apportionment of the existing special tax of the Community Facilities District and set a public hearing on such proposed change as part of the regularly scheduled City Council meeting on Tuesday, July 19, 2022; and
C. Accept a written petition requesting commencement of proceedings (on file in the Records Management Department) from Lennar to increase the maximum aggregate amount of bonded indebtedness that the Community Facilities District is authorized to incur to $45,000,000 and waive certain procedural matters, under the Act; and
D. Adopt a Resolution of Intention to amend Resolution No. 2017-124 in order to increase the maximum aggregate amount of bonded indebtedness that the Community Facilities

District is authorized to incur and set a public hearing on such proposed increase as part of the regularly scheduled City Council meeting on Tuesday, July 19, 2022.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF CONSIDERATION TO CHANGE THE RATE AND METHOD OF APPORTIONMENT OF THE EXISTING SPECIAL TAX OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 35 (COUNTRYSIDE PHASE 2 SOUTH - FACILITIES).

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF INTENTION TO AMEND RESOLUTON NO. 2017-124 IN ORDER TO INCREASE THE MAXIMUM AGGREGATE AMOUNT OF BONDED INDEBTEDNESS THAT CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 35 (COUNTRYSIDE PHASE 2 SOUTH - FACILITIES) IS AUTHORIZED TO INCUR.

ATTACHMENT: 20220607 CFD No. 35 Countryside Phase 2 Facilities^01 RESO Consideration of Change^RM
ATTACHMENT: 20220607 CFD No. 35 Countryside Phase 2 Facilities^01A RMA EXH A
ATTACHMENT: 20220607 CFD No. 35 Countryside Phase 2 Facilities^02 RESO Intention^RM

7. A RESOLUTION ADOPTING THE LIST OF PROJECTS FOR FISCAL YEAR 2022-23 FUNDED BY SENATE BILL 1, THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017

That the City Council adopt a Resolution approving the FY 2022-23 Project List for Senate Bill 1 ("SB1"), the Road Repair and Accountability Act of 2017.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING A LIST OF PROJECTS FOR FISCAL YEAR 2022-23 FUNDED BY SENATE BILL 1, THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017.

ATTACHMENT: 20220607 Road Maintenance and Rehabilitation Account 01^RESO^RM
ATTACHMENT: 20220607 Road Maintenance and Rehabilitation Account^02 EXH A

8. AUTHORIZE THE PURCHASE OF FLEET EQUIPMENT

That the City Council authorize the cooperative purchase and delivery of one Generac Mobile Generator in the amount of $100,751.90, consistent with the terms and conditions of the Sourcewell Cooperative Contract No. 041719-GEN.

9. AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT WITH MERCHANTS BUILDING MAINTENANCE FOR CUSTODIAL SERVICES

That the City Council authorize the City Manager to execute Amendment No. 1 to the Maintenance Services Agreement (on file in the Records Management Department) with Merchants Building Maintenance of Pomona, California, for custodial services, to exercise the two optional one-year extensions, for a total not to exceed amount of $1,868,590.

10. AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENTS FOR LANDSCAPE

MAINTENANCE SERVICES FOR ONTARIO SOCCER PARK, HOUSING AND GAS TAX FUNDED SITES, FORMER REDEVELOPMENT SITES, AND CERTAIN PARKWAYS, FIRE STATIONS, AND LANDSCAPED MEDIANS THROUGHOUT THE CITY

That the City Council takes the following actions:

A. Authorize the City Manager to execute the optional two (2), one-year extensions to the Maintenance Services Agreement (on file with Records Management) for contract No. PM1819-09 with Brightview Landscape Services, Inc., of Upland, California, for landscape maintenance services at Ontario Soccer Park.
B. Authorize the City Manager to execute the optional two (2), one-year extensions to the Maintenance Services Agreement (on file with Records Management) for contract No. PM1617-7 with Brightview Landscape Services, Inc. of Upland, California, for landscape maintenance services for Housing and Gas Tax Funded Sites.
C. Authorize the City Manager to execute the optional two (2), one-year extensions to the Maintenance Services Agreement (on file with Records Management) for contract No. PM1617-10 with Brightview Landscape Services, Inc. of Upland, California, for landscape maintenance services at former Redevelopment Sites.
D. Authorize the City Manager to execute the optional two (2), one-year extensions to the Maintenance Services Agreement (on file with Records Management) for contract No. PM1617-9 with Brightview Landscape Services, Inc. of Upland, California, for landscape maintenance services of certain Parkways, Fire Stations, and Landscaped Medians throughout the City.

11. AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENTS FOR LANDSCAPE MAINTENANCE SERVICES FOR PARKS, EDENGLEN/SCE WALKING TRAIL, ASSESSMENT MAINTENANCE DISTRICTS, ONTARIO TOWN SQUARE, AND PARKWAYS IN THE ONTARIO RANCH AREA

That the City Council takes the following actions:

A. Authorize the City Manager to execute the optional two (2), one-year extensions to the Maintenance Services Agreement (on file with Records Management) for Contract No. PM1617-4 with Merchants Landscape Services, Inc. of Rancho Cucamonga, California, for landscape maintenance services for various City Parks.
B. Authorize the City Manager to execute the optional two (2), one-year extensions to the Maintenance Services Agreement (on file with Records Management) for Contract No. PM1617-12 with Merchants Landscape, Inc. of Rancho Cucamonga, California, for landscape maintenance services for the Edenglen/SCE Walking Trail.
C. Authorize the City Manager to execute the optional two (2), one-year extensions to the Maintenance Services Agreement (on file with Records Management) for Contract No. PM1617-5 with Merchants Landscape Services, Inc. of Rancho Cucamonga, California, for landscape maintenance services at Citywide Assessment Maintenance Districts.
D. Authorize the City Manager to execute the optional two (2), one-year terms to the Maintenances Service Agreement (on file with Records Management) for Contract No. PM1819-8 with Merchants Landscape Services, Inc. of Rancho Cucamonga, California, for

landscape maintenance services at Ontario Town Square.

E. Authorize the City Manager to execute Amendment No. 3 to the existing Maintenance Services Agreement (on file with Records Management) 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.

12. AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT FOR LANDSCAPE MAINTENANCE SERVICES FOR WATER WELL SITES

That the City Council approve and authorize the City Manager to execute the two (2) one-year extensions to the Maintenance Services Agreement (on file with Records Management) for Contract No. PM1617-11 with SoCal Land Maintenance, Inc. of Anaheim, California, for Landscape Maintenance Services for Water Well Sites.

13. ACCEPTANCE OF AMERICAN RESCUE PLAN ACT (ARPA) FUNDS FROM THE SAN BERNARDINO COUNTY ADMINISTRATIVE OFFICE FOR THE BON VIEW PARK SPORTING FIELD PROJECT

That the City Council authorize the City Manager to execute all documents necessary to accept the American Rescue Plan Act (ARPA) funds in the amount of $300,000 from the San Bernardino County Administrative Office for the Bon View Park Sporting Field Project.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE CITY MANAGER, OR THE CITY MANAGER'S DESIGNEE, TO EXECUTE AND ENTER INTO, ON BEHALF OF THE CITY, AN AGREEMENT WITH THE COUNTY OF SAN BERNARDINO ACCEPTING GRANT FUNDS FROM THE AMERICAN RESCUE PLAN ACT (ARPA) TO BE USED FOR THE BON VIEW PARK FIELD RENOVATIONS IN AN AMOUNT NOT TO EXCEED $300,000.

ATTACHMENT: 20220607 Accepting ARPA Funds^01 RESO^RM
ATTACHMENT: 20220607 ARPA CLFRF Contract^02 EXH A

14. AN AGREEMENT WITH THE COUNTY OF SAN BERNARDINO FOR THE OPERATION OF A HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITY

That the City Council approve and authorize the City Manager to execute a five-year Agreement (on file with Records Management Department) with the County of San Bernardino (County) for the operation of a Household Hazardous Waste (HHW) Collection Facility.

15. AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT FOR LANDSCAPE MAINTENANCE SERVICES FOR PARKWAYS AND MEDIANS IN THE ONTARIO RANCH AREA

That the City Council authorize the City Manager to execute Amendment No. 2 to the Maintenance Services Agreement (on file with the Records Management) for Contract No. PM2021-2 with Greentech Landscape, Inc. of Whittier, California, for landscape maintenance services for a newly acquired Community Facilities District (CFD) located in the Ontario Ranch

area.

16. AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT FOR CITYWIDE TREE MAINTENANCE SERVICES

That the City Council authorize the City Manager to execute the sixth (6) optional year extension to the Maintenance Services Agreement (on file with the Records Management) for Contract No. PM-WCA1415 with West Coast Arborist, Inc. of Anaheim, California, for Citywide Tree Maintenance Services.

17. AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT FOR CITYWIDE STREET SWEEPING SERVICES

That the City Council authorize the City Manager to execute the optional two (2) one-year extensions and add new streets for sweeping to the Maintenance Service Agreement for Contract No. SM1617-2 (on file with Records Management) with Sweeping Corp of America (formerly named Cleanstreet, Inc.), of Gardena, California, for Citywide Street Sweeping Services.

18. A CONSTRUCTION CONTRACT FOR THE FY 2020-21 & 2021-22 CDBG STREET LIGHT INSTALLATION PROJECT

That the City Council award a construction contract (on file in the Records Management Department) to California Professional Engineering, Inc. of La Puente, California, for the Fiscal Year 2020-21 and Fiscal Year 2021-22 CDBG Street Light Installation Project in the bid amount of $151,844 plus a ten percent (10%) contingency of $15,184 for a total authorized expenditure of $167,028; and authorize the City Manager, or his designee to execute said contract and all related documents, and file a notice of completion at the conclusion of all construction activities.

ATTACHMENT: 20220607 FY 20/21 & 21/22 CDBG Street Light Installation Project^01 EXH A

19. AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT FOR CITYWIDE STORM DRAIN MAINTENANCE SERVICES

That the City Council approve and authorize the City Manager to execute the optional two (2) one-year extensions to the Maintenance Services Agreement (on file with Records Management) for Contract No. SM1920-1 with United Storm Water, Inc., located in Industry, California, for Citywide Storm Drain Maintenance Services.

20. MAINTENANCE SERVICES AGREEMENT FOR STREETLIGHT MAINTENANCE AND REPAIR SERVICES

That the City Council take the following actions: Approve and authorize the City Manager to execute a three-year Maintenance Services Agreement (on file in the Records Management Department) with Yunex LLC of Austin, Texas for streetlight maintenance and repair services in an amount not to exceed $1,939,935; and authorize the City Manager to extend the

Agreement for up to two additional one-year terms.

21. AN AMENDMENT TO THE GOODS AND SERVICES AGREEMENT WITH UNITED TRANSMISSION EXCHANGE FOR PROCUREMENT & REPAIRS OF ALLISON TRANSMISSIONS

That the City Council approve and authorize the City Manager to execute Amendment No. 3 to the Goods and Services Agreement (on file in the Records Management Department) with United Transmission Exchange of San Bernardino, California, for procurement & repairs of Allison Transmissions in the amount of $70,000, increasing the not-to-exceed amount to $150,000 and extending the term of the Agreement to June 30, 2024.

22. AUTHORIZE THE EQUIPMENT PURCHASE OF FOOD SCRAP CONTAINERS FOR THE INTEGRATED WASTE DEPARTMENT

That the City Council authorize the purchase of food scrap containers with Sure-Close located in Ottawa, Canada, in an amount not to exceed $140,800 to promote state mandate Senate Bill (SB) 1383 in organic waste recycling.

23. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT FOR CONSULTING SERVICES, APPLICATION DEVELOPMENT AND DATABASE ADMINISTRATION

That the City Council authorize the City Manager to execute an Amendment to the current five-year agreement (on file with the Records Management Department) with ICS Software, LLC, of Upland, California, for information technology consulting services to add an additional $80,000 to year five of the existing contract of $120,000 annually, for a total not to exceed $680,000.

24. AN AMENDMENT TO THE GOODS AND SERVICES AGREEMENT WITH ALL STAR GLASS INC. FOR PROCUREMENT & REPAIRS OF AUTOMOTIVE WINDSHIELDS

That the City Council authorize the City Manager to execute Amendment No. 3 to the Goods and Services Agreement (on file in the Records Management Department) with All Star Glass Inc., of San Diego, California, in the amount of $90,000, increasing the not-to-exceed amount to $170,000 and extending the term of the Agreement to June 30, 2024.

25. AN AMENDMENT TO THE COOPERATIVE AGREEMENT FOR THE SR-60 AT ARCHIBALD AVENUE INTERCHANGE PROJECT

That the City Council approve Amendment No. 5 in the amount of $4,191,726 to Cooperative Agreement R14138 (15-1001150) (on file in the Records Management Department) with San Bernardino County Transportation Authority (SBCTA) for funding the State Route 60 (SR-60) at Archibald Avenue Interchange Project (Project); and authorize the City Manager to execute said agreement and future amendments within the authorization limits.

26. AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA21-014) BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC., TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP 20449 (FILE NO. PMTT21-014), A 35.65-ACRE PROPERTY LOCATED NEAR THE SOUTHEAST CORNER OF

HAVEN AVENUE AND ONTARIO RANCH ROAD, WITHIN PLANNING AREA 9A (RESIDENTIAL & COMMERCIAL LAND USE DISTRICT) OF THE RICH HAVEN SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 0218-211-01

That the City Council consider and adopt an Ordinance approving the Development Agreement (File No. PDA21-014) between the City of Ontario and BrookCal Ontario, LLC., to establish the terms and conditions for the development of Tentative Tract Map 20499 (File No. PMTT21-014), a 35.65-acre property located near the southeast corner of Haven Avenue and Ontario Ranch Road, within Planning Area 9A (Residential & Commercial land use district) of the Rich Haven Specific Plan.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA21-014, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO LLC., TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP 20449 (FILE NO. PMTT21-014), A 35.65-ACRE PROPERTY LOCATED NEAR THE SOUTHEAST CORNER OF HAVEN AVENUE AND ONTARIO RANCH ROAD, WITHIN PLANNING AREA 9A (RESIDENTIAL & COMMERCIAL LAND USE DISTRICT) OF THE RICH HAVEN SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0218-211-01.

ATTACHMENT: 20220607 File No. PDA21-014 BrookCal Ontario LLC^01 EXB A & B
ATTACHMENT: 20220607 File No. PDA21-014 BrookCal Ontario LLC^02 PC Backup.pdf
ATTACHMENT: 20220607 File No. PDA21-014 BrookCal Ontario LLC 03 ORD^RM
ATTACHMENT: 20220607 File No. PDA21-014 BrookCal Ontario LLC^04 AGMT

27. A PROFESSIONAL SERVICES AGREEMENT FOR WELL NO. 50 TREATMENT FACILITY DESIGN

That the City Council approve and authorize the City Manager or designee to execute a Professional Services Agreement (on file in the Records Management Department) with GHD, Inc., of Irvine, California, for Well No. 50 Treatment Facility Design, Contract No. UT 1019 in the amount of $399,310, plus a 5% contingency of $19,965, for a total amount of $419,275.

ATTACHMENT: 20220607 Well No. 50 Treatment Facility^01 EXH A

28. AN AMENDMENT TO THE MAINTENANCE SERVICE AGREEMENT FOR METER MAINTENANCE

That the City Council approve and authorize the City Manager or his designee to execute Amendment No. 1 to the Maintenance Services Agreement (on file in the Records Management Department) with Master Meter, Inc., of Mansfield, Texas, in the amount of $40,000 for Fiscal Year 2022-23, extend the initial term of the Agreement through June of 2023, and authorize the option to extend the Agreement for up to two successive one-year periods in the annual amount of $50,000 each year (FY 2023-24 and FY 2024-25), for a new total not-to-exceed cost of $235,000 for the five years.

29. A CONSTRUCTION CONTRACT FOR THE MISSION LANDSCAPE AND IRRIGATION PROJECT

That the City Council take the following action:

A. Reject Golden Gate Steel, Inc.'s protest against SGD Enterprises for PM2122-8 for the Mission Landscape and Irrigation Project;
B. Authorize the City Manager or his designee to execute Construction Contract No. PM2122-8 with SGD Enterprises for the Mission Landscape and Irrigation Project for a total bid amount of $626,292;
C. Authorize a 10% contingency of $62,629 to address any unforeseen issues that may arise during construction; and
D. Authorize the City Manager or his designee to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, reductions of retention accounts, and filing a notice of completion at the conclusion of all construction related activities.

30. SECOND READING AND ADOPTION OF ORDINANCE NO. 1766 APPROVING A MILITARY EQUIPMENT USE POLICY PURSUANT TO GOVERNMENT CODE SECTIONS 7070, ET. SEQ.

That the City Council adopt an Ordinance adopting a Military Equipment Use Policy.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING A MILITARY EQUIPMENT USE POLICY PURSUANT TO GOVERNMENT CODE §§ 7070, ET. SEQ.

ATTACHMENT: 20220607 Assembly Bill 481^01 ORD^RM
ATTACHMENT: 20220607 OPD Lexipol Policy 708 Military Equipment^02 EXH A
ATTACHMENT: 20220607 OPD AB 481 Military Equipment Inventory^03 EXH B

31. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT FOR MUSEUM EXHIBIT DESIGN FOR THE BUILT ON WATER EXHIBIT

That the City Council approve and authorize the City Manager or his designee to execute Amendment No. 3 (on file with the Records Management Department) to the Professional Services Agreement with Picnic Design of Los Angeles, California. This agreement encompasses design services for the Built on Water exhibit currently under construction at the Ontario Museum of History & Art. Amendment No. 3 adds $13,800 to the agreement, for a revised total contract amount of $105,000.

32. AN AMENDMENT TO THE AMERICORPS STATE & NATIONAL COMPETITIVE GRANT FOR THE 2021-2022 PROGRAM YEAR

That the City Council approve an amendment and budget adjustments for FY 2021-22 to the AmeriCorps State & National Competitive Grant in the amount of $74,001.

33. FIRST AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT FOR LEGAL SERVICES

That the City Council ("City") approve and authorize the City Manager to execute a First Amendment to a Professional Services Agreement with Kane Ballmer & Berkman in the amount not to exceed $150,000.

PUBLIC HEARINGS

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

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34. **A PUBLIC HEARING TO CONSIDER FILE NO. PDCA22-003, A DEVELOPMENT CODE AMENDMENT PROPOSING CERTAIN CLARIFICATIONS AND REVISIONS TO THE CITY OF ONTARIO DEVELOPMENT CODE, ADDRESSING: [1] TIME EXTENSIONS FOR DISCRETIONARY PROJECTS (SECTION 2.02.025.B.2.C); [2] PUBLIC NOTIFICATION REQUIREMENTS FOR MINOR VARIANCES (SECTION 2.03.010); [3] ADMINISTRATIVE EXCEPTIONS (SECTIONS 4.02.020 AND 4.03.050, AND TABLES 2.02-1 AND 2.03-1); [4] SPECIFIC PLAN MINOR AMENDMENTS (SECTION 4.02.080); [5] HOUSING AND REASONABLE ACCOMMODATIONS (SECTIONS 4.02.035 AND 4.03.055, AND TABLES 2.02-1 AND 2.03-1); [6] ACCESSORY DWELLING UNITS (SECTION 5.03.010); [7] MINIMUM USEABLE REAR YARD AREA FOR SINGLE-FAMILY DWELLINGS (SECTION 5.03.011); [8] BANQUET FACILITIES ON HISTORIC PROPERTIES (SECTION 5.03.067); [9] RETAIL SALES EVENTS (SECTION 5.03.395 AND TABLE 8.01-1); [10] CONVERSION OF GARAGES TO ACCOMMODATE ACCESSORY DWELLING UNITS (SECTION 6.01.010); [11] DEFINITION FOR "GARAGE" (SECTION 9.01.010.G); [12] SINGLE-FAMILY TWO-UNIT PROJECTS AND URBAN LOT SPLITS, RESCINDING URGENCY ORDINANCE NO. 3200 AND ADOPTING STANDARDS (SECTIONS 5.03.403 AND 6.08.060, AND TABLES 2.02-1 AND 2.03-1); AND [13] CERTAIN ALLOWED LAND USES (TABLE 5.02-1)**

That the City Council introduce and waive further reading of the ordinance approving File No. PDCA22-003, a Development Code Amendment proposing certain clarifications and revisions to the City of Ontario Development Code, addressing time extensions for discretionary projects; public notification requirements for minor variances; administrative exceptions; specific plan minor amendments; housing and reasonable accommodations; accessory dwelling units; minimum useable rear yard area for single-family dwellings; banquet facilities on historic properties; retail sales events; conversion of garages to accommodate accessory dwelling units; the definition for "garage;" and, single-family two-unit projects and urban lot splits, rescinding urgency Ordinance No. 3200 and adopting standards, and certain allowed land uses.

> AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDCA22-003, A DEVELOPMENT CODE AMENDMENT REVISING AND CLARIFYING CERTAIN PROVISIONS ADDRESSING [1] TIME EXTENSIONS FOR DISCRETIONARY PROJECTS (SECTION 2.02.025.B.2.C); [2] PUBLIC NOTIFICATION REQUIREMENTS FOR MINOR VARIANCES (SECTION 2.03.010); [3] ADMINISTRATIVE EXCEPTIONS (SECTIONS 4.02.020 AND 4.03.050, AND TABLES 2.02-1 AND 2.03-1); [4] SPECIFIC PLAN MINOR AMENDMENTS (SECTION 4.02.080); [5] HOUSING AND REASONABLE ACCOMMODATIONS (SECTIONS 4.02.035 AND 4.03.055, AND TABLES 2.02-1 AND 2.03-1); [6] ACCESSORY DWELLING UNITS (SECTION 5.03.010); [7]

MINIMUM USEABLE REAR YARD AREA FOR SINGLE-FAMILY DWELLINGS (SECTION 5.03.011); [8] BANQUET FACILITIES ON HISTORIC PROPERTIES (SECTION 5.03.067); [9] RETAIL SALES EVENTS (SECTION 5.03.395 AND TABLE 8.01-1); [10] CONVERSION OF GARAGES TO ACCOMMODATE ACCESSORY DWELLING UNITS (SECTION 6.01.010); [11] DEFINITION FOR "GARAGE" (SECTION 9.01.010.G); [12] SINGLE-FAMILY TWO-UNIT PROJECTS AND URBAN LOT SPLITS, RESCINDING URGENCY ORDINANCE NO. 3200 AND ADOPTING STANDARDS (SECTIONS 5.03.403 AND 6.08.060, AND TABLES 2.02-1 AND 2.03-1); AND [13] CERTAIN ALLOWED LAND USES (TABLE 5.02-1), AND MAKING FINDINGS IN SUPPORT THEREOF.

ATTACHMENT: 20220607 File No. PDCA22-003^01 AR EXH A
ATTACHMENT: 20220607 File No. PDCA22-003^02 PC Backup
ATTACHMENT: 20220607 File No. PDCA22-003^03 ORD^RM

35. INTRODUCTION OF ORDINANCE AMENDING CHAPTER 3 OF TITLE 6 OF VOLUME I OF THE ONTARIO MUNICIPAL CODE REGARDING INTEGRATED SOLID WASTE MANAGEMENT COLLECTION FREQUENCY

That the City Council introduce and waive further reading of the ordinance amending Chapter 3 of Title 6 of Volume I of the Ontario Municipal Code Regarding Integrated Solid Waste Management Collection Frequency and Finding the Action Exempt from CEQA.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CHAPTER 3 OF TITLE 6 OF VOLUME I OF THE ONTARIO MUNICIPAL CODE REGARDING INTEGRATED SOLID WASTE MANAGEMENT COLLECTION FREQUENCY AND FINDING THE ACTION EXEMPT FROM CEQA.

ATTACHMENT: 20220607 Commercial Collection Frequency^01 ORD^RM

ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

36. A RESOLUTION AUTHORIZING THE ISSUANCE OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 42 (WEST HAVEN) SPECIAL TAX BONDS, SERIES 2022, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $8 MILLION AND RELATED MATTERS

That the City Council consider and adopt a Resolution authorizing the issuance of City of Ontario Community Facilities District No. 42 (West Haven) Special Tax Bonds, Series 2022.

A. Authorize the issuance of special tax bonds for public improvements required to facilitate the development of the West Haven project and the Ontario Ranch development;
B. Approve the forms of the Indenture, the Bond Purchase Agreement, the Continuing Disclosure Agreement, and the Preliminary Official Statement;
C. Authorize a negotiated sale of the special tax bonds to Stifel, Nicolaus & Company, Incorporated (the "Underwriter") in accordance with the terms of the Bond Purchase Agreement; and

D. Authorize the execution of the Indenture, the Bond Purchase Agreement, the Continuing Disclosure Agreement, a deemed final certification in connection with the Preliminary Official Statement, a final Official Statement and other documents in connection with the issuance of the bonds by the City Manager or the other specified authorized officers.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE ISSUANCE OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 42 (WEST HAVEN) SPECIAL TAX BONDS, SERIES 2022, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED $8,000,000.00, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A BOND PURCHASE AGREEMENT, AND A CONTINUING DISCLOSURE AGREEMENT, AUTHORIZING THE DISTRIBUTION OF AN OFFICIAL STATEMENT IN CONNECTION THEREWITH AND AUTHORIZING THE EXECUTION OF NECESSARY DOCUMENTS AND CERTIFICATES AND RELATED ACTIONS.

ATTACHMENT: 20220607 CFD No. 42 West Haven^01 RESO Authorizing Issuance of Bonds^RM

STAFF MATTERS

City Manager Ochoa

COUNCIL MATTERS

Mayor Leon
Mayor Pro tem Wapner
Council Member Bowman
Council Member Dorst-Porada
Council Member Valencia

ADJOURNMENT

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **SPECIAL CEREMONIES**
Department: Recreation & Community Services Prepared By: Nick S Gonzalez Staff Member Presenting: Helen McAlary, Executive Director Community Life and Culture Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No:

SUBJECT: ONTARIO 5K REINDEER RUN & RUDOLPH'S DASH CHECK PRESENTATION TO ONTARIO-MONTCLAIR SCHOOLS FOUNDATION

RECOMMENDATION: That the City Council present the Ontario-Montclair Schools Foundation with a check from the proceeds of the 2021 Ontario 5K Reindeer Run & Rudolph's DASH.

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

FISCAL IMPACT: The City enters into an agreement annually with the Ontario-Montclair Schools Foundation to split proceeds from this yearly event. As part of that agreement, 75% of the proceeds go to Ontario-Montclair Promise Scholars and 25% of the proceeds go to the City's Empowerment Scholarship program. The adjusted net proceeds for the 2021 event were $91,076, which are accounted for in the Recreation & Community Services Department's revenue account. There is no impact to the General Fund.

BACKGROUND & ANALYSIS: Each year the Recreation & Community Services Department partners with the Ontario-Montclair Schools Foundation to support and promote the 5K Reindeer Run & Rudolph's DASH event. The Recreation & Community Services Department organizes and executes the event each year, including seeking sponsors and marketing the event. The Ontario-Montclair Schools Foundation garners district-wide support, volunteers, assists with promotion, marketing, and administrative support for the event. In 2021, the 5K Reindeer Run & Rudolph's DASH brought in record numbers, with a total of 3,228 runners and $42,050 in sponsorship packages.

The Ontario-Montclair Promise Scholars is an award-winning program designed to assist Ontario-Montclair youth by helping prepare them for their journey toward a college education. Ontario-Montclair Promise Scholars utilizes the proceeds from the event to provide college and career curriculum in each K-6 classroom, take field trips to colleges, host parent presentations, put on college fairs, and assist students with college applications and financial aid forms. The City's Empowerment Scholarship allows Ontario community members from low-income backgrounds to participate in fee-based recreation activities that will enrich their lives. Community members can

apply for Empowerment Scholarship funds by visiting the City website www.OntarioCA.gov/Recreation

The adjusted net proceeds for this event were $91,076. Per the agreement between the City of Ontario and Ontario-Montclair Schools Foundation, $68,307 will benefit the Promise Scholars program and $22,769 will be used to fund the City's Empowerment Scholarships.

ONTARIO CITY COUNCIL/
ONTARIO HOUSING AUTHORITY
MINUTES
MAY 3, 2022
(Not Official Until Approved)

JOINT MEETINGS

The regular meetings of the Ontario City Council and Housing Authority were held on Tuesday, May 3, 2022 at Ontario City Hall, 303 E. B Street Ontario, California.

CALL TO ORDER

Mayor Leon called the Joint City Council and Ontario Housing Authority meetings to order at 6:30 p.m.

ROLL CALL

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

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

PLEDGE OF ALLEGIANCE

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

INVOCATION

The Invocation was led by Pastor Francesca Fajinmi, Dios International Missionary Church.

PUBLIC COMMENTS

There were five emailed comments regarding local farming:
Bianca Ruddy
Shimkiri Syiem
Kelly Roberts
Ronda Rhodes
Guzman Ashleigh

Mayor Leon then called upon the first speaker.

Randy Bekendam, spoke on local farming.

Nicolle Mendoza, has a small business and feels welcomed in the City.

Judy & Dale Briggs, expressed concerns regarding empty parcels.

Celina Lopez, spoke on her experience at events held in the City of Ontario.

Eva Ramirez, thanked Council for the progress in the City. Appreciates the support in arts.

Pilar Gonzalez, spoke on her experience at local events held in the City of Ontario.

Angleica Meza, spoke on her experience at local events held in the City of Ontario.

Armando Rodriguez, provided an updated on events from the Hispanic Chamber of Commerce.

Cassandra Sanchez, thanked City Council for their work on the Jesus Sanchez homicide.

AGENDA REVIEW/ANNOUNCEMENTS

City Manager Ochoa made no announcements.

CONSENT CALENDAR

MOTION: Moved by Council Member Dorst-Porada, seconded by Council Member Bowman and carried by unanimous vote 5-0, to approve the Consent Calendar as presented.

1. APPROVAL OF MINUTES

The City Council approved minutes for the regular meetings of the City Council and Housing Authority of April 5, 2022, approving the same as on file in the Records Management Department.

2. BILLS & PAYROLL

Approved Bills from April 1, 2022 through April 14, 2022 in the amount of $15,847,200.60 and Payroll March 27, 2022 through April 9, 2022 in the amount of $3,862,964.45, when audited by the Finance Committee.

3. AMENDMENT TO THE PURCHASE AND INSTALLATION OF REPLACEMENT FIRE STATION ALERTING SYSTEM

The City Council took the following actions:

A. Authorized the City Manager to execute an additional sole source purchase with US Digital Designs of Tempe, Arizona, in the amount of $72,900 for a fire station alerting system for a total not to exceed amount to $647,884;
B. Authorized a $20,000 contingency to address any unforeseen needs that may arise with US Digital Designs;
C. The City Council approved Amendment No. 1 to increase the contracted dollar amount with Bergelectric Corp. of Encino, California, by $54,999, which would increase the total not to exceed amount to $280,299;
D. Authorized a 15% contingency of $41,588 to address any unforeseen issues that may arise with Bergelectric Corp.; and
E. Authorized the City Manager or his designee to execute all documents required for the completion of the project, including, but not limited to contracts, agreements, assessments, easements, reduction of retention accounts, and filing notice of completion at the conclusion of all construction related activities.

4. A RESOLUTION APPROVING THE UPDATED DELEGATION OF AUTHORITY TO REQUEST DISBURSEMENTS OF CALIFORNIA EMPLOYERS' RETIREE BENEFIT TRUST (CERBT) FUND ADMINISTERED BY CALPERS

The City Council considered and approved a Resolution updating the City's delegation of authority to request disbursements from California Employers' Retiree Benefit Trust (CERBT).

RESOLUTION NO. 2022-038 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE DELEGATION OF AUTHORITY TO ADDITIONAL POSITIONS TO REQUEST, ON BEHALF OF THE CITY, DISBURSEMENTS FROM THE CALIFORNIA EMPLOYERS' RETIREE BENEFIT TRUST FUND.

5. AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT FOR CITYWIDE LANDSCAPE FERTILIZATION, WEED CONTROL, PEST, AND DISEASE CONTROL SERVICES

The City Council authorized the City Manager to execute the optional two (2) one-year terms to the Maintenance Service Agreement for Contract No. PM1617-8 with RPW, Inc. of Fullerton, California, for citywide landscape fertilization, weed control, pest, and disease control services.

6. MAINTENANCE SERVICES AGREEMENT FOR CONCRETE REPAIR AND MAINTENANCE SERVICES

The City Council authorized the City Manager to execute a Maintenance Services Agreement for Contract No. SM2223-1 with Towo Enterprise Inc. of Fullerton, California, for concrete repair and maintenance in the not to exceed amount of $3,321,000 for a three-year term, with an option to extend for two additional one-year terms at $1,441,700 for the first optional year and $1,574,550 for the second optional year, for a total not to exceed amount of $6,337,250, consistent with future budgets approved by the City Council.

7. THE RENEWAL OF AN EXISTING AGREEMENT FOR LAND MANAGEMENT SYSTEM FOR COMMUNITY DEVELOPMENT AGENCY, FIRE PREVENTION, AND THE ONTARIO MUNICIPAL UTILITIES COMPANY

The City Council authorized the City Manager to negotiate and execute a one (1) year agreement, with an optional renewal period for two (2) years with Accela, Inc. of San Ramon, California, to renew and extend the use of the Accela citizen access, land management, mobile office and GIS systems used by Community Development, Fire Prevention, and the Ontario Municipal Utilities Company in the amount of $558,480, including an amount of $180,685 for the first year and $186,106 and $191,689 for the optional second and third years, subject to City Council approved budgets.

8. MAINTENANCE SERVICES AGREEMENT FOR GRAFFITI REMOVAL SERVICES AT VARIOUS CITY LOCATIONS

The City Council authorized the City Manager, or his designee, to execute a five-year Maintenance Services Agreement for Contract No. 1617-5 with Graffiti Protective Coatings of Los Angeles, California, for graffiti removal services at various city locations for an annual cost of $691,200, with a 5% contingency of $34,560, for a total annual amount of $725,760, or not to exceed of $3,628,800 over a five-year term.

9. PRE-AUTHORIZED LIST OF VENDORS TO PROVIDE MAINTENANCE SERVICE AND PARTS FOR THE POLICE HELICOPTERS

The City Council approved the attached list of pre-authorized vendors to provide maintenance service, equipment, parts and tools for the Police Helicopters.

10. AUTHORIZE THE PURCHASE OF FIRE APPARATUSES

The City Council authorized the purchase and delivery of one (1) KME Fire Pumper in the amount of $971,000 and one (1) KME Fire Aerial Tractor in the amount of $1,917,000 from Kovatch Mobile Equipment (KME) of Fontana, California.

11. AMENDMENT NO. 3 TO THE LETTER OF AGREEMENT FOR WORKPLACE INVESTIGATIONS, CONSULTING AND LEGAL SERVICES

The City Council authorized the City Manager, or his designee, to execute Amendment No. 3 adding $100,000 to the existing Letter of Agreement with Atkinson, Andelson, Loya, Ruud & Romo (AALRR) for Workplace Investigations, Consulting and Legal Services for a revised contract authority of $200,000, and to extend the contract term to June 30, 2024. This would extend the contract by 2 additional years, making the life of the contract a total of seven (7) years.

PUBLIC HEARINGS

12. A PUBLIC HEARING FOR THE INTRODUCTION OF AN ORDINANCE ADDING CHAPTER 33 TO TITLE 5 OF VOLUME I TO THE ONTARIO MUNICIPAL CODE, ESTABLISHING A PUBLIC ART PROGRAM, ESTABLISHING A PUBLIC ART ADVISORY COMMITTEE, AND INCLUDING A DEVELOPMENT FEE TO SUPPORT PUBLIC ART, AND FINDING THE ACTION EXEMPT FROM CEQA

The City Council considered and took action to add Chapter 33 to Title 5 of Volume I to the Ontario Municipal Code related to establishing a Public Art Program, establishing a Public Art Advisory committee, and a development fee to support public art.

ORDINANCE NO. 3208 (FIRST READING) AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADDING CHAPTER 33 TO TITLE 5 OF VOLUME I TO THE ONTARIO MUNICIPAL CODE, ESTABLISHING A PUBLIC ART PROGRAM, ESTABLISHING A PUBLIC ART ADVISORY COMMITTEE, AND INCLUDING A DEVELOPMENT FEE TO SUPPORT PUBLIC ART, AND FINDING THE ACTION EXEMPT FROM CEQA.

Notice of public hearing has been duly given and affidavits of compliance are on file in the Records Management Department.

There was one written communication from John Machado in support of the item.

Mayor Leon opened the public hearing asking those persons interested in this item to speak. Hearing no one wishing to speak, Mayor Leon closed the public hearing and opened the item for Council discussion.

City Attorney Duran noted a small update from Staff for the record, under subsection C of the Ordinance, Minimum Public Art Allocation to read, “all projects installed through the onsite fee option must be maintained by the developer during the life of the buildings and structures.”

MOTION: Moved by Council Member Dorst-Porada, seconded by Council Member Bowman and carried by unanimous vote of 5-0, to introduce Ordinance No. 3208 as amended by Staff.

13. A PUBLIC HEARING TO CONSIDER A RESOLUTION CALLING A SPECIAL ELECTION FOR PROPOSED CHANGES TO THE RATE AND METHOD OF APPORTIONMENT OF THE EXISTING SPECIAL TAX OF THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 35 (COUNTRYSIDE PHASE 2 SOUTH-FACILITIES); A RESOLUTION OF CHANGE, DECLARING RESULTS OF A SPECIAL ELECTION, DETERMINING THAT CHANGES TO THE RATE AND METHOD OF APPORTIONMENT OF THE EXISTING SPECIAL TAX OF COMMUNITY FACILITIES DISTRICT NO. 35 (COUNTRYSIDE PHASE 2 SOUTH-FACILITIES) ARE LAWFULLY AUTHORIZED AND DIRECTING THE RECORDING OF AN AMENDMENT TO NOTICE OF SPECIAL TAX LIEN; AND AN ORDINANCE AMENDING AND RESTATING ORDINANCE NO. 3082 LEVYING SPECIAL TAXES WITHIN THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 35 (COUNTRYSIDE PHASE 2 SOUTH-FACILITIES); A RESOLUTION DEEMING IT NECESSARY TO AMEND RESOLUTION NO. 2017-124 IN ORDER TO INCREASE THE MAXIMUM AGGREGATE AMOUNT OF BONDED INDEBTEDNESS THAT CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 35 (COUNTRYSIDE PHASE 2 SOUTH-FACILITIES) IS AUTHORIZED TO INCUR; A RESOLUTION CALLING A SPECIAL ELECTION FOR CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 35 (COUNTRYSIDE PHASE 2 SOUTH-FACILITIES); AND A RESOLUTION DECLARING THE RESULTS OF THE SPECIAL ELECTION.

Notice of the April 19, 2022 Public Hearing was published at least seven (7) days prior to the opening of the hearing, as required by the Mello-Roos Community Facilities Act. On April 19, 2022 the hearing was opened and then continued by the City Council to this date. There were no written communications.

Mayor Leon opened the public hearing asking those persons interested in this item to speak. Hearing no one wishing to speak, Mayor Leon opened the item for Council discussion.

MOTION: Moved by Council Member Bowman, seconded by Council Member Dorst-Porada and carried by unanimous vote of 5-0, to abandon the proceedings for the proposed changes to the rate and method of apportionment of the existing special tax for the community facilities district.

Regarding the second part of this item, City Clerk Mautz announced this was the continued public hearing to consider the amendment of Resolution No. 2017-124 to increase the maximum aggregate amount of bonded indebtedness that Community Facilities District No. 35 (Countryside Phase 2 South - Facilities) is authorized to incur.

Notice of the April 19, 2022 Public Hearing was published at least seven (7) days prior to the opening of the hearing, as required by the Mello-Roos Community Facilities Act. On April 19, 2022 the hearing was opened and then continued by

the City Council to this date. There were no written communications. There were no written communications.

Mayor Leon then opened the public hearing asking those persons interested in this item to speak. Hearing no one wishing to speak, Mayor Leon closed the Public Hearing and opened the item for Council discussion.

MOTION: Moved by Council Member Bowman, seconded by Council Member Dorst-Porada and carried by unanimous vote of 5-0, to abandon the proceedings for the Amendment of Resolution No. 2017-124 in order to increase the aggregate amount of bonded indebtedness that the Community Facilities District is authorized to incur.

14. A PUBLIC HEARING TO CONSIDER FILE NO. PCUP21-009, A CONDITIONAL USE PERMIT TO ESTABLISH A 128-ROOM LIMITED-SERVICE HOTEL ON 1.83 ACRES OF LAND LOCATED AT 5060 EAST FOURTH STREET, WITHIN THE FREEWAY COMMERCIAL LAND USE DISTRICT OF THE EXCHANGE SPECIFIC PLAN (APN: 0238-012-30)

The City Council considered a Resolution approving the Conditional Use Permit, File No. PCUP21-009, establishing a 128-room limited-service hotel located at 5060 East Fourth Street.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PCUP21-009, A CONDITIONAL USE PERMIT TO ESTABLISH AND OPERATE A 128-ROOM LIMITED-SERVICE HOTEL ON 1.83 ACRES OF LAND LOCATED AT 5060 EAST FOURTH STREET, WITHIN THE FREEWAY COMMERCIAL LAND USE DISTRICT OF THE EXCHANGE SPECIFIC PLAN AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 0238-012-30.

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

Mayor Leon then opened the public hearing asking those persons interested in this item to speak. Hearing no one wishing to speak Mayor Leon closed the hearing and opened the item for Council discussion.

Mayor pro Tem Wapner expressed concerns regarding safety and inquired the economic impact a hotel like this would have on the local economy.

Community Development Executive Director Scott Murphy noted he did not have the requested information readily available and did not have a time frame for when the information would be available.

MOTION: Moved by Mayor pro Tem Wapner, seconded by Council Member Bowman and carried by unanimous vote of 5-0, to table the item.

15. A PUBLIC HEARING TO CONSIDER A RESOLUTION REGARDING THE FORMATION OF THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 63 (OLIVE AND OLEANDER); ADOPTION OF A RESOLUTION TO INCUR BONDED INDEBTEDNESS; AND INTRODUCTION OF AN ORDINANCE LEVYING SPECIAL TAXES

That the City Council consider and:

A. Adopt a Resolution of formation of Community Facilities District No. 63 (Olive and Oleander), authorizing the levy of special taxes within the community facilities district, and establishing an appropriations limit for the community facilities district;
B. Adopt a Resolution deeming it necessary to incur bonded indebtedness within Community Facilities District No. 63 (Olive and Oleander);
C. Adopt a resolution calling a special election for City of Ontario Community Facilities District No. 63 (Olive and Oleander);
D. Adopt a resolution declaring the results of the special election and directing the recording of a Notice of Special Tax Lien;
E. Introduce and waive further reading of an ordinance levying special taxes within City of Ontario Community Facilities District No. 63 (Olive and Oleander); and
F. Adopt a resolution authorizing the execution and delivery of an acquisition and funding agreement with Shea Homes Limited Partnership, a California limited partnership.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF FORMATION OF THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 63 (OLIVE AND OLEANDER), AUTHORIZING THE LEVY OF A SPECIAL TAX.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DEEMING IT NECESSARY TO INCUR BONDED INDEBTEDNESS WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 63 (OLIVE AND OLEANDER).

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CALLING SPECIAL ELECTION FOR CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 63 (OLIVE AND OLEANDER).

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING RESULTS OF SPECIAL ELECTION AND DIRECTING RECORDING OF NOTICE OF SPECIAL TAX LIEN FOR CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 63 (OLIVE AND OLEANDER).

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING SPECIAL TAXES WITHIN COMMUNITY FACILITY DISTRICT NO. 63 (OLIVE AND OLEANDER).

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF AN ACQUISITION AND FUNDING AGREEMENT WITH SHEA HOMES LP OF CALIFORNIA.

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

There were no written communications. Mayor Leon opened the public hearing asking those persons interested in this item to speak. Hearing no one wishing to speak, Mayor Leon opened the item for Council discussion and continued the public hearing.

Mayor Leon noted that due to the complexity of the matter additional time is needed to consider the formation of City of Ontario Community Facilities District No. 63 (Olive and Oleander) and the Levy of Special Taxes therein.

MOTION: Moved by Council Member Dorst-Porada, seconded by Council Member Bowman and carried by unanimous vote of 5-0, to continue the Public Hearing to the May 17, 2022 meeting.

STAFF MATTERS

City Manager Ochoa made no comments.

COUNCIL MATTERS

Council Member Dorst-Porada inquired if a temporary use permit was pulled for an event held at De Anza over the weekend.

Council Member Wapner spoke of Rancho Cucamonga Council Member Sam Spagnolo's passing and expressed his condolences.

Council Member Bowman spoke on the Ribbon Cutting event held at Ontario Fire Station 9.

Council Member Valencia thanked Staff for Fire Station 9, and spoke about the events he attended over the weekend. He also spoke of Curtis Meredith and Alfonso Ochoa's passing and expressed his condolences.

Mayor Leon spoke of the Ribbon Cutting at Ontario Fire Station 9. He also expressed his condolences to family members of those who have suffered a loss.

ADJOURNMENT

Mayor Leon adjourned the meetings of the Joint Agencies at 7:21 p.m. in memory of Rancho Cucamonga Council Member Sam Spagnolo, Curtis Meredith and Alfonso Ochoa, and announced the next regular meeting to be held on Tuesday, May 17, 2022.

Respectfully submitted,

_____
SHEILA MAUTZ, CITY CLERK/SECRETARY

APPROVED:

_____
PAUL S. LEON, MAYOR/CHAIRMAN

ONTARIO CITY COUNCIL/
ONTARIO HOUSING AUTHORITY
SPECIAL MEETING MINUTES
MAY 10, 2022
(Not official until approved)

JOINT MEETINGS

The special meetings of the Ontario City Council and Housing Authority were held on Tuesday, May 10, 2022 at Ontario City Hall, 303 E. B Street Ontario, California.

CALL TO ORDER

Mayor Leon called the Joint City Council and Ontario Housing Authority meetings to order at 6:34 p.m.

ROLL CALL

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

Also present were City Manager / Executive Director Scott Ochoa, Best Best and Krieger Election's Legal Counsel Scott Smith, and City Clerk/Secretary Sheila Mautz.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Bowman.

PUBLIC COMMENTS

There were no public comments.

AGENDA REVIEW/ANNOUNCEMENTS

City Manager Ochoa made no announcements.

PUBLIC HEARINGS

1. PUBLIC HEARING #2 TO RECEIVE PUBLIC COMMENTS ON TRANSITIONING TO DISTRICT-BASED ELECTIONS UNDER THE CALIFORNIA VOTING RIGHTS ACT

The City Council opened the second Public Hearing, received further input regarding the formation of districts and closed the Public Hearing.

Legal Counsel, Scott Smith provided a presentation regarding the districting process.

PUBLIC HEARING COMMENTS:

There were eight written comments which were printed and entered into the record:
Raymond Smith
Anthony Noriega
Melissa May
Maxine Bowden
Angela Miramontes
Erma Gardner
Claudia Prats
Martha Aragon
Austin Aragon
Sepiuta Siasau
Lolofi Soakai
Stephen May

Mayor Leon called upon the first speaker:

Chris Robles, announced he submitted draft maps and spoke on his community of interest.

Loree Masonis, spoke in opposition to districts.

Randy Beckendam, spoke on his community of interest.

Stephanie, spoke on her community of interest.

Juana Galvez, spoke on her community of interest.

Maribel Nuñez, spoke on the districting process.

Yasmine Ramirez, spoke on the districting process.

Anthony Noriega, spoke on the districting process.

Xochitl Escamilla: spoke on her community of interest.

Ted Burnett, spoke on the districting process.

Andrea Galvan, spoke on the districting process and her community of interest.

Norberto Corona: spoke on his community of interest.

Maria Galvan, spoke on her community of interest.

STAFF MATTERS

City Manager Ochoa announced the mapping tool would be released on May 11, 2022, and that the Community Workshops were scheduled for May 14, 2022 to demonstrate the mapping tool.

ADJOURNMENT

Mayor Leon adjourned the meetings of the Joint Agencies at 7:59 p.m.

Respectfully submitted,

_____
SHEILA MAUTZ, CITY CLERK/SECRETARY

APPROVED:

_____
PAUL S. LEON, MAYOR/CHAIRMAN

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Craig Cruz Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 3

SUBJECT: AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT WITH YUNEX LLC

RECOMMENDATION: That the City Council approve an amendment to the Maintenance Services Agreement (on file in the Records Management Department) with Yunex LLC, of Austin, Texas, to provide maintenance services for the City's traffic signals and traffic signal system for Fiscal Year 2022-23 in the amount of $760,000, for a revised total expenditure of $3,601,945; and authorize the City Manager to execute said amendment and future amendments within the authorization limits.

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

FISCAL IMPACT: The proposed Amendment No. 6 increases the Agreement amount by $760,000 for a revised total authorization of $3,601,945 to provide funding for the final year of the contract. The Fiscal Year 2022-23 Adopted Budget includes appropriations of $3,601,945 for maintenance related services for the City's traffic signals and traffic signal system, no additional appropriations are needed.

BACKGROUND & ANALYSIS: In July 2018, the City awarded a contract to Yunex LLC (formerly Siemens Industry, Inc. and Siemens Mobility, Inc.) for maintenance services for one (1) year with four (4) additional one (1) year periods, at the City's discretion. The City will be in the final year of the contract and has expended $2,841,945 towards traffic signal and traffic signal system maintenance.

This proposed Amendment would extend the contract term to FY22/23 and increase the not-to-exceed compensation amount consistent with the adopted budget.

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Police Department Prepared By: Lizceth Zazueta Department: Prepared By: Lizceth Zazueta Staff Member Presenting: Mike Lorenz, Chief of Police Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 4

SUBJECT: **APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH PHOENIX GROUP INFORMATION SYSTEMS REFERENCE PROCESSING SERVICES FOR POLICE PARKING CITATIONS, FIRE AND COMMUNITY IMPROVEMENT ADMINISTRATIVE CITATIONS, AND FALSE ALARM PROGRAM**

RECOMMENDATION: That City Council authorizes the City Manager to execute a new Professional Services Agreement with Phoenix Group Information Systems from Santa Ana, California, for services involving the processing of Ontario Police Department parking citations, Ontario Fire Department and Ontario Community Improvement Department administrative citations, and false alarm program fees.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Maintain the Current High Level of Public Safety
Operate in a Businesslike Manner

FISCAL IMPACT: The contract has a not to exceed amount of $750,000 over three years. Appropriations of $156,000 are included in the General Fund FY 2022-23 Adopted Budget and will be included in subsequent years for Council approval. A request for an additional budget appropriation will occur should the department(s) experience an increase in citations processed far more than anticipated. The yearly threshold in the contract mitigates the need for a contract revision due to increases in city citations processed.

BACKGROUND & ANALYSIS: The City of Ontario currently issues citations for Ontario Municipal Code, firework, false alarm, and parking violations. Since 1989, the City of Ontario has used a third-party company to assist with processing these invoices, paying required county fees pertaining to specific citations, and assist with processing contested tickets for the Ontario Police Department, the Ontario Fire Department, and the Ontario Community Improvement Department.

To address all citation needs required of the third-party vendor, the City has utilized a coordinated contracting approach with responsibility for contract management residing with the Ontario Police Department. In January 2022, the City solicited proposals through the City's RFP management

system, RFP #1491, for the processing services for Police parking citations, Fire and Community Improvement administrative citations, and false alarm program. Proposals were based on the needs of each individual department to include processing, invoicing, monitoring, and contesting citations.

Out of the two viable vendors, Phoenix Group Information Systems was selected by a review committee consisting of representatives from the Ontario Police Department, and confirmation from the Ontario Fire Department and Community Improvement Department Staff. Phoenix Group Information Systems has been contracting with the City of Ontario since November 1989. Based on Phoenix Group Information Systems' satisfactory performance, and after meeting the criteria set forth in RFP #1491, Staff recommends entering this contract with Phoenix Group Information Systems for a three year term.

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Broadband Operations Prepared By: Alicia Lara Staff Member Presenting: Jimmy Chang, Innovation Performance and Audit Director Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 5

SUBJECT: PRE-AUTHORIZED LIST OF VENDORS TO PROVIDE SPECIALIZED PARTS AND EQUIPMENT FOR CITY FIBER OPTICS NETWORK

RECOMMENDATION: That the City Council approve a pre-authorized list of vendors to provide specialized parts and equipment for the construction and maintenance of the City Fiber Optics Network.

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

FISCAL IMPACT: The designation of pre-authorized vendors to provide specialized parts and equipment does not affect appropriations and does not commit the City to any specific level of future expenditures with these vendors. Expenditures for each vendor and in total for each fiscal year will not exceed the Department's appropriations limits established by the City Council.

BACKGROUND & ANALYSIS: The City Council adopted the Fiber Optics Master Plan in 2013 to construct a fiber optics network. Construction of this network began in 2015 and has resulted in the construction of over 100 miles of fiber optic cable throughout the Ontario Ranch Community and within the corridors of the City. OntarioNet, along with the City service provider partner, there are now over 1,700 residential customers, 50 commercial customers, and 5 City facilities connected to the City fiber-based broadband services. The City has standardized on many specialized parts and equipment and has been able to procure directly from the manufacturers (AFL, Calix, Clearfield, Communication Supply Corporation, Coriant North America Inc., Myers Power Products, Newbasis West LLC), eliminating third-party markups. When unable to procure directly from a manufacturer, the bid process is followed. Certain vendors (Graybar Electric Supply, Power & Telephone Supply Company, MSI Tec, Inc.), have consistently provided the best pricing and have proven to provide quality service, prompt turnarounds and excellent products. Due to the specialized nature of the parts and equipment and the lead time necessary to procure items to keep fiber system installations on schedule, it is recommended that the City add Ubicquia to the list of pre-authorized

vendors.

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Investments & Revenue Resources Prepared By: Nicole Phillips Staff Member Presenting: Armen Harkalyan, Executive Director of Finance Reviewed By: Cecilia House, Armen Harkalyan Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 6

SUBJECT: **ACCEPT A WRITTEN PETITION REQUESTING COMMENCEMENT OF CHANGE PROCEEDINGS TO CHANGE THE RATE AND METHOD OF APPORTIONMENT (RMA) OF THE EXISTING SPECIAL TAX OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 35 (COUNTRYSIDE PHASE 2 SOUTH-FACILITIES); ADOPT A RESOLUTION OF CONSIDERATION TO CHANGE THE RMA OF THE EXISTING SPECIAL TAX AND ACCEPT A WRITTEN PETITION REQUESTING TO INCREASE THE MAXIMUM AGGREGATE AMOUNT OF BONDED INDEBTEDNESS OF COMMUNITY FACILITIES DISTRICT NO. 35 (COUNTRYSIDE PHASE 2 SOUTH-FACILITIES) THAT IS AUTHORIZED TO INCUR TO $45,000,000; ADOPT A RESOLUTION OF INTENTION TO AMEND RESOLUTION NO. 2017-124 IN ORDER TO INCREASE THE MAXIMUM AGGREGATE AMOUNT OF BONDED INDEBTEDNESS.**

RECOMMENDATION: That the City Council consider and:

A. Accept a written petition requesting commencement of change proceedings (on file in the Records Management Department) from Lennar Homes of California, LLC ("Lennar"), to consider a change to the Rate and Method of Apportionment of the existing special tax of the City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South-Facilities) (the "Community Facilities District") and waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982 (the "Act");
B. Adopt a Resolution of Consideration to change the Rate and Method of Apportionment of the existing special tax of the Community Facilities District and set a public hearing on such proposed change as part of the regularly scheduled City Council meeting on Tuesday, July 19, 2022; and
C. Accept a written petition requesting commencement of proceedings (on file in the Records Management Department) from Lennar to increase the maximum aggregate amount of bonded indebtedness that the Community Facilities District is authorized to incur to $45,000,000 and waive certain procedural matters, under the Act; and
D. Adopt a Resolution of Intention to amend Resolution No. 2017-124 in order to increase the maximum aggregate amount of bonded indebtedness that the Community Facilities District is authorized to incur and set a public hearing on such proposed increase as part of the regularly scheduled City Council meeting on Tuesday, July 19, 2022.

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

FISCAL IMPACT: If City Council approves the Resolution of Consideration to change the Rate and Method of Apportionment the aggregate amount of bonded indebtedness that the Community Facilities District is authorized to incur (as requested in the Petition from Lennar), the Community Facilities District will be projected to generate approximately $45 million in bond proceeds to fund a portion of the public infrastructure improvements that will serve the project. The use of Mello-Roos financing is critical in achieving the City Council's goal to "Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch". Mello-Roos bonds are not a direct obligation of the City and are paid from special taxes levied on each taxable parcel in the Community Facilities District; therefore, there is no fiscal impact to the General Fund from the issuance of Mello-Roos bonds. City Council approval will be required in future years to process annual special tax levies.

BACKGROUND & ANALYSIS: The Act provides local government the authority to establish community facilities districts for the purpose of financing various kinds of public infrastructure facilities. The Countryside Phase 2 South-Facilities project addresses the development of approximately 34.22 gross acres located generally East of the Cucamonga Creek Channel, west of Archibald Avenue, south of Chino Avenue and north of Schaefer Avenue. At build out, the development is projected to include 235 single-family detached units.

Lennar Homes has provided a written petition to the City Council to commence proceedings pursuant to the Act to change the Rate and Method of Apportionment of the existing special tax levied within the Community Facilities District. In consideration of this request, the City requested a second price point study to be performed by Empire Economics, Price Point Study and Market Absorption Consultant. The study was concluded in January 2022 and found that estimated home prices for market comparables had increased approximately 40.2% for the development, as compared to the initial price point study performed in June 2017. Goodwin Consulting Group, Special Tax Consultant, has prepared an Amended and Restated Rate and Method Apportionment which reflects the overall estimated price point increase of 40.2%.

Included, as part of the Resolution of Consideration for the proposed changes, is the proposed Amended and Restated Rate and Method of Apportionment of Special Tax for City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South-Facilities). Under the Amended and Restated Rate and Method of Apportionment, certain special tax rates within the Community Facilities District would be increased. The terms of the Amended and Restated Rate and Method are consistent with the City Council's adopted Mello-Roos Local Goals and Policies, Resolution No. 2006-021, in all aspects.

The term, structure and special tax rates of the Amended and Restated Rate and Method Apportionment are consistent with those of the previously adopted Rate and Method of Apportionments for Ontario Ranch community facilities districts. This will ensure that the special tax rates levied on all residential property owners in community facilities districts in Ontario Ranch are developed in a consistent and equivalent manner. In addition, under the provisions of the Act, to ensure that home buyers are making an informed decision, all residential builders in Ontario Ranch community facilities districts will be required to disclose the maximum annual special tax amounts to each homeowner before entering into a sales contract.

As proposed, the Resolution of Consideration to change the Rate and Method of Apportionment of the existing special tax of the Community Facilities District will set the public hearing date to consider the matter for the regularly scheduled City Council meeting on Tuesday, July 19, 2022.

If the increased special tax rates as provided in the Amended and Restated Rate and Method of Apportionment are approved by the qualified electors of the Community Facilities District, the Community Facilities District would have the ability to incur a greater amount of bonded indebtedness than it presently is authorized to incur. Lennar has provided a written petition to the City Council to increase the maximum aggregate amount of bonded indebtedness that the Community Facilities District is authorized to incur to $45,000,000. If such increase is approved by the qualified electors of the Community Facilities District, the Community Facilities District would have the ability to finance a greater amount of public facilities.

As proposed, the Resolution of Intention to increase the maximum aggregate amount of bonded indebtedness that the Community Facilities District is authorized to incur will set the public hearing date to consider the matter for the regularly scheduled City Council meeting on Tuesday, July 19, 2022.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF CONSIDERATION TO CHANGE THE RATE AND METHOD OF APPORTIONMENT OF THE EXISTING SPECIAL TAX OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 35 (COUNTRYSIDE PHASE 2 SOUTH - FACILITIES).

WHEREAS, the City Council (the "City Council") of the City of Ontario (the "City") has previously established City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South - Facilities) (the "Community Facilities District") pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"); and

WHEREAS, subdivision (a) of Section 53332 of the Act provides that if a petition signed by the owners of 25% or more of the land within a community facilities district not exempt from the special tax is filed with the legislative body requesting that proceedings be commenced to change the rate or method of apportionment of an existing special tax, the legislative body shall within 40 days of the payment of the fee determined under subdivision (b) of said Section adopt a resolution of consideration in the form specified in the Act to make those changes within the community facilities district except that an existing special tax being used to pay off any debt incurred shall not be reduced or terminated if doing so would interfere with the timely retirement of that debt; and

WHEREAS, pursuant to the Act, the City Council is the legislative body of the Community Facilities District; and

WHEREAS, the Community Facilities District has incurred no debt; and

WHEREAS, the City Council has received a written petition (the "Petition") from Lennar Homes of California, LLC, a California limited liability company (as successor-in-interest by conversion to Lennar Homes of California, Inc.) (the "Landowner"), requesting that proceedings be commenced pursuant to the Act to change the rate and method of apportionment of the special tax levied within the Community Facilities District so as to increase certain of the special tax rates thereunder, as described in the Petition; and

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

WHEREAS, the Landowner has paid a fee in an amount determined by the City Council to be sufficient to compensate the City for all costs incurred in conducting proceedings to change the rate and method of apportionment of the existing special tax levied within the Community Facilities District; and

WHEREAS, the City Council desires to commence proceedings pursuant to the Act to change the rate and method of apportionment of the special tax levied within the Community Facilities District; and

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

SECTION 1. The foregoing recitals are true and correct, and the City Council so finds and determines.

SECTION 2. The City Council hereby finds that the Petition has been signed by the owners of 25% or more of the land within the Community Facilities District not exempt from the special tax levied within the Community Facilities District.

SECTION 3. The name of the Community Facilities District is "City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South - Facilities)."

SECTION 4. The boundaries of the Community Facilities District are as shown on the map of the Community Facilities District recorded at Book 87 of Maps of Assessment and Community Facilities Districts at Page 62, in the office of the County Recorder for the County of San Bernardino, State of California (Document No. 2017-0370110), which map is the final boundary map of the Community Facilities District.

SECTION 5. The proposed changes to the rate and method of apportionment of the special tax levied within the Community Facilities District are reflected in the Amended and Restated Rate and Method of Apportionment of Special Tax (the "Restated Rate and Method") attached hereto as Exhibit A, which is by this reference incorporated herein. Included in Exhibit A is a description of the increases in the special tax rates that would be made by the proposed changes to the rate and method of apportionment.

SECTION 6. The City Council hereby fixes Tuesday, July 19, 2022, at 6:30 p.m., or as soon thereafter as the City Council may reach the matter, at 303 East B Street, Ontario, California, as the time and place when and where the City Council will conduct a public hearing on the proposed changes to the rate and method of apportionment of the special tax levied within the Community Facilities District; provided, that, in the event the July 19, 2022 City Council meeting is held via teleconference and/or videoconference only, the means by which the public may observe such public hearing and offer public comment shall be prescribed in the notice and agenda for such City Council meeting.

SECTION 7. The City Clerk is hereby directed to publish, or cause to be published, a notice of said public hearing one time in a newspaper of general circulation published in the area of the Community Facilities District. The publication of said notice shall be completed at least seven days prior to the date herein fixed for said hearing. Said notice shall contain the information prescribed by Section 53335 of the Act.

SECTION 8. The changes to the rate and method of apportionment of the special tax levied within the Community Facilities District shall be subject to the approval of the qualified electors of the Community Facilities District at a special election. The proposed voting procedure shall be by mailed or hand-delivered ballots among the landowners in the Community Facilities District, with each owner having one vote for each acre or portion of an acre such owner owns in the Community Facilities District.

SECTION 9. All actions heretofore taken by the officers, employees and agents of the City with respect to the proposed changes to the rate and method of apportionment of the special tax levied within the Community Facilities District, or in connection with or related to any of the documents referred to herein, are hereby approved, confirmed and ratified.

SECTION 10. 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 11. 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 7th day of June 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 June 7, 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 June 7, 2022.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

AMENDED AND RESTATED RATE AND METHOD
OF APPORTIONMENT OF SPECIAL TAX

EXHIBIT A

CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 35
(COUNTRYSIDE PHASE 2 SOUTH – FACILITIES)
AMENDED AND RESTATED
RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax shall be levied on all Assessor's Parcels in the City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South – Facilities) ("CFD No. 35") and collected each Fiscal Year, commencing in Fiscal Year 2018-19, in an amount determined by the City Council of the City of Ontario through the application of the Rate and Method of Apportionment, as described below. All of the real property in CFD No. 35, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent, and in the manner herein provided.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Acre" or **"Acreage"** means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Subdivision Map, parcel map, condominium plan, or other recorded County map.

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5 of Part 1 of Division 2 of Title 5 of the California Government Code.

"Administrative Expenses" means the following actual or reasonably estimated costs directly related to the administration of CFD No. 35: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or CFD No. 35 or both); the costs of collecting the Special Taxes (whether by the County or otherwise); the costs of remitting the Special Taxes to the Trustee; the costs of the Trustee (including its legal counsel) in the discharge of the duties required of it under the Indenture; the costs to the City or CFD No. 35 of complying with arbitrage rebate requirements; the costs to the City or CFD No. 35 of complying with City, CFD No. 35, or obligated persons disclosure requirements associated with applicable federal and state securities laws and of the Act; the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City or CFD No. 35 related to the analysis and reduction, if any, of the Special Tax on Single Family Property in accordance with Section C.1 herein; the costs of the City or CFD No. 35 related to an appeal of the Special Tax; the costs associated with the release of funds from any escrow account; the City's administration fees and third party expenses; the costs of City staff time and reasonable overhead relating to CFD No. 35; and amounts estimated or advanced by the City or CFD No. 35 for any other

administrative purposes of the CFD, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

"Assessor's Parcel" means a lot or parcel shown in an Assessor's Parcel Map with an assigned Assessor's Parcel Number.

"Assessor's Parcel Map" means an official map of the Assessor of the County designating parcels by Assessor's Parcel Number.

"Assessor's Parcel Number" means, with respect to an Assessor's Parcel, that number assigned to such Assessor's Parcel by the County for purposes of identification.

"Assigned Special Tax" means the Special Tax for each Land Use Class of Developed Property, as determined in accordance with Section C.1.a.2 below.

"Backup Special Tax" means the Special Tax for each Land Use Class of Developed Property, as determined in accordance with Section C.1.a.3 below.

"Bonds" means any bonds or other debt (as defined in Section 53317(d) of the Act) issued by CFD No. 35 under the Act and payable from Special Taxes.

"Buildable Lot" means an individual lot, within a Final Subdivision Map or an area expected by CFD No. 35 to become Final Mapped Property, such as the area within a Tentative Tract Map, for which a building permit may be issued without further subdivision of such lot.

"CFD Administrator" means an official of the City responsible for determining the Special Tax Requirement, providing for the levy and collection of the Special Taxes, and performing the other duties provided for herein.

"CFD No. 19" means City of Ontario Community Facilities District No. 19 (Countryside Phase 1 – Services).

"CFD No. 35" means City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South – Facilities).

"City" means the City of Ontario, California.

"City Council" means the City Council of the City, acting as the legislative body of CFD No. 35.

"Contractual Impositions" means (a) a voluntary contractual assessment established and levied on an Assessor's Parcel pursuant to Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (commencing with Section 5898.10 *et seq.*), as amended from time to time, (b) a special tax established and levied on an Assessor's Parcel pursuant to Section 53328.1 of the California Government Code and related provisions of the Act, as amended from time to time, and (c) any other fee, charge, tax, or assessment established and levied on an individual Assessor's Parcel pursuant to a

contractual agreement or other voluntary consent by the owner thereof (e.g., property owner association assessments).

"County" means the County of San Bernardino.

"Designated Buildable Lot" means a Buildable Lot for which a building permit has not been issued by the City as of the date of calculation of the Backup Special Tax.

"Developed Property" means for each Fiscal Year, all Taxable Property, exclusive of Final Mapped Property, Taxable Property Owner Association Property, and Taxable Public Property, for which a building permit or other applicable permit for new construction was issued after January 1, 2017, and before May 1 of the prior Fiscal Year.

"Expected Residential Lot Count" means 235 Buildable Lots of Single Family Property or, as determined by the CFD Administrator, the number of Buildable Lots of Single Family Property based on the most recent Tentative Tract Map(s) or most recently recorded Final Subdivision Map(s) or modified Final Subdivision Map(s).

"Facilities" means the public facilities authorized to be financed, in whole or in part, by CFD No. 35.

"Final Mapped Property" means, for each Fiscal Year, all Taxable Property, exclusive of Developed Property, Taxable Property Owner Association Property, and Taxable Public Property, which as of January 1 of the previous Fiscal Year was located within a Final Subdivision Map. The term Final Mapped Property shall include any parcel map or Final Subdivision Map, or portion thereof, that creates individual lots for which a building permit may be issued, including Parcels that are designated as a remainder Parcel (i.e., one where the size, location, etc., precludes any further subdivision or taxable use).

"Final Subdivision Map" means a final tract map, parcel map, or lot line adjustment approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) or a condominium plan recorded in accordance with California Civil Code Section 4285 that, in either case, creates individual lots for which building permits may be issued without further subdivision.

"Fiscal Year" means the period starting July 1 and ending on the following June 30.

"Indenture" means the indenture, fiscal agent agreement, resolution, or other instrument pursuant to which Bonds are issued, as modified, amended, and/or supplemented from time to time.

"Land Use Class" means any of the classes listed in Table 1 below.

"Lower Income Household Welfare Exemption Property" means, for each Fiscal Year, an Assessor's Parcel within the boundaries of CFD No. 35 that is subject to a welfare exemption under subdivision (g) of Section 214 of the California Revenue and

Taxation Code (or any successor statute), as indicated in the most recent County assessor's roll finalized prior to such Fiscal Year.

"Maximum Special Tax" means, with respect to an Assessor's Parcel of Taxable Property, the Maximum Special Tax determined in accordance with Section C.1 below that can be levied in any Fiscal Year on such Assessor's Parcel of Taxable Property.

"Minimum Sale Price" means the minimum price at which Units of a given Land Use Class have sold or are expected to be sold in a normal marketing environment and shall not include prices for such Units that are sold at a discount to expected sales prices for the purpose of stimulating the initial sales activity with respect to such Land Use Class.

"Non-Residential Property" means all Assessor's Parcels of Developed Property for which a building permit was issued by the City permitting the construction of one or more non-residential structures or facilities.

"Other Residential Property" means all Assessor's Parcels of Developed Property for which a building permit was issued by the City for purposes of constructing Units, excluding Single Family Attached Property and Single Family Detached Property.

"Outstanding Bonds" means all Bonds which are outstanding under and in accordance with the provisions of the Indenture.

"Price Point Consultant" means any consultant or firm of such consultants selected by CFD No. 35 that (a) has substantial experience in performing price point studies for residential units within community facilities districts established under the Act or otherwise estimating or confirming pricing for residential units in such community facilities districts, (b) has recognized expertise in analyzing economic and real estate data that relates to the pricing of residential units in such community facilities districts, (c) is in fact independent and not under the control of CFD No. 35 or the City, (d) does not have any substantial interest, direct or indirect, with or in (i) CFD No. 35, (ii) the City, (iii) any owner of real property in CFD No. 35, or (iv) any real property in CFD No. 35, and (e) is not connected with CFD No. 35 or the City as an officer or employee thereof, but who may be regularly retained to make reports to CFD No. 35 or the City.

"Price Point Study" means a price point study or a letter updating a previous price point study prepared by the Price Point Consultant pursuant to Section C herein.

"Property Owner Association Property" means, for each Fiscal Year, any property within the boundaries of CFD No. 35 that was owned by a property owner association, including any master or sub-association, as of January 1 of the prior Fiscal Year.

"Proportionately" means (a) for Developed Property in the first step of Section D below, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor's Parcels of Developed Property; however, for Developed Property in the fourth step of Section D below, Proportionately means that the amount of the increase above the Assigned Special Tax, if necessary, is equal for all Assessor's Parcels of Developed Property, except that if the Backup Special Tax limits the increase on any

Assessor's Parcel(s), then the amount of the increase shall be equal for the remaining Assessor's Parcels; (b) for Final Mapped Property, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor's Parcels of Final Mapped Property; (c) for Undeveloped Property, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor's Parcels of Undeveloped Property; (d) for Taxable Property Owner Association Property, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor's Parcels of Taxable Property Owner Association Property; and (e) for Taxable Public Property, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor's Parcels of Taxable Public Property.

"Public Property" means, for each Fiscal Year, property within the boundaries of CFD No. 35 that is (a) owned by, irrevocably offered to, or dedicated to the federal government, the State, the County, the City, or any local government or other public agency or (b) encumbered by an easement for purposes of public or utility right-of-way that makes impractical its use for any purpose other than that set forth in such easement, provided that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act shall be taxed and classified according to its use.

"Rate and Method of Apportionment" means this Amended and Restated Rate and Method of Apportionment of Special Tax.

"Residential Floor Area" means all of the Square Footage of living area within the perimeter of a Unit, not including any carport, walkway, garage, overhang, patio, enclosed patio, or similar area. The determination of Residential Floor Area shall be as set forth in the building permit(s) issued for such Assessor's Parcel, or as set forth in other official records maintained by the City's Building Department or other appropriate means selected by CFD No. 35. The actual Square Footage shall be rounded up to the next whole square foot. Once such determination has been made for an Assessor's Parcel, it shall remain fixed in all future Fiscal Years unless an appeal pursuant to Section F below is approved that results in a change in the actual Square Footage.

"Services" means the services authorized to be financed, in whole or in part, by CFD No. 35.

"Single Family Attached Property" means all Assessor's Parcels of Developed Property for which a building permit or use permit was issued for construction of a residential structure consisting of two or more Units that share common walls, have separate Assessor's Parcel Numbers assigned to them (except for a duplex unit, which may share an Assessor's Parcel with another duplex unit), and may be purchased by individual homebuyers (which shall still be the case even if the Units are purchased and subsequently offered for rent by the owner of the Unit), including such residential structures that meet the statutory definition of a condominium contained in California Civil Code Section 4125.

"Single Family Detached Property" means all Assessor's Parcels of Developed Property for which a building permit was issued for construction of a Unit, on one legal lot, that does not share a common wall with another Unit.

"Single Family Property" means all Assessor's Parcels of Single Family Attached Property and Single Family Detached Property.

"Special Tax" means the special tax authorized by the qualified electors of CFD No. 35 to be levied within the boundaries of CFD No. 35.

"Special Tax Requirement" means for any Fiscal Year that amount required, after taking into account available amounts held in the funds and accounts established under the Indenture, for CFD No. 35 to: (i) pay debt service on all Outstanding Bonds which is due in the calendar year that commences in such Fiscal Year; (ii) pay periodic costs on the Bonds, including, but not limited to, credit enhancement and rebate payments on the Bonds; (iii) pay Administrative Expenses; (iv) provide any amounts required to establish or replenish any reserve fund for the Bonds; (v) pay directly for acquisition or construction of Facilities, or the cost of Services, to the extent that the inclusion of such amounts does not increase the Special Tax levy on Final Mapped Property or Undeveloped Property; (vi) provide an amount equal to Special Tax delinquencies based on the historical delinquency rate for the Special Tax as determined by the CFD Administrator.

"Square Footage" or **"Sq. Ft."** means the floor area square footage reflected on the original construction building permit, or as set forth in other official records maintained by the City's Building Department or other appropriate means selected by CFD No. 35, issued for construction of Single Family Property, Other Residential Property, or Non-Residential Property, plus any square footage subsequently added to a building of Non-Residential Property after issuance of a building permit for expansion or renovation of such building.

"State" means the State of California.

"Taxable Property" means, for each Fiscal Year, all of the Assessor's Parcels within the boundaries of CFD No. 35 that are not exempt from the Special Tax pursuant to law or Section E below.

"Taxable Property Owner Association Property" means, for each Fiscal Year, all Assessor's Parcels of Property Owner Association Property that are not exempt from the Special Tax pursuant to Section E below.

"Taxable Public Property" means, for each Fiscal Year, all Assessor's Parcels of Public Property that are not exempt from the Special Tax pursuant to law or Section E below.

"Tentative Tract Map" means a map: (i) showing a proposed subdivision of an Assessor's Parcel(s) and the conditions pertaining thereto; (ii) that may or may not be based on a detailed survey; and (iii) that is not recorded by the County to create legal lots.

"Total Tax Burden" means, for a Unit within a Land Use Class, for the Fiscal Year in which Total Tax Burden is being calculated, the sum of (a) the Assigned Special Tax for such Land Use Class for such Fiscal Year, plus (b) the CFD No. 19 special tax for such Land Use Class for such Fiscal Year, plus (c) the *ad valorem* property taxes, special assessments, special taxes for any other overlapping community facilities districts, and any other governmental fees, charges (other than fees or charges for services such as sewer and trash), taxes, and assessments (which do not include Contractual Impositions) collected by the County on *ad valorem* tax bills and that the CFD Administrator estimates would be levied or imposed on such Unit in such Fiscal Year if the residential dwelling unit thereon or therein had been completed and sold, and was subject to such fees, charges, taxes, and assessments in such Fiscal Year.

"Trustee" means the trustee or fiscal agent under the Indenture.

"TTM 17449" means Tentative Tract Map No. 17449, the area of which is located within CFD No. 35.

"TTM 17450" means Tentative Tract Map No. 17450, the area of which is located within CFD No. 35.

"Undeveloped Property" means, for each Fiscal Year, all Taxable Property not classified as Developed Property, Final Mapped Property, Taxable Public Property, or Taxable Property Owner Association Property.

"Unit" means an individual single-family detached or attached home, townhome, condominium, apartment, or other residential dwelling unit, including each separate living area within a half-plex, duplex, triplex, fourplex, or other residential structure.

B. ASSIGNMENT TO LAND USE CATEGORIES

Each Fiscal Year, beginning with Fiscal Year 2018-19, all Taxable Property within CFD No. 35 shall be classified as Developed Property, Final Mapped Property, Taxable Public Property, Taxable Property Owner Association Property, or Undeveloped Property and shall be subject to Special Taxes in accordance with the Rate and Method of Apportionment as determined pursuant to Sections C and D below. Assessor's Parcels of Single Family Property shall be assigned to Land Use Classes 1 through 7, as listed in Table 1 below based on the Residential Floor Area of the Units on such Assessor's Parcels. Other Residential Property shall be assigned to Land Use Class 8, and Non-Residential Property shall be assigned to Land Use Class 9.

C. MAXIMUM SPECIAL TAX

1. Special Tax

At least 30 days prior to the issuance of the first series of Bonds, the Assigned Special Tax on Developed Property (set forth in Table 1 below) shall be analyzed in accordance with and subject to the conditions set forth in this Section C. At

such time, CFD No. 35 shall select and engage a Price Point Consultant and the CFD Administrator shall request the Price Point Consultant to prepare a Price Point Study setting forth the Minimum Sale Price of Units within each Land Use Class. If based upon such Price Point Study the CFD Administrator calculates that the Total Tax Burden applicable to Units within one or more Land Use Classes of Single Family Property to be constructed within CFD No. 35 exceeds 1.95% of the Minimum Sale Price of such Units, the Assigned Special Tax shall be reduced to the extent necessary to cause the Total Tax Burden that shall apply to Units within such Land Use Class(es) not to exceed 1.95% of the Minimum Sale Price of such Units.

Each Assigned Special Tax reduction for a Land Use Class shall be calculated by the CFD Administrator separately, and it shall not be required that such reduction be proportionate among Land Use Classes. In connection with any reduction in the Assigned Special Tax, the Backup Special Tax shall also be reduced by the CFD Administrator based on the percentage reduction in Maximum Special Tax revenues within the Tentative Tract Map area(s) where the Assigned Special Tax reductions occurred. Upon determining the reductions, if any, in the Assigned Special Tax and Backup Special Tax required pursuant to this Section C, the CFD Administrator shall complete the Certificate of Modification of Special Tax substantially in the form attached hereto as Exhibit A (the "Certificate of Modification"), shall execute such completed Certificate of Modification, and shall deliver such executed Certificate of Modification to CFD No. 35. Upon receipt thereof, if in satisfactory form, CFD No. 35 shall execute such Certificate of Modification. The reduced Assigned Special Tax and Backup Special Tax specified in such Certificate of Modification shall become effective upon the execution of such Certificate of Modification by CFD No. 35.

The Special Tax reductions required pursuant to this section shall be reflected in an amended notice of Special Tax lien, which CFD No. 35 shall cause to be recorded with the County Recorder as soon as practicable after execution of the Certificate of Modification by CFD No. 35. The reductions in this section apply to Single Family Property, but not to Other Residential Property or Non-Residential Property.

a. Developed Property

1) *Maximum Special Tax*

The Maximum Special Tax that may be levied in any Fiscal Year for each Assessor's Parcel classified as Developed Property shall be the greater of (i) the amount derived by application of the Assigned Special Tax or (ii) the amount derived by application of the Backup Special Tax. The Maximum Special Tax shall not increase in future years, other than as calculated pursuant to Section C.1.a.3 below.

2) *Assigned Special Tax*

The Assigned Special Tax that may be levied in any Fiscal Year for each Land Use Class is shown below in Table 1.

TABLE 1
ASSIGNED SPECIAL TAX – DEVELOPED PROPERTY

Land Use Class	Description	Residential Floor Area (Square Footage)	Assigned Special Tax
1	Single Family Property	< 1,501	$3,342 per Unit
2	Single Family Property	1,501 – 1,700	$3,454 per Unit
3	Single Family Property	1,701 – 1,900	$3,626 per Unit
4	Single Family Property	1,901 – 2,100	$3,849 per Unit
5	Single Family Property	2,101 – 2,300	$3,935 per Unit
6	Single Family Property	2,301 – 2,500	$4,073 per Unit
7	Single Family Property	> 2,500	$4,262 per Unit
8	Other Residential Property		$52,912 per Acre
9	Non-Residential Property		$52,912 per Acre

3) *Backup Special Tax*

The Backup Special Tax shall be $3,846 per Unit for Single Family Property. However, if the Expected Residential Lot Count does not equal 235 for Single Family Property, and the City has not issued Bonds, then the Backup Special Tax for Designated Buildable Lots of Single Family Property shall be calculated according to the following formula:

Backup Special Tax = $903,846 ÷ Expected Residential Lot Count for Single Family Property

If any portion of a Final Subdivision Map, or any area expected by CFD No. 35 to become Final Mapped Property, such as the area within TTM 17449, TTM 17450, or any other Tentative Tract Map, changes any time after the City has issued Bonds, causing an adjustment to the number of Designated Buildable Lots, then the Backup Special Tax for all Designated Buildable Lots of Single Family Property subject to the change shall be calculated according to the following steps:

Step 1: Determine the total Backup Special Taxes that could have been collected from Designated

Buildable Lots of Single Family Property prior to the Final Subdivision Map or expected Final Mapped Property change.

Step 2: Divide the amount determined in Step 1 by the number of Designated Buildable Lots of Single Family Property that exists after the Final Subdivision Map or expected Final Mapped Property change.

Step 3: Apply the amount determined in Step 2 as the Backup Special Tax per Unit for Single Family Property.

The Backup Special Tax for an Assessor's Parcel shall not change once an Assessor's Parcel is classified as Developed Property.

b. Final Mapped Property, Taxable Public Property, Taxable Property Owner Association Property, and Undeveloped Property

The Maximum Special Tax for Final Mapped Property, Taxable Public Property, Taxable Property Owner Association Property, and Undeveloped Property shall be $52,912 per Acre, and shall not be subject to increase or reduction and, therefore, shall remain the same in every Fiscal Year.

2. Multiple Land Use Classes on an Assessor's Parcel

In some instances an Assessor's Parcel of Developed Property may contain more than one Land Use Class. The Maximum Special Tax levied on such Assessor's Parcel shall be the sum of the Maximum Special Tax for all Units of Single Family Property and Acres of Other Residential Property and Non-Residential Property (based on the pro rata share of Square Footage between Other Residential Property and Non-Residential Property, according to the applicable building permits, Final Subdivision Map, parcel map, condominium plan, or other recorded County map) located on that Assessor's Parcel.

D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX

Each Fiscal Year, beginning with Fiscal Year 2018-19, the CFD Administrator shall determine the Special Tax Requirement for such Fiscal Year. The Special Tax shall then be levied as follows:

First: If needed to satisfy the Special Tax Requirement, the Special Tax shall be levied Proportionately on each Assessor's Parcel of Developed Property up to 100% of the applicable Assigned Special Tax;

Second: If additional monies are needed to satisfy the Special Tax Requirement after the first step has been completed, then the Special Tax shall be levied Proportionately on each Assessor's Parcel of Final Mapped Property up to 100% of the Maximum Special Tax for Final Mapped Property;

Third: If additional monies are needed to satisfy the Special Tax Requirement after the first two steps have been completed, then the Special Tax shall be levied Proportionately on each Assessor's Parcel of Undeveloped Property up to 100% of the Maximum Special Tax for Undeveloped Property;

Fourth: If additional monies are needed to satisfy the Special Tax Requirement after the first three steps have been completed, then the levy of the Special Tax on each Assessor's Parcel of Developed Property whose Maximum Special Tax is determined through the application of the Backup Special Tax shall be increased Proportionately from the Assigned Special Tax up to the Maximum Special Tax for each such Assessor's Parcel;

Fifth: If additional monies are needed to satisfy the Special Tax Requirement after the first four steps have been completed, then the Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Property Owner Association Property up to the Maximum Special Tax for Taxable Property Owner Association Property;

Sixth: If additional monies are needed to satisfy the Special Tax Requirement after the first five steps have been completed, then the Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Public Property up to the Maximum Special Tax for Taxable Public Property.

Notwithstanding the above, under no circumstances shall the Special Tax levied in any Fiscal Year on any Assessor's Parcel of Single Family Property or Other Residential Property for which an occupancy permit for private residential use has been issued be increased as a result of delinquency or default by the owner or owners of any other Assessor's Parcel or Assessor's Parcels within CFD No. 35 by more than ten percent above the amount that would have been levied in that Fiscal Year had there never been any such delinquencies or defaults.

E. EXEMPTIONS

No Special Tax shall be levied on up to 2.44 Acres of Public Property and up to 14.12 Acres of Property Owner Association Property. Tax-exempt status will be assigned by the CFD Administrator in the chronological order in which property becomes Public Property or Property Owner Association Property.

Property Owner Association Property or Public Property that is not exempt from the Special Tax under this section shall be subject to the levy of the Special Tax and shall be taxed Proportionately as part of the fifth or sixth step, respectively, in Section D above, up to 100% of the applicable Maximum Special Tax for Taxable Property Owner Association Property and Taxable Public Property. No Special Tax shall be levied in any Fiscal Year on Assessor's Parcels that have fully prepaid the Special Tax obligation pursuant to the formula set forth in Section H.

No Special Tax shall be levied on Lower Income Household Welfare Exemption Property; provided, however, that if, in any Fiscal Year, applicable law does not require that Lower Income Household Welfare Exemption Property be exempt from some portion, or all, of the Special Tax, such portion, or all, of the Special Tax shall be levied on such property in accordance with this Rate and Method of Apportionment based on the Land Use Class to which the Assessor's Parcel is assigned.

F. APPEALS

Any property owner may file a written appeal of the Special Tax with CFD No. 35 claiming that the amount or application of the Special Tax is not correct. The appeal must be filed not later than one calendar year after having paid the Special Tax that is disputed, and the appellant must be current in all payments of Special Taxes. In addition, during the term of the appeal process, all Special Taxes levied must be paid on or before the payment date established when the levy was made.

The appeal must specify the reasons why the appellant claims the Special Tax is in error. The CFD Administrator shall review the appeal, meet with the appellant if the CFD Administrator deems necessary, and advise the appellant of its determination.

If the property owner disagrees with the CFD Administrator's decision relative to the appeal, the owner may then file a written appeal with the City Council whose subsequent decision shall be final and binding on all interested parties. If the decision of the CFD Administrator or subsequent decision by the City Council requires the Special Tax to be modified or changed in favor of the property owner, then the CFD Administrator shall determine if sufficient Special Tax revenue is available to make a cash refund. If a cash refund cannot be made, then an adjustment shall be made to credit future Special Tax levy(ies).

This procedure shall be exclusive and its exhaustion by any property owner shall be a condition precedent to filing any legal action by such owner.

G. MANNER OF COLLECTION

The Special Tax shall be collected in the same manner and at the same time as ordinary *ad valorem* property taxes; provided, however, that the Special Taxes may be collected in such other manner as the City Council shall determine, including direct billing of affected property owners.

H. PREPAYMENT OF SPECIAL TAX

The following definitions apply to this Section H:

"CFD Public Facilities" means $12,757,000 each Prepayment Period, or such lower number as determined by the City Council to be sufficient to fund the Facilities and Services to be provided by CFD No. 35.

"Expenditures Fund" means funds or accounts, regardless of their names, that are established to hold moneys that are available to acquire or construct Facilities and to fund Services.

"Future Facilities Costs" means the CFD Public Facilities minus (i) Facilities and Services costs previously paid from the Expenditures Fund during the Prepayment Period in which the prepayment is being made, (ii) moneys currently on deposit in the Expenditures Fund from deposits made during the Prepayment Period in which the prepayment is being made, and (iii) moneys currently on deposit in an escrow fund that are expected to be available to finance Facilities costs. In no event shall the amount of Future Facilities Costs be less than zero.

"Prepayment Period" means one of three periods of time during which a Special Tax prepayment may be made.

"Prepayment Period 1" means July 1, 2018, through June 30, 2052.

"Prepayment Period 2" means July 1, 2052, through June 30, 2085.

"Prepayment Period 3" means July 1, 2085, through June 30, 2119.

1. Prepayment in Full

The obligation of an Assessor's Parcel to pay the Special Tax may be prepaid as described herein, provided that a prepayment may be made only for Assessor's Parcels for which a building permit for new construction was issued after January 1, 2017, and only if there are no delinquent Special Taxes with respect to such Assessor's Parcel at the time of prepayment. An owner of an Assessor's Parcel intending to prepay the Special Tax obligation shall provide the CFD Administrator with written notice of intent to prepay. Within 30 days of receipt of such written notice, the CFD Administrator shall notify such owner of the prepayment amount for such Assessor's Parcel. The CFD Administrator may charge a fee for providing this service. Prepayment in any six month period must be made not less than 45 days prior to the next occurring date that notice of redemption of Bonds from the proceeds of such prepayment may be given to the Trustee pursuant to the Indenture.

The Special Tax Prepayment Amount (defined below) shall be calculated as summarized below (capitalized terms as defined below):

Bond Redemption Amount	
plus	Redemption Premium
plus	Future Facilities Amount
plus	Defeasance Amount
plus	Administrative Fees and Expenses
less	Reserve Fund Credit
Total	Prepayment Amount

As of the proposed date of prepayment, the Special Tax Prepayment Amount (defined below) shall be calculated by the CFD Administrator as follows:

Paragraph No.

1. Confirm that no Special Tax delinquencies apply to such Assessor's Parcel, and determine the Prepayment Period for the proposed prepayment.

2. Compute the Assigned Special Tax and Backup Special Tax for the Assessor's Parcel to be prepaid based on the Developed Property Special Tax which is, or could be, charged in the current Fiscal Year. For Assessor's Parcels of Final Mapped Property (for which a building permit has been issued but which is not yet classified as Developed Property) to be prepaid, compute the Assigned Special Tax and Backup Special Tax for that Assessor's Parcel as though it was already designated as Developed Property, based upon the building permit which has already been issued for that Assessor's Parcel.

3. (a) Divide the Assigned Special Tax computed pursuant to Paragraph 2 by the total estimated Assigned Special Tax for CFD No. 35 based on the Developed Property Special Tax which could be charged in the current Fiscal Year on all expected development through buildout of CFD No. 35, excluding any Assessor's Parcels which have been prepaid, and

   (b) Divide the Backup Special Tax computed pursuant to Paragraph 2 by the estimated total Backup Special Tax at buildout of CFD No. 35, excluding any Assessor's Parcels which have been prepaid.

4. Multiply the larger quotient computed pursuant to Paragraph 3(a) or 3(b) by the Outstanding Bonds to compute the amount of Outstanding Bonds to be retired and prepaid (the "Bond Redemption Amount").

5. Multiply the Bond Redemption Amount computed pursuant to Paragraph 4 by the applicable redemption premium (e.g., the redemption price minus 100%), if any, on the Outstanding Bonds to be redeemed (the "Redemption Premium").

6. Compute the Future Facilities Costs for the applicable Prepayment Period.

7. Multiply the larger quotient computed pursuant to Paragraph 3(a) or 3(b) by the amount determined pursuant to Paragraph 6 to compute the amount of Future Facilities Costs to be prepaid (the "Future Facilities Amount").

8. Compute the amount needed to pay interest on the Bond Redemption Amount from the first bond interest and/or principal payment date following the current Fiscal Year until the earliest redemption date for the Outstanding Bonds.

9. Determine the Special Tax levied on the Assessor's Parcel in the current Fiscal Year which has not yet been paid.

10. Add the amounts computed pursuant to Paragraphs 8 and 9 to determine the "Defeasance Amount".

11. Verify the administrative fees and expenses of CFD No. 35, including the costs to compute the prepayment, the costs to invest the prepayment proceeds, the costs to redeem Bonds, and the costs to record any notices to evidence the prepayment and the redemption (the "Administrative Fees and Expenses").

12. If reserve funds for the Outstanding Bonds, if any, are at or above 100% of the reserve requirement (as defined in the Indenture) on the prepayment date, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (the "Reserve Fund Credit"). No Reserve Fund Credit shall be granted if reserve funds are below 100% of the reserve requirement on the prepayment date or the redemption date.

13. The Special Tax prepayment is equal to the sum of the amounts computed pursuant to Paragraphs 4, 5, 7, 10, and 11, less the amount computed pursuant to Paragraph 12 (the "Prepayment Amount").

14. From the Prepayment Amount, the amounts computed pursuant to Paragraphs 4, 5, 10, and 12 shall be deposited into the appropriate fund as established under the Indenture and be used to retire Outstanding Bonds or make debt service payments. The amount computed pursuant to Paragraph 7 shall be deposited into the Expenditures Fund. The amount computed pursuant to Paragraph 11 shall be retained by CFD No. 35.

The Special Tax Prepayment Amount may be sufficient to redeem other than a $5,000 increment of Bonds. In such cases, the increment above $5,000, or integral multiple thereof, will be retained in the appropriate fund established under the Indenture to be used with the next prepayment of Bonds or to make debt service payments.

As a result of the payment of the current Fiscal Year's Special Tax levy as determined under Paragraph 9 (above), the CFD Administrator shall remove the current Fiscal Year's Special Tax levy for such Assessor's Parcel from the County tax rolls. With respect to any Assessor's Parcel that is prepaid during Prepayment Period 3, the CFD Administrator shall cause a suitable notice to be recorded in compliance with the Act to indicate that the Special Tax has been prepaid and that the obligation of such Assessor's Parcel to pay the Special Tax shall cease.

With respect to the Special Tax for any Assessor's Parcel that is prepaid during Prepayment Period 1 or Prepayment Period 2, the obligation of such Assessor's Parcel to pay the Special Tax shall be tolled, or suspended, through the end of such Prepayment Period, but shall resume in the first Fiscal Year of the subsequent Prepayment Period. The CFD Administrator shall cause a suitable notice to be recorded in compliance with the Act to indicate that the Special Tax has been satisfied for the remainder of the applicable Prepayment Period but has not been permanently satisfied and the obligation

to pay the Special Tax will resume in the first Fiscal Year of the Prepayment Period following the Prepayment Period in which the prepayment was made. Once the obligation of an Assessor's Parcel to pay the Special Tax resumes, the Special Tax for the then applicable Prepayment Period may be prepaid.

Notwithstanding the foregoing, no Special Tax prepayment shall be allowed unless the amount of Maximum Special Tax that may be levied on Taxable Property within CFD No. 35 (after excluding 2.44 Acres of Public Property and 14.12 acres of Property Owner Association Property) both prior to and after the proposed prepayment is at least 1.1 times the maximum annual debt service on all Outstanding Bonds.

2. Prepayment in Part

The Special Tax on an Assessor's Parcel for which a building permit for new construction was issued after January 1, 2017, may be partially prepaid. The amount of the prepayment shall be calculated as in Section H.1, except that a partial prepayment shall be calculated by the CFD Administrator according to the following formula:

$$PP = (PF - AE) \times \% + AE.$$

The terms above have the following meaning:

PP = the partial prepayment
PF = the Prepayment Amount (full prepayment) for the Special Tax calculated according to Section H.1
AE = the Administrative Fees and Expenses determined pursuant to paragraph 11 above
% = the percentage by which the owner of the Assessor's Parcel(s) is partially prepaying the Special Tax

The Special Tax partial prepayment amount must be sufficient to redeem at least a $5,000 increment of Bonds.

The owner of any Assessor's Parcel who desires such prepayment shall notify the CFD Administrator of such owner's intent to partially prepay the Special Tax and the percentage by which the Special Tax shall be prepaid. The CFD Administrator shall provide the owner with a statement of the amount required for the partial prepayment of the Special Tax for an Assessor's Parcel within thirty (30) days of the request and may charge a fee for providing this service. With respect to any Assessor's Parcel that is partially prepaid, the CFD Administrator shall (i) distribute the remitted prepayment funds according to Section H.1, and (ii) indicate in the records of CFD No. 35 that there has been a partial prepayment of the Special Tax and that a portion of the Special Tax with respect to such Assessor's Parcel, equal to the outstanding percentage (100% - "%", as defined above) of the Maximum Special Tax, shall continue to be levied on such Assessor's Parcel pursuant to Section D during the Prepayment Period in which the partial prepayment is made.

For partial prepayments made during Prepayment Period 1 or Prepayment Period 2, the full amount of the Special Tax shall resume in the first Fiscal Year of the Prepayment

Period following the Prepayment Period in which the partial prepayment was made. Once the obligation of an Assessor's Parcel to pay the Special Tax resumes, the Special Tax for the then applicable Prepayment Period may be prepaid.

I. TERM OF SPECIAL TAX

The Fiscal Year after which no further Special Tax shall be levied or collected is Fiscal Year 2118-2119, except that the Special Tax that was lawfully levied in or before such Fiscal Year and that remains delinquent may be collected in subsequent years.

EXHIBIT A

CERTIFICATE OF MODIFICATION OF SPECIAL TAX
(PAGE 1 OF 2)

CITY OF ONTARIO AND CFD NO. 35 CERTIFICATE

1. Pursuant to Section C.1 of the Amended and Restated Rate and Method of Apportionment of Special Tax (the "Rate and Method") for City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South – Facilities) ("CFD No. 35"), the Assigned Special Tax and the Backup Special Tax for Developed Property within CFD No. 35 has been modified.

    a. The information in Table 1 relating to the Assigned Special Tax for Developed Property within CFD No. 35, as stated in Section C.1.a.2 of the Rate and Method of Apportionment, has been modified as follows:

TABLE 1
ASSIGNED SPECIAL TAX – DEVELOPED PROPERTY

Land Use Class	Description	Residential Floor Area (Square Footage)	Assigned Special Tax
1	Single Family Property	< 1,501	$[ ] per Unit
2	Single Family Property	1,501 – 1,700	$[ ] per Unit
3	Single Family Property	1,701 – 1,900	$[ ] per Unit
4	Single Family Property	1,901 – 2,100	$[ ] per Unit
5	Single Family Property	2,101 – 2,300	$[ ] per Unit
6	Single Family Property	2,301 – 2,500	$[ ] per Unit
7	Single Family Property	> 2,500	$[ ] per Unit
8	Other Residential Property		$[ ] per Acre
9	Non-Residential Property		$[ ] per Acre

EXHIBIT A

CERTIFICATE OF MODIFICATION OF SPECIAL TAX
(PAGE 2 OF 2)

b. The Backup Special Tax for Developed Property, as stated in Section C.1.a.3, shall be modified as follows:

The Backup Special Tax shall be $[____] per Unit for Single Family Property. However, if the Expected Residential Lot Count does not equal 235 for Single Family Property, and the City has not issued Bonds, then the Backup Special Tax for Designated Buildable Lots of Single Family Property shall be calculated according to the following formula:

Backup Special Tax = $[_____] ÷ Expected Residential Lot Count for Single Family Property

2. The Special Tax for Developed Property may only be modified prior to the first issuance of CFD No. 35 Bonds.

3. Upon execution of this Certificate by CFD No. 35, CFD No. 35 shall cause an amended notice of Special Tax lien for CFD No. 35 to be recorded reflecting the modifications set forth herein.

Capitalized undefined terms used herein have the meanings ascribed thereto in the Rate and Method. The modifications set forth in this Certificate have been calculated by the CFD Administrator in accordance with the Rate and Method.

GOODWIN CONSULTING GROUP, INC.
CFD ADMINISTRATOR

By:_____ Date:_____

The undersigned acknowledges receipt of this Certificate and of the modification of the Assigned Special Tax and the Backup Special Tax for Developed Property as set forth in this Certificate.

CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 35
(COUNTRYSIDE PHASE 2 SOUTH – FACILITIES)

By:_____ Date:_____

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF INTENTION TO AMEND RESOLUTON NO. 2017-124 IN ORDER TO INCREASE THE MAXIMUM AGGREGATE AMOUNT OF BONDED INDEBTEDNESS THAT CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 35 (COUNTRYSIDE PHASE 2 SOUTH - FACILITIES) IS AUTHORIZED TO INCUR.

WHEREAS, on October 17, 2017, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), adopted Resolution No. 2017-123, entitled "A Resolution of the City Council of the City of Ontario, California, of Formation of the City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South - Facilities), Authorizing the Levy of a Special Tax within the Community Facilities District and Establishing an Appropriations Limit for the Community Facilities District" (the "Resolution of Formation"), Resolution No. 2017-124, entitled "A Resolution of the City Council of the City of Ontario, California, Deeming it Necessary to Incur Bonded Indebtedness within the City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South - Facilities)" (the "Resolution Deeming it Necessary to Incur"), and Resolution No. 2017-125, entitled "A Resolution of the City Council of the City of Ontario, California, Calling Special Election for City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South - Facilities)", which resolutions established City of Ontario Community Facilities District No. 35 (Countryside Phase 2 South - Facilities) (the "Community Facilities District"), authorized the levy of a special tax within the Community Facilities District and called an election within the Community Facilities District on the proposition of incurring indebtedness, levying a special tax within the Community Facilities District and establishing an appropriations limit for the Community Facilities District, respectively, for the purpose of financing certain public facilities (the "Facilities") and services, as further provided in the Resolution of Formation; and

WHEREAS, on October 17, 2017, an election was held in which the qualified electors of the Community Facilities District approved said proposition by more than the two-thirds vote required by the Act; and

WHEREAS, pursuant to the Resolution Deeming it Necessary to Incur and said election, the Community Facilities District is authorized to incur bonded indebtedness in a maximum aggregate amount of not to exceed $27,000,000; and

WHEREAS, the City Council has received a written petition (the "Petition") from Lennar Homes of California, LLC, a California limited liability company (as successor-in-interest by conversion to Lennar Homes of California, Inc.) (the "Landowner"), requesting that proceedings be commenced pursuant to the Act to increase the maximum aggregate amount of bonded indebtedness that the Community Facilities District is authorized to incur to $45,000,000; and

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

WHEREAS, the Landowner has paid a fee in an amount determined by the City Council to be sufficient to compensate the City for all costs incurred in conducting proceedings to increase the maximum aggregate amount of bonded indebtedness that the Community Facilities District is authorized to incur; and

WHEREAS, the City Council desires to commence proceedings pursuant to the Act to so amend the Resolution Deeming it Necessary to Incur; and

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

SECTION 1. The foregoing recitals are true and correct, and the City Council so finds and determines.

SECTION 2. The City Council hereby declares that to provide the funds necessary to pay the costs of the Facilities, including all costs and estimated costs incidental to, or connected with, the accomplishment of said purpose and of the financing thereof, as permitted by Section 53345.3 of the Act, it is necessary to incur bonded indebtedness in a maximum aggregate amount of $45,000,000.

SECTION 3. In order to increase the maximum aggregate amount of bonded indebtedness that the Community Facilities District is authorized to incur from $27,000,000 to $45,000,000, the City Council intends to amend Section 5 of the Resolution Deeming it Necessary to Incur to read in full as follows:

> "Section 5. The maximum aggregate amount of debt to be incurred is $45,000,000."

SECTION 4. The City Council hereby fixes Tuesday, July 19, 2022, at 6:30 p.m., or as soon thereafter as the City Council may reach the matter, at 303 East B Street, Ontario, California, as the time and place when and where the City Council will conduct a public hearing on the proposed increase in the maximum aggregate amount of bonded indebtedness that the Community Facilities District is authorized to incur; provided, that, in the event the July 19, 2022 City Council meeting is held via teleconference and/or videoconference only, the means by which the public may observe such public hearing and offer public comment shall be prescribed in the notice and agenda for such City Council meeting.

SECTION 5. The City Clerk is hereby directed to publish, or cause to be published, a notice of said public hearing one time in a newspaper of general circulation published in the area of the Community Facilities District. The publication of said notice shall be completed at least seven days prior to the date herein fixed for said hearing. Said notice shall contain the information prescribed by Section 53346 of the Act.

SECTION 6. The increase in the maximum aggregate amount of bonded indebtedness that the Community Facilities District is authorized to incur shall be subject to the approval of the qualified electors of the Community Facilities District at a special election. The proposed voting procedure shall be by mailed or hand-delivered ballots among the landowners in the Community Facilities District, with each owner having one vote for each acre or portion of an acre such owner owns in the Community Facilities District.

SECTION 7. All actions heretofore taken by the officers, employees and agents of the City with respect to the proposed increase in the maximum aggregate amount of bonded indebtedness that the Community Facilities District is authorized to incur, or in connection with or related to any of the documents referred to herein, are hereby approved, confirmed and ratified.

SECTION 8. 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 9. 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 7th day of June 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 June 7, 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 June 7, 2022.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Leonard Lui Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 7

SUBJECT: **A RESOLUTION ADOPTING THE LIST OF PROJECTS FOR FISCAL YEAR 2022-23 FUNDED BY SENATE BILL 1, THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017**

RECOMMENDATION: That the City Council adopt a Resolution approving the FY 2022-23 Project List for Senate Bill 1 ("SB1"), the Road Repair and Accountability Act of 2017.

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

FISCAL IMPACT: This spending plan identifies the recommended uses for the City's Fiscal Year 2022-23 apportionment of Road Maintenance and Rehabilitation Account (RMRA) funds from SB1, which is projected to be at $4,148,720 for the upcoming fiscal year. The proposed projects for Fiscal Year 2022-23 are consistent with the projects included in the City's proposed Five-Year Capital Improvement Program adopted by City Council as part of the Fiscal Year 2022-23 budget.

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

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

The proposed projects for FY 2022-23 (Exhibit "A" of the Resolution) are consistent with the projects

included in the City's proposed Five-Year Capital Improvement Program submitted to the City Council for the upcoming fiscal year's budget.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING A LIST OF PROJECTS FOR FISCAL YEAR 2022-23 FUNDED BY SENATE BILL 1, THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017.

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

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

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

WHEREAS, the City will receive an estimated $4,148,720 in RMRA funding in Fiscal Year 2022-23 from SB1; and

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

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

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

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

WHEREAS, the 2020 California Statewide Local Streets and Roads Needs Assessment found that the City's streets and roads are in a "good" condition and this revenue will help us increase the overall quality of our road system and over the next decade will bring our streets and roads to an "excellent" condition; and

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

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

1. That the foregoing recitals are true and correct.

2. That the attached list (Exhibit A) of proposed projects will be funded in-part or solely with Fiscal Year 2022-23 Road Maintenance and Rehabilitation Account revenues.

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

PASSED, APPROVED, AND ADOPTED this 7th day of June 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 June 7, 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 June 7, 2022.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A
Local Streets and Roads Program
Fiscal Year 2022-23 Proposed Projects List

AGENCY NAME: City of Ontario
AGENCY CONTACT: Tricia Espinoza
tespinoza@ontarioca.gov

Project Title and Description	Project Type	Project Limits	Begin Project	End Project	Estimated Useful Life
FY 21-22 CARRYOVER					
Traffic Improvement Program	Traffic Signal	Campus Ave./Walnut St.; Campus Ave./Francis St.	7/1/2022	12/31/2022	25-35 years
ATP Cycle 4 Pedestrian Improvements (CON)	Pedestrian Access	B Street and Vine Avenue; SR-60 to Mission Blvd	7/1/2021	7/31/2022	25-35 years
ATP Cycle 5 Pedestrian Improvements (PA&ED)	Bicycle Safety	B Street and Vine Avenue	7/1/2022	6/30/2023	25-35 years
FY 2022-23					
Alley Rehabilitation Program	Asphalt Overlay	Vesta Street - Mountain Avenue to Begonia Avenue Alley South of Armsley Square - Vine Avenue to Bonnie Brae Court Alley South of State Street - Vine Avenue to 200' East of Laurel Avenue Alley North of H Street - Campus Avenue to Berlyn Avenue	3/15/2023	4/30/2023	15-25 years
Reconstruction of alleys with new concrete ribbon gutters, drive approaches and asphalt pavement.					
Edison Avenue Widening Feasibility Study	Street Widening	Euclid Ave to Cucamonga Creek Channel	7/1/2021	6/30/2023	N/A
Feasibility study to widen 3 miles of Edison Avenue from two lanes to four lanes.					
ATP Cycle 5 Bicycle Improvements (PS&E)	Bicycle Safety	B Street and Vine Avenue	7/1/2022	6/30/2023	25-35 years
Design and construction of 2 miles of combined Class III and IV bike facilities and street improvements including curb extensions, high visibility crosswalks, traffic circles and street lights.					
FY 22-23 Pavement Rehabilitation Project	Asphalt Overlay	Phillips Street - Benson Avenue to Magnolia Avenue Vintage Avenue - Concours Street to Ontario Mills Parkway Wineville Avenue - Fourth Street to Concours Street Vineyard Avenue - SR-60 Sidewalk Repair	7/1/2022	6/30/2023	15-25 years
Construction of Rubberized Asphalt Hot Mix pavement including removal and replacement of failing pavement areas, replacement of damaged sidewalk, curb and gutter, placement of ADA ramps, updated signage and striping. This rubberized ashpalt mix is a high performing asphalt product that extends the pavement life while providing an environmentally friendly recycled tire usage.					

FY 22-23 Slurry Seal/Cape Seal Program	Slurry/Cape Seal	Select streets in area bounded by Benson Avenue to the West, I-10 Freeway to the North, Campus Avenue to the East, and Holt Boulevard to the South (Slurry) Phillips Street (Cape Seal) - Magnolia Avenue to Euclid Avenue Francis Street (Cape Seal) - Archibald Avenue to Business Parkway Business Parkway (Cape Seal) - Mission Boulevard to Francis Street Business Parkway (Cape Seal) - Francis Street to Philadelphia Street Locust Street (Cape Seal) - Grove Avenue to Parco Avenue Acacia Street (Cape Seal) - Channel to Baker Avenue Cedar Street (Cape Seal) - Business Parkway to Turner Avenue	8/1/2022	1/31/2023	10-15 years
Construction of rubber polymer modified slurry seal and ARAM cape seal for residential, collector and arterial streets.					
TDA Article 3 - Bus Stop Pad Installation	Bus Stops	Haven Avenue/Francis Street, Archibald Avenue/Riverside Drive, Campus Avenue/D Street	7/1/2022	6/30/2023	25-35 years
Installation of concrete passenger boarding areas for ADA compliance improvements.					
Traffic Improvement Program	Traffic Signal	San Antonio Avenue/ State Street San Antonio Avenue/Franics Street Campus Avenue/Mission Boulevard (Modification) Sultana Avenue/Mission Boulevard (Modification)	7/1/2022	6/30/2024	25-35 years
Construction of a new traffic signal or modifications to the existing signal at intersection, which will provide controlled access.					

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Municipal Services Prepared By: Michael Johnson 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: 8

SUBJECT: AUTHORIZE THE PURCHASE OF FLEET EQUIPMENT

RECOMMENDATION: That the City Council authorize the cooperative purchase and delivery of one Generac Mobile Generator in the amount of $100,751.90, consistent with the terms and conditions of the Sourcewell Cooperative Contract No. 041719-GEN.

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

FISCAL IMPACT: The Fiscal Year 2021-22 Adopted Budget includes appropriations of $125,000 in the Facilities and Parks Maintenance Fund for the purchase of a mobile generator. The total cost of the generator recommended for purchase is $100,751.90.

BACKGROUND & ANALYSIS: The portable generator recommended for purchase will be used by the Facilities Maintenance Department as a backup emergency generator at City facilities equipped with the proper transfer switch electrical equipment for resiliency purposes in the event of scheduled or unexpected power outages. The generator will be mounted on a trailer that can be hooked up and transported using City fleet vehicles to the location needed in a matter of minutes to provide temporary power and keep a building operational until grid power is restored.

This purchase is being made using Sourcewell. In general conformation with the provisions of Government Code Section 54201 through 54204, Ontario Municipal Code Section 2-6.29 allows for the purchase of supplies and equipment through cooperative purchasing programs, pursuant to California Government Code Section 6502 and City of Ontario Resolution No. 91-141. Cooperative purchasing allows the City to pool its procurement power with other public agencies to obtain lower pricing than otherwise might be possible.

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Municipal Services Prepared By: Michael Johnson 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: AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT WITH MERCHANTS BUILDING MAINTENANCE FOR CUSTODIAL SERVICES

RECOMMENDATION: That the City Council authorize the City Manager to execute Amendment No. 1 to the Maintenance Services Agreement (on file in the Records Management Department) with Merchants Building Maintenance of Pomona, California, for custodial services, to exercise the two optional one-year extensions, for a total not to exceed amount of $1,868,590.

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

FISCAL IMPACT: The Fiscal Year 2022-23 Adopted Budget includes appropriations of $455,000 in the Facilities and Parks Maintenance Fund for custodial services. The estimated cost for Fiscal Year 2023-24 will be $465,000. The total compensation paid by the City will be contingent upon actual services provided at the contracted fixed hourly rates as set forth in the agreement and shall not exceed $1,868,590 over the 5-year term.

BACKGROUND & ANALYSIS: On November 19, 2019, the City awarded a Maintenance Services Agreement to Merchants Building Maintenance for custodial services for a three-year term and a not to exceed amount of $948,590. The City has historically deployed a balance of in-house custodial staff, supplemented by outside contractor services. This staffing model ensures that regular service needs are covered by a core contingent of City staff while allowing for fluctuations in workload to be managed by contract service providers, thereby eliminating any cyclical hiring and separation of employees that may otherwise occur.

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Parks & Maintenance Prepared By: Alfredo Banuelos 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: 10

SUBJECT: **AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENTS FOR LANDSCAPE MAINTENANCE SERVICES FOR ONTARIO SOCCER PARK, HOUSING AND GAS TAX FUNDED SITES, FORMER REDEVELOPMENT SITES, AND CERTAIN PARKWAYS, FIRE STATIONS, AND LANDSCAPED MEDIANS THROUGHOUT THE CITY**

RECOMMENDATION: That the City Council takes the following actions:

A. Authorize the City Manager to execute the optional two (2), one-year extensions to the Maintenance Services Agreement (on file with Records Management) for contract No. PM1819-09 with Brightview Landscape Services, Inc., of Upland, California, for landscape maintenance services at Ontario Soccer Park.
B. Authorize the City Manager to execute the optional two (2), one-year extensions to the Maintenance Services Agreement (on file with Records Management) for contract No. PM1617-7 with Brightview Landscape Services, Inc. of Upland, California, for landscape maintenance services for Housing and Gas Tax Funded Sites.
C. Authorize the City Manager to execute the optional two (2), one-year extensions to the Maintenance Services Agreement (on file with Records Management) for contract No. PM1617-10 with Brightview Landscape Services, Inc. of Upland, California, for landscape maintenance services at former Redevelopment Sites.
D. Authorize the City Manager to execute the optional two (2), one-year extensions to the Maintenance Services Agreement (on file with Records Management) for contract No. PM1617-9 with Brightview Landscape Services, Inc. of Upland, California, for landscape maintenance services of certain Parkways, Fire Stations, and Landscaped Medians throughout the City.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
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 recommended amended costs for the Maintenance Services Agreements are as follows:

A. The cost of option Year One to the Maintenance Services Agreement is $188,220, plus $62,859 for urgency and monitoring services for a total not to exceed amount of $251,079. The cost of Year Two is $193,872, plus $62,859 for urgency and monitoring services for a total not to exceed amount of $256,731. This brings the new total not to exceed contract amount to $1,244,595. Appropriations for the maintenance of the Ontario Soccer Park landscape services in Facilities & Parks Maintenance Fund are included in the Fiscal Year 2022-23 Adopted Budget.
B. The cost of option Year One to the Maintenance Services Agreement is $61,499, plus $11,250 for urgency services for a total not to exceed amount of $72,749. The cost of Year Two is $63,799, plus $11,250 for urgency services for a total not to exceed amount of $75,049. This brings the new total not to exceed contract amount to $510,114. Appropriations for the maintenance of the Housing and Gas Tax funded sites landscape services in General, Gas Tax, Ontario Housing Authority, and Housing Asset Funds are included in the Fiscal Year 2022-23 Adopted Budget.
C. The cost of option Year One to the Maintenance Services Agreement is $148,423, plus $7,290 for urgency services for a total not to exceed amount of $155,713. The cost of Year Two is $150,815, plus $7,290 for urgency services for a total not to exceed amount of $158,105. This brings the new total not to exceed contract amount to $1,050,893. Appropriations for the maintenance of the Former Redevelopment Sites landscape services in Facilities & Parks Maintenance Fund are included in the Fiscal Year 2022-23 Adopted Budget.
D. The cost of option Year One to the Maintenance Services Agreement is $329,330, plus $8,749 for urgency services for a total not to exceed amount of $338,079. The cost of Year Two is $332,978, plus $8,749 for a total not to exceed amount of $341,727. This brings the new total not to exceed contract amount to $1,663,029. Appropriations for the maintenance of certain parkways, fire stations, and landscaped medians throughout the City are included in the Facilities & Parks Maintenance Fund in the Fiscal Year 2022-23 Adopted Budget.

BACKGROUND & ANALYSIS:

Ontario Soccer Park

In March 2019, the City solicited bids for Landscape Maintenance Services for Ontario Soccer Park. Nine (9) bids were received that met the bid criteria and standards necessary to perform this work. Brightview Landscape Services, Inc., located in Upland, California, submitted the lowest responsible bid for a three-year total of $736,785. Based on their credentials, pricing, and favorable reference checks, the City Council awarded a Maintenance Services Agreement to Brightview Landscape Services, Inc. at its regular City Council meeting on May 7, 2019.

Housing and Gas Tax Funded Sites

In March 2017, the City solicited bids for landscape maintenance services for Housing and Gas Tax funded sites. Three (3) bids were received that met the bid criteria and standards necessary to

perform this work. Brightview Landscape Services, Inc., located in Upland, California, submitted the lowest responsible bid for a five-year total of $362,336. Based on credentials, pricing, and favorable reference checks, the City Council awarded a Maintenance Services Agreement to Brightview Landscape Services, Inc. at its regular City Council meeting on June 6, 2017.

Former Redevelopment Sites

In March 2017, the City solicited bids for landscape maintenance services for former Redevelopment Sites. Three (3) bids were received that met the bid criteria and standards necessary to perform this work. Brightview Landscape Services, Inc., located in Upland, California, submitted the lowest responsible bid for a five-year total of $737,075. 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.

Parkway, Fire Stations and Landscape Medians

In March 2017, the City solicited bids for landscape maintenance services for Parkway, Fire Stations, and Landscaped Medians. Three (3) bids were received that met the bid criteria and standards necessary to perform this work. Brightview Landscape Services, Inc., located in Upland, California, submitted the lowest responsible bid for a five-year total of $983,223. Based on credentials, pricing, and favorable reference checks, the City Council awarded a Maintenance Services Agreement to Brightview Landscape Services, Inc. at its regular City Council meeting on June 20, 2017.

Exercising the option years will allow the City to limit the potential for higher annual increases to the contracts, avoid the costs of re-bidding the contracts, provide service continuity, and project future costs.

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Parks & Maintenance Prepared By: Alfredo Banuelos 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: 11

SUBJECT: **AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENTS FOR LANDSCAPE MAINTENANCE SERVICES FOR PARKS, EDENGLEN/SCE WALKING TRAIL, ASSESSMENT MAINTENANCE DISTRICTS, ONTARIO TOWN SQUARE, AND PARKWAYS IN THE ONTARIO RANCH AREA**

RECOMMENDATION: That the City Council takes the following actions:

A. Authorize the City Manager to execute the optional two (2), one-year extensions to the Maintenance Services Agreement (on file with Records Management) for Contract No. PM1617-4 with Merchants Landscape Services, Inc. of Rancho Cucamonga, California, for landscape maintenance services for various City Parks.
B. Authorize the City Manager to execute the optional two (2), one-year extensions to the Maintenance Services Agreement (on file with Records Management) for Contract No. PM1617-12 with Merchants Landscape, Inc. of Rancho Cucamonga, California, for landscape maintenance services for the Edenglen/SCE Walking Trail.
C. Authorize the City Manager to execute the optional two (2), one-year extensions to the Maintenance Services Agreement (on file with Records Management) for Contract No. PM1617-5 with Merchants Landscape Services, Inc. of Rancho Cucamonga, California, for landscape maintenance services at Citywide Assessment Maintenance Districts.
D. Authorize the City Manager to execute the optional two (2), one-year terms to the Maintenances Service Agreement (on file with Records Management) for Contract No. PM1819-8 with Merchants Landscape Services, Inc. of Rancho Cucamonga, California, for landscape maintenance services at Ontario Town Square.
E. Authorize the City Manager to execute Amendment No. 3 to the existing Maintenance Services Agreement (on file with Records Management) 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.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

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

A. The cost of option Year One to the Maintenance Services Agreement for Contract No. PM 1617-4 is $610,176, plus $28,801 for urgency services. The cost of Year Two is $646,116, plus $28,801 urgency services for a new total not to exceed contract amount of $4,337,959. Appropriations for the maintenance cost for Parks landscape services from the Facilities & Parks Maintenance Fund are included in the Fiscal Year 2022-23 Adopted Budget.
B. The cost of option Year One to the Maintenance Services Agreement for Contract No. PM1617-12 is $216,600, plus $10,200 for urgency services. The cost of Year Two is $228,600, plus $10,200 for urgency services for a new total not to exceed contract amount of $1,540,060. Appropriations for the maintenance cost for the Edenglen/SEC Walking Trail landscape services from the General Fund are included in the Fiscal Year 2022-23 Adopted Budget.
C. The cost of option Year One to the Maintenance Services Agreement for Contract No. PM1617-5 is $392,556, plus $16,350 for urgency services. The cost of Year Two is $416,052, plus $16,350 for urgency services for a new total not to exceed contract amount of $2,795,594. Appropriations for the maintenance cost for the Assessment Maintenance Districts landscape services from the Parkway Maintenance Fund are included in the Fiscal Year 2022-23 Adopted Budget.
D. The cost of option Year One to the Maintenance Services Agreement for Contract No. PM1819-8 is $88,800, plus $13,000 for urgency services. The cost of Year Two is $90,600, plus $13,000 for urgency services for a new total not to exceed contract amount of $505,400. Appropriations for the maintenance cost for Ontario Town Square landscape services from the General Fund are included in the Fiscal Year 2022-23 Adopted Budget.
E. The recommended amendment increases the authorized contract amount by $72,635 for the final year of the three-year term. The recommended amendment would bring the total contract amount to a new not to exceed amount of $578,611 from July 1, 2022 through June 30, 2023. Appropriations for the maintenance cost for Park Place landscape services from the General Fund are included in the Fiscal Year 2022-23 Adopted Budget.

BACKGROUND & ANALYSIS:

City Parks

In March 2017, the City solicited bids for landscape maintenance services for Centennial Park, Creekside Park, Cypress Park, Del Rancho Park, Grove Memorial Park, George Gibbs Park, Kimball Community Park, Vineyard Park, Sam Alba Park, James R. Bryant Park, Ranch Park, and Ontario Motor Speedway Park. Six (6) bids 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, not to exceed amount of $3,024,065. 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.

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 (2) bids 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.

Assessment Maintenance Districts

In May 2017, the City solicited bids for landscape maintenance services for all the Assessment Maintenance Districts. Four (4) bids 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 $1,933,590. 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 16, 2017.

Ontario Town Square

In March 2019, the City solicited bids for landscape maintenance services for Ontario Town Square. Six (6) bids were received, five (5) 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 $300,000. Based on their 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.

Park Place

In March 2020, the City solicited bids for landscape maintenance services for Park Place in the Ontario Ranch area. Six (6) bids were received, five (5) 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 their 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 April 16, 2019.

The City is responsible for landscape maintenance of public parkways and medians throughout the Ontario Ranch area. The City recently accepted two new Community Facilities District (CFD) areas. The first area is SD51, the northeast corner parkway, at Hellman Avenue and Merrill Avenue (72,466 sf) at a contract amount of $30,436 per year. The second area is SD48, the southwest corner of Archibald Avenue and Merrill Avenue parkway (117,220 sf) of the Colony Commerce Center adding a contract amount of $42,199 per year. The recommended amendment increases the authorized

contract amount by $72,635, for a total not to exceed contract amount of $578,611.

Exercising the option years will allow the City to limit the potential for higher yearly increases to the bid amounts, avoid the costs of re-bidding the contract, provide service continuity, and project future costs.

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Parks & Maintenance Prepared By: Alfredo Banuelos 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: 12

SUBJECT: AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT FOR LANDSCAPE MAINTENANCE SERVICES FOR WATER WELL SITES

RECOMMENDATION: That the City Council approve and authorize the City Manager to execute the two (2) one-year extensions to the Maintenance Services Agreement (on file with Records Management) for Contract No. PM1617-11 with SoCal Land Maintenance, Inc. of Anaheim, California, for Landscape Maintenance Services for Water Well Sites.

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 annual cost for Option Year One, Fiscal Year 2022-23, of the Maintenance Service Agreement with SoCal Land Maintenance, Inc. is $116,597, plus $17,379 for urgency services for a total not to exceed amount of $133,976. Option Year Two, for Fiscal Year 2023-24 is $118,883, plus $17,379 for urgency services for a not to exceed amount of $136,262. This brings the new five-year total not to exceed contract amount to $930,607. The Fiscal Year 2022-23 Adopted Budget includes appropriations from the Water Operating Fund for landscape maintenance services for Water Well Sites.

BACKGROUND & ANALYSIS: In March 2017, the City solicited bids for landscape maintenance services for all city Water Well Sites. Three (3) bids were received that met the bid criteria and standards necessary to perform this work. SoCal Land Maintenance, Inc. located in Anaheim, California, submitted the lowest responsible bid for a five-year total of $660,369. Based on credentials, pricing, and favorable reference checks, the City Council awarded a Maintenance Services Agreement to SoCal Land Maintenance, Inc. at its regular City Council meeting on June 6, 2017. The Maintenance Services Agreement provides landscape maintenance services to 42 water well sites, including one located in the City of Upland.

Exercising the option years will allow the City to limit the potential for higher yearly increases to the

bid amounts, avoid the costs of re-bidding the contract, provide service continuity, and project future costs.

CITY OF ONTARIO *Agenda Report* **June 7, 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: 13

SUBJECT: **ACCEPTANCE OF AMERICAN RESCUE PLAN ACT (ARPA) FUNDS FROM THE SAN BERNARDINO COUNTY ADMINISTRATIVE OFFICE FOR THE BON VIEW PARK SPORTING FIELD PROJECT**

RECOMMENDATION: That the City Council authorize the City Manager to execute all documents necessary to accept the American Rescue Plan Act (ARPA) funds in the amount of $300,000 from the San Bernardino County Administrative Office for the Bon View Park Sporting Field Project.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Pursue City's Goals and Objectives by Working with Other Governmental Agencies
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: The City has been awarded $300,000 in ARPA funds from San Bernardino County to fund the Bon View Park Sporting Field project scheduled to be completed during FY 2022-23. The associated revenue and expenditure adjustments will be budgeted in the General Fund Grants Fund and will be presented in the FY 2021-22 Year-end Budget Update to the City Council.

BACKGROUND & ANALYSIS: Pursuant to Section 9901 of the ARPA, San Bernardino County received a disbursement from the United States Department of the Treasury, Coronavirus Local Fiscal Recovery Fund (CLFRF) for Local Governments. On March 14, 2022, the City was confirmed for the award of $300,000 in ARPA funds for the Bon View Park Sporting Field project.

The City of Ontario, in collaboration with the Ontario-Montclair School District, proposes to make improvements to the baseball field at Bon View Park to increase the use, usefulness, and availability of the park to the students and families.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE CITY MANAGER, OR THE CITY MANAGER'S DESIGNEE, TO EXECUTE AND ENTER INTO, ON BEHALF OF THE CITY, AN AGREEMENT WITH THE COUNTY OF SAN BERNARDINO ACCEPTING GRANT FUNDS FROM THE AMERICAN RESCUE PLAN ACT (ARPA) TO BE USED FOR THE BON VIEW PARK FIELD RENOVATIONS IN AN AMOUNT NOT TO EXCEED $300,000.

WHEREAS, on March 11, 2021, the President of the United States signed into law the American Rescue Plan Act (ARPA) to provide continued relief from the impact of the COVID-19 pandemic; and

WHEREAS, approximately $350 billion dollars of the ARPA funding was allotted to assist state, local, tribal, and territory governments in responding to the COVID-19 pandemic; and

WHEREAS**,** pursuant to Section 9901 of the ARPA, San Bernardino County (County) received a disbursement from the United States Department of the Treasury of money associated with the Coronavirus Local Fiscal Recovery Fund (CLFRF) for Local Governments under Section 603(a) [see 42 U.S.C. Section 803]; and

WHEREAS, the County desires to transfer and City of Ontario desires to accept a transfer from ARPA CLFRF in an amount not to exceed $300,000 for expenditures identified in Exhibit "A", which is incorporated herein by this reference, related to Bon View Park Baseball Field Renovations.

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 City Council of the City of Ontario does hereby authorize and empower the City Manager, or the City Manager's designee, to execute, in the name of the City of Ontario, all grant documents, including, but not limited to, agreements necessary to secure grant funds related to the acceptance and transfer from ARPA CLFRE in an amount not to exceed $300,000 for expenditures identified in Exhibit A related to the Bon View Park Baseball Field Renovations, based on a reimbursement basis.

SECTION 3. This Resolution shall take effect immediately upon its adoption.

SECTION 4. The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 7th day of June 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 June 7, 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 June 7, 2022.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

Contract Number
ARPA21-PRJC-003-ONT

SAP Number

County Administrative Office

Department Contract Representative	Matthew Erickson, County Chief Financial Officer
Telephone Number	(909) 387-5423
Contractor	City of Ontario DUNS No. 078136223 UEI No. CVCXJQVZRMB3
Contractor Representative	Tito Haes, Executive Director Public Works
Telephone Number	909-395-2625
Contract Term	March 1, 2022 through December 31, 2026
Original Contract Amount	Based on actual project costs Not to Exceed $300,000
Amendment Amount	
Total Contract Amount	Based on actual project costs Not to Exceed $300,000
Cost Center	1100941078
Internal Order (If Applicable)	1012336

CONTRACT BETWEEN SAN BERNARDINO COUNTY AND CITY OF ONTARIO RELATED TO THE AMERICAN RESCUE PLAN ACT AND THE CORONAVIRUS LOCAL FISCAL RECOVERY FUND

WHEREAS, on March 4, 2020, the State of California declared a state of emergency as a result of the Coronavirus Disease 2019 (COVID-19) outbreak and on March 13, 2020, by Proclamation 9994, the President declared a national emergency concerning the COVID-19 pandemic. The COVID-19 pandemic continues to cause significant risk to the public health and safety of the United States; and

WHEREAS, on March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law by the President and the law is intended to combat the COVID-19 pandemic, including the public health and economic impacts; and

WHEREAS, pursuant to Section 9901 of the ARPA, San Bernardino County (County) received a disbursement from the United States Department of the Treasury of money associated with the

Coronavirus Local Fiscal Recovery Fund (CLFRF) for Local Governments under Section 603(a) [see 42 U.S.C. Section 803]; and

WHEREAS, the County agreed to comply with the United States Department of the Treasury Coronavirus State Fiscal Recovery Fund Award Terms and Conditions (Terms and Conditions), including Assurance of Compliance with Title VI of the Civil Rights Act of 1964 (Assurance of Compliance with Civil Rights Requirements), identified in the United States Department of the Treasury and San Bernardino County Agreement (OMB Approved No. 1505-0271) (United States Department of the Treasury Agreement), which is on file with the County and incorporated herein by this reference; and

WHEREAS, the Assistance Listing Number (ALN)/Federal Assistance Identification Number (FAIN) for the ARPA CLFRF is 21.027/SLT-0628 respectively; and

WHEREAS, the ARPA provides that payments from the CLFRF may be used for the following: i) to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality; ii) to respond to workers performing essential work during the COVID–19 public health emergency by providing premium pay to eligible workers that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work; iii) for the provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; or iv) to make necessary investments in water, sewer, or broadband infrastructure; and

WHEREAS, funding provided under ARPA CLFRF must be obligated by December 31, 2024 and expended by December 31, 2026; and

WHEREAS, the County desires to transfer and City of Ontario (Contractor) desires to accept a transfer from ARPA CLFRF in the not to exceed amount of $300,000 for expenditures identified in Exhibit “A” related to Bon View Park Baseball Field Renovations.

NOW, THEREFORE, in consideration of the above, the County and Contractor agree as follows:

1. **THE ARPA CLFRF**
   - **A.** This Contract applies to the following ARPA CLFRF transfers:
     The transfer by the County of an amount not to exceed $300,000 to Contractor on a reimbursement basis for expenditures identified in Exhibit “A”. Exhibit “A” is attached hereto and incorporated herein by this reference. County acknowledges and agrees that Contractor will be administering the transfer of funds for the expenditures identified in Exhibit “A” by separate contracts. Contractor shall provide the County quarterly reports of actual cash expenditures to date under this Contract, and estimated cash expenditures through December 31st of each year. County, through its Chief Executive Officer (CEO), in the CEO’s sole discretion, reserves the right to reduce the transfer amount identified in this Contract with fifteen (15) days advance written notice provided to Contractor. The reduction would be based: A) on Contractor’s estimated cash expenditures through December 31st of each year; B) a later determination by the United States Department of the Treasury, or County, that the costs identified in this Contract are ineligible for ARPA CLFRF; or C) a determination by CEO the funds should be utilized in a different manner.

   - **B.** Contractor certifies that the use of funds that will be submitted for reimbursement from the CLFRF under Paragraph 1.A. and Exhibit “A” of this Contract will be used only to cover

those costs that: i) are related to public health or negative economic impact eligible use; and ii) were incurred during the period that begins March 1, 2022, and will end June 30, 2024. For purposes of this Contract and pursuant to federal guidance, expended or obligated costs are costs incurred by Contractor during the time period referenced above that are allowable for reimbursement. Any cost obligated by Contractor as of December 31, 2024, must be expended by December 31, 2026, to meet the eligible costs timeframe as defined by the United States Department of the Treasury.

C. Contractor agrees that the funds provided pursuant to this Contract cannot be used: i) as a revenue replacement for lower than expected tax or other revenue collections; ii) for expenditures for which Contractor has received any other emergency COVID-19 supplemental funding (whether federal, state, or private in nature) for that same expense; or iii) as a deposit into any pension fund.

D. Contractor shall prepare and submit to County an invoice for reimbursement of eligible funding expenses identified in Paragraph 1.A., above. Invoices may be submitted to County as frequently as monthly. Invoices will be reviewed and approved for compliance with terms of this Contract. County shall reimburse to Contractor the amount of approved invoices submitted within sixty (60) days of receipt. If an invoice is rejected, or revisions are requested, Contractor will work with County to submit the required revisions.

E. Both County and Contractor agree to comply with any and all ARPA CLFRF requirements, including but are not limited to the terms included in this Contract, as well as any and all applicable County, Contractor, State, and Federal laws, regulations, policies and procedures pertaining to the funding described in this Contract. County and Contractor shall comply with Title 2 Code of Federal Regulations (C.F.R.) Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), including, but not limited to, Title 2 C.F.R. Section 200.303 (internal control), Title 2 C.F.R. Sections 200.331 through 200.333 (subrecipient monitoring and management), and Title 2 C.F.R. Part 200 Subpart F (audit requirements), as these sections currently exist or may be amended. The use of funds must also adhere to official federal guidance issued or to be issued on what constitutes an eligible expenditure. Any funds expended by Contractor or its subcontractor(s) in any manner that does not adhere to official federal guidance shall be returned to the County. Contractor agrees to comply with all official guidance regarding the ARPA CLFRF. County and Contractor also agree that as additional federal guidance becomes available, an amendment to this Contract may become necessary. If an amendment is required, Contractor agrees to promptly execute the Contract amendment.

F. Contractor shall retain documentation of all uses of the funds, including but not limited to invoices and/or sales receipts in a manner consistent with Title 2 C.F.R. Section 200.334 (retention requirements for records). Such documentation shall be produced to County upon request and may be subject to audit. Unless otherwise provided by Federal or State law (whichever is the most restrictive), Contractor shall maintain all documentation connected with its performance under this Contract for a minimum of five (5) years from the date of the last payment made by County or until audit resolution is achieved, whichever is later, and to make all such supporting information available for inspection and audit by representatives of the County, the State or the United States Government during normal business hours at Contractor. Copies will be made and furnished by Contractor upon written request by County.

G. Contractor shall establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support Contractor's requests for reimbursement which segregate and accumulate costs of Contractor and produce monthly reports which clearly identify reimbursable costs, matching fund costs (if applicable), and other allowable expenditures by Contractor. Contractor shall provide a monthly report of expenditures under this Contract no later than the 20th day of the following month.

H. Contractor shall cooperate in having an audit completed by County, at County's option and expense. Any audit required by ARPA CLFRF and its regulation and United States Treasury guidance will be completed by Contractor at Contractor's expense.

I. Contractor shall repay to County any reimbursement for ARPA CLFRF funding that is determined by subsequent audit to be unallowable under the ARPA CLFRF within the time period required by the ARPA CLFRF, but no later than one hundred twenty (120) days of Contractor receiving notice of audit findings, which time shall include an opportunity for Contractor to respond to and/or resolve the findings. Should the findings not be otherwise resolved and Contractor fail to reimburse moneys due County within one hundred twenty (120) days of audit findings, or within such other period as may be agreed between both parties or required by the ARPA CLFRF, County reserves the right to withhold future payments due Contractor from any source under County's control.

J. Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.

K. County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract.

L. Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Contractor shall not claim reimbursement or payment from County for, or apply sums received from County with respect to that portion of its obligations that have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the County.

M. **County shall only reimburse costs incurred through the dates identified in Exhibit "A".** Contractor requirements in Sections 1, 2 and 5 of this Contract shall survive the termination of this Contract. The costs to be reimbursed under this Contract do not include Research and Development as defined in Title 2 Code of Federal Regulations (C.F.R.) Section 200.1, nor do they include indirect costs.

2. AMERICAN RESCUE PLAN ACT REQUIREMENTS

A. This Contract may be funded in whole or in part with funds provided by the American Rescue Plan Act - Coronavirus Local Fiscal Recovery Fund (ARPA), *Federal Award Identification Number (FAIN): SLT-0628 and Assistance Listing Number (formerly known as a CFDA number): 21.027*, and therefore Contractor agrees to comply with any and all ARPA requirements in addition to any and all applicable County, State, and Federal laws,

regulations, policies, and procedures pertaining to the funding of this Contract. The use of the funds must also adhere to official federal guidance issued or to be issued on what constitutes a necessary expenditure. Any funds expended by Contractor or its subcontractor(s) in any manner that does not adhere to the ARPA requirements shall be returned or repaid to the County. Any funds paid to Contractor: i) in excess of the amount to which Contractor is finally determined to be authorized to retain; ii) that are determined to have been misused; or iii) that are determined to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid, shall constitute a debt to the federal government. Contractor agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to the Act, and guidance issued by Treasury regarding the foregoing. Contractor shall provide for such compliance in any agreements with subcontractor(s).

B. Contractor agrees to comply with all applicable federal laws and regulations, including but not limited to all laws and regulations identified in Section 2 of the Contract.

C. In accordance with Title 2 C.F.R. Section 200.322, the non-Federal Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section: “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

D. In accordance with Title 2 C.F.R. Section 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, cloud servers are allowable except for the following circumstances: Obligating or expending covered telecommunications and video surveillance services or equipment or services (as described in 2 C.F.R. Section 200.216) to: 1) Procure or obtain, extend or renew a contract to procure or obtain; 2) Enter into a contract (or extend or renew a contract) to procure; or 3) Obtain the equipment, services, or systems, as described in Title 2 C.F.R. Section 200.216 that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) and: (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (ii) Telecommunications or video surveillance services provided by such entities or using such equipment; and (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. In implementing the prohibition under Public Law 115-232, section 889, subsection (f),

paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

E. A non-Federal Contractor that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at Title 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

F. Byrd Anti-Lobbying Amendment (31 U.S.C. Section 1352) - Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by Title 31 U.S.C. Section 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

G. Clean Air Act (42 U.S.C. Sections 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. Sections 1251-1389), as amended - Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. Sections 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. Sections1251-1389).

H. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under Title 37 C.F.R. Section 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Title 33 U.S.C. Sections 1251-1387 recipient or subrecipient must comply with the requirements of Title 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

I. Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 3701-3708). Where applicable, all contracts awarded by the non-Federal Contractor in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with Title 40 U.S.C. Sections 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under Title 40 U.S.C. Section 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the

basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of Title 40 U.S.C. Section 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to health or safety. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

J. Davis-Bacon Act, as amended (40 U.S.C. Sections 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. Sections 3141-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal contractor must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal Contractor must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. Section 874 and 40 U.S.C. Section 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal contractor must report all suspected or reported violations to the Federal awarding agency.

i. The Contractor and all Subcontractors and Sub-subcontractors are required to pay their employees and workers a wage not less than the minimum wage for the work classification as specified in both the Federal and California wage decisions. See Exhibit "B" for additional information regarding California Prevailing Wage Rate Requirements and the applicable general prevailing wage determinations which are on file with the County and are available to any interested party on request. The higher of the two applicable wage determinations, either California prevailing wage or Davis-Bacon Federal prevailing wage, will be enforced for all applicable work/services under this Contract.

K. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by Title 41 U.S.C. Section 1908, must address administrative, contractual, or legal remedies in instances where Contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

L. All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal Contractor including the manner by which it will be effected and the basis for settlement.

M. Equal Employment Opportunity. Except as otherwise provided under Title 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in Title 41 C.F.R. Section 60-1.3 must include the equal opportunity clause provided under Title 41 C.F.R. Section 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The identified clause is below and Contractor shall comply with the clause and all legal requirements and include the equal opportunity clause in each of its nonexempt subcontracts.

i. The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at Title 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision

of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

N. Data Collection Requirements – Contractor agrees to collect pre-post data per County, and United States Treasury guidelines and timeline, for project tracking and monitoring and various reporting purposes. Data including, but not limited to: Required Project Demographic Distribution Data; Required Performance Indicators and Programmatic Data; Required Expenditure Report Data; and Required Program Evaluation Data. Contractor agrees to track and monitor data in a quantifiable and reportable database - retrievable collective data that needs to be available to County, State or Federal governments upon request.

O. Data Submission Requirements - Contractor agrees to furnish data to the County upon request, per County, and United States Treasury guidelines and timeline, for project tracking and monitoring and various reporting purposes. Data including, but not limited to: Required Project Demographic Distribution Data; Required Performance Indicators and Programmatic Data; Required Expenditure Report Data; Required Program Evaluation Data. Contractor agrees to track and monitor data in a quantifiable and reportable database - retrievable collective data that needs to be available at request.

P. Project Progress Reporting - Contractor agrees to provide project timeline and progress updates to the County upon request, per County, and United States Treasury guidelines and timeline. Contractor agrees to routine and impromptu program and project evaluation by the County.

Q. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Title 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply.

R. Universal Identifier and System for Award Management (SAM), Title 2 C.F.R. Part 25.

S. Reporting Subaward and Executive Compensation Information, Title 2 C.F.R. Part 170.

T. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (nonprocurement), title 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to Title 2 C.F.R. Part 180 and Treasury's implementing regulation at Title 31 C.F.R. Part 19. Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR Section 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at Title 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

U. Recipient Integrity and Performance Matters, pursuant to which the award terms set forth in Title 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

V. Government Requirements for Drug-Free Workplace, Title 31 C.F.R. Part 20.

W. New Restrictions on Lobbying, Title 31 C.F.R. Part 21.

X. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. Sections 4601-4655) and implementing regulations.

Y. Applicable Federal environmental laws and regulations.

Z. Statutes and regulations prohibiting discrimination include, without limitation, the following:

i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. Sections 2000d et seq.) and Treasury's implementing regulations at Title 31 C.F.R. Part 22, which prohibits discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance.

ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. Sections 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability.

iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance.

iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. Sections 6101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Sections 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

AA. Contractor understands that making false statements or claims in connection with the ARPA funded activities is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

BB. Any publications produced with ARPA funds must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number SLT-0628 awarded to San Bernardino County by the United States Department of Treasury."

CC. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is being encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles.

DD. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor is being encouraged to adopt and enforce policies that ban text messaging while driving and establishing workplace safety policies to decrease accidents caused by distracted drivers.

EE. As a recipient of federal financial assistance, the Civil Rights Restoration Act of 1987 applies, and Contractor and all subrecipients assures that it:

i. Ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal funds, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. Sections 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at Title 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda and/or guidance documents.

ii. Acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Contractor understands that denying a person access to its programs, services, and activities, because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Contractor shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure LEP persons have meaningful access to its programs, services, and activities. Contractor understands and agrees that meaningful access may entail provide language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication.

iii. Agrees to consider the need for language services for LEP persons during development of applicable budgets and when conducting programs, services, and activities.

iv. Agrees to maintain a complaint log of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome.

FF. The Contractor must include the following language in every contract or agreement subject to Title VI and its regulations:

"The sub-grantee, contractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or nation origin (42 U.S.C. Section 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a

part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. Sections 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement."

GG. Contractor shall cooperate in any enforcement or compliance review activities by the County and/or the Department of the Treasury. Contractor shall comply with information requests, on-site compliance reviews, and reporting requirements.

HH. Contractor shall maintain records and financial documents sufficient to evidence compliance with section 603(c), regulations adopted by Treasury implementing those sections, and guidance issued by Treasury regarding the foregoing.

II. County has the right of access to records (electronic or otherwise) of Contractor in order to conduct audits or other investigations.

JJ. Contractor shall maintain records for a period of five (5) years after the completion of the contract or a period of five (5) years after the last reporting date the County is obligated with the Department of the United States Treasury, whichever is later.

KK. Contractor must disclose in writing any potential conflict of interest in accordance with Title 2 C.F.R. Section 200.112.

LL. In accordance with Title 41 U.S.C. Section 4712, subrecipient or Contractor may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

The list of persons and entities referenced in the paragraph above includes the following: (i) A member of Congress or a representative of a committee of Congress; (ii) An Inspector General; (iii) The Government Accountability Office; (iv) A Treasury employee responsible for contract or grant oversight or management; (v) An authorized official of the Department of Justice or other law enforcement agency; (vi) A court or grand jury; or (vii) A management official or other employee of recipient, subrecipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct. Subrecipient or Contractor shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

MM. County and Contractor acknowledge that if additional federal guidance is issued, an amendment to this Contract may be necessary. In the event any of the terms in this Section 2 conflict with any other terms in the Contract, the terms in this Section 2 shall control.

3. GENERAL CONTRACT REQUIREMENTS

A. Recitals

The recitals set forth above are true and correct and incorporated herein by this reference.

B. Contract Amendments

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.

C. Contract Assignability

Without the prior written consent of the County, the Contract is not assignable by Contractor either in whole or in part.

D. Contract Exclusivity

This is not an exclusive Contract. The County reserves the right to enter into a contract with other contractors for the same or similar services. The County does not guarantee or represent that the Contractor will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.

E. Attorney's Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

F. Background Checks for Contractor Personnel

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform services; (d) do not use legal or illegal substances in any manner which will impact their ability to provide services; and (c) are not otherwise disqualified from performing the services under applicable law. If requested by the County and not in violation of applicable law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing services. If requested by the County, Contractor shall provide the results of the background check of each individual to the County. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet the County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or services, and County shall have the right, at its sole option, to refuse access to any Contract personnel to any County facility.

G. Change of Address

Contractor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

H. Choice of Law

This Contract shall be governed by and construed according to the laws of the State of California.

I. Confidentiality

Contractor shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving services pursuant to this Contract, except for statistical information not identifying any participant. Contractor shall not use or disclose any identifying information for any other purpose other than carrying out the Contractor's

obligations under this Contract, except as may be otherwise required by law. This provision will remain in force even after the termination of the Contract.

J. Primary Point of Contact

Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business days. Contractor shall not change the primary contact without written acknowledgement to the County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

K. Rule of Construction

The parties agree that this Contract and all agreements or documents incorporated herein shall not be subject to the rule of construction that a written agreement is construed against the party preparing or drafting that agreement.

L. County Representative

The Chief Executive Officer or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the services/scope of Work by Contractor. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

M. Damage to County Property

Contractor shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or its employees or agents. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Contractor fails to make timely repairs, the County may make any necessary repairs. The Contractor, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from the County, as determined at the County's sole discretion.

N. Debarment and Suspension

Contractor certifies that neither it nor its principals or subcontracts is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website https://www.sam.gov). Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State. An subcontracts funded by this Contract shall be with vendors that meet this certification and registration requirement.

O. Drug and Alcohol Free Workplace

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

i. Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.

ii. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.

iii. Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other Contract the Contractor has with the County, if the Contractor or Contractor's employees are determined by the County not to be in compliance with above.

P. Duration of Terms

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

Q. Discrimination

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

R. Improper Influence

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

S. Improper Consideration

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any

officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

T. Informal Dispute Resolution

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

U. Legality and Severability

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

V. Licenses, Permits and/or Certifications

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

W. Material Misstatement/Misrepresentation

If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

X. Mutual Covenants

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

Y. Nondisclosure

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the

performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

Z. Notice of Delays

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

AA. Ownership of Documents

All documents, data, products, graphics, computer programs and reports prepared by Contractor pursuant to the Contract shall be considered property of the County upon payment for services (and products, if applicable). All such items shall be delivered to County at the completion of work under the Contract. Unless otherwise directed by County, Contractor may retain copies of such items.

BB. Air, Water Pollution Control, Safety and Health

Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

CC. Records

Contractor shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to the Contractor's personnel, consultants, subcontractors, services/scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

DD. Relationship of the Parties

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

EE. Release of Information

No news releases, advertisements, public announcements or photographs arising out of the Contract or Contractor's relationship with County may be made or used without prior written approval of the County.

FF. Representation of the County

In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the San Bernardino County.

GG. Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

HH. Subcontracting

Contractor shall obtain County's written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the services to County. At County's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Section 5. All approved subcontractors shall be subject to the provisions of this Contract applicable to Contractor Personnel.

For any subcontractor, Contractor shall:

i. Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
ii. Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.
iii. Include in the subcontractor's subcontract substantially similar terms as are provided in this Contract.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with County.

II. Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the goods or services provided under this Contract is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.

JJ. Termination for Convenience

The County reserves the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. The County's Chief Executive Officer is authorized to terminate this Contract. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Contractor for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon

receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

KK. Time of the Essence

Time is of the essence in performance of this Contract and of each of its provisions.

LL. Venue

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

MM. Conflict of Interest

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Contractor shall make a reasonable effort to prevent employees, Contractor, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

NN. Copyright

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the San Bernardino County as the funding agency and Contractor as the creator of the publication. No such materials, or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printer material, and periodicals, assembled pursuant to this Contract must be filed with the County prior to publication.

OO. Iran Contracting Act

IRAN CONTRACTING ACT OF 2010, Public Contract Code Sections 2200 et seq. (Applicable for all Contracts of one million dollars ($1,000,000) or more). In accordance with Public Contract Code Section 2204(a), the Contractor certifies that at the time the

Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code Section 2203 as a person (as defined in Public Contract Code Section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code Section 2202.5, or as a person described in subdivision (b) of Public Contract Code Section 2202.5, as applicable.

Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code Section 2205.

PP. California Consumer Privacy Act

To the extent applicable, if Contractor is a business that collects the personal information of a consumer(s) in performing services pursuant to this Contract, Contractor must comply with the provisions of the California Consumer Privacy Act (CCPA). (Cal. Civil Code Sections 1798.100, et seq.). For purposes of this provision, "business," "consumer," and "personal information" shall have the same meanings as set forth at Civil Code Section 1798.140. Contractor must contact the County immediately upon receipt of any request by a consumer submitted pursuant to the CCPA that requires any action on the part of the County, including but not limited to, providing a list of disclosures or deleting personal information. Contractor must not sell, market or otherwise disclose personal information of a consumer provided by the County unless specifically authorized pursuant to terms of this Contract. Contractor must immediately provide to the County any notice provided by a consumer to Contractor pursuant to Civil Code Section 1798.150(b) alleging a violation of the CCPA, that involves personal information received or maintained pursuant to this Contract. Contractor must immediately notify the County if it receives a notice of violation from the California Attorney General pursuant to Civil Code Section 1798.155(b).

QQ. Prevailing Wage Laws

By its execution of this Contract, Contractor certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Section 1720 of the California Labor Code states in part: "For purposes of this paragraph, 'construction' includes work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction including, but not limited to, inspection and land surveying work…" If the services/scope of Work are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor will also adhere to any other applicable requirements, including but not limited to, those regarding the employment of apprentices, travel and subsistence pay, retention and inspection of payroll records, workers compensation and forfeiture of penalties prescribed in the Labor Code for violations. Contractor shall defend, indemnify and hold the County, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with Prevailing Wage Laws. See Exhibit "B", which is attached and incorporated by reference, for additional information regarding Prevailing Wage Laws. Contractor shall comply with all applicable terms and conditions in Exhibit "B". The applicable general prevailing wage determinations are on file

with the County and are available to any interested party on request. Contractor shall post a copy of the applicable prevailing wage determinations at the job site.

4. TERM OF CONTRACT

This Contract is effective on March 1, 2022(Effective Date), requires all incurred obligations by December 31, 2024, and expires on December 31, 2026, but may be terminated earlier in accordance with the provisions of this Contract.

5. INDEMNIFICATION AND INSURANCE REQUIREMENTS

A. Indemnification

The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The Contractor indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

B. Insurance

i. Contractor and County are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability, Worker's Compensation and Property Damage and warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Contract.

ii. Insurance Review – Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

6. RIGHT TO MONITOR AND AUDIT

A. The County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County.

B. All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under this Contract or until all pending County, State and Federal audits are completed, whichever is later.

7. CORRECTION OF PERFORMANCE DEFICIENCIES

A. Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.

B. In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

i. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County; and/or

ii. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or

iii. Withhold funds pending duration of the breach; and/or

iv. Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to Item “B” of this paragraph; and/or

v. Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.

8. NOTICES

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

San Bernardino County
County Administrative Office – 4th Floor
385 N. Arrowhead Avenue
San Bernardino, CA 92415

City of Ontario
303 East “B” Street
Ontario, CA 91764

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

9. ENTIRE AGREEMENT

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

10. CONTRACT EXECUTION

This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.

IN WITNESS WHEREOF, the San Bernardino County and City of Ontario have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

► _____
Leonard X. Hernandez, Chief Executive Officer

Dated: _____

City of Ontario
(Print or type name of corporation, company, contractor, etc.)

By _____
(Authorized signature - sign in blue ink)

Name Scott Ochoa
(*Print or type name of person signing contract)*

Title City Manager
(Print or Type)

Dated: _____

Address 303 East B Street, Ontario, CA 91764

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► _____	► _____	► _____
County Counsel		
Date _____	Date _____	Date _____

EXHIBIT A

SCOPE OF EXPENDITURES

[SEPARATELY ATTACHED]

EXHIBIT B

PREVAILING WAGE REQUIREMENTS

A. All or a portion of the Scope of Work in the Contract requires the payment of prevailing wages and compliance with the following requirements:

1. **Determination of Prevailing Rates**:
   Pursuant to Labor Code sections 1770, et seq., the County has obtained from the Director of the Department of Industrial Relations (DIR) pursuant to the California Labor Code, the general prevailing rates of per diem wages and the prevailing rates for holiday and overtime work in the locality in which the Scope of Work is to be performed. Copies of said rates are on file with the County, will be made available for inspection during regular business hours, may be included elsewhere in the specifications for the Scope of Work, and are also available online at www.dir.ca.gov. The wage rate for any classification not listed, but which may be required to execute the Scope of Work, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. In accordance with Labor Code section 1773.2, the Contractor shall post, at appropriate and conspicuous locations on the job site, a schedule showing all applicable prevailing wage rates and shall comply with the requirements of Labor Code sections 1773, et seq.

2. **Payment of Prevailing Rates**
   Each worker of the Contractor, or any subcontractor, engaged in the Scope of Work, shall be paid not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor, and such worker.

3. **Prevailing Rate Penalty**
   The Contractor shall, as a penalty, forfeit two hundred dollars ($200.00) to the County for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the DIR for such work or craft in which such worker is employed by the Contractor or by any subcontractor in connection with the Scope of Work. Pursuant to California Labor Code section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

4. **Ineligible Contractors**:
   Pursuant to the provisions of Labor Code section 1777.1, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a contractor or subcontractor on a public works project. This list of debarred contractors is available from the DIR website at http://www.dir.ca.gov/Public-Works/PublicWorks.html. Any contract entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the County. The Contractor shall be responsible for the payment of wages to workers as a debarred subcontractor who has been allowed to work on the Scope of Work.

5. **Payroll Records:**
   a. Pursuant to California Labor Code section 1776, the Contractor and each subcontractor, shall keep accurate certified payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Scope of Work. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or subcontractor has complied with the requirements of the California Labor Code sections 1771, 1811, and 1815 for any Scope of Work performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
      i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request;
      ii. A certified copy of all payroll records shall be made available for inspection or furnished upon request to the County, the Division of Labor Standards Enforcement of the DIR;
      iii. A certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the County or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the County or the Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractor and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor;
      iv. The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and
      v. Copies provided to the public, by the County or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any subcontractor, performing a part of the Scope of Work shall not be marked or obliterated. The Contractor shall inform the County of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address.
   b. The Contractor shall have ten (10) days from receipt of the written notice specifying in what respects the Contractor must comply with the above requirements. In the event Contractor does not comply with the requirements of this section within the ten (10) day period, the Contractor shall, as a penalty to the County, forfeit one-hundred dollars ($100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalty shall be withheld from any portion of the payments then due or to become due to the Contractor.

6. **Limits on Hours of Work**:
   Pursuant to California Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code section 1811, the time of service of any worker employed at any time by the Contractor or by a subcontractor, upon the Scope of Work or upon any part of the Scope of Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as

provided for under Labor Code section 1815. Notwithstanding the foregoing provisions, work performed by employees of Contractor or any subcontractor, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

7. Penalty for Excess Hours:

The Contractor shall pay to the County a penalty of twenty-five dollars ($25.00) for each worker employed on the Scope of Work by the Contractor or any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

8. Senate Bill 854 (Chapter 28, Statutes of 2014) and Senate Bill 96 (Chapter 28, Statutes of 2017) Requirements:

a. Contractor shall comply with Senate Bill 854 and Senate Bill 96. The requirements include, but are not limited to, the following:
   i. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from this requirements for bid purposes only as allowed under Labor Code section 1771.1(a).
   ii. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project unless registered with the DIR pursuant to Labor Code section 1725.5.
   iii. This project is subject to compliance monitoring and enforcement by the DIR.
   iv. As required by the DIR, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.
   v. Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all public works projects.
      1) The certified payroll must be submitted at least monthly to the Labor Commissioner.
      2) The County reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner.
      3) The certified payroll records must be in a format prescribed by the Labor Commissioner.
   vi. Registration with the DIR and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is $25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is $15,000 or less when the project is for maintenance work.

b. Labor Code section 1725.5 states the following:
   "A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, "contractor" includes a subcontractor as defined by Section 1722.1.

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars ($400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.

(2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

(ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars ($2,000).

(b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2).

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.

(f) This section does not apply to work performed on a public works project of twenty-five thousand dollars ($25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars ($15,000) or less when the project is for maintenance work."

c. Labor Code section 1771.1 states the following:
"(a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by

Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars ($100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars ($8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(h)(1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars ($100) for each day the unregistered lower tier subcontractor performs work in violation of the

registration requirement, not to exceed an aggregate penalty of ten thousand dollars ($10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(3) A higher tiered public works contractor or subcontractor shall not be liable for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnity or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j)(1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at one of the following:

(i) The address of the contractor or subcontractor on file with either the Secretary of State or the Contractors' State License Board.

(ii) If the contractor or subcontractor has no address on file with the Secretary of State or the Contractors' State License Board, the address of the site of the public work.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(4) Any employee of an unregistered contractor or subcontractor who is affected by a work stoppage ordered by the commissioner pursuant to this subdivision shall be paid at his or her regular hourly prevailing wage rate by that employer for any hours the employee would have worked but for the work stoppage, not to exceed 10 days.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars ($10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars ($25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars ($15,000) or less when the project is for maintenance work."

d. Labor Code section 1771.4 states the following:
"(a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not

required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016."

B. STATE PUBLIC WORKS APPRENTICESHIP REQUIREMENTS

1. State Public Works Apprenticeship Requirements:

a. The Contractor is responsible for compliance with Labor Code section 1777.5 and the California Code of Regulations, title 8, sections 230 – 230.2 for all apprenticeable occupations (denoted with "#" symbol next to craft name in DIR Prevailing Wage Determination), whether employed by the Contractor, subcontractor, vendor or consultant. Included in these requirements is (1) the Contractor's requirement to provide notification (i.e. DAS-140) to the appropriate apprenticeship committees; (2) pay training fund contributions for each apprenticeable hour employed on the Contract; and (3) utilize apprentices in a minimum ratio of not less than one apprentice hour for each five journeyman hours by completion of Contract work (unless an exception is granted in accordance with Labor Code section 1777.5) or request for the dispatch of apprentices.

b. Any apprentices employed to perform any of the Scope of Work shall be paid the standard wage to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code sections 3070 et seq. are eligible to be employed for the Scope of Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

2. Compliance with California Labor Code section 1777.5 requires all public works contractors to:

a. Submit Contract Award Information (DAS-140):

i. Although there are a few exemptions (identified below), all Contractors, regardless of union affiliation, must submit contract award information when performing on a California public works project.
ii. The DAS-140 is a notification "announcement" of the Contractor's participation on a public works project—*it is not a request for the dispatch of an apprentice.*
iii. Contractors shall submit the contract award information (you may use form DAS 140) within 10 days of the execution of the prime contract or subcontract, but in no event later than the first day in which the Contractor has workers employed on the public work.
iv. Contractors who are already approved to train apprentices (i.e. check "Box 1" on the DAS-140) shall only be required to submit the form to their approved program.
v. Contractors who are NOT approved to train apprentices (i.e. those that check either "Box 2" or "Box 3" on the DAS-140) shall submit the DAS-140 TO EACH of the apprenticeship program sponsors in the area of your public works project. For a listing of apprenticeship programs see http://www.dir.ca.gov/Databases/das/pwaddrstart.asp.

b. Employ Registered Apprentices
i. Labor Code section 1777.5 requires that a contractor performing work in an "apprenticeable" craft must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. This ratio shall be met prior to the Contractor's completion of work on the project. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
ii. All Contractors who do not fall within an exemption category (see below) must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (business days only) before the date on which apprentices are required.
iii. Contractors may use the "DAS-142" form for making a request for the dispatch of an apprentice.
iv. Contractors who are participating in an approved apprenticeship training program and who did not receive sufficient number of apprentices from their initial request must request dispatch of apprentices from ALL OTHER apprenticeship committees in the project area in order to fulfill this requirement.
v. Contractor should maintain and submit proof (when requested) of its DAS-142 submittal to the apprenticeship committees (e.g. fax transmittal confirmation). A Contractor has met its requirement to employ apprentices only after it has successfully made a dispatch request to all apprenticeship programs in the project area.
vi. Only "registered" apprentices may be paid the prevailing apprentice rates and must, at all times work under the supervision of a Journeyman (Cal. Code Regs., tit 8, § 230.1).

c. Make Training Fund Contributions
i. Contractors performing in apprenticeable crafts on public works projects, must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices.
ii. Contractors may use the "CAC-2" form for submittal of their training fund contributions.
iii. Contractors who do not submit their training fund contributions to an approved apprenticeship training program must submit their contributions to the California Apprenticeship Council (CAC), PO Box 420603, San Francisco, CA 94142-0603.

iv. Training fund contributions to the CAC are due and payable on the 15th day of the month for work performed during the preceding month.
v. The “training” contribution amount identified on the prevailing wage determination shall not be paid to the worker, unless the worker falls within one of the exemption categories listed below.

3. Exemptions to Apprenticeship Requirements:

a. The following are exempt from having to comply with California apprenticeship requirements. These types of contractors do not need to submit a DAS-140, DAS-142, make training fund contributions, or utilize apprentices:
   i. When the Contractor holds a sole proprietor license (“Owner-Operator”) and no workers were employed by the Contractor. In other words, the contractor performed the entire work from start to finish and worked alone.
   ii. Contractors performing in non-apprenticeable crafts. “Apprenticeable” crafts are denoted with a pound symbol “#” in front of the craft name on the prevailing wage determination.
   iii. When the Contractor has a direct contract with the Public Agency that is under $30,000.
   iv. When the project is 100% federally-funded and the funding of the project does not contain any city, county, and/or state monies (unless the project is administered by a state agency in which case the apprenticeship requirements apply).
   v. When the project is a private project not covered by the definition of public works as found in Labor Code section 1720.

4. Exemption from Apprenticeship Rations:

a. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Section when it finds that any one of the following conditions are met:
   i. Unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%); or
   ii. The number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen; or
   iii. The Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis; or
   iv. If assignment of an apprentice to any work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.
b. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

5. **Contractor's Compliance:**
   a. The responsibility of compliance with this Section for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Section are subject to the provisions of California Labor Code section 3081 and penalties are pursuant to Labor Code section 1777.7 and the determination of the Labor Commissioner.

EXHIBIT A – SCOPE OF EXPENDITURES

APPLIES TO AGREEMENT ARPA21-PRJC-003-ONT BETWEEN SAN BERNARDINO COUNTY AND THE CITY OF ONTARIO RELATED TO THE CORONAVIRUS RELIEF FUND FOR LOCAL GOVERNMENTS

1. The following is the mutually agreed upon scope of expenditures to be funded by the American Rescue Plan Act of 2021 (ARPA) Coronavirus Local Fiscal Recovery Fund (CLFRF) received by San Bernardino County:

General Information:

2020-2021 Student Enrollment:
19,286 students in grades TK-8.
22 Elementary Schools, 4 K-8 schools, and 6 comprehensive middle schools.
32 total schools with an average enrollment of 603 students per school.

OMSD Student Demographics (based on 2019-2020 and 2020-21 data):
Total student population- 19,286
Hispanic/Latino- 18,927
Black or African American- 693
Asian- 455
White- 642.

Number of students (Socio-Economically Disadvantaged)- 18,875
Number of students receiving Free or reduced lunch- 16,854 (87%)
Unduplicated Pupil Count- 17,097 (89%)
Number of English Learners- 5,174 (26.8%)
Number of Foster Youth- 125

Students enrolled in after school program- 1,760

Student participation in after school athletics programs –

Middle School (2019-20)
Soccer- 120
Basketball- 77
Flag Football- 147
Track and Field- NA

Elementary (2019-20)
Soccer- 312
Basketball- 257
Track and Field- NA

Rationale:

The City of Ontario in collaboration with the Ontario Montclair School District propose to make improvements to the baseball field at Bon View Park as a means to increase the use, usefulness, and availability of the park to the students and families of the Ontario Montclair School District (OMSD).
The current state of the baseball fields at Bon View Park do not allow for any use of the field. (Please see proposed facility upgrades after the conclusion of this narrative).
Through this restoration project the City of Ontario and OMSD plan to provide baseball and baseball related activities to Ontario families. Currently, the city has 2 little league entities that have practice facilities and fields, Eastern Little League and Western Little League. Currently, there is no little league entity that practices within 2.5 miles of an OMSD School (Homer Briggs Parks to Oaks Middle School). Use of Bon View Park would cut the distance to the nearest OMSD school to less than 1 mile or a 60% decrease in distance.

Context:

Programmatically OMSD plans to use the facility at Bon View Park as a part of a larger Expanded Learning Opportunities Program (ELOP) that will be implemented district wide. The goal of this program is to offer beyond the bells and weekend enrichment and academic activities for students and families. OMSD is committing to increasing the number of offerings to students and families in the areas of academic (language arts and math), STEM, music and the arts, social emotional, wellness and sports activities.
Our current projection is to offer ELOP to 50% of our unduplicated student population (foster youth, low income and English learner) both middle school and elementary school in the 2021-2022 school year and to offer ELOP opportunities to 100% of elementary and middle school students by the end of the 2022-2023 school year and in subsequent school years.

Implementation:

Our plan is to provide coaching using district staff and potentially community partners (such as Chaffey College baseball team, little league partnerships…) coaches will do weekly and/or monthly skills clinics for students in the basics of baseball such as throwing, catching, fielding, base running and hitting. This will potentially lead to the creation of an intramural baseball program. This intramural program will be open to all students in grades 4-8 (in line with the current district athletics guidance). Teams will be created based on region and tryouts will be held to identify student ability and create teams of equal skill levels. This season could potentially occur in the fall or late spring.

Implementation timeline-

Date Range	*Task*	*Needs*
August 2021- May 2022	*Work with city to plan and renovate the Bon View baseball field.*	*Meeting with City of Ontario Park Walkthrough* *Schedule and begin improvements*
March 2022- June 2022	*Determine field use priorities between City and District* *Gather stakeholder input*	*Implementation plan* *Stakeholder meetings*
November 2021-May 2022	*Develop potential skills clinics and identify weekday and weekend dates to hold clinics.*	*Coaches* *Busing* *Meals* *Dates*
Ongoing	*Review planned implementation and make staffing and budgeting adjustments as needed.*	*Annual budget review*
Ongoing	*Stakeholder feedback*	*Schedule meetings*

Through this effort the City of Ontario and the Ontario Montclair School District intend to expand the availability of a 'beyond the bells' baseball programs to students and families in the Ontario-Montclair School District by increasing program involvement by 10% yearly and increasing the number of students offered extended day learning programs to 50% of the total eligible student population in the 2021-2011 school year and 100% of the total eligible student population in the 2022-2023. This effort will also increase parent and community engagement through re-purposing a community space that is currently under-used as a gathering spot and community resource.

2. Not-to-exceed amount of expenditures described in 1, above, obligated during the period of **March 1, 2022** and **June 30, 2024** and expended on or before December 31, 2026 is $300,000.

3. The following is the list of projected expenditures that will be funded by the CLFRF for the scope identified in 1, above:

Expenditure Type (e.g., Payroll)	**Projected Expenditures***
Snack Shack	$150,000
-Downstairs – Equipment Removal	
-Downstairs – Interior Upgrades	
-Upstairs - Upgrades	
-Exterior Upgrades and General Cleanup	
-Purchase of equipment inside/around Snack Shack	
Ballfield	$150,000
-Initial gopher eradication process	
-Infill and level out the low spots (Outfield)	
-Add decomposed granite/brick dust (Infield)	
-Remove old wood framing and rebuild/clean up bullpen	
-General Cleanup	
-Remove concrete slab from old restroom building and replace with new asphalt/concrete	
-Repair/replace missing drain cover	
--Purchase of equipment: Scoreboard, Public Address System, Utility Vehicle, Field Drags, Industrial Rakes, Pitcher "L" Screens, and Player Equipment.	
Total Expenditure	$300,000

*Note: Projected expenditures may differ from the actual costs but a total amount of expenditure shall not exceed the amount as specified in Section 2, above.

4. The Contractor is responsible for ensuring that any procurement using CLFRF funds, or payments under procurement contracts using such funds are consistent with the procurement standards set forth in the Uniform Guidance at Title 2 C.F.R. Sections 200.317 - 200.327, as applicable. The Uniform Guidance establishes in Title 2 C.F.R. Section 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in Title 2 C.F.R. Section 200.320. If the full and open procurement is not applicable, provide a reason for its exemption:

Confirmed – No exemption.

CITY OF ONTARIO *Agenda Report* **June 7, 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: 14

SUBJECT: AN AGREEMENT WITH THE COUNTY OF SAN BERNARDINO FOR THE OPERATION OF A HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITY

RECOMMENDATION: That the City Council approve and authorize the City Manager to execute a five-year Agreement (on file with Records Management Department) with the County of San Bernardino (County) for the operation of a Household Hazardous Waste (HHW) Collection Facility.

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

FISCAL IMPACT: The Fiscal Year 2022-23 Adopted Budget includes appropriations in the Integrated Waste Fund for these services, inclusive of a $25,000 annual grant through the Used Oil Payment Program. The recommended Agreement amount of $319,144 for Fiscal Year 2022-23 is a 2.5% increase over the prior year. The Agreement is for a five-year term from Fiscal Years 2022-27 for a total amount of $1,712,082.44. The average annual increment is 3.6% for each of the remaining four years. There is no fiscal impact to the General Fund.

BACKGROUND & ANALYSIS: The State of California Public Resources Code requires cities and counties to prepare an HHW Element, which identifies a program for the safe collection, recycling, treatment, and disposal of hazardous wastes that are generated by households in the City. As part of the HHW Element, the City provides its residents an HHW Collection Facility, which is located at 1430 South Cucamonga Avenue. The facility is open Fridays and Saturdays between the hours of 9:00 a.m. and 2:00 p.m. The facility accepts paint, motor oils, batteries, pesticides, and other commonly generated household hazardous wastes.

The County has provided this service for the City of Ontario since 1996. The County provides two (2) personnel to operate the facility, along with a re-use area and a 24-hour emergency response capability. In addition, the County provides an annual report to the City that includes the amount, types of waste collected, and final disposition of waste collected, and waste storage containers meeting the specifications of Department of Transportation. The County assumes responsibility for maintaining the necessary site permits and responsibility for the on-site management, transportation, recycling, and disposal of the materials and waste collected at the site. The County

also either removes the accumulated wastes or contracts with a licensed hazardous waste hauler to remove the accumulated wastes, monthly, and to recycle or dispose of wastes at approved facilities at no additional cost to the City.

Added benefits of contracting with the County include giving residents the option of using any other County-run HHW facility, and Staff networking opportunities with other County-run cities to keep abreast of changing State requirements and regulations. The current Agreement expires June 30, 2022. Either party may terminate the agreement for any reason, at any time, upon 90 days prior written notice to the other party.

CITY OF ONTARIO *Agenda Report* **June 7, 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: 15

SUBJECT: **AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT FOR LANDSCAPE MAINTENANCE SERVICES FOR PARKWAYS AND MEDIANS IN THE ONTARIO RANCH AREA**

RECOMMENDATION: That the City Council authorize the City Manager to execute Amendment No. 2 to the Maintenance Services Agreement (on file with the Records Management) for Contract No. PM2021-2 with Greentech Landscape, Inc. of Whittier, California, for landscape maintenance services for a newly acquired Community Facilities District (CFD) located in the Ontario Ranch area.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
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 recommended Amendment increases the authorized contract amount by $52,032 annually for Fiscal Years 2022-23 and 2023-24, for a new total not to exceed contract amount of $1,120,590. Appropriations for the maintenance cost for landscape maintenance services from the General Fund are included in the Fiscal Year 2022-23 Adopted Budget.

BACKGROUND & ANALYSIS: In October 2020, the City solicited bids for landscape maintenance services for parkways and medians throughout the Ontario Ranch area. Four (4) bids were received that met the criteria and standards necessary to perform this work. Greentech Landscape, Inc. submitted the lowest responsible bid for a three-year total of $733,320. Based on credentials, pricing, and favorable reference checks, the City Council awarded a Maintenance Services Agreement to Greentech Landscape, Inc. at its regular City Council meeting on May 4, 2021.

The Maintenance Services Agreement provides landscape maintenance services for parkways and medians in CFD-SD57 located in the Ontario Ranch area. Two new areas in the Ontario Ranch have recently been accepted by the City and need to be added to this Maintenance Services Agreement. The first includes the SCE Trail from Haven Avenue to Twinkle Avenue. The second area includes the parkways and medians on Haven Avenue between East Nelson Drive and the SCE Trail. The annual

cost to include landscape maintenance services for both new areas is $52,032. Staff requests Council approval to amend the Maintenance Services Agreement with Greentech Landscape, Inc. to add the two new areas.

CITY OF ONTARIO *Agenda Report* **June 7, 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: 16

SUBJECT: AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT FOR CITYWIDE TREE MAINTENANCE SERVICES

RECOMMENDATION: That the City Council authorize the City Manager to execute the sixth (6) optional year extension to the Maintenance Services Agreement (on file with the Records Management) for Contract No. PM-WCA1415 with West Coast Arborist, Inc. of Anaheim, California, for Citywide Tree Maintenance Services.

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

FISCAL IMPACT: The proposed sixth (6) optional year to the Maintenance Services Agreement for Citywide Tree Maintenance Services is $1,295,173, bringing the new total not to exceed contract amount to $9,439,329. Appropriations for citywide tree maintenance services from the General Fund and Facilities and Parks Maintenance Fund are included in the FY 2022-23 Adopted Budget. The existing Maintenance Services Agreement with West Coast Arborists, Inc. includes an amount not to exceed $8,144,156.

BACKGROUND & ANALYSIS: The City is responsible for the maintenance of approximately 72,000 trees throughout the City on parkways, parks, and medians. On June 17, 2014, the City Council authorized executing a three-year Maintenance Services Agreement, including seven optional annual extensions, with West Coast Arborists, Inc. for citywide tree maintenance services. The Agreement includes tree trimming, tree and stump removal, tree planting, and 24-hour on-call emergency services. The City utilizes a five-year planned grid-trimming cycle throughout the City in order to reduce emergency and service request responses and minimize risk to the City due to tree or limb failures.

Exercising the option years will allow the City to limit the potential for higher yearly increases to the bid amounts, avoid the costs of re-bidding the contract, provide service continuity, and project future costs.

CITY OF ONTARIO *Agenda Report* **June 7, 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: 17

SUBJECT: AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT FOR CITYWIDE STREET SWEEPING SERVICES

RECOMMENDATION: That the City Council authorize the City Manager to execute the optional two (2) one-year extensions and add new streets for sweeping to the Maintenance Service Agreement for Contract No. SM1617-2 (on file with Records Management) with Sweeping Corp of America (formerly named Cleanstreet, Inc.), of Gardena, California, for Citywide Street Sweeping Services.

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 annual base cost of option Year One to the Maintenance Services Agreement is $1,296,318, plus $40,000 for urgency services, for a total not to exceed amount of $1,336,318. Option Year Two to the Maintenance Services Agreement is $1,322,244, plus $40,000 for urgency services, for a total not to exceed amount of $1,362,244. The recommended agreement amount would bring the new total not to exceed contract amount to $8,744,465. Appropriations for citywide street sweeping maintenance cost in Integrated Waste Fund are included in the Fiscal Year 2022-23 Adopted Budget.

BACKGROUND & ANALYSIS: In March 2017, the City solicited proposals for Citywide Street Sweeping Services. Four (4) proposals were received that met the bid criteria and standards necessary to perform this work. Cleanstreet, Inc., located in Gardena, California, submitted the lowest responsible proposal with base cost and urgency services for a five-year total of $5,920,050. Based on proposal, credentials, pricing, and favorable reference checks, the City Council awarded a Maintenance Services Agreement to Cleanstreet, Inc. at its regular City Council meeting on May 16, 2017. Amendments No.1, No. 2, and No. 3 include additional street sweeping services in Ontario Ranch in the total amount of $125,853. In September of 2020, Cleanstreet, Inc. officially changed its name to Sweeping Corp of America.

The goal of the street sweeping program is to provide economical services that sustain and restore City streets to maintain a clean and safe environment. Debris collected in the gutter can block

stormwater facilities, and cause flooding during heavy rains. Street sweeping is an essential service that removes debris from streets and gutters, keeping pollutants from entering the City's storm drains. Street sweeping is a requirement of the state and federal National Pollutant Discharge Elimination System (NPDES) and the City's Municipal Separate Storm Sewer System (MS4) permit.

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Nathan Kuan Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 18

SUBJECT: A CONSTRUCTION CONTRACT FOR THE FY 2020-21 & 2021-22 CDBG STREET LIGHT INSTALLATION PROJECT

RECOMMENDATION: That the City Council award a construction contract (on file in the Records Management Department) to California Professional Engineering, Inc. of La Puente, California, for the Fiscal Year 2020-21 and Fiscal Year 2021-22 CDBG Street Light Installation Project in the bid amount of $151,844 plus a ten percent (10%) contingency of $15,184 for a total authorized expenditure of $167,028; and authorize the City Manager, or his designee to execute said contract and all related documents, and file a notice of completion at the conclusion of all construction activities.

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

FISCAL IMPACT: The Fiscal Year 2021-22 Adopted Budget allocated funds for the Fiscal Year 2020-21 and Fiscal Year 2021-22 CDBG Street Light Installation Project in the amount of $200,000 from Community Development Block Grant funds. The total recommended expenditure authorization consists of $151,844 plus a ten percent (10%) contingency of $15,184, for a total authorized expenditure of $167,028, within the Fiscal Year 2021-22 budget allocation.

BACKGROUND & ANALYSIS: The general scope of work to be performed consists of, but is not limited to, the installation of new street light poles, foundations, LED light fixtures, pull boxes, and other appurtenances necessary to complete the improvements. The project is located on Virginia Avenue, from Holt Boulevard to D Street. This project will improve the illumination of the roadway and intersection lighting on Virginia Avenue. Project location maps are provided for reference as Exhibit “A”.

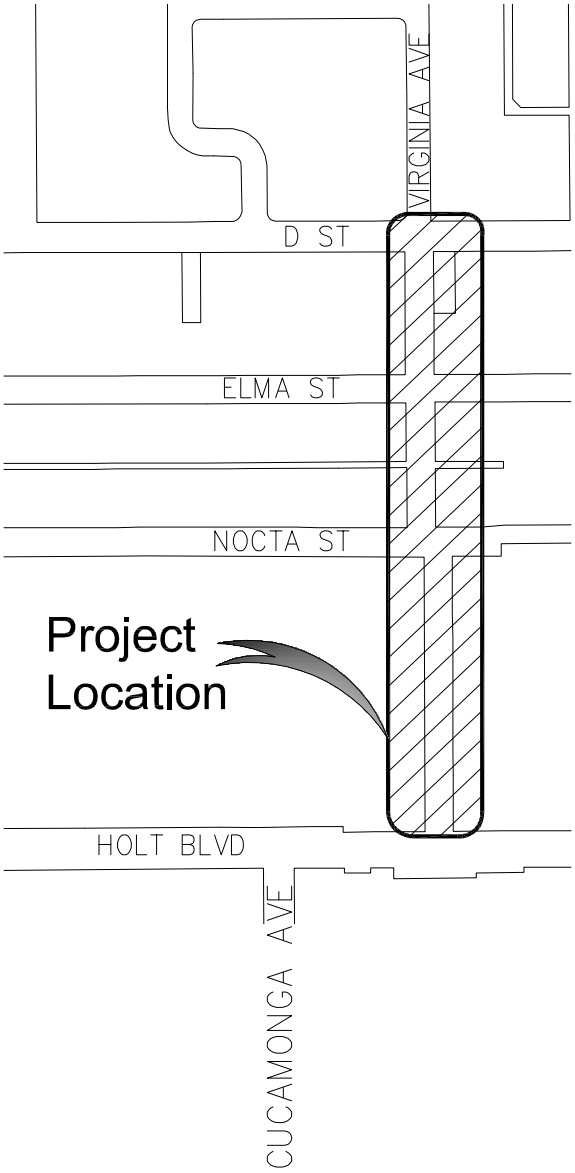
In April 2022, the City solicited bids for the project and two bids were received. The following is a summary of the bid results:

COMPANY	LOCATION	AMOUNT
California Professional Engineering, Inc.	La Puente, CA	$151,844
Elecnor Belco Electric, Inc.	Chino, CA	$174,400

California Professional Engineering, Inc. provided all the required documents in their bid package and staff recommends that the City Council award a construction contract to California Professional Engineering Inc., the lowest responsible bidder.

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

EXHIBIT "A"
FY 20/21 & 21/22
CDBG LED STREET LIGHT
INSTALLATION PROJECT
Contract No. TR1701
VIRGINIA AVENUE FROM
HOLT BOULEVARD TO D STREET



N.T.S.

CITY OF ONTARIO *Agenda Report* **June 7, 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: 19

SUBJECT: AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT FOR CITYWIDE STORM DRAIN MAINTENANCE SERVICES

RECOMMENDATION: That the City Council approve and authorize the City Manager to execute the optional two (2) one-year extensions to the Maintenance Services Agreement (on file with Records Management) for Contract No. SM1920-1 with United Storm Water, Inc., located in Industry, California, for Citywide Storm Drain Maintenance Services.

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

FISCAL IMPACT: Appropriations for citywide storm drain maintenance cost in Storm Drain Maintenance Fund are included in the Fiscal Year 2022-23 Adopted Budget. Between Fiscal Years 2019-20 and 2021-22, the total authorized contract amount is $333,589, plus $50,040 for urgency services, for a total not to exceed contract amount of $383,629. The annual cost of option Year One to the Maintenance Services Agreement is $124,453, plus $16,680 for urgency services, for a new not to exceed contract amount of $141,133. The annual cost for Year Two is $131,899, plus $16,680 for urgency services, for a new not to exceed amount of $148,579. The recommended amendment would bring the new total not to exceed contract amount to $673,341.

BACKGROUND & ANALYSIS: The City maintains 673,496 linear feet of storm drains citywide. In order to keep the storm drain system operational, the catch basins must be serviced regularly. In August 2019, the City solicited bids for Citywide Storm Drain Maintenance Services. Three (3) bids were received that met the bid criteria and standards necessary to perform this work. United Storm Water, Inc., located in Industry, California, submitted the lowest responsible bid for a five-year total of $383,629. Based on the proposal, credentials, pricing, and favorable reference checks, the City Council awarded a Maintenance Services Agreement to United Storm Water, Inc. at its regular City Council meeting on October 15, 2019.

With the pandemic and rise of material and fuel costs, the contractor is asking for a 10% increase to the option years. The Consumer Price Index (CPI) for Riverside, San Bernardino, and Ontario areas

ending in March 2022 is 10%. Exercising the option years with a 10% increase will allow the City to limit the potential for higher yearly increases to the bid amounts, avoid the costs of re-bidding the contract, provide service continuity, and project future costs. Staff requests Council approval to exercise the optional two one-year extensions with United Storm Water, Inc. for Citywide Storm Drain Maintenance Services.

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Municipal Services Prepared By: Michael Johnson 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: 20

SUBJECT: MAINTENANCE SERVICES AGREEMENT FOR STREETLIGHT MAINTENANCE AND REPAIR SERVICES

RECOMMENDATION: That the City Council take the following actions: Approve and authorize the City Manager to execute a three-year Maintenance Services Agreement (on file in the Records Management Department) with Yunex LLC of Austin, Texas for streetlight maintenance and repair services in an amount not to exceed $1,939,935; and authorize the City Manager to extend the Agreement for up to two additional one-year terms.

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

FISCAL IMPACT: The Fiscal Year 2022-23 Adopted Operating Budget includes appropriations of $267,500 in the General Fund, $329,145 in the Streetlight Maintenance Fund, and $50,000 in the Broadband Fund for streetlight maintenance and repair services. The total compensation paid by the City will be contingent upon actual services provided at the contracted fixed hourly rates as set forth in the Agreement and shall not exceed $1,939,935 over the 3-year term.

BACKGROUND & ANALYSIS: Street lighting contributes to the safety and security of pedestrians, vehicle traffic, homeowners, and businesses. Currently, there are approximately 13,000 streetlights in the City and Streetlight Maintenance Districts that will be maintained through this proposed contract with additional lights being added as new developments in Ontario Ranch are released to the City to maintain. The scope of general maintenance will consist of all operations and repairs starting from the pull box to the streetlight fixture. Additional services include the removal and disposal of knocked down streetlight poles, removal and installation of new concrete foundations for streetlight poles, the installation of new streetlight poles, vandalism repairs, and the installation and repair of streetlight smart nodes.

In March 2022, the City solicited proposals for streetlight maintenance and repair services. The City received 5 proposals from the following companies through planet bids, the City's electronic bid

management system: Bear Electrical Solutions, Inc. of Alviso, California, E.E. Electric, Inc. of Jurupa Valley, California, Quality Light and Electrical of Bloomington, California, Tanko Streetlighting, Inc. of San Francisco, California, and Yunex LLC of Riverside, California. After a thorough review of the proposals submitted, consideration was given to the overall proposal, experience of each company and team members, pricing, and references. Yunex LLC (formerly Siemens Industry, Inc. and Siemens Mobility Inc.) has performed several streetlight retrofits projects, has been awarded contracts for both streetlight maintenance and traffic signal maintenance, as well as contracts for streetlight pole installation over the past 15 years. Their knowledge and experience working with the City's streetlighting infrastructure, work order systems and City employees, has enabled their technicians to respond to, troubleshoot, and repair issues faster than the required response times per their maintenance contracts. Yunex has a large workforce of International Municipal Signal Association (ISMA) certified technicians and a large fleet of vehicles and equipment which ensures they have the resources to provide service to the City of Ontario without disruption 24 hours per day, 365 days a year, including all holidays. Based on their combined qualifications and pricing, Staff recommends that the City enter into a Maintenance Services Agreement with Yunex, LLC.

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Municipal Services Prepared By: Michael Johnson 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: 21

SUBJECT: **AN AMENDMENT TO THE GOODS AND SERVICES AGREEMENT WITH UNITED TRANSMISSION EXCHANGE FOR PROCUREMENT & REPAIRS OF ALLISON TRANSMISSIONS**

RECOMMENDATION: That the City Council approve and authorize the City Manager to execute Amendment No. 3 to the Goods and Services Agreement (on file in the Records Management Department) with United Transmission Exchange of San Bernardino, California, for procurement & repairs of Allison Transmissions in the amount of $70,000, increasing the not-to-exceed amount to $150,000 and extending the term of the Agreement to June 30, 2024.

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 $30,000 in the Equipment Services fund for maintenance and repairs. The estimated cost for Fiscal Year 2023-24 will be $40,000. The total compensation paid by the City will be contingent upon actual services provided at the contracted rates set forth in the Agreement and shall not exceed $150,000 over the 5-year term.

BACKGROUND & ANALYSIS: Most of the heavy-duty fleet vehicles are equipped with Allison Transmissions including all Integrated Waste refuse vehicles. United Transmission Exchange is the largest remanufacturer of Allision Transmissions in California and can rebuild transmissions that the City of Ontario fleet mechanics are not authorized to do for warranty purposes or due to the time and specialty equipment required to provide those services. In August 2019, the City solicited quotes for Allison Transmissions and labor rates. Four (4) quotes were received that met the criteria. United Transmission Exchange of San Bernardino, California, submitted the lowest quote of $11,752. Based on the proposal, credentials, pricing, and favorable reference checks, the City entered into a Goods & Services Agreement with United Transmission Exchange on December 12, 2019. Based on their previous history of providing excellence service to the City of Ontario, Staff recommends exercising the two optional one-year extensions and increasing the total authorized compensation to ensure the Fleet Services Department can continue to maintain and repair

vehicles quickly and keep them operational so they can provide services to the City of Ontario residents.

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Integrated Waste Prepared By: Blaine M Ishii 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: 22

SUBJECT: AUTHORIZE THE EQUIPMENT PURCHASE OF FOOD SCRAP CONTAINERS FOR THE INTEGRATED WASTE DEPARTMENT

RECOMMENDATION: That the City Council authorize the purchase of food scrap containers with Sure-Close located in Ottawa, Canada, in an amount not to exceed $140,800 to promote state mandate Senate Bill (SB) 1383 in organic waste recycling.

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 contract would require an increase in appropriations of $140,800 from the Integrated Waste Fund that will be included in the Fiscal Year 2021-22 Year-end Budget Update. There is no fiscal impact to the General Fund. Actual expenditures will be based on the fixed-unit pricing and the actual quantity of containers purchased in order to meet operational needs.

BACKGROUND & ANALYSIS: Effective January 1, 2022, CalRecycle's regulations to meet the organic waste reduction and the edible food recovery targets took effect, including penalties to cities for non-compliance. In late 2021, the Integrated Waste Department implemented a residential food waste recycling pilot program. The program included 100 single family residential customers who were provided Sure-Close food scrap containers to help collect their food scraps. The container was lined with a plastic bag and food scraps were placed in the bag. The bag containing the food scraps was then deposited into the green waste container for collection. The organics (green and food waste) are sent to be processed into mulch, compost, or anaerobic digestors to be converted to renewable gas and used for transportation fuel, electricity or heating. According to a 2018 CalRecycle study, 13% of waste going to landfills consisted of food waste. Diversion of food waste from landfills helps extend the life of landfills and reduce methane emissions, which improves air quality.

The purchase of the Sure-Close food scrap containers will be part of the citywide, state mandated, implementation of the food waste recycling program. Staff anticipates the program to be implemented by late summer of 2022. Below is a summary of the quantity and type of food scrap

containers to be purchased:

QUANTITY	TYPE	PRICE
32,000	Sure-Close 1.9 Gallon	$140,800
	TOTAL	**$140,800**

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Information Technology Prepared By: Samantha Robles Staff Member Presenting: Colin Fernandes, Executive Director Information Technology Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 23

SUBJECT: **AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT FOR CONSULTING SERVICES, APPLICATION DEVELOPMENT AND DATABASE ADMINISTRATION**

RECOMMENDATION: That the City Council authorize the City Manager to execute an Amendment to the current five-year agreement (on file with the Records Management Department) with ICS Software, LLC, of Upland, California, for information technology consulting services to add an additional $80,000 to year five of the existing contract of $120,000 annually, for a total not to exceed $680,000.

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

FISCAL IMPACT: The Amendment to the Professional Services Agreement increases the current year-five $120,000 annual agreement by $80,000 for a total not-to-exceed contract amount of $680,000. These amounts will be funded through the Information Technology Fund. The Fiscal Year 2021-22 budget includes appropriations for the current contract year. If approved, appropriations will need to be added to the FY 2021-22 budget.

BACKGROUND & ANALYSIS: ICS Software, LLC provides the City with specialized application development and database administration for the City's business and public safety systems, including development of mobile and web applications. Continued support and development services are required to ensure all databases are optimized, not adding unnecessary delays to the City's business applications or first responders' ability to provide high-quality public safety services. Additional funding in year five will support the new task of public safety data archival as the City moves from systems housed locally in the data center, to cloud-based systems.

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Municipal Services Prepared By: Michael Johnson 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: 24

SUBJECT: AN AMENDMENT TO THE GOODS AND SERVICES AGREEMENT WITH ALL STAR GLASS INC. FOR PROCUREMENT & REPAIRS OF AUTOMOTIVE WINDSHIELDS

RECOMMENDATION: That the City Council authorize the City Manager to execute Amendment No. 3 to the Goods and Services Agreement (on file in the Records Management Department) with All Star Glass Inc., of San Diego, California, in the amount of $90,000, increasing the not-to-exceed amount to $170,000 and extending the term of the Agreement to June 30, 2024.

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 $40,000 in the Equipment Services Fund for maintenance and repairs. The estimated cost for Fiscal Year 2023-24 will be $50,000. The total compensation paid by the City will be contingent upon actual services provided at the contracted rates set forth in the Agreement and shall not exceed $170,000 over the 5-year term.

BACKGROUND & ANALYSIS: In July 2019, the City solicited quotes for Windshield Repair Services and labor rates. All Star Glass Inc., of San Diego, California, was the sole bidder. Based on the credentials, pricing, and favorable reference checks, the City entered into a one-year agreement with four (4) optional annual extensions with All Star Glass Inc., on October 4, 2019. Based on their previous experience providing windshield repair services to the City, Staff recommends exercising the two optional one-year extensions and increasing the total authorized compensation to ensure the Fleet Services Department can continue to maintain and repair vehicles quickly and keep them operational so they can provide services to the City of Ontario residents.

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Craig Cruz Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 25

SUBJECT: AN AMENDMENT TO THE COOPERATIVE AGREEMENT FOR THE SR-60 AT ARCHIBALD AVENUE INTERCHANGE PROJECT

RECOMMENDATION: That the City Council approve Amendment No. 5 in the amount of $4,191,726 to Cooperative Agreement R14138 (15-1001150) (on file in the Records Management Department) with San Bernardino County Transportation Authority (SBCTA) for funding the State Route 60 (SR-60) at Archibald Avenue Interchange Project (Project); and authorize the City Manager to execute said agreement and future amendments within the authorization limits.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Pursue City's Goals and Objectives by Working with Other Governmental Agencies
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: This Amendment No. 5 with SBCTA increases the Project Cost from $23,910,000 to $28,101,726 and the City's share of the Project from $16,953,673 to $19,664,788. Per the Agreement with SBCTA, the City's share is 66.1% of the actual expenses, which is consistent with the City's adopted Development Impact Fee (DIF) Program and SBCTA's approved Measure I Nexus Study. Per the Agreement with SBCTA, City Betterment and Oversight costs in the amount of $3,266,562 are 100% the responsibility of the City. An initial amount of $26,954 for Oversight is covered by SBCTA as these were expenditures that occurred before the original Cooperative Agreement was executed. This Amendment will require an additional $2,711,116 in Ontario Ranch Regional Street DIF to fully fund the City's share of the Project, which is included in the FY 2021-22 approved budget.

BACKGROUND & ANALYSIS: The Project will widen the existing Archibald Avenue bridge undercrossing at SR-60 to accommodate additional left-turn pockets and will widen the existing freeway on and off ramps. Traffic generated in Ontario Ranch will create impacts at the SR-60 at Archibald Avenue interchange that will be mitigated by this Project.

In August 2014, the City entered into a Cooperative Agreement with SBCTA for the Project and committed funds for the Environmental and Design phases at that time. Project funding was subsequently added in the FY 2017-18 Budget for the Right-Of-Way phase. In February 2019, funds were again added for the Construction phase. In September 2019, SBCTA received bids for the Project which exceeded the value of the current Cooperative Agreement, thus requiring Amendment No. 3 in November 2019. In August 2020, Amendment No. 4 increased the funds to cover construction management services for the betterment work for the replacement of asphalt concrete to full depth concrete pavement on Archibald Avenue between the SR-60 ramps and the addition of service laterals for the parcel on the northwest corner of Archibald Avenue and the SR-60 westbound on-ramp.

This Amendment proposes to increase the funds to settle the claims of adjacent property owners against the project and SBCTA project management costs associated with the project closeout and negotiations with the adjacent properties.

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Development Administration Prepared By: Derrick E Womble Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 26

SUBJECT: **AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA21-014) BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC., TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP 20449 (FILE NO. PMTT21-014), A 35.65-ACRE PROPERTY LOCATED NEAR THE SOUTHEAST CORNER OF HAVEN AVENUE AND ONTARIO RANCH ROAD, WITHIN PLANNING AREA 9A (RESIDENTIAL & COMMERCIAL LAND USE DISTRICT) OF THE RICH HAVEN SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 0218-211-01**

RECOMMENDATION: That the City Council consider and adopt an Ordinance approving the Development Agreement (File No. PDA21-014) between the City of Ontario and BrookCal Ontario, LLC., to establish the terms and conditions for the development of Tentative Tract Map 20499 (File No. PMTT21-014), a 35.65-acre property located near the southeast corner of Haven Avenue and Ontario Ranch Road, within Planning Area 9A (Residential & Commercial land use district) of the Rich Haven Specific Plan.

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

FISCAL IMPACT: The proposed Development Agreement (File No. PDA21-014) will not have a direct impact on the City's General Fund. The Development Agreement will provide funding from the formation of a Community Facilities District (CFD) for City services and facilities required to support the Rich Haven Specific Plan development, thereby mitigating the increased costs associated with such services. In addition, the City will receive public service funding fees plus development impact, compliance processing, licensing, and permitting fees. No General Fund revenue will be used to support the Ontario Ranch development.

BACKGROUND & ANALYSIS: On May, 17, 2022, the City Council introduced and waived further reading of an ordinance approving the Development Agreement. On December 4, 2007, the City Council certified the Rich Haven Specific Plan Environmental Impact Report in conjunction with File No. PGPA07-001. The related Rich Haven Specific Plan, File No. PSP05-004, was approved by the City Council on December 18, 2007. The Specific Plan established the land use designations, development standards, and design guidelines for approximately 512 acres of land, which included the potential development of 4,256 residential units and 889,200 square feet of commercial/office land uses.

The Ontario Ranch financial commitments required for construction of properties within a specific plan are substantial. Therefore, in order to adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules, and regulations, BrookCal Ontario LLC, ("Owner') has requested that the City enter into negotiations to create a Development Agreement ("Agreement"). In accordance with California Government Code Section 65865, which in part states that "[a]ny city… may enter into a Development Agreement with any person having a legal or equitable interest in real property for the development of such property…" and California Government Code Section 65865.52, which in part states that "a Development Agreement shall specify the duration of the Agreement, the permitted uses of the property… and may include conditions, terms, restrictions…," the City of Ontario adopted Resolution No. 2002-100 setting forth the procedures and requirements for consideration of Development Agreements. Furthermore, the Financing and Construction Agreement with the NMC Builders, LLC ("NMC Builders"), requires those developments wishing to use the infrastructure it created to enter into Development Agreements with the City of Ontario. Pursuant to these procedures and requirements, staff entered into negotiations with the Owner to create a Development Agreement for consideration by the Planning Commission and City Council.

The proposed Agreement (File No. PDA21-014) is based on the model Development Agreement that was developed in coordination with the City Attorney and legal counsel for NMC Builders. This model Development Agreement is consistent with the provisions of the Construction Agreement. The terms of the agreement between NMC Builders' members requires that members enter into Development Agreements that are consistent with the provisions of the Construction Agreement.

The Agreement proposes to include 35.65 gross acres of land within Planning Area 9A (Residential & Commercial land use district) of the Rich Haven Specific Plan, as shown on the attached Exhibit A. The Agreement grants the Owner a vested right to develop Tentative Tract Map 20449 (the "Map"), provided the Owner complies with the terms and conditions of the Agreement, Specific Plan, and EIR. The Map (see attached Exhibit B) is located near the southeast corner of Haven Avenue and Ontario Ranch Road and proposes to subdivide approximately 35.65 gross acres of land into 92 numbered lots and 55 lettered lots for residential and commercial uses, public/private streets, landscape neighborhood edges and common open space purposes.

The term of the Agreement is for 10 years, with a 5-year option to renew. The main points of the Agreement address funding for all new City expenses created by the project, which includes: Development Impact Fees ("DIF") for construction of public improvements (i.e., streets and bridges, sewer, water, storm drain and fiber); Public Service Funding to ensure adequate provisions of

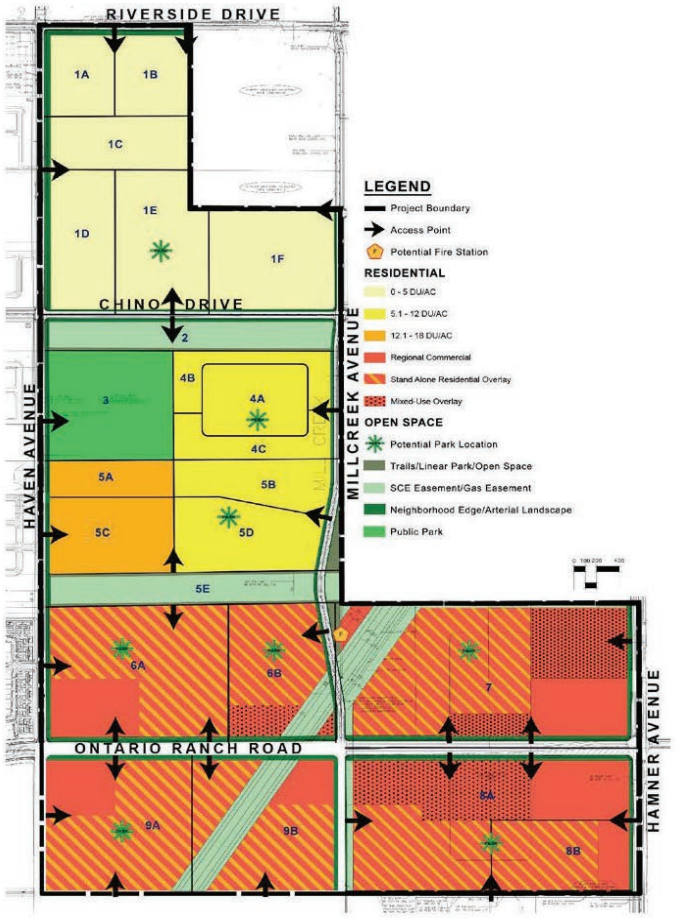
public services (police, fire and other public services); and the creation of a Community Facilities District ("CFD") for the maintenance of public facilities.

In considering the Agreement at their meeting on April 26, 2022, the Planning Commission found that the Agreement was consistent with State law, The Ontario Plan, and the City' Development Agreement policies. As a result, the Planning Commission adopted Resolution No. PC22-018 with a 6 to 0 vote, recommending City Council approval of the Agreement.

HOUSING ELEMENT COMPLIANCE: The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed project is consistent with the number of dwelling units (298) and density (13.97) specified in the Available Land Inventory.

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.

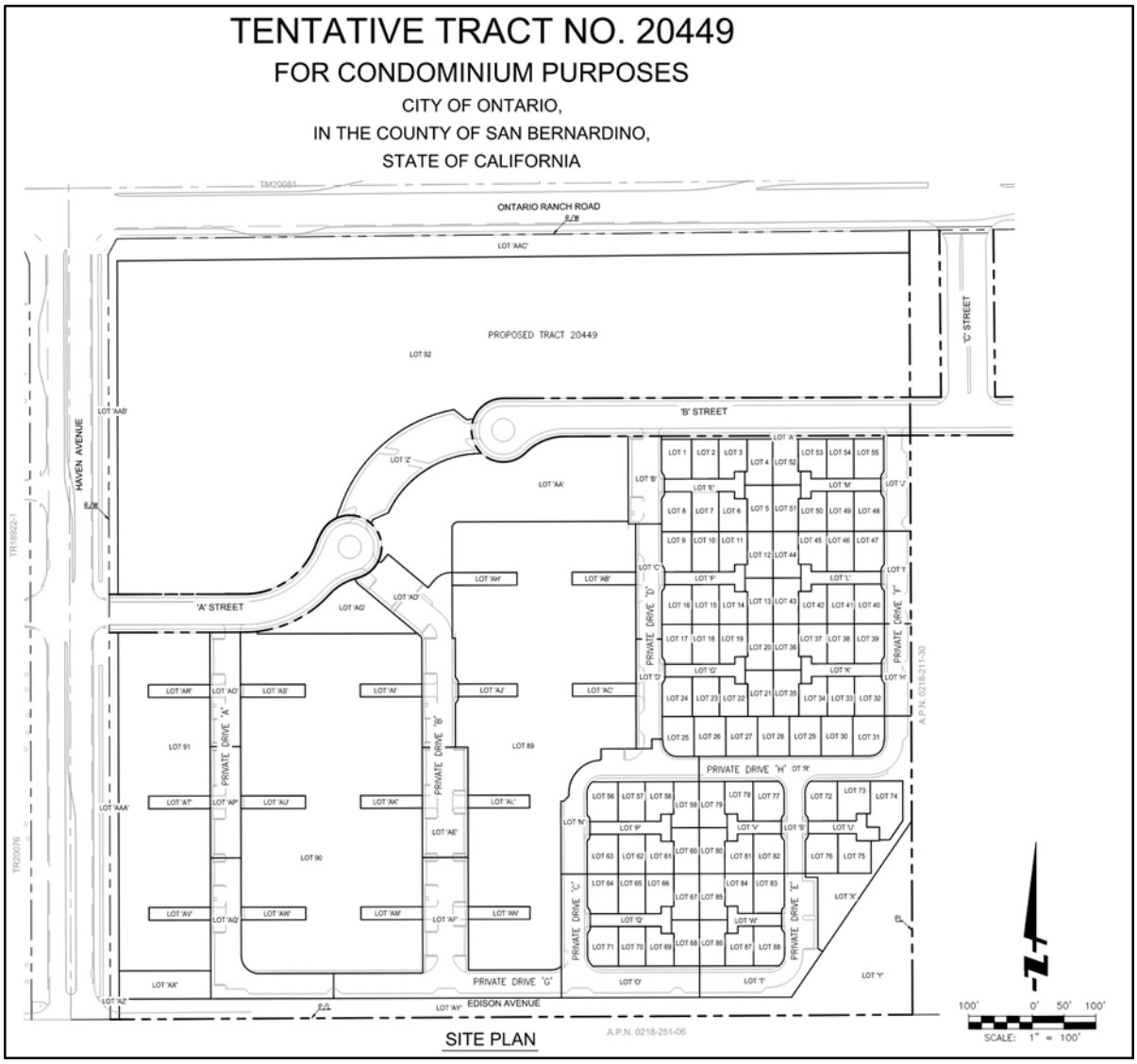
ENVIRONMENTAL REVIEW: The environmental impacts of this Project were previously analyzed in an Addendum to the Rich Haven Specific Plan Environmental Impact Report (State Clearinghouse No. 2006051081) and an Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140). This Application is consistent with the previously Certified Environmental Impact Reports and Approved Addendums and introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by this reference.



* Circulation pattern for local streets within Specific Plan Area to be established at Tentative Tract Map submittal.
** Residential development along the frontage of Haven Avenue within Planning Areas 5A, 5C and 6A and residential development along the frontage of Ontario Ranch Road within Planning Areas 6A and 7 shall average a density of 18 to 25 dwelling units per acre to support Bus Rapid Transit (BRT) along Haven Avenue.
*** After full dedication of Master Plan sheets and neighborhood edges, residential development within Planning Areas 6A + 9A and residential development within Planning Areas 6B + 9B shall meet a minimum net density of 14 dwelling units per acre.
The minimum density in Planting Areas 6A + 9B and Planning Areas 6B + 9B can be averaged between the two areas and shall be established at Tentative Tract submittal for each Planning Area.

RICH HAVEN SPECIFIC PLAN
LAND USE PLAN
FIGURE 3-1

Exhibit B—TENTATIVE TRACT MAP NO. 20449



CITY OF ONTARIO PLANNING DEPARTMENT

PLANNING COMMISSION STAFF REPORT

April 26, 2022

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

FILE NO: PDA21-014

SUBJECT: A public hearing to consider a Development Agreement between the City of Ontario and BrookCal Ontario LLC, to establish the terms and conditions associated with the development of Tentative Tract Map No. 20449 (File No. PMTT21-014), a 35.65 gross acre property located at the southeast corner of Haven Avenue and Ontario Ranch Road, within Planning Area 9A (Residential & Commercial) land use district of the Rich Haven Specific Plan; (APN: 218-211-01) **submitted by BrookCal Ontario LLC. City Council action is required.**

PROPERTY OWNER: BrookCal Ontario LLC., a Delaware limited liability company

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RECOMMENDED ACTION: That the Planning Commission consider and recommend the City Council adopt an ordinance approving the Development Agreement (File No. PDA21-014) between the City of Ontario and BrookCal Ontario LLC, pursuant to the facts and reasons contained in the staff report and attached resolution.

PROJECT SETTING: The project site is comprised of 35.65 gross acres of land located at the southeast corner of Haven Avenue and Ontario Ranch Road, within Planning Area 9A (Residential & Commercial) land use district of the Rich Haven Specific Plan, depicted in Figure 1: Project Location, right. 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.

Figure 1: Project Location

PROJECT ANALYSIS:

(1) Background — On December 4, 2007, the City Council certified the Rich Haven Specific Plan Environmental Impact Report in conjunction with File No. PGPA07-001. The related Rich Haven Specific Plan, File No. PSP05-004, was

Case Planner:	Derrick Womble, Administrative Officer
Planning Director Approval:	
Submittal Date:	12/09/2021

Hearing Body	*Date*	*Decision*	*Action*
DAB	N/A	N/A	N/A
PC	04/26/2022		Recommend
CC	05/17/2022		Final

approved by the City Council on December 18, 2007. The Specific Plan established the land use designations, development standards, and design guidelines for approximately 512 acres of land, which included the potential development of 4,256 residential units and 889,200 square feet of commercial/office land uses.

The Ontario Ranch financial commitments required for construction of properties within a specific plan are substantial. Therefore, in order to adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules, and regulations, BrookCal Ontario LLC, ("Owner') has requested that the City enter into negotiations to create a Development Agreement ("Agreement").

In accordance with California Government Code Section 65865, which in part states that "[a]ny city… may enter into a Development Agreement with any person having a legal or equitable interest in real property for the development of such property…" and California Government Code Section 65865.52, which in part states that "a Development Agreement shall specify the duration of the Agreement, the permitted uses of the property… and may include conditions, terms, restrictions…," the City of Ontario adopted Resolution No. 2002-100 setting forth the procedures and requirements for consideration of Development Agreements. Furthermore, the Financing and Construction Agreement with the NMC Builders, LLC ("NMC Builders"), requires those developments wishing to use the infrastructure it created to enter into Development Agreements with the City of Ontario. Pursuant to these procedures and requirements, staff entered into negotiations with the Owner to create a Development Agreement for consideration by the Planning Commission and City Council.

The proposed Agreement (File No. PDA21-014) is based on the model Development Agreement that was developed in coordination with the City Attorney and legal counsel for NMC Builders. This model Development Agreement is consistent with the provisions of the Construction Agreement. The terms of the agreement between NMC Builders' members requires that members of the LLC enter into Development Agreements that are consistent with the provisions of the Construction Agreement.

(2) Staff Analysis — The Agreement proposes to include 35.65 gross acres of land within Planning Area 9A (Residential & Commercial) land use district of the Rich Haven Specific Plan, as shown on the attached Exhibit A. The Agreement grants the Owner a vested right to develop Tentative Tract Map 20449 (the "Map"), provided the Owner complies with the terms and conditions of the Agreement, Specific Plan, and EIR.

The Map (see attached Exhibit B) is located near the southeast corner of Haven Avenue and Ontario Ranch Road and proposes to subdivide approximately 35.65 gross acres of land into 92 numbered lots and 55 lettered lots for residential and commercial uses, public/private streets, landscape neighborhood edges and common open space purposes.

The term of the Agreement is for 10 years, with a 5-year option to renew. The main points of the Agreement address funding for all new City expenses created by the project, which includes: Development Impact Fees ("DIF") for construction of public improvements (i.e., streets and bridges, sewer, water, storm drain and fiber); Public Service Funding to ensure adequate provisions of public services (police, fire and other public services); and the creation of a Community Facilities District ("CFD") for the maintenance of public facilities.

Staff finds that the Agreement is consistent with State law, The Ontario Plan, and the City's Development Agreement policies. As a result, staff is recommending approval of the application to the Planning Commission. If the Planning Commission finds the Agreement is acceptable, a recommendation of approval to the City Council would be appropriate.

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

(1) City Council Goals.

- Invest in the Growth and Evolution of the City's Economy
- Operate in a Businesslike Manner
- Focus Resources in Ontario's Commercial and Residential Neighborhoods
- Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)
- Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony

(2) Vision.

Distinctive Development:

- Commercial and Residential Development

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

(3) Governance.

Decision Making:

- Goal G1: Sustained decision-making that consistently moves Ontario towards its Vision by using The Ontario Plan as a framework for assessing choices.

➢ 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.

➢ LU1-1 Strategic Growth. We concentrate growth in strategic locations that help create place and identity, maximize available and planned infrastructure, and foster the development of transit.

➢ 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.

➢ LU2-6: Infrastructure Compatibility: We require infrastructure to be aesthetically pleasing and in context with the community character.

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.

➢ H2-4 New Model Colony. We support a premier lifestyle community in the New Model Colony distinguished by diverse housing, highest design quality, and cohesive and highly amenitized neighborhoods.

➢ 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.

- H5-2 Family Housing. We support the development of larger rental apartments that are appropriate for families with children, including, as feasible, the provision of services, recreation and other amenities.

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.

- Goal CE2: A City of distinctive neighborhoods, districts, and corridors, where people choose to be.

- 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:

- Goal CD1: A dynamic, progressive city containing distinct neighborhoods and commercial districts that foster a positive sense of identity and belonging among residents, visitors, and businesses.

  - CD1-1 City Identity. We take actions that are consistent with the City being a leading urban center in Southern California while recognizing the diverse character of our existing viable neighborhoods.

  - CD1-2 Growth Areas. We require development in growth areas to be distinctive and unique places within which there are cohesive design themes.

  - 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;
    - 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.

  - CD2-2 Neighborhood Design. We create distinct residential neighborhoods that are functional, have a sense of community, emphasize livability and social interaction, and are uniquely identifiable places through such elements as:

    - A pattern of smaller, walkable blocks that promote access, activity and safety;
    - Variable setbacks and parcel sizes to accommodate a diversity of housing types;
    - Traffic calming measures to slow traffic and promote walkability while maintaining acceptable fire protection and traffic flows;
    - Floor plans that encourage views onto the street and de-emphasize the visual and physical dominance of garages (introducing the front porch as the "outdoor living room"), as appropriate; and
    - Landscaped parkways, with sidewalks separated from the curb.

- CD2-7 Sustainability. We collaborate with the development community to design and build neighborhoods, streetscapes, sites, outdoor spaces, landscaping and buildings to reduce energy demand through solar orientation, maximum use of natural daylight, passive solar and natural ventilation, building form, mechanical and structural systems, building materials and construction techniques.

- 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.

- CD2-10 Surface Parking Areas. We require parking areas visible to or used by the public to be landscaped in an aesthetically pleasing, safe and environmentally sensitive manner. Examples include shade trees, pervious surfaces, urban run-off capture and infiltration, and pedestrian paths to guide users through the parking field.

- CD2-11 Entry Statements. We encourage the inclusion of amenities, signage and landscaping at the entry to neighborhoods, commercial centers, mixed use areas, industrial developments, and public places that reinforce them as uniquely identifiable places.

- CD2-12 Site and Building Signage. We encourage the use of sign programs that utilize complementary materials, colors, and themes. Project signage should be designed to effectively communicate and direct users to various aspects of the development and complement the character of the structures.

- 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.

- Goal CD3: Vibrant urban environments that are organized around intense buildings, pedestrian and transit areas, public plazas, and linkages between and within developments that are conveniently located, visually appealing and safe during all hours.

- CD3-1 Design. We require that pedestrian, vehicular, bicycle and equestrian circulation on both public and private property be coordinated and designed to maximize safety, comfort and aesthetics.

- CD3-2 Connectivity Between Streets, Sidewalks, Walkways and Plazas. We require landscaping and paving be used to optimize visual connectivity between streets, sidewalks, walkways and plazas for pedestrians.

- 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.

- CD5-2 Maintenance of Infrastructure. We require the continual maintenance of infrastructure.

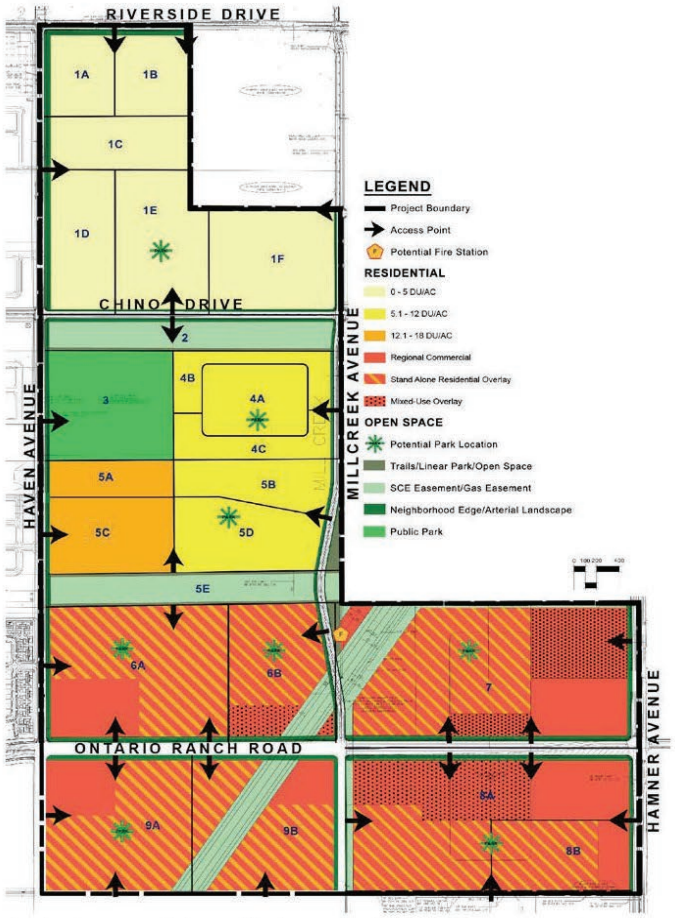
HOUSING ELEMENT COMPLIANCE: The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed project is consistent with the number of dwelling units (298) and density (13.97) specified in the Available Land Inventory.

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 of this Project were previously analyzed in an Addendum to the Rich Haven Specific Plan Environmental Impact Report (State Clearinghouse No. 2006051081) and an Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140). This Application is consistent with the previously Certified Environmental Impact Reports and Approved Addendums and introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by this reference.

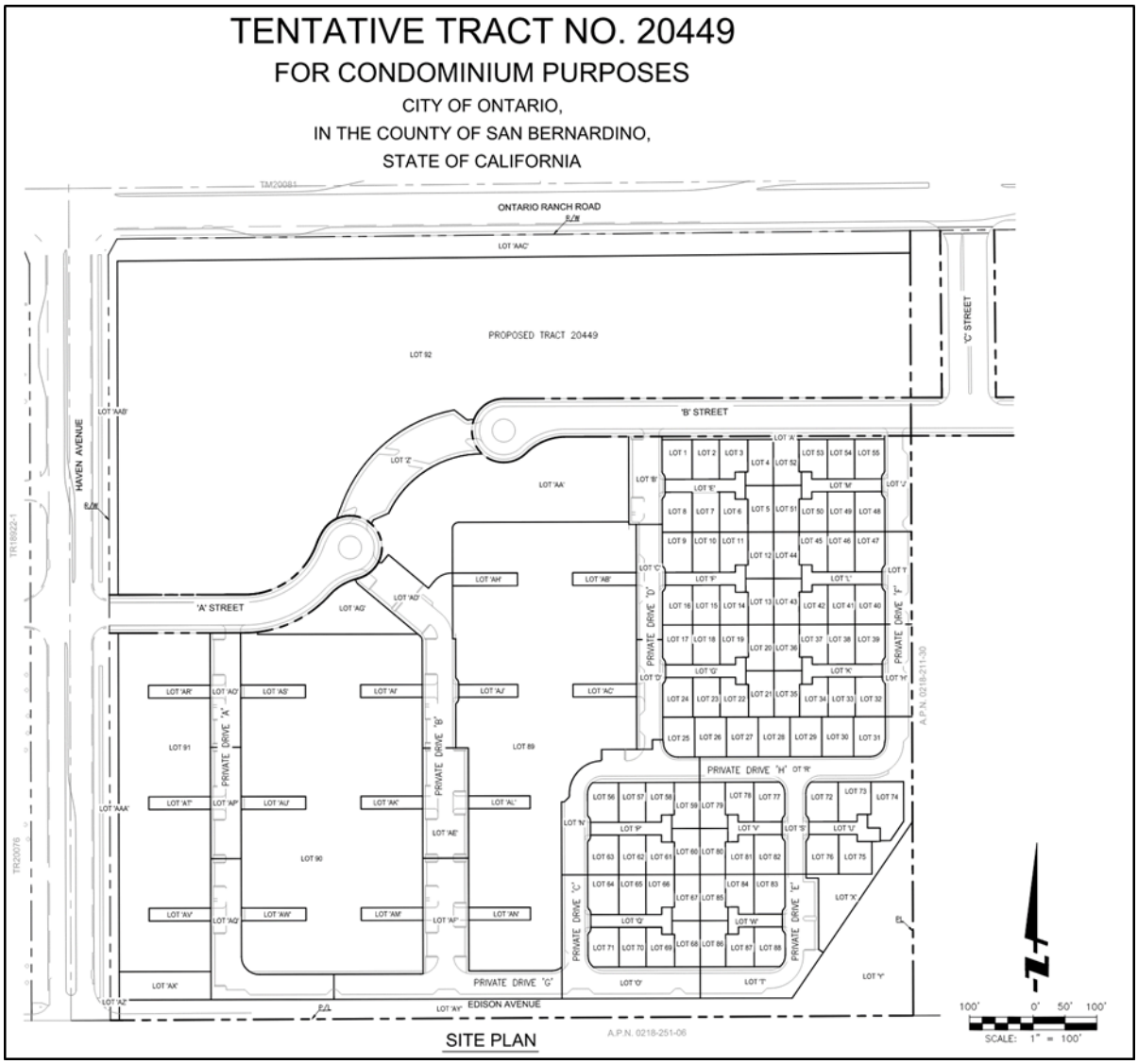
Exhibit A—RICH HAVEN SPECIFIC PLAN LAND USE PLAN



* Circulation pattern for local streets within Specific Plan Area to be established at Tentative Tract Map submittal.
** Residential development along the frontage of Haven Avenue within Planning Areas 5A, 5C and 6A and residential development along the frontage of Ontario Ranch Road within Planning Areas 6A and 7 shall average a density of 18 to 25 dwelling units per acre to support Bus Rapid Transit (BRT) along Haven Avenue.
*** After full dedication of Master Plan sheets and neighborhood edges, residential development within Planning Areas 6A + 9A and residential development within Planning Areas 6B + 9B shall meet a minimum net density of 14 dwelling units per acre.
The minimum density in Planting Areas 6A + 9B and Planning Areas 6B + 9B can be averaged between the two areas and shall be established at Tentative Tract submittal for each Planning Area.

RICH HAVEN SPECIFIC PLAN
LAND USE PLAN
FIGURE 3-1

Exhibit B—TENTATIVE TRACT MAP NO. 20449



RESOLUTION NO. PC22-018

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THE CITY COUNCIL APPROVE FILE NO. PDA21-014, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO LLC., TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP 20449 (FILE NO. PMTT21-014), A 35.65 GROSS ACRE PROPERTY LOCATED NEAR THE SOUTHEAST CORNER OF HAVEN AVENUE AND ONTARIO RANCH ROAD, WITHIN PLANNING AREA 9A (RESIDENTIAL & COMMERICIAL) LAND USE DISTRICT OF THE RICH HAVEN SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0218-211-01.

WHEREAS, BrookCal Ontario, LLC., ("Applicant") has filed an Application for the approval of a Development Agreement, File No. PDA21-014, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 35.65 gross acres of land generally located near the southeast corner of Haven Avenue and Ontario Ranch road, within Planning Area 9A (Residential & Commercial) land use district of the Rich Haven Specific Plan; and

WHEREAS, the Applicant has submitted a Tentative Tract Map 20449 (File No. PMTT21-014) to subdivide approximately 35.65 gross acres of land into 92 numbered lots and 55 lettered common lots for residential and commercial uses, public/private streets, landscape neighborhood edges and common open space purposes; and

WHEREAS, the environmental impacts of this Project were previously analyzed in an Addendum to the Rich Haven Specific Plan Environmental Impact Report (State Clearinghouse No. 2006051081) and an Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140). This Application is consistent with the previously Certified Environmental Impact Reports and Approved Addendums and introduces no new significant environmental impacts; and

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

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

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

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan ("ALUCP"), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on April 26, 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 of this project were previously reviewed in conjunction with an Addendum to the Rich Haven Specific Plan Environmental Impact Report (State Clearinghouse No. 2006051081) and an Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140). This Application is consistent with the previously Certified Environmental Impact Reports (collectively the "Certified EIR") and Approved Addendums and introduces no new significant environmental impacts; and

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

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

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

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

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

(1) Does not constitute substantial changes to the Certified EIR that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

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

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

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

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

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

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

SECTION 3: ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending authority for the Project, the Planning Commission finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed project is consistent with the number of dwelling units (298) and density (13.97) specified in the Available Land Inventory.

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, 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:

a. The Development Agreement applies to approximately 35.65 gross acres of land located near the southeast corner of Haven Avenue and Ontario Ranch

road, within Planning Area 9A (Residential & Commercial) land use district of the Rich Haven Specific Plan; and

b. The Development Agreement establishes parameters for the development of the Planning Area 9A (Residential & Commercial) land use district of the Rich Haven Specific Plan. The Development Agreement also grants the Applicant, the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the Rich Haven Specific Plan; and

c. The Development Agreement grants the Owner a vested right to develop Tentative Tract Map 20449 (File No. PMTT21-014) as long as the Owner complies with the terms and conditions of the Specific Plan and EIR. Tentative Tract Map 20449 is located near the southeast corner of Haven Avenue and Ontario Ranch Road, and proposes to subdivide 35.65 gross acres of land into 92 numbered lots and 55 lettered common lots; and

d. The Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

e. The Development Agreement does not conflict with the Land Use Policies of The Ontario Plan Policy Plan (General Plan) and will provide for development, within the district, in a manner consistent with the Policy Plan and with related development; and

f. This Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

g. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will not have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were previously reviewed in conjunction with an Addendum to the Rich Haven Specific Plan Environmental Impact Report (State Clearinghouse No. 2006051081) and an Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140). This Application is consistent with the previously Certified Environmental Impact Reports and Approved Addendums and introduces no new significant environmental impacts; and

h. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by this reference.

SECTION 6: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 5, above, the Planning Commission hereby RECOMMENDS THE CITY COUNCIL APPROVE the herein described Application, subject to each and every condition set forth in the Development Agreement (File No. PDA21-014) attached hereto as "Attachment A," and incorporated herein by this reference.

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

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

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

- - - - - - - - - - - - - -

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 26th day of April 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. PC22-018, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on April 26, 2022, by the following roll call vote, to wit:

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

NOES: None

ABSENT: Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

File No. PDA21-014

DEVELOPMENT AGREEMENT

By and Between

City of Ontario
a California municipal corporation

and

BrookCal Ontario LLC.,
a Delaware limited liability company

(Development Agreement to follow this page)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

CITY OF ONTARIO
CITY CLERK / RECORDS MANAGEMENT
303 EAST "B" STREET
ONTARIO, CA 91764-4196

Exempt from Fees Per Gov. Code § 6103

Space above this line for Recorder's Use Only

FILE NO. PDA21-014

DEVELOPMENT AGREEMENT

By and Between

City of Ontario
a California municipal corporation

and
BrookCal Ontario LLC
a Delaware limited liability company

_____, 2022

San Bernardino County, California

DEVELOPMENT AGREEMENT NO. PDA21-014

This Development Agreement (hereinafter "Agreement") is entered into effective as of the ____ day of _____, 2022 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and BrookCal Ontario, LLC., a Delaware limited liability company (hereinafter "OWNER"):

RECITALS

WHEREAS, CITY is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code; and

WHEREAS, OWNER has requested CITY to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of CITY; and

WHEREAS, by electing to enter into this Agreement, CITY shall bind future City Councils of CITY by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of CITY; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by CITY and the City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of the CITY and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement in that Rich-Haven Specific Plan (State Clearinghouse No. 2006051081 (the "FEIR"). The City Council found and determined that the FEIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the project described in the FEIR, which included consideration of this Agreement; and

WHEREAS, this Agreement and the Project are consistent with the CITY's Comprehensive General Plan and the Rich-Haven Specific Plan; and

WHEREAS, all actions taken and approvals given by CITY have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

WHEREAS, development of the Property in accordance with this Agreement will provide substantial benefits to CITY and will further important policies and goals of CITY; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, ensure progressive installation of necessary

improvements, provide for public services appropriate to the development of the Project, and generally serve the purposes for which development agreements under Sections 65864 et seq. of the Government Code are intended; and

WHEREAS, OWNER has incurred and will in the future incur substantial costs in excess of the generally applicable requirements in order to assure vesting of legal rights to develop the Property in accordance with this Agreement.

WHEREAS, the Property is located in an area of the City of Ontario that has been known as the "New Model Colony" area and the New Model Colony area has now been renamed as "Ontario Ranch."

WHEREAS, the property developer/owners are made aware of the South Archibald Trichloroethylene (TCE) Plume Disclosure Letter (Exhibit "G"). Property owner may wish to provide the attached Letter as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq. This may include notifications in the Covenants, Conditions and Restrictions (CC&Rs) or other documents related to property transfer and disclosures. Additional information on the plume is available from the Santa Ana Regional Water Quality Control Board at http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T10000004658.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "CITY" means the City of Ontario, California, a California municipal corporation.

1.1.3 "Construction Agreement" means that certain Agreement for the Financing and Construction of Phases I and II Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony, entered into between the CITY and NMC Builders as of the 4th day of October, 2005, and all amendments thereto and "Construction Agreement Amendment" means that First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve and Easterly Portion of the New Model Colony entered into between the CITY and NMC Builders as of the 21st day of August 2012.

1.1.4 “Development” means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of public infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping. “Development” does not include the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

1.1.5 “Development Approvals” means all permits and other entitlements for use subject to approval or issuance by CITY in connection with development of the Property including, but not limited to:

(a) specific plans and specific plan amendments;

(b) tentative and final subdivision and parcel maps;

(c) development plan review;

(d) conditional use permits (including model home use permits), public use permits and plot plans;

(e) zoning;

(f) grading and building permits.

1.1.6 “Development Exaction” means any requirement of CITY in connection with or pursuant to any Land Use Regulation or Development Approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

1.1.7 “Development Impact Fee” means a monetary exaction, other than a tax or special assessment, whether characterized as a fee or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4, For purposes of this Agreement only, "Development Impact Fee" shall not include processing fees and charges imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government

Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superceded, including by amendment or replacement.

1.1.8 "Development Plan" means the Existing Development Approvals and the Existing Land Use Regulations applicable to development of the Property.

1.1.9 "Effective Date" means the date that the ordinance approving this Agreement goes into effect.

1.1.10 "Existing Development Approvals" means all Development Approvals approved or issued prior to the Effective Date. Existing Development Approvals includes the Approvals incorporated herein as Exhibit "C" and all other Approvals which are a matter of public record on the Effective Date.

1.1.11 "Existing Land Use Regulations" means all Land Use Regulations in effect on the Effective Date. Existing Land Use Regulations includes the Regulations incorporated herein as Exhibit "D" and all other Land Use Regulations that are in effect and a matter of public record on the Effective Date.

1.1.12 "General Plan" means the General Plan adopted on January 27, 2010.

1.1.13 "Improvement" or "Improvements" means those public improvements required to support the development of the Project as described in the Tract Map conditions for Tract No. 20449 as further described in Exhibit "E" and depicted in Exhibit "F" (the "Infrastructure Improvements Exhibit").

1.1.14 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of CITY governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Property. "Land Use Regulations" does not include any CITY ordinance, resolution, code, rule, regulation or official policy, governing:

(a) the conduct of businesses, professions, and occupations;

(b) taxes and assessments;

(c) the control and abatement of nuisances;

(d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property;

(e) the exercise of the power of eminent domain.

1.1.15 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns.

1.1.16 "Model Units" means a maximum of nineteen (19) model units, private common recreation facilities and sales facilities constructed by OWNER prior to the construction of any Production units and not offered for sale and occupancy for a period of time after the issuance of permits for Production Units.

1.1.17 "OWNER" means the persons and entities listed as owner on page 1 of this Agreement and their permitted successors in interest to all or any part of the Property.

1.1.18 "Production Unit(s)" means all units constructed for sale and occupancy by OWNER and excludes the specified number of Model Units constructed by OWNER for promotion of sales.

1.1.19 "Project" means the development of the Property contemplated by the Development Plan, as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.1.20 "Property" means the real property described on Exhibit "A" and shown on Exhibit "B" to this Agreement.

1.1.21 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to OWNER under this Agreement and reserved to CITY under Section 3.6 of this Agreement.

1.1.22 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "Rich-Haven Specific Plan."

1.1.23 "Storm Water Treatment Capacity Availability" means a designated portion of the total Storm Water Treatment Capacity Availability made available through the completion of construction of a Phase of regional storm water treatment facilities by the NMC Builders LLC as described in the Construction Agreement Amendment. The amount, in acres, of Storm Water Treatment Capacity Availability required for the issuance of a grading permit shall be based upon the factors and assumptions listed in the Construction Agreement Amendment.

1.1.24 "Subsequent Development Approvals" means all Development Approvals required subsequent to the Effective Date in connection with development of the Property.

1.1.25 "Subsequent Land Use Regulations" means any Land Use Regulations adopted and effective after the Effective Date of this Agreement.

1.1.26 "Water Availability Equivalent (WAE)" means a designated portion of the total Net MDD made available through the construction of each Phase described in the Water Phasing Plan of the Construction Agreement. The number of Water Availability Equivalents (of portions thereof) required for the issuance of each building permit shall be based upon water demand factors and assumptions listed in the Construction Agreement and Construction Agreement Amendment as "Water Availability Equivalents by Land Use" for each land use category.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit "A" — Legal Description of the Property.

Exhibit "B" — Map showing Property and its location.

Exhibit "C" — Existing Development Approvals.

Exhibit "D" — Existing Land Use Regulations.

Exhibit "E" — Description of Required Infrastructure Improvements

Exhibit "F" — Depiction of Required Infrastructure Improvements Exhibit

Exhibit "G" - Form of Plume Disclosure Letter

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out only in accordance with the terms of this Agreement.

2.2 Ownership of Property. OWNER represents and covenants that it is the owner of the fee simple title to the Property or a portion thereof, or has the right to acquire fee simple title to the Property or a portion thereof from the current owner(s) thereof. To the extent OWNER does not own fee simple title to the Property, OWNER shall obtain written consent from the current fee owner of the Property agreeing to the terms of this Agreement and the recordation thereof.

2.3 Term. The term of this Agreement shall commence on the Effective Date and shall continue for an initial term of ten (10) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement. The term of this Agreement may be extended for an additional five (5) years following expiration of the initial ten (10) year term, provided the following have occurred:

(a) OWNER provides at least 180 days written notice to CITY prior to expiration of the initial term; and

(b) In non-mixed use and residential use only projects, the OWNER shall have obtained, as applicable, building permits for at least seventy percent (70%) of the actual number of residential units permitted under this Agreement; and

(c) OWNER is not then in uncured default of this Agreement.

2.4 Assignment.

2.4.1 Right to Assign. OWNER shall have the right to sell, transfer or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.), to any person, partnership, limited liability company, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following:

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property. OWNER may be required to provide disclosure that the Property is within the South Archibald Trichloroethylene (TCE) Plume. OWNER may wish to provide the attached Disclosure Letter (Exhibit G) as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq.

(b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, OWNER shall notify CITY's City Manager, in writing, of such sale, transfer or assignment and shall provide CITY with: (1) an executed agreement, in a form reasonably acceptable to CITY, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties and obligations of OWNER under this Agreement with respect to the portion of the Property so sold, transferred or assigned; and (2) the payment of the applicable processing charge to cover the CITY's review and consideration of such sale, transfer or assignment.

(c) Any sale, transfer or assignment not made in strict compliance with the foregoing conditions shall constitute a default by OWNER under this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by Paragraph (b) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee or assignee until and unless such agreement is executed. The City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny any proposed sale, transfer or assignment that is not made in compliance with this section 2.4.

2.4.2 Release of Transferring Owner. Notwithstanding any sale, transfer or assignment, a transferring OWNER shall continue to be obligated under this Agreement unless such transferring owner is given a release in writing by CITY, which release shall be provided by CITY upon the full satisfaction by such transferring owner of the following conditions:

(a) OWNER no longer has a legal or equitable interest in all or any part of the portion of the Property sold, transferred or assigned.

(b) OWNER is not then in default under this Agreement.

(c) OWNER has provided CITY with the notice and executed agreement required under Paragraph (b) of Subsection 2.4.1 above.

(d) The purchaser, transferee or assignee provides CITY with security equivalent to any security previously provided by OWNER to secure performance of its obligations hereunder.

2.4.3 Effect of Assignment and Release of Obligations. In the event of a sale, transfer or assignment pursuant to the provisions of Section 2.4.2 above:

(a) The assignee shall be liable for the performance of all obligations of OWNER with respect to transferred property, but shall have no obligations with respect to the portions of the Property, if any, not transferred (the "Retained Property").

(b) The owner of the Retained Property shall be liable for the performance of all obligations of OWNER with respect to Retained Property, but shall have no further obligations with respect to the transferred property.

(c) The assignee's exercise, use and enjoyment of the Property or portion thereof shall be subject to the terms of this Agreement to the same extent as if the assignee were the OWNER.

2.4.4 Subsequent Assignment. Any subsequent sale, transfer or assignment after an initial sale, transfer or assignment shall be made only in accordance with and subject to the terms and conditions of this Section 2.4.

2.4.5 Termination of Agreement with Respect to Individual Lots Upon Sale to Public and Completion of Construction. The provisions of Subsection 2.4.1 shall not apply to the sale or lease (for a period longer than one year) of any lot which has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

(a) The lot has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and,

(b) A certificate of occupancy has been issued for a building on the lot, and the fees set forth under Section 4 of this Agreement have been paid.

2.5 Amendment or Cancellation of Agreement. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section 65868.1. Any amendment of this Agreement, which amendment has been requested by OWNER, shall be considered by the CITY only upon the payment of the applicable processing charge. This provision shall not limit any remedy of CITY or OWNER as provided by this Agreement. Either Party or successor in interest, may propose an amendment to or cancellation, in whole or in part, of this Agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided otherwise in this Agreement or in Government Code Section 65865.1. For purposes of this section, the term "successor in interest" shall mean any person having a legal or equitable interest in the whole of the Property, or any portion thereof as to which such person wishes to amend or cancel this Agreement. The procedure for proposing and adopting an amendment to, or cancellation of, in whole or in part, this Agreement shall be the same as the procedure for adopting and entering into this Agreement in the first instance. Notwithstanding the foregoing sentence, if the CITY initiates the proposed amendment to, or cancellation of, in whole or in part, this Agreement, CITY shall first give notice to the OWNER of its intention to initiate such proceedings at least sixty (60) days in advance of the giving the public notice of intention to consider the amendment or cancellation.

2.5.1 Amendment to Reflect Consistency With Future Amendments to the Construction Agreement. To the extent any future amendment to the Construction Agreement provides for modifications to rights or obligations that differ from or alter the same or similar rights or obligations contained in this Development Agreement, OWNER reserves the right to request an amendment to the Development Agreement to reflect any or all of such modifications.

2.6 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 2.3.

(b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

(c) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.

(d) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by CITY or applicable public agency of all required dedications.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant to Section 4.2 of this Agreement by OWNER to CITY for residential units on which construction has not yet begun shall be refunded to OWNER by CITY.

2.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to CITY:
Scott Ochoa, City Manager
City of Ontario
303 East "B" Street
Ontario, CA 91764

If to OWNER:
Dave Bartlett
BrookCal Ontario LLC
3200 Park Center Drive, Suite 100
Costa Mesa, CA 92626
Phone: 714.200.1533

with a copy to:
Ruben Duran, City Attorney
Best Best & Krieger, LLP
2855 E Guasti Road
Ontario, CA 91761

with a copy to:
Tim Roberts
BrookCal Ontario LLC
3200 Park Center Drive, Suite 1000
Costa Mesa, CA 92626
Phone: 714.200.2483

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of

a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Development Plan.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, CITY shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

3.3 Timing of Development. The parties acknowledge that OWNER cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of OWNER, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Ca1. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that OWNER shall have the right to develop the Property in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment.

3.3.1 Infrastructure Improvement Exhibit. Attached hereto as Exhibits "E" and "F" are a description and depiction, respectively, of the improvements needed for the development of the Property. In the event of any discrepancy between Exhibit E and Exhibit F, Exhibit F shall control.

3.4 Requirement for Public Infrastructure Improvements. Development of the Property is contingent in part on the phasing of area-wide infrastructure improvements

over which the OWNER has control. The issuance of building permits by CITY for Model Units and Production Units is, in general, contingent on OWNER's completion of needed infrastructure improvements and the availability of improvements and services to serve the Property.

3.4.1 Attached hereto as Exhibit "E" and Exhibit "F" are the description and depiction of the infrastructure improvements needed for the development of the Property ("the Infrastructure Improvement Exhibit").

3.4.2 Subject to the prior submittal by OWNER and approval by CITY of a plan to provide sufficient public infrastructure for the construction of a maximum number of nineteen (19) Model Units, private common recreation facilities and sales facilities. CITY may issue a maximum of nineteen (19) building permits for Model Units, private common recreation facilities and sales facilities. The plan to be submitted by OWNER for CITY approval shall describe the utilities and other infrastructure necessary to provide sufficient fire protection and other public health and safety requirements for the Model Units and other facilities.

3.5 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event OWNER finds that a change in the Existing Development Approvals is necessary or appropriate, OWNER shall apply for a Subsequent Development Approval to effectuate such change and CITY shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. If approved, any such change in the Existing Development Approvals shall be incorporated herein as an addendum to Exhibit "C", and may be further changed from time to time as provided in this Section. Unless otherwise required by law, as determined in CITY's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

(a) Alter the permitted uses of the Property as a whole; or,

(b) Increase the density or intensity of use of the Property as a whole; or,

(c) Increase the maximum height and size of permitted buildings; or,

(d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,

(e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

3.6 Reservations of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the CITY shall not be prevented from applying new rules, regulations and policies upon the OWNER, nor shall a development agreement prevent the CITY from denying or conditionally approving any subsequent development project application on the basis of such new rules, regulations and policies where the new rules, regulations and policies consist of the following:

(a) Processing fees by CITY to cover costs of processing applications for development approvals or for monitoring compliance with any development approvals;

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records and any other matter of procedure;

(c) Regulations, policies and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the CITY and any local amendments to those codes adopted by the CITY; provided however that, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan;

(d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the residents of the project and/or of the immediate community from a condition perilous to their health or safety;

(e) Regulations that do not conflict with those rules, regulations and policies set forth in this Agreement or the Development Plan;

(f) Regulations that may conflict but to which the OWNER consents.

3.6.2 Subsequent Development Approvals. This Agreement shall not prevent CITY, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations that do not conflict with the Development Plan, nor shall this Agreement prevent CITY from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Plan.

3.6.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or

suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce. In the event OWNER alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Agreement, and the CITY does not agree, the OWNER may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided however, that nothing contained in this Section 3.6.3 shall impose on CITY any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

3.6.4 Intent. The parties acknowledge and agree that CITY is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations and exceptions are intended to reserve to CITY all of its police power which cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to CITY all such power and authority which cannot be restricted by contract.

3.7 Public Works; Utilities. If OWNER is required by this Agreement to construct any public works facilities which will be dedicated to CITY or any other public agency upon completion, and if required by applicable laws to do so, OWNER shall perform such work in the same manner and subject to the same requirements as would be applicable to CITY or such other public agency should it have undertaken such construction. As a condition of development approval, OWNER shall connect the Project to all utilities necessary to provide adequate water, recycled water, sewer, gas, electric, and other utility service to the Project. As a further condition of development approval, OWNER shall contract with the CITY for CITY-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the CITY.

3.7.1 OWNER agrees that development of the Project shall require the construction of storm drain improvements as described in Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the storm drain improvements, as described in Exhibit E and depicted in Exhibit F.

3.7.2 OWNER agrees that development of the Project shall require the construction of street improvements as described in Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the street improvements, as described in Exhibit E and depicted in Exhibit F.

3.7.3 OWNER agrees that development of the Property shall require the extension of water and recycled water utility infrastructure as described in Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the water and recycled

water improvements as described in Exhibit E and depicted in Exhibit F. OWNER also agrees that recycled water shall be available and utilized by OWNER for all construction-related water uses including prior to, and during, any grading of the Property.

3.7.4 OWNER agrees that development of the Property shall require the extension of sewer improvements, as described in the attached Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the sewer improvements, as described in Exhibit E and depicted in Exhibit F.

3.7.5 OWNER agrees that development of the Property shall require the extension of fiber optic communications improvements as described in the attached Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the fiber optic communication improvements, as described in Exhibit E and depicted in Exhibit F.

3.8 Acquisition of Offsite Provision of Real Property Interests. In any instance where OWNER is required by any Development Approval or Land Use Regulation and the Construction Agreement to construct any public improvement on land not owned by OWNER ("Offsite Improvements"), the CITY and OWNER shall cooperate in acquiring the necessary legal interest ("Offsite Property") in accordance with the procedures set forth in Section 2.4 of the Construction Agreement. This section 3.8 is not intended by the parties to impose upon the OWNER an enforceable duty to acquire land or construct any public improvements on land not owned by OWNER, except to the extent that the OWNER elects to proceed with the development of the Project, and then only in accordance with valid conditions imposed by the CITY upon the development of the Project under the Subdivision Map Act or other legal authority.

3.8.1 CITY Acquisition of Non-Construction Agreement Offsite Property. In the event OWNER is required to construct any public improvements on land not owned by OWNER, but such requirement is not based upon the Construction Agreement, Sections 3.8.1 and 3.8.2 shall control the acquisition of the necessary property interest(s) ("Non-Construction Agreement Offsite Property"). If the OWNER is unable to acquire such Non-Construction Agreement Offsite Property, and following the written request from the OWNER to CITY, CITY agrees to use reasonable and diligent good faith efforts to acquire the Non-Construction Agreement Offsite Property from the owner or owners of record by negotiation to the extent permitted by law and consistent with this Agreement. If CITY is unable to acquire the Non-Construction Agreement Offsite Property by negotiation within thirty (30) days after OWNER'S written request, CITY shall, initiate proceedings utilizing its power of eminent domain to acquire that Non-Construction Agreement Subject Property at a public hearing noticed and conducted in accordance with California Code of Civil Procedure Section 1245.235 for the purpose of considering the adoption of a resolution of necessity concerning the Non-Construction Agreement Offsite Property, subject to the

conditions set forth in this Section 3.8. The CITY and OWNER acknowledge that the timelines set forth in this Section 3.8.1 represent the maximum time periods which CITY and OWNER reasonably believe will be necessary to complete the acquisition of any Non-Construction Agreement Offsite Property. CITY agrees to use reasonable good faith efforts to complete the actions described within lesser time periods, to the extent that it is reasonably able to do so, consistent with the legal constraints imposed upon CITY.

3.8.2 Owner's Option to Terminate Proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to making an offer to the owner of the Non-Construction Agreement Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease all acquisition proceedings with respect to that Non-Construction Agreement Offsite Property, whereupon CITY shall cease such proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to the date of the hearing on CITY'S intent to consider the adoption of a resolution of necessity as to any Non-Construction Agreement Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease condemnation proceedings, whereupon CITY shall cease such proceedings. If OWNER does not notify CITY to cease condemnation proceedings within said fifteen (15) day period, then the CITY may proceed to consider and act upon the Non-Construction Agreement Offsite Property resolution of necessity. If CITY adopts such resolution of necessity, then CITY shall diligently institute condemnation proceedings and file a complaint in condemnation and seek an order of immediate possession with respect to the Non-Construction Agreement Offsite Property.

3.9 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of CITY possess authority to regulate aspects of the development of the Property separately from or jointly with CITY and this Agreement does not limit the authority of such other public agencies. CITY agrees to cooperate fully, at no cost to CITY, with OWNER in obtaining any required permits or compliance with the regulations of other public agencies provided such cooperation is not in conflict with any laws, regulations or policies of the CITY.

3.10 Tentative Tract Maps; Extension. With respect to applications by OWNER for tentative subdivision maps for portions of the Property, CITY agrees that OWNER may file and process tentative maps in accordance with Chapter 4.5 (commencing with Section 66498.1) of Division 2 of Title 7 of the California Government Code and the applicable provisions of CITY's subdivision ordinance, as the same may be amended from time to time. In accordance with the provisions of Section 66452.6 of the Government Code, each tentative subdivision map or tentative parcel map, heretofore or hereafter approved in connection with development of the Property, shall be deemed to have been granted an extension of time to and until the date that is five (5) years following the Effective Date of this Agreement.; The CITY's City Council may, in its discretion, extend any such map for an additional period of up to five (5) years beyond

its original term, so long as the subdivider files a written request for an extension with the City prior to the expiration of the initial five (5) year term.

4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs that will not be fully met by the Development Plan and further acknowledge and agree that this Agreement confers substantial private benefits on OWNER that should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on OWNER by providing more fully for the satisfaction of the public needs resulting from the Project.

4.2 Development Impact Fees.

4.2.1 Amount of Development Impact Fee. Development Impact Fees (DIF) shall be paid by OWNER. The Development Impact Fee amounts to be paid by OWNER shall be the amounts that are in effect at the time such amounts are due. Nothing contained in this Agreement shall affect the ability of the CITY to impose new Development Impact Fees or amend the amounts of existing Development Impact Fees. Additionally, nothing contained in this Agreement shall affect the ability of other public agencies that are not controlled by CITY to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by CITY.

4.2.2 Time of Payment. The Development Impact Fees required pursuant to Subsection 4.2.1 shall be paid to CITY prior to the issuance of building permit for each applicable residential or other unit, except for the Open Space and Habitat Acquisition Development Impact fee, which shall be paid by OWNER to CITY prior to the issuance of a grading permit. Deferral of the payment of Development Impact Fees may be granted pursuant to a separate agreement approved by City pursuant to City policy.

4.2.3 Parkland and Quimby Act Fees. Pursuant to the General Plan (Ontario Plan) Goal PR1, Policy PR1-5 (achievement of a park standard of 5 acres of parkland per 1,000 residents) OWNER shall provide improved parks, developed in accordance with the City's park standards in an amount equal to two (2) acres per 1,000 of projected population without credit, reimbursement, offset or consideration from City. Such areas shall either be dedicated to the City or transferred to a homeowners' association. If approved by the City Manager, OWNER may satisfy this requirement through the development of non-public recreation facilities such as private recreational clubhouses or pool facilities. Credit for such private recreational facilities areas shall be limited to a maximum of 50% of the foregoing park development requirement. If OWNER's Project does not provide dedicated and developed park acreage equal to two (2) acres per 1,000 projected population, OWNER shall pay a fee in-lieu equal to the per

acre estimated costs of acquisition and development of parkland in the City's Development Impact Fee for the calculated park acreage deficiency, at the time the fee becomes due and payable to the City. Such in-lieu fee shall be due and payable prior to the issuance of the first building permit for Production Units issued to OWNER. Any park dedication and/or improvements in excess of such two (2) acres per thousand standard, provided such park has been developed in accordance with the City's park standards and is open to the public generally, shall entitle OWNER to a credit toward its obligations under the Quimby Act (Gov. Code, § 64477) and the City's implementing ordinance and/or resolution (collectively "**Quimby Act Obligations**"), and to the extent OWNER's Quimby Act Obligations are satisfied, OWNER shall be entitled to have the City acquire such developed and publicly available parks as Non-Program Interests in accordance with Section 4.3.3 below.

4.3 Responsibility for Construction of Public Improvements.

4.3.1 Timely Construction of Public Infrastructure. The phasing of the areawide infrastructure construction within the New Model Colony will be as approved by the CITY. OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the Project as shown on the attached Exhibit "F" and any and all tentative tract map conditions. Unless otherwise specified in the Subdivision Agreement/Tract Map conditions, all other required Improvements for each Tract Map, shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of the first building permit for Production Units for each such Tract Map. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Tract Map conditions for Tract Map No. 20449.

4.3.2 Construction of DIF Program Infrastructure (Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and the Construction Agreement between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit in accordance with the provisions of the Construction Agreement and any amendments thereto. Use of DIF Credit issued to OWNER as a member of NMC Builders LLC to offset OWNER's DIF payment obligations shall also be subject to the provisions of the Construction Agreement and any amendments thereto.

4.3.3 Construction of DIF Program Infrastructure (Non-Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and such public improvements are not included the Construction Agreement between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitation on the use of DIF Credit issued to OWNER to offset OWNER's DIF payment obligations shall also be subject to the provisions of a separate Fee Credit Agreement. CITY and

OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements.

4.4 Affordable Housing Requirement.

4.4.1 Affordable Housing- Number of Units. OWNER shall provide a minimum number of affordable housing units, equivalent to 10% of the OWNER's total approved residential units within the Project, that are affordable to very low, low and moderate income households. Such requirement for affordable housing shall be met through one, or a combination of one or more, of the options provided in the following Sections 4.3.2.1 through 4.3.2.1. For the purposes of this Section, any term not defined in this Agreement shall be as defined by California Community Redevelopment Law (California Health and Safety Code Section 33000 et seq.).

4.4.2 Affordability Spread. Of the total number of residential dwelling units specified in Section 4.4.1, to be constructed or rehabilitated pursuant to Sections 4.4.2.1 or 4.4.2.2 respectively, thirty percent (30%) shall be available to very low income, thirty percent (30%) shall be available to low income and forty percent (40%) shall be available to moderate income households. "**Households**" shall be as defined by California Health and Safety Code Section 50053.

4.4.2.1 New Construction. If OWNER elects to fully or partially satisfy the affordable housing requirement by the construction of new residential units, it shall construct and restrict the affordability of residential dwelling units within its Project or, at OWNER's option and with the approval of the City, within another project elsewhere within the City. The affordable units constructed shall be intermingled with other units as part of the Project, and shall be built to the same construction, design and aesthetic standards, as well as number of rooms, as other units constructed as part of that OWNER's Project. In addition, the percentage ratio of affordable units offered for sale versus those offered for rent shall equal the percentage ratio of other units offered for sale versus for rent within OWNER's Project. Such construction shall be completed no later than the date that is five (5) years following the issuance of the first building permit for OWNER's Project; provided however that to the extent OWNER has not constructed the required percentage of units, based on the number of building permits for non-restricted units, OWNER shall, prior to the issuance of such building permits, provide security (in the form and substance approved by the City Manager and City Attorney) to City in order to ensure the faithful completion of such required percentage of construction of affordable units. If OWNER elects the option of constructing new affordable units, a detailed Affordable Housing Agreement specifying terms for the allowable monthly housing costs or rents (as applicable) and maintenance and occupancy standards shall be prepared, executed and recorded against such units as a condition to the issuance of a building permit. The Affordable Housing Agreement shall hold a recorded priority position senior to any other non-

statutory lien or encumbrance affecting the unit.

4.4.2.2 Rehabilitation. If OWNER elects to fully or partially satisfy the affordable housing requirement by the substantial rehabilitation of existing residential units in the City, it shall substantially rehabilitate and restrict the affordability of, the number of residential units specified in Section 4.4.1, provided that such units shall be provided elsewhere within the City. The rehabilitation work shall be substantial and of high quality and shall also address any deferred property maintenance issues on the property. "**Substantial rehabilitation**" shall mean rehabilitated multi-family rented dwelling units with three or more units and the value of the rehabilitation constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of land value pursuant to Health and Safety Code Section 33413(b)(2)(A)(iii-iv) as such section exists as of the Effective Date of this Agreement. If OWNER chooses the option of rehabilitation of existing housing units within the City, a detailed Affordable Housing Agreement specifying the terms for the allowable month housing costs or rents (as applicable) and maintenance and occupancy standards shall be prepared, executed and recorded against such units as a condition to the issuance of a building permit. Such rehabilitation shall be completed no later than the date that is five (5) years following the issuance of the first building permit for OWNER's Project; provided however that to the extent OWNER has not rehabilitated the required percentage of units, based on the number of building permits, OWNER shall, prior to the issuance of such building permits, provide security (in the form and substance approved by the City Manager and City Attorney) to the City in order to ensure the faithful completion of such required percentage of rehabilitation.

4.4.2.3 In-Lieu Fee. If OWNER has not fully complied with the requirements of Section 4.3.1 by providing the minimum number of affordable units through the construction of new affordable units or by the substantial rehabilitation of existing units, shall pay an "**Affordability In-Lieu Fee**". If OWNER has not provided any affordable residential units by construction or rehabilitation, the Affordability In-Lieu fee shall be equal to Two Dollars Sixty-One Cents ($2.61) per square foot of residential development within OWNER's Project or, if pre-paid as set forth below, Two Dollars Twenty-Eight Cents ($2.28) per square foot of residential development within OWNER's Project. If OWNER has partially complied with the requirements of Section 4.4.1 by construction or rehabilitation of less than the minimum number of units, then the Affordability In-lieu Fee shall be recalculated and reduced in consideration of the number and type of affordable units provided. The Affordability In-Lieu Fee shall be paid by OWNER to City no later than prior to the issuance of each building permit within OWNER's Project based on the square footage of the residential unit for which such building permit is sought; provided however that OWNER may, at OWNER's election, pre-pay such Affordability In-Lieu Fee by paying such Affordability In-Lieu Fee within thirty (30) days following the

earliest discretionary approval by the City for OWNER's Project, including, but not limited to, any general plan amendment, specific plan adoption, development agreement, tentative map approval, variance, conditional use permit, or resolution of intention to form any public financing mechanism. The Two Dollars, Thirty-Seven Cents ($2.37) and the Two Dollars Seven Cents ($2.07) per square foot amounts shall automatically be increased annually, commencing on July 1, 2022, and automatically each July 1 thereafter. Such adjustment shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Riverside - San Bernardino - Ontario, CA), (December 2017=100) over the preceding year. The pre-paid Affordability In-Lieu Fee shall be calculated based on the maximum floor area ratio (FAR) permitted within the General Plan and any applicable FAR contained within the applicable specific plan, whichever is greater, and the Maximum Development Density. For purposes of this Agreement, "**Maximum Development Density**" shall be determined by multiplying the OWNER's Project's density for residential development potential as set forth in the General Plan or the applicable Specific Plan, whichever is less, by the net acreage of land within OWNER's Project. All "Affordability In-Lieu Fees" collected by the City shall be used to promote the construction of affordable housing within the City.

4.4.2.4 Affordability Covenants. Prior to the issuance of the first building permit for any affordable unit, the City and OWNER shall enter into an Affordable Housing Agreement Affordability shall be assured for a period of forty-five (45) years for for-sale units and fifty-five (55) years for rentals. For rental units, base rents shall be established by the City and rental adjustments required by the City shall be performed on an annual basis. In addition, the Affordable Housing Agreement shall impose maximum occupancy limits of 2 occupants per bedroom plus 1 additional occupant per dwelling unit, and a requirement for the owner or tenant to properly maintain each dwelling unit.

4.4.2.5 Transfer of Affordable Project. No transfer of title to any affordable housing project shall occur without the prior written consent of the City. In the event OWNER transfers title to any affordable housing project required to be constructed pursuant to this Agreement to a non-profit entity, or other entity, that receives an exemption from ad valorem real property taxes, the City shall be required to assure payment of an annual in lieu fee to the City on July 1 of each year equal to one-tenth of one percent (0.1%) of the assessed value of such project. The City may permit OWNER to satisfy this obligation by recorded covenants against the property and enforceable against said entity by the City. Any such covenants shall be approved by the Planning Director and the City Attorney.

4.5 Schools Obligations.

4.5.1 Written Evidence of Compliance with Schools Obligations.
OWNER shall, either through joint or individual agreements between OWNER and the applicable school district(s), shall satisfy its new school obligations. The new school obligations for the Mountain View School District in the Ontario Ranch area have been projected to include the acquisition or dedication of school sites for, and construction of, up to eight (8) schools. Of these eight (8) schools, six (6) are to be elementary (K-5) grade schools and two (2) are to be middle grade schools. The new school obligations for the Chaffey Joint Union High School District in the Ontario Ranch area have been projected to include the dedication of a school site for, and construction of, an additional high school. The new school obligations for the applicable school district shall be met by a combination of the following: (1) designating and dedicating school site(s) within the Property as set forth in the General Plan, and/or (2) paying school impact fees, (3) entering into a joint mitigation agreement or individual mitigation agreements, or (4) any combination of the foregoing. Written evidence of approval by the applicable school district that OWNER has met their school obligations may be required by the City as the condition to the issuance by the City of any entitlements for OWNER's Project. In the event OWNER is unable to provide such written evidence from the applicable school district(s), the City shall have the right to decline to honor any DIF Credit, Certificates of MDD Availability, Certificates of Storm Water Treatment Capacity Availability, or any combination thereof, presented by such OWNER, without liability to the City. To the extent that a joint mitigation agreement is approved by the applicable school district(s), and OWNER is a participant in good standing in such mitigation agreement, OWNER shall be deemed to have mitigated its new school obligations under this Section 4.4.1.

4.6 Public Services Funding Fee.

4.6.1 Requirement for Payment of Public Services Funding Fee. In order to ensure that the adequate provision of public services, including without limitation, police, fire and other public safety services, are available to the residents of each Project in a timely manner, OWNER shall pay to CITY a "**Public Services Funding Fee**." The Public Services Funding Fee shall apply to residential and non-residential uses as set forth below.

4.6.2 Public Services Funding Fee Amount. OWNER shall pay a Public Services Funding fee in the total amount of Two Thousand Three Hundred Seventeen dollars ($2,317.00) per residential dwelling unit. The Public Services Funding Fee shall be paid in one (1) installment within one hundred eighty (180) calendar days after the effective date of the Development Agreement or in two (2) installments, at OWNER's option, as follows:

4.6.2.1 First Installment (Residential uses). The First Installment of the Public Services Funding Fee shall be One Thousand One Hundred Fifty Eight dollars and fifty cents ($1,158.50) per residential dwelling unit. The First Installment shall be based upon the "**Maximum Development**

Density" of the OWNER Project, as defined in Section 3.7.2.3 of the First Amended and Restated Construction Agreement. The First Installment shall be due and payable 30 days following the effective date of the Development Agreement.

If the First installment amount is not paid for all residential dwelling units within the Project (based on the Maximum Development Density, or the number of units described on "B Maps" if approved) by January 1, 2023, the amount of the First Installment shall be increased. Such increase shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Riverside - San Bernardino - Ontario, CA) (December 2017=100) over the preceding year. Additionally, the amount shall be further increased automatically by the percentage increase in the Consumer Price Index (Riverside - San Bernardino - Ontario, CA) (December 2017=100) on each January 1 thereafter.

4.6.2.2 Second Installment (Residential Uses). The Second Installment of the Public Services Funding Fee shall be One Thousand One Hundred Fifty Eight dollars and fifty cents ($1,158.50) per residential unit. The Second Installment shall be paid at the time of the issuance of each building permit for the Project. The amount of the Second Installment shall increase automatically by percentage increase (but no decrease) in the Consumer Price Index (Riverside - San Bernardino - Ontario, CA) (December 2017=100) over the preceding year on January 1st of each year, beginning on January 1, 2023. OWNER may exercise the option to pay the Second Installment amount for all residential units, a portion of the residential units, or for the remainder of the residential units within OWNER's Project on or before each December 31st, before the Second Installment amount is automatically increased.

4.6.2.3 Single Installment (Non-residential Uses). A single installment payment of the Public Services Funding Fee shall be required in the amount of Seventy Cents ($.70) per square foot of non-residential buildings. The single installment for non-residential uses shall be due and payable prior to the issuance of the building permit for a non-residential building. The amount of the Single Installment for non-residential uses shall automatically increase by percentage increase (but no decrease) in the Consumer Price Index (Riverside - San Bernardino - Ontario, CA), (December 2017=100) over the preceding year on January 1st of each year, beginning on January 1, 2023. OWNER may exercise the option to pay any single installment amounts for the remainder of the non-residential square footage within the Project on or before December 31st, before the Single Installment amount is automatically increased.

4.7 Net MDD/Water Availability Equivalents.

4.7.1 Assigned Net MDD/Water Availability Equivalents. The City has agreed with NMC Builders LLC to reserve exclusively for Members of NMC Builders, including OWNER, Net MDD made available through the construction of water system improvements funded by NMC Builders LLC. NMC Builders has assigned to OWNER its allocable share of the Net MDD issued by City. The provisions of the Construction Agreement Amendment requires that the City shall not approve a final tract map or issue building permits or certificates of occupancy for the area of development within the New Model Colony served by the water system improvements funded by NMC Builders LLC, except to the bearer of an Assignment of Net MDD Water Availability.

4.7.2 Use of Assigned Net MDD Water Availability. OWNER shall provide evidence of sufficient Net MDD Water Availability Equivalents (or portions thereof) prior to and as a condition precedent to, the City's approval of any and all tract maps for the Property. The amount of Net MDD Water Availability Equivalents required for City's approval of a tract map shall be based upon water demand factors and assumptions listed in Exhibit C-2R of the Construction Agreement Amendment as "Water Demand Equivalents by Land Use" for each land use category.

4.7.3 Requirement for other Water System Improvements. A Certificate of Net MDD Availability is evidence only of available water capacity and does not satisfy any other conditions applicable to an OWNER's Project, including those relating to design and construction of master-planned potable water and recycled water transmission and distribution system for the respective pressure zone and other public infrastructure requirements.

4.8 Storm Water Capacity Availability.

4.8.1 Requirement for Storm Water Treatment Capacity Availability. OWNER shall provide evidence of sufficient Storm Water Treatment Capacity Availability as reserved in a Certificate of Storm Water Treatment Capacity Availability the same manner and subject to the same limitations as provided for the assignment of Certificates of Net MDD Availability in Section 4.6 of this Agreement.

4.8.2 Use of Storm Water Treatment Capacity Availability. The amount of Storm Water Treatment Capacity Availability required for the issuance of a grading permit to OWNER shall be based upon the Net Residential Acreage of the area to be graded regardless of the corresponding use.

4.8.3 Requirement for other Storm Water Improvements. The Certificate of Storm Water Treatment Capacity Availability is evidence only of available storm water treatment capacity and does not satisfy any other conditions applicable to a particular development project, including those relating to on-site water treatment, water quality, connection to the storm water collection system, or other public infrastructure requirements.

4.9 Maintenance of Open Space. OWNER shall provide for the ongoing maintenance of all park, common areas and open space areas within the Project as more particularly set forth in the Specific Plan, through a homeowners' association as approved by the CITY. Covenants, conditions and restrictions establishing any homeowners' association shall be approved by the Planning Director and City Attorney.

4.10 Compliance with Public Benefits Requirements.

4.10.1 Failure to Provide Public Benefits. In the event OWNER fails or refuses to comply with any condition referenced in Section 4.1 through 4.10, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, OWNER shall be deemed in default of this Agreement pursuant to Section 8.4 hereof, thereby entitling the City to any and all remedies available to it, including, without limitation, the right of the City to withhold OWNER's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). In accordance with the Memorandum of Agreement between the CITY and NMC Builders, CITY will cooperate with OWNER in the formation of a CFD, or CFDs, to include all of the Project, to provide a financing mechanism to reimburse the OWNER for funds paid to NMC Builders LLC for OWNER's share of the costs of public infrastructure pursuant to the Construction Agreement and to acquire other public facilities constructed by OWNER subject to the provisions of the Memorandum of Agreement between CITY and NMC Builders LLC. Notwithstanding such reimbursements and acquisitions, OWNER shall remain entitled to DIF Credits as provided for in Article 3 of the Construction Agreement and/or as provided for in a separate Fee Credit Agreement between CITY and OWNER. OWNER agrees that, prior to the recordation of any Tract Map for the Property, the Property shall be included in a CFD to finance City services through annual special taxes that will initially be $1,560.77 per Single Family Detached Dwelling Unit, $1,352.59 per Multiple-Family Dwelling Unit, $1,134.29 per Gated Apartment Community Dwelling Unit, and $.29 per square foot for Non-Residential buildings. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year, unless otherwise modified by the CITY. CITY shall be the sole and exclusive lead agency in the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. In addition to the rights of the CITY pursuant to section 5.2 hereof, CITY shall have the right, but not the obligation, to condition the formation of any CFD, assessment district or other public financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the

condition to the formation of any CFD, assessment district or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit the City's ability to take any and all necessary steps requisite to the formation of the CFD to finance City services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district or to issue and sell bonds.

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

6.1.1 Time for and Initiation of Periodic Review. The CITY shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by the OWNER with the terms of this Agreement. The OWNER shall submit an Annual Monitoring Report to CITY, in a form acceptable to the City Manager, along with any applicable processing charge within ten (10) days after each anniversary date of the Effective Date of this Agreement. Within fifteen (15) days after the receipt of the Annual Monitoring Report, CITY shall review the Annual Monitoring Report. Prior to the expiration of the fifteen (15) day review period, CITY shall either issue a notice of continuing compliance or a notice of non-compliance and a notice of CITY's intent to conduct a Special Review pursuant to Sections 6.1.2 through 6.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his designee.

6.1.2 Initiation of Special Review. A special review may be called either by agreement between the parties or by initiation in one or more of the following ways:

(1) Recommendation of the Planning staff;

(2) Affirmative vote of at least four (4) members of the Planning Commission; or

(3) Affirmative vote of at least three (3) members of the City Council.

6.1.3 Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that the CITY intends to undertake a special

review of this Agreement to the OWNER. Such notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission.

6.1.4 Public Hearing. The Planning Commission shall conduct a hearing at which the OWNER must demonstrate good faith compliance with the terms of this Agreement. The burden of proof on this issue is upon the OWNER.

6.1.5 Findings Upon Public Hearing. The Planning Commission shall determine upon the basis of substantial evidence whether or not the OWNER has, for the period under review, complied in good faith with the terms and conditions of this Agreement.

6.1.6 Procedure Upon Findings.

(a) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.

(b) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has not complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission may recommend to the City Council to modify or terminate this Agreement.

(c) The OWNER may appeal a determination pursuant to paragraph (b) to the City Council in accordance with the CITY's rule for consideration of appeals in zoning matters generally.

6.2 Proceedings Upon Modification or Termination. If, upon a finding under Section 6.1.6(b), the CITY determines to proceed with modification or termination of this Agreement, the CITY shall give notice to the property OWNER of its intention so to do. The notice shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not the CITY proposes to terminate or to modify this Agreement; and

(c) Other information that the CITY considers necessary to inform the OWNER of the nature of the proceeding.

6.3 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, the OWNER shall be given an opportunity to be heard. The OWNER shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the OWNER. If the City Council finds, based upon substantial evidence in the

administrative record, that the OWNER has not complied in good faith with the terms and conditions of the agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the CITY. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, OWNER is found to be in compliance with this Agreement, CITY shall, upon written request by OWNER, issue a Certificate of Agreement Compliance ("Certificate") to OWNER stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) OWNER is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. OWNER may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or OWNER, CITY shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [RESERVED]

8. DEFAULT AND REMEDIES.

8.1 Remedies in General. It is acknowledged by the parties that CITY would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that CITY shall not be liable in damages to OWNER, or to any successor in interest of OWNER, or to any other person, and OWNER covenants not to sue for damages or claim any damages:

(a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or

(b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

(c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

8.2 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all parties for the following reasons:

(a) Money damages are unavailable against CITY as provided in Section 8.1 above.

(b) Due to the size, nature and scope of the project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts.

8.3 Release. Except for nondamage remedies, including the remedy of specific performance and judicial review as provided for in Section 6.5, OWNER, for itself, its successors and assignees, hereby releases the CITY, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the CITY because it entered into this Agreement or because of the terms of this Agreement.

8.4 Termination or Modification of Agreement for Default of OWNER. Subject to the provisions contained in Subsections 6.2 and 6.3 herein, CITY may terminate or modify this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate or modify this Agreement pursuant to this Section only after providing written notice to OWNER of default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

8.5 Termination of Agreement for Default of CITY. OWNER may terminate this Agreement only in the event of a default by CITY in the performance of a material term of this Agreement and only after providing written notice to CITY of default setting forth the nature of the default and the actions, if any, required by CITY to cure such default and, where the default can be cured, CITY has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

9. THIRD PARTY LITIGATION.

9.1 General Plan Litigation. CITY has determined that this Agreement is consistent with its Comprehensive General Plan, as such General Plan exists as of the Effective Date ("General Plan"), and that the General Plan meets all requirements of law. OWNER has reviewed the General Plan and concurs with CITY's determination. CITY shall have no liability in damages under this Agreement for any failure of CITY to perform under this Agreement or the inability of OWNER to develop the Property as contemplated by the Development Plan of this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

9.2 Third Party Litigation Concerning Agreement. OWNER shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless CITY, its agents, officers and employees from any claim, action or proceeding against CITY, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. CITY shall promptly notify OWNER of any such claim, action or proceeding, and CITY shall cooperate in the defense. If CITY fails to promptly notify OWNER of any such claim, action or proceeding, or if CITY fails to cooperate in the defense, OWNER shall not thereafter be responsible to defend, indemnify, or hold harmless CITY. CITY may in its discretion participate in the defense of any such claim, action or proceeding.

9.3 Indemnity. In addition to the provisions of 9.2 above, OWNER shall indemnify and hold CITY, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of OWNER, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (OWNER's employees included) or any other element of damage of any kind or nature, relating to or in any way connected with or arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, failure and conveyance of the public improvements, save and except claims for damages arising through the sole active negligence or sole willful misconduct of CITY. OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions. CITY may in its discretion participate in the defense of any such legal action.

9.4 Environment Assurances. OWNER shall indemnify and hold CITY, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any act or omission of OWNER, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions, and OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. CITY may in its discretion participate in the defense of any such action.

9.5 Reservation of Rights. With respect to Sections 9.2, 9.3 and 9.4 herein, CITY reserves the right to either (1) approve the attorney(s) which OWNER selects, hires or otherwise engages to defend CITY hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense, provided, however, that OWNER shall reimburse CITY forthwith for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefor.

9.6 Survival. The provisions of this Sections 9.1 through 9.6, inclusive, shall survive the termination of this Agreement.

10. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit OWNER, in any manner, at OWNER's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. CITY acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with OWNER and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. CITY will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee, has submitted a request in writing to the CITY in the manner specified herein for giving notices, shall be entitled to receive written notification from CITY of any default by OWNER in the performance of OWNER's obligations under this Agreement.

(c) If CITY timely receives a request from a Mortgagee requesting a copy of any notice of default given to OWNER under the terms of this Agreement, CITY shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to OWNER. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of OWNER's obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to

be performed by OWNER is a condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement.

11. MISCELLANEOUS PROVISIONS.

11.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the San Bernardino County Recorder by the City Clerk within the ten (10) days after the CITY executes this Agreement, as required by Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if the CITY terminates or modifies the agreement as provided for herein and in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the San Bernardino County Recorder.

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

11.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provision of the Public Benefits set forth in Section 4 of this Agreement, including the payment of the fees set forth therein, are essential elements of this Agreement and CITY would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

11.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

11.6 Singular and Plural. As used herein, the singular of any word includes the plural.

11.7 Joint and Several Obligations. Subject to section 2.4, if at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one owner, all obligations of such owners under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners. Notwithstanding the foregoing, no owner of a single lot which has been finally subdivided and sold to such owner as a member of the general public or otherwise as an ultimate user shall have any obligation under this Agreement except as provided under Section 4 hereof.

11.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

11.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

11.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

11.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control, (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

11.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

11.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to

do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

11.14 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

11.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Bernardino, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the development of private property and the owner of such property.

11.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The City Manager may delegate his powers and duties under this Agreement to an Assistant City Manager or other management level employee of the CITY.

11.18 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by CITY of its power of eminent domain.

11.19 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, OWNER shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement,

and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this County and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. OWNER for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

11.20 Estoppel Certificate. Within thirty (30) business days following a written request by any of the parties, the other party shall execute and deliver to the requesting party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party. OWNER shall pay to CITY all costs incurred by CITY in connection with the issuance of estoppel certificates under this Section 11.20 prior to CITY's issuance of such certificates.

11.21 Authority to Execute. The person or persons executing this Agreement on behalf of OWNER warrants and represents that he or she/they have the authority to execute this Agreement on behalf of his or her/their corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind OWNER to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT NO. PDA21-014

"OWNER"

BROOKCAL ONTARIO LLC, a Delaware limited liability company

By:_____
Name: David E. Bartlett
Title: Vice President
Date: _____

"CITY"

CITY OF ONTARIO

By:_____
Scott Ochoa
City Manager

Date: _____

ATTEST:

_____
City Clerk, Ontario

APPROVED AS TO FORM:
BEST BEST KRIEGER, LLP

_____
City Attorney

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
COUNTY OF_____)

On _____, 20_____, before me,_____,
Date *Insert Name and Title of the Officer*

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

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

WITNESS my hand and official seal.

Signature_____
Signature of Notary Public

Place Notary Seal Above

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
COUNTY OF_____)

On _____, 20_____, before me _____,
Date Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature_____
Signature of Notary Public

Place Notary Seal Above

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

Legal Description of Property

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

THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXHIBIT "B"
TO DEVELOPMENT AGREEMENT

Map showing Property and its location

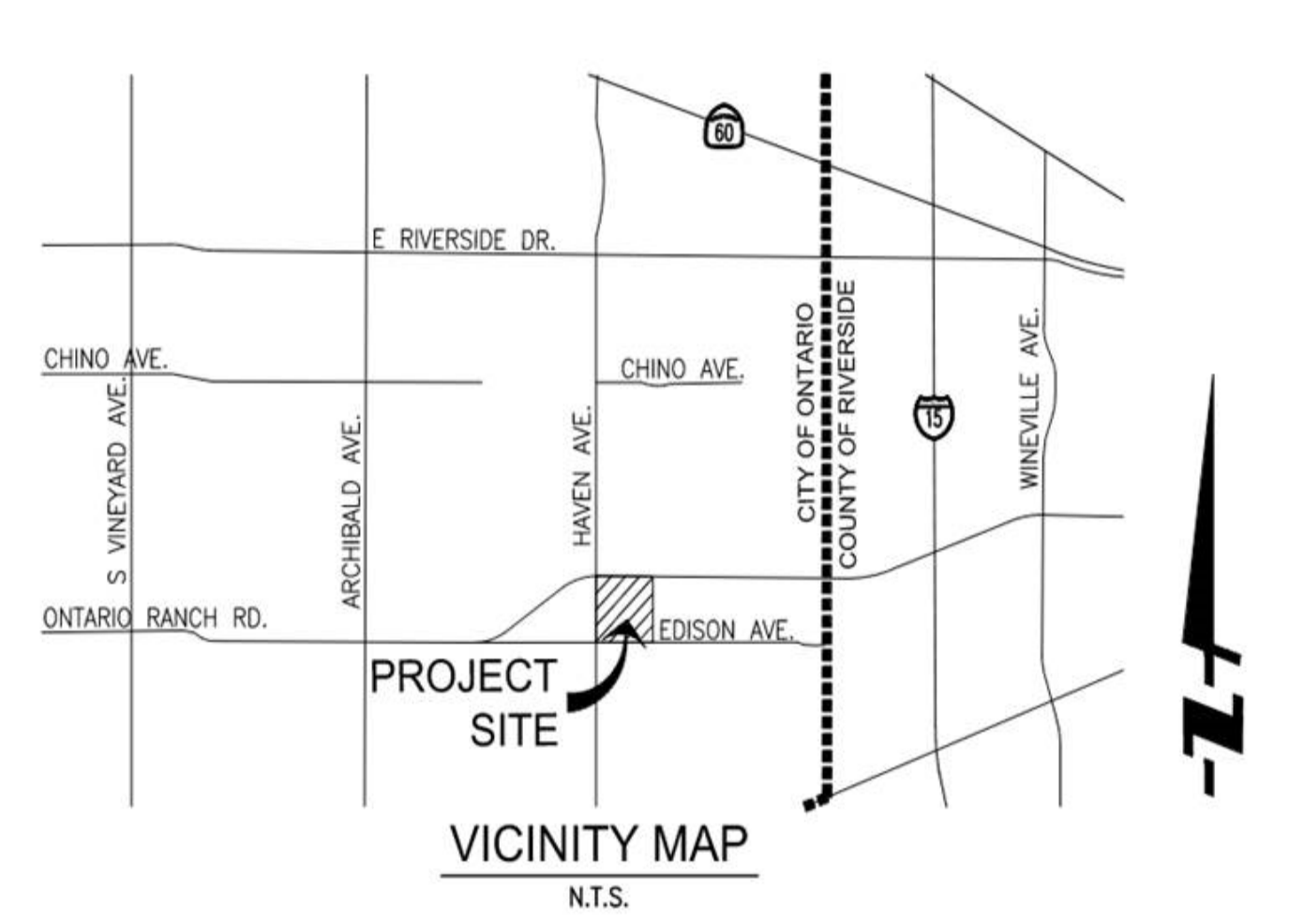


EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Existing Development Approvals

On October 23, 2007 the Planning Commission:

a) Issued Resolution No. PC07-125 recommending City Council certification of the Rich-Haven Specific Plan EIR (SCH#2006051081).
b) Issued Resolution No. PC07-127 recommending to City Council approval of the Rich-Haven Specific Plan (File No. PSP05-004).

On December 4, 2007, the City Council:

a) Issued Resolution No. 2007-145 certifying the Rich-Haven Specific Plan EIR (SCH#2006051081).
b) Adopted Ordinance No. 2884 approving the Rich-Haven Specific Plan.

On February 23, 2016, the Planning Commission:

a) Issued Resolution No. PC16-003 recommending City Council adoption of an Addendum to the Rich-Haven EIR.
b) Issued Resolution PC16-004 recommending approval of the Rich-Haven Specific Plan Amendment (File No. PSPA16-001).

On March 15, 2016, the City Council:

a) Issued Resolution No. 2016-024 for the adoption of an Addendum (File No. PSPA16-001) to the Rich-Haven Specific Plan EIR.
b) Issued Resolution No. 2016-025 approving an Amendment (File No. PSPA16-001) to the Rich-Haven Specific Plan.

On January 23, 2018, the Planning Commission:

a) Issued Resolution No. PC18-014 recommending City Council adoption of an Addendum to the Rich-haven EIR.
b) Issued Resolution No. PC18-015 recommending to City Council adoption of the Rich-Haven Specific Plan Amendment (File No. PSPA16-005).

On February 20, 2018, the City Council:

a) Issued Resolution No. 2018-017 for the adoption of an Addendum (File No. PSPA16-005) to the Rich-Haven Specific Plan EIR.
b) Issued Resolution No. 2018-018 approving an Amendment (File No. PSPA16-005) to the Rich-Haven Specific Plan.

EXHIBIT "D"
TO DEVELOPMENT AGREEMENT

Existing Land Use Regulations

These documents are listed for reference only:

1. The Rich-Haven Specific Plan (File No. PSP05-004) Environmental Impact Report, Resolution No. 2007-145.

2. The Rich-Haven Specific Plan (File No. PSP05-004), Ordinance No. 2884.

3. Addendum to the Rich-Haven Specific Plan (File No. PSPA16-001) Environmental Impact Report, Resolution No. 2016-024.

4. Amendment to the Rich-Haven Specific Plan (File No. PSPA16-001), Resolution No. 2016-025.

5. Addendum to the Rich-Haven Specific Plan (File No. PSPA16-005) Environmental Impact Report, Resolution No. 2018-017.

6. Amendment to the Rich-Haven Specific Plan (File No. PSPA16-005), Resolution No. 2018-018.

7. City of Ontario Municipal Code
    a. Six – Sanitation & Health
    b. Seven – Public Works
    c. Eight – Building Regulations
    d. Nine – Development Code
    e. Ten – Parks & Recreation

EXHIBIT "E"
TO DEVELOPMENT AGREEMENT

Description of Required Improvements

OWNER shall design, construct, and complete all improvements including but not limited to sewer, water, recycled water, storm drain, fiber, and street improvements necessary to serve the Property, prior to the request of any Production Units.

STREETS (ST)

(A) As part of the required ST improvements, OWNER shall include the ultimate signing and striping improvements along the Property frontage on Haven Avenue, including the northbound section of Haven Avenue, north of Schaefer Avenue to Aspen/Nelson, to install the two (2) northbound thru lanes with a trap right turn lane at the intersection of Aspen/Nelson.

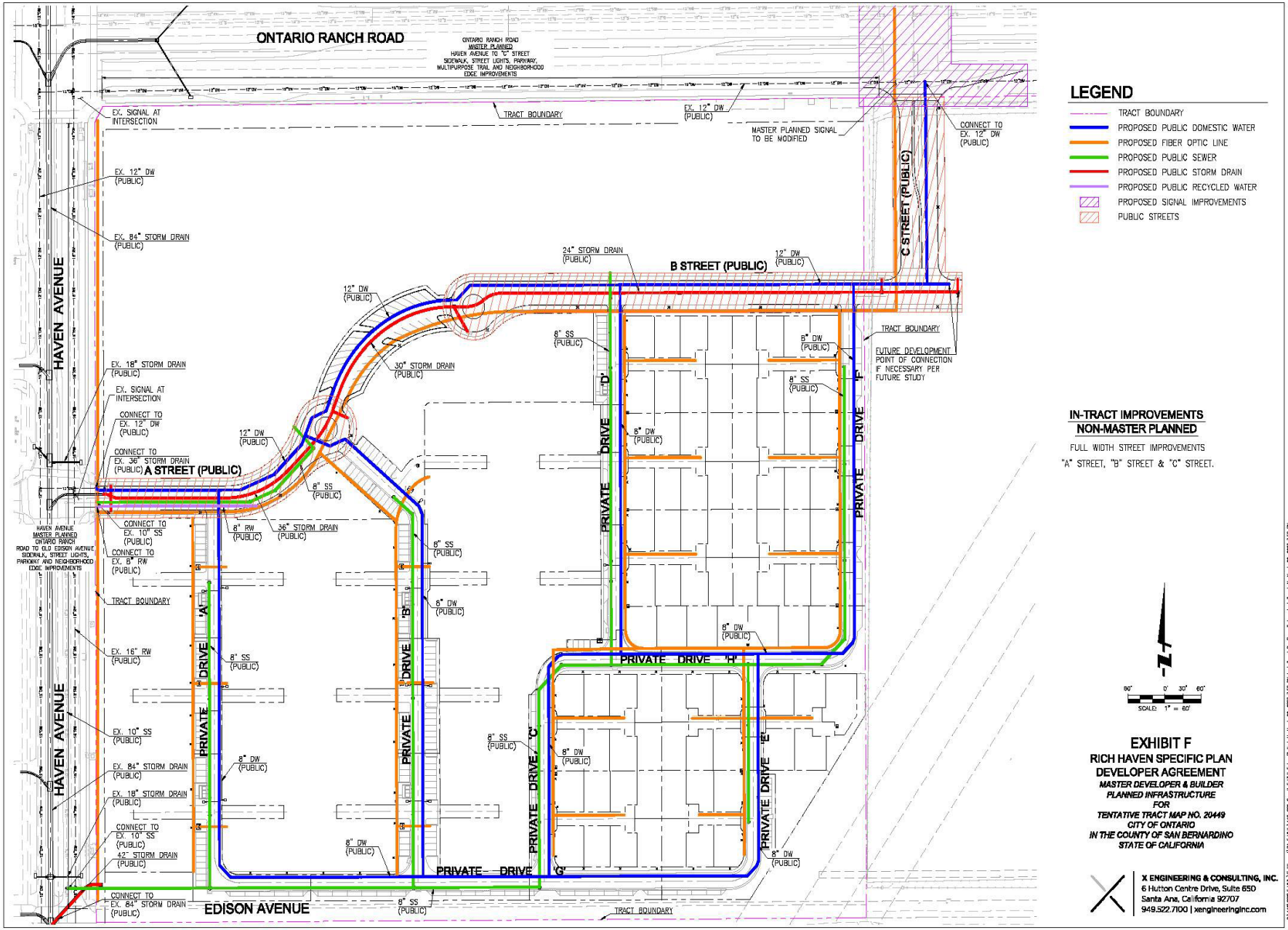
FIBER OPTIC (FO)

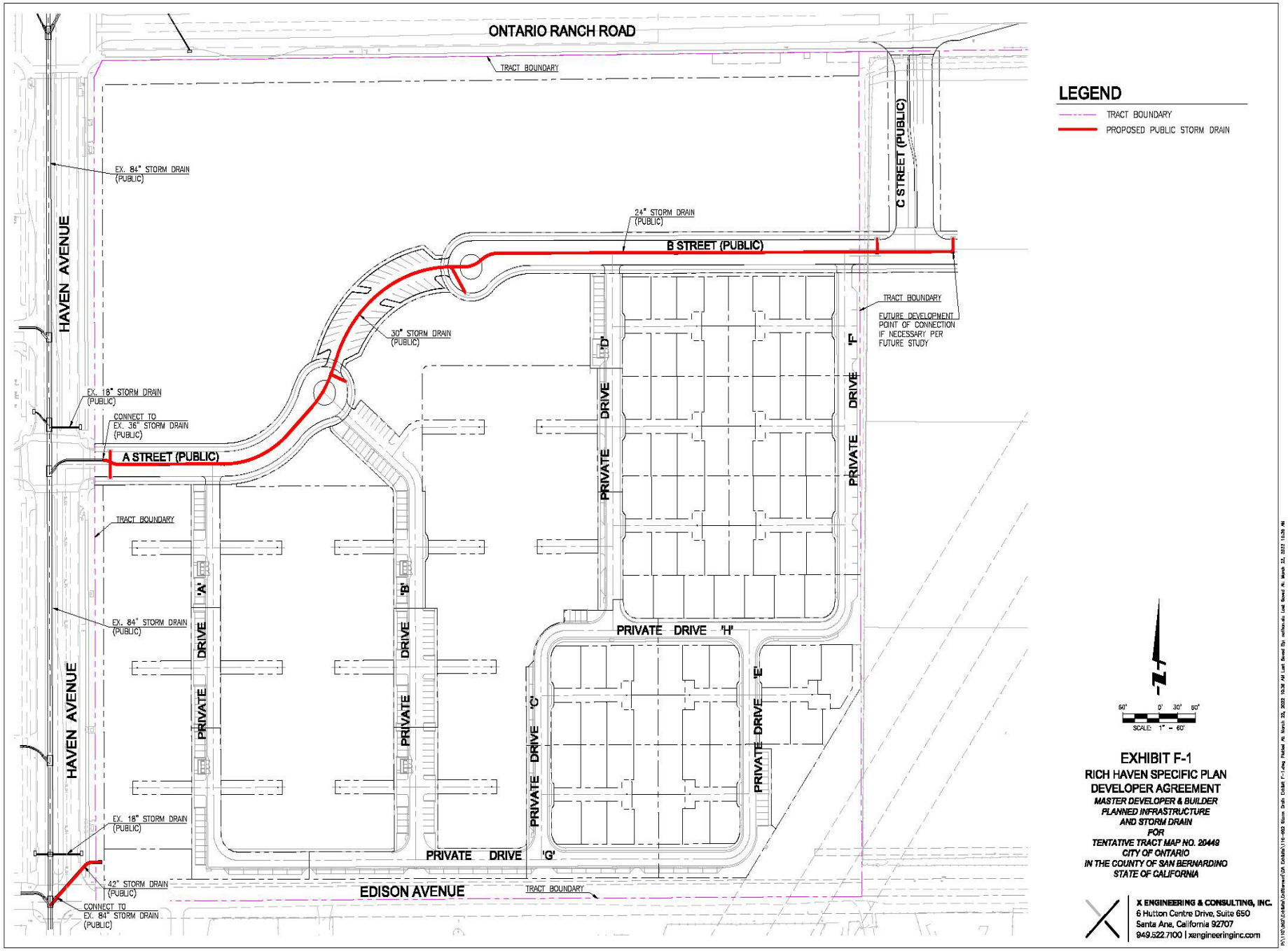
(A) OWNER shall design, construct, complete, and connect the FO improvements necessary for the vacant portion of the Property to the nearest point of connection that exist at the time the vacant Property develops. If the vacant Property develops as non-residential (e.g., retail/commercial), OWNER shall construct and complete the connection prior to the request of any occupancy. If the vacant Property develops as residential, OWNER shall construct and complete the connection prior to the request for occupancy of any Production Units.

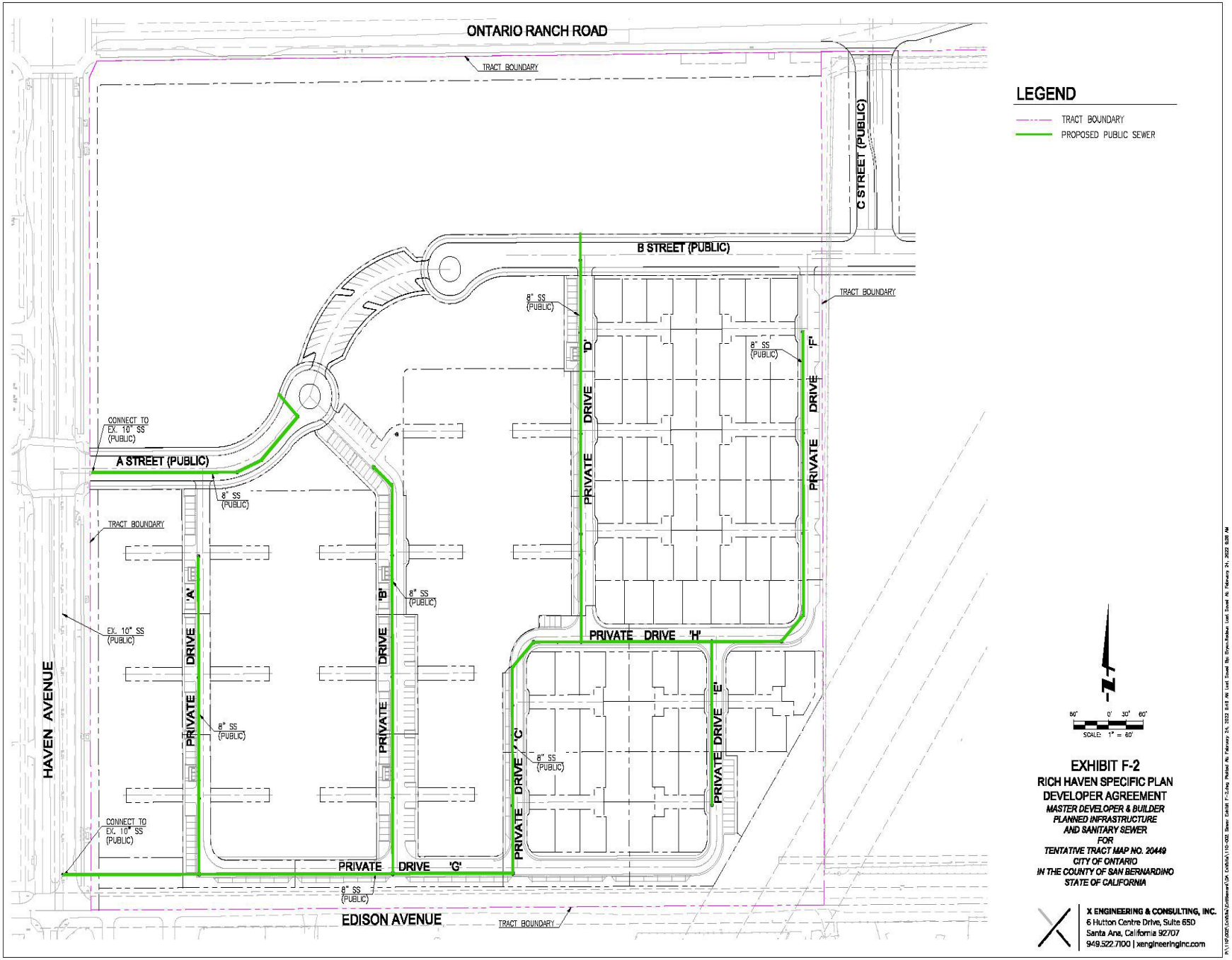
EXHIBIT "F"
TO DEVELOPMENT AGREEMENT

Depiction of Required Infrastructure Improvements

(SEE ATTACHED)


ONTARIO RANCH ROAD
ONTARIO RANCH ROAD MASTER PLANNED HAVEN AVENUE TO "C" STREET SIDEWALK, STREET LIGHTS, PARKWAY, MULTIPURPOSE TRAIL AND NEIGHBORHOOD EDGE IMPROVEMENTS
HAVEN AVENUE
EDISON AVENUE
B STREET (PUBLIC)
A STREET (PUBLIC)
C STREET (PUBLIC)
PRIVATE DRIVE 'A'
PRIVATE DRIVE 'B'
PRIVATE DRIVE 'C'
PRIVATE DRIVE 'D'
PRIVATE DRIVE 'E'
PRIVATE DRIVE 'F'
PRIVATE DRIVE 'G'
PRIVATE DRIVE 'H'
TRACT BOUNDARY
EX. SIGNAL AT INTERSECTION
EX. 12" DW (PUBLIC)
EX. 84" STORM DRAIN (PUBLIC)
EX. 18" STORM DRAIN (PUBLIC)
CONNECT TO EX. 12" DW (PUBLIC)
CONNECT TO EX. 36" STORM DRAIN (PUBLIC)
CONNECT TO EX. 10" SS (PUBLIC)
CONNECT TO EX. 8" RW (PUBLIC)
EX. 16" RW (PUBLIC)
EX. 10" SS (PUBLIC)
42" STORM DRAIN (PUBLIC)
CONNECT TO EX. 84" STORM DRAIN (PUBLIC)
MASTER PLANNED SIGNAL TO BE MODIFIED
24" STORM DRAIN (PUBLIC)
30" STORM DRAIN (PUBLIC)
36" STORM DRAIN (PUBLIC)
12" DW (PUBLIC)
8" DW (PUBLIC)
8" SS (PUBLIC)
8" RW (PUBLIC)
6" SS (PUBLIC)
6" DW (PUBLIC)
FUTURE DEVELOPMENT POINT OF CONNECTION IF NECESSARY PER FUTURE STUDY
HAVEN AVENUE MASTER PLANNED ONTARIO RANCH ROAD TO OLD EDISON AVENUE SIDEWALK, STREET LIGHTS, PARKWAY AND NEIGHBORHOOD EDGE IMPROVEMENTS
LEGEND
TRACT BOUNDARY
PROPOSED PUBLIC DOMESTIC WATER
PROPOSED FIBER OPTIC LINE
PROPOSED PUBLIC SEWER
PROPOSED PUBLIC STORM DRAIN
PROPOSED PUBLIC RECYCLED WATER
PROPOSED SIGNAL IMPROVEMENTS
PUBLIC STREETS
IN-TRACT IMPROVEMENTS
NON-MASTER PLANNED
FULL WIDTH STREET IMPROVEMENTS
"A" STREET, "B" STREET & "C" STREET.
SCALE: 1" = 60'
EXHIBIT F
RICH HAVEN SPECIFIC PLAN
DEVELOPER AGREEMENT
MASTER DEVELOPER & BUILDER PLANNED INFRASTRUCTURE
FOR
TENTATIVE TRACT MAP NO. 20449
CITY OF ONTARIO
IN THE COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA
X ENGINEERING & CONSULTING, INC.
6 Hutton Centre Drive, Suite 650
Santa Ana, California 92707
949.522.7100 | xengineeringinc.com


ONTARIO RANCH ROAD
TRACT BOUNDARY
EX. 84" STORM DRAIN (PUBLIC)
HAVEN AVENUE
24" STORM DRAIN (PUBLIC)
B STREET (PUBLIC)
C STREET (PUBLIC)
TRACT BOUNDARY
FUTURE DEVELOPMENT POINT OF CONNECTION IF NECESSARY PER FUTURE STUDY
30" STORM DRAIN (PUBLIC)
EX. 18" STORM DRAIN (PUBLIC)
CONNECT TO EX. 36" STORM DRAIN (PUBLIC)
A STREET (PUBLIC)
'D'
'F'
DRIVE
PRIVATE
TRACT BOUNDARY
'A'
'B'
EX. 84" STORM DRAIN (PUBLIC)
PRIVATE DRIVE 'H'
'C'
'E'
EX. 18" STORM DRAIN (PUBLIC)
PRIVATE DRIVE 'G'
42" STORM DRAIN (PUBLIC)
CONNECT TO EX. 84" STORM DRAIN (PUBLIC)
EDISON AVENUE
TRACT BOUNDARY
LEGEND
TRACT BOUNDARY
PROPOSED PUBLIC STORM DRAIN
60' 0' 30' 60'
SCALE: 1" = 60'
EXHIBIT F-1
RICH HAVEN SPECIFIC PLAN
DEVELOPER AGREEMENT
MASTER DEVELOPER & BUILDER
PLANNED INFRASTRUCTURE
AND STORM DRAIN
FOR
TENTATIVE TRACT MAP NO. 20449
CITY OF ONTARIO
IN THE COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA
X ENGINEERING & CONSULTING, INC.
6 Hutton Centre Drive, Suite 650
Santa Ana, California 92707
949.522.7100 | xengineeringinc.com


ONTARIO RANCH ROAD
TRACT BOUNDARY
C STREET (PUBLIC)
B STREET (PUBLIC)
A STREET (PUBLIC)
CONNECT TO EX. 10" SS (PUBLIC)
8" SS (PUBLIC)
'A'
'B'
'C'
'D'
'E'
'F'
'G'
'H'
DRIVE
PRIVATE
EX. 10" SS (PUBLIC)
HAVEN AVENUE
EDISON AVENUE
LEGEND
TRACT BOUNDARY
PROPOSED PUBLIC SEWER
N
SCALE: 1" = 60'
EXHIBIT F-2
RICH HAVEN SPECIFIC PLAN
DEVELOPER AGREEMENT
MASTER DEVELOPER & BUILDER
PLANNED INFRASTRUCTURE
AND SANITARY SEWER
FOR
TENTATIVE TRACT MAP NO. 20449
CITY OF ONTARIO
IN THE COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA
X ENGINEERING & CONSULTING, INC.
6 Hutton Centre Drive, Suite 650
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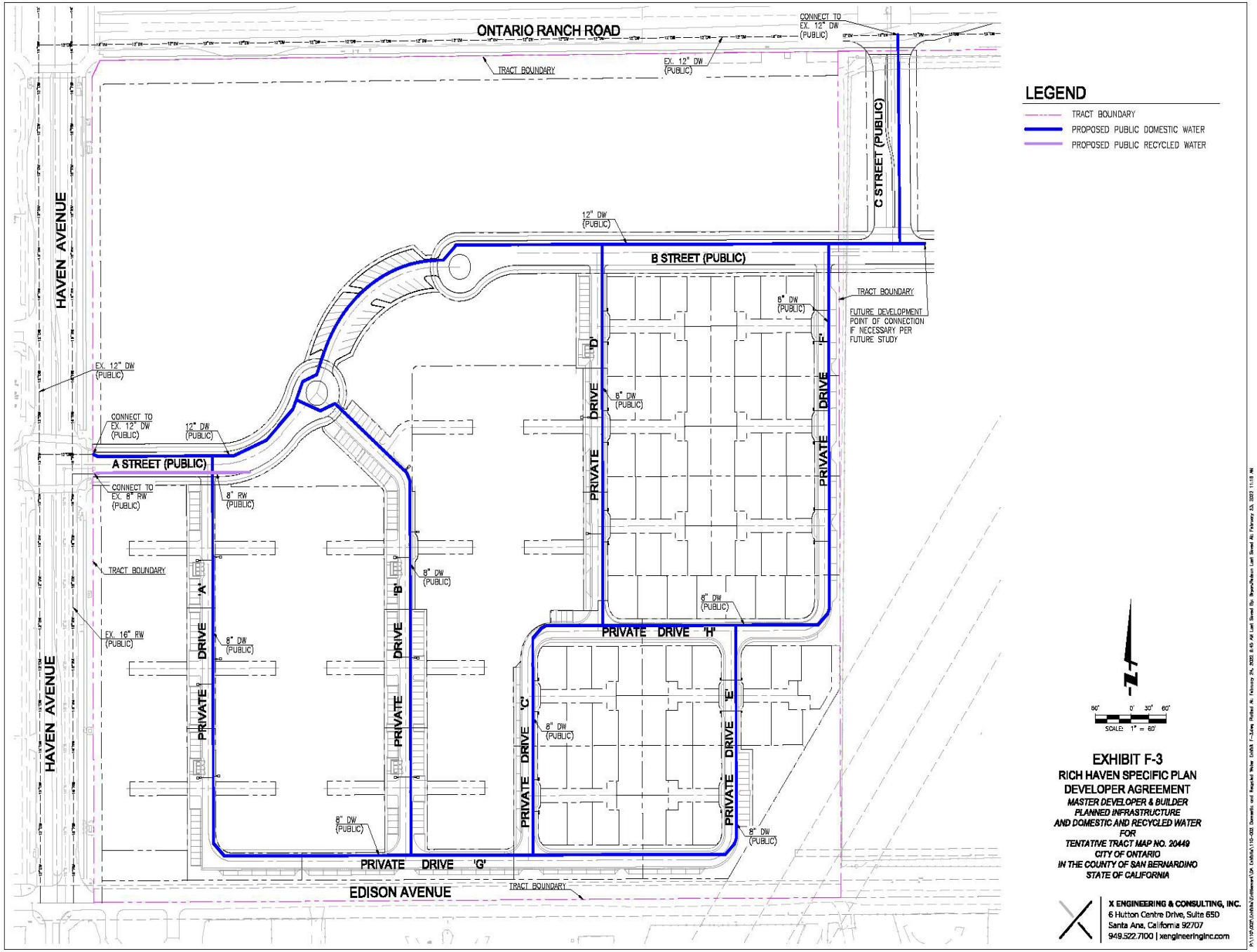
ONTARIO RANCH ROAD
HAVEN AVENUE
HAVEN AVENUE
EDISON AVENUE
A STREET (PUBLIC)
B STREET (PUBLIC)
C STREET (PUBLIC)
PRIVATE DRIVE 'A'
PRIVATE DRIVE 'B'
PRIVATE DRIVE 'C'
PRIVATE DRIVE 'D'
PRIVATE DRIVE 'E'
PRIVATE DRIVE 'F'
PRIVATE DRIVE 'G'
PRIVATE DRIVE 'H'
TRACT BOUNDARY
EX. 12" DW (PUBLIC)
CONNECT TO EX. 12" DW (PUBLIC)
12" DW (PUBLIC)
8" DW (PUBLIC)
8" RW (PUBLIC)
CONNECT TO EX. 8" RW (PUBLIC)
EX. 16" RW (PUBLIC)
FUTURE DEVELOPMENT POINT OF CONNECTION IF NECESSARY PER FUTURE STUDY
LEGEND
TRACT BOUNDARY
PROPOSED PUBLIC DOMESTIC WATER
PROPOSED PUBLIC RECYCLED WATER
SCALE: 1" = 60'
EXHIBIT F-3
RICH HAVEN SPECIFIC PLAN
DEVELOPER AGREEMENT
MASTER DEVELOPER & BUILDER
PLANNED INFRASTRUCTURE
AND DOMESTIC AND RECYCLED WATER
FOR
TENTATIVE TRACT MAP NO. 20449
CITY OF ONTARIO
IN THE COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA
X ENGINEERING & CONSULTING, INC.
6 Hutton Centre Drive, Suite 650
Santa Ana, California 92707
949.522.7100 | xengineeringinc.com

ONTARIO RANCH ROAD
CONNECT TO EXISTING FIBER OPTICS LINE ON NORTH SIDE OF ONTARIO RANCH ROAD.
CONNECT TO EXISTING FIBER OPTICS LINE
TRACT BOUNDARY
HAVEN AVENUE
C STREET (PUBLIC)
B STREET (PUBLIC)
A STREET (PUBLIC)
PRIVATE DRIVE 'A'
PRIVATE DRIVE 'B'
PRIVATE DRIVE 'C'
PRIVATE DRIVE 'D'
PRIVATE DRIVE 'E'
PRIVATE DRIVE 'F'
PRIVATE DRIVE 'G'
PRIVATE DRIVE 'H'
EDISON AVENUE
LEGEND
TRACT BOUNDARY
PROPOSED FIBER OPTIC LINE
N
SCALE: 1" = 60'
EXHIBIT F-4
RICH HAVEN SPECIFIC PLAN
DEVELOPER AGREEMENT
MASTER DEVELOPER & BUILDER
PLANNED INFRASTRUCTURE
AND FIBER OPTIC
FOR
TENTATIVE TRACT MAP NO. 20449
CITY OF ONTARIO
IN THE COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA
X ENGINEERING & CONSULTING, INC.
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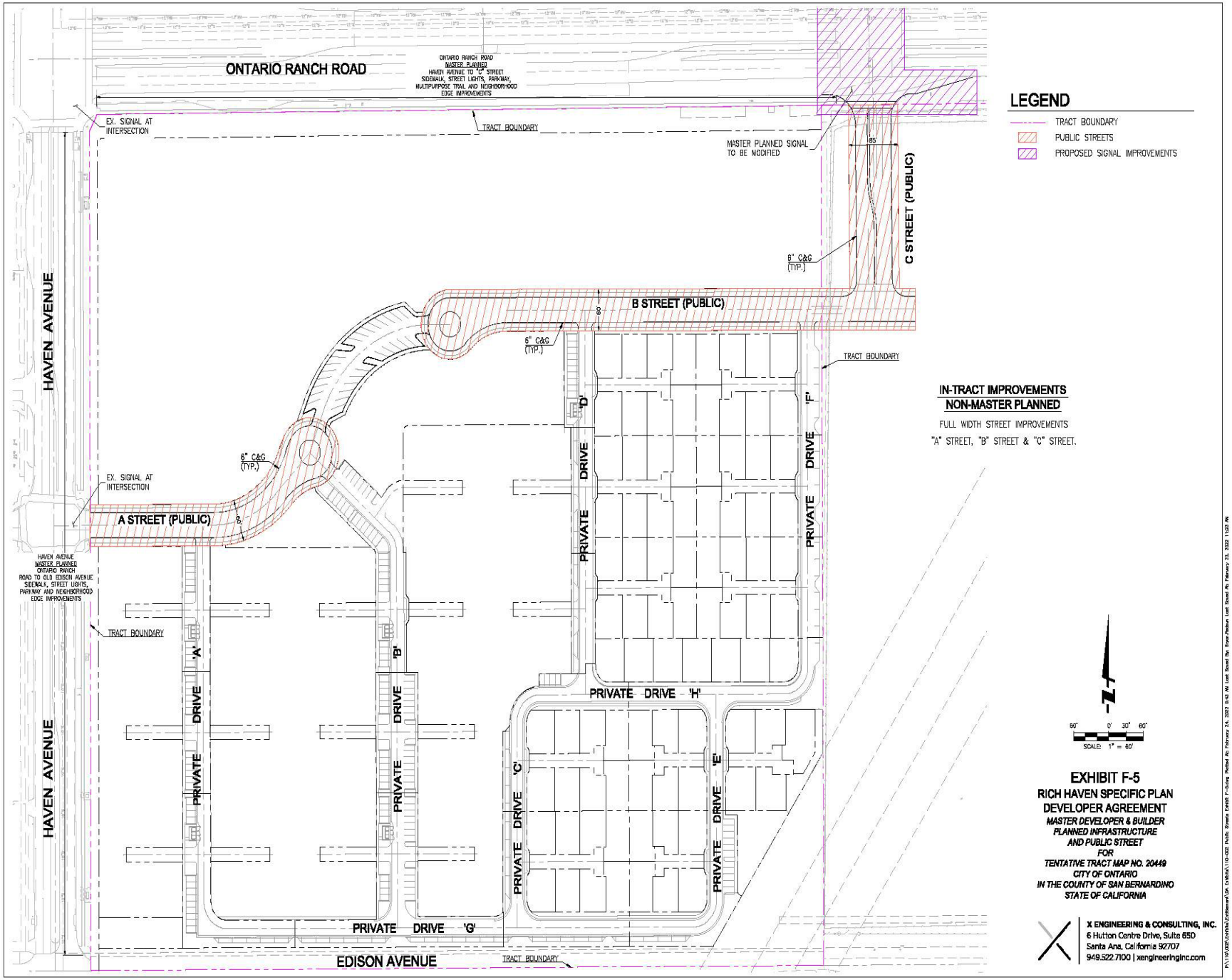

ONTARIO RANCH ROAD
ONTARIO RANCH ROAD MASTER PLANNED HAVEN AVENUE TO "C" STREET SIDEWALK, STREET LIGHTS, PARKWAY, MULTIPURPOSE TRAIL AND NEIGHBORHOOD EDGE IMPROVEMENTS
EX. SIGNAL AT INTERSECTION
TRACT BOUNDARY
MASTER PLANNED SIGNAL TO BE MODIFIED
85'
C STREET (PUBLIC)
6" C&G (TYP.)
HAVEN AVENUE
B STREET (PUBLIC)
80'
6" C&G (TYP.)
TRACT BOUNDARY
'D'
'F'
DRIVE
PRIVATE
6" C&G (TYP.)
EX. SIGNAL AT INTERSECTION
A STREET (PUBLIC)
80'
HAVEN AVENUE MASTER PLANNED ONTARIO RANCH ROAD TO OLD EDISON AVENUE SIDEWALK, STREET LIGHTS, PARKWAY AND NEIGHBORHOOD EDGE IMPROVEMENTS
TRACT BOUNDARY
'A'
'B'
'C'
'E'
PRIVATE DRIVE 'H'
PRIVATE DRIVE 'G'
HAVEN AVENUE
EDISON AVENUE
TRACT BOUNDARY
LEGEND
TRACT BOUNDARY
PUBLIC STREETS
PROPOSED SIGNAL IMPROVEMENTS
IN-TRACT IMPROVEMENTS
NON-MASTER PLANNED
FULL WIDTH STREET IMPROVEMENTS
"A" STREET, "B" STREET & "C" STREET.
N
80' 0' 30' 60'
SCALE: 1" = 60'
EXHIBIT F-5
RICH HAVEN SPECIFIC PLAN
DEVELOPER AGREEMENT
MASTER DEVELOPER & BUILDER
PLANNED INFRASTRUCTURE
AND PUBLIC STREET
FOR
TENTATIVE TRACT MAP NO. 20449
CITY OF ONTARIO
IN THE COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA
X ENGINEERING & CONSULTING, INC.
6 Hutton Centre Drive, Suite 650
Santa Ana, California 92707
949.522.7100 | xengineeringinc.com

Exhibit "G"
TO DEVELOPMENT AGREEMENT

Form of Plume Disclosure Letter

CITY OF ONTARIO

ONTARIO MUNICIPAL UTILITIES COMPANY

PAUL S. LEON
MAYOR

DEBRA DORST-PORADA
MAYOR PRO TEM

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

AL C. BOLING
CITY MANAGER

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT BURTON
UTILITIES GENERAL MANAGER

March 2017

DISCLOSURE NOTICE
SOUTH ARCHIBALD TRICHLOROETHYLENE PLUME

Dear Property Owner/Developer/Applicant:

The City of Ontario ("City") has approved or will be approving development in the Ontario Ranch area in the next few years, subject to the appropriate and required statutory process. This letter is intended to serve as notice to all potential property owners of the existence of a groundwater plume, known as the South Archibald Trichloroethylene (TCE) Plume which may exist in, under or near owner's property.

The groundwater plume is in an area in the central Chino Basin south of the Pomona Freeway, west of Turner Avenue, east of Grove Avenue, and north of Kimball Avenue. The plume primarily consists of TCE, a discontinued industrial solvent, and is subject to a clean-up under the oversight and direction of the Santa Ana Regional Water Quality Control Board ("Regional Board").

The Regional Board's approved clean-up procedure involves the removal and treatment of groundwater containing TCE via groundwater wells to reduce the plume concentrations and control its migration. In addition, the City is providing potable water supplies for domestic purposes to residences with private domestic wells affected by the plume. Finally, the Regional Board will continue to monitor all impacted areas and private domestic wells to ensure that residents' health and the environment are properly safeguarded. These remedial actions are documented in a Remedial Action Plan approved by the Regional Board in September 2016.

Further and current information may be found on the Regional Board's Geotracker website at https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000004658.

Property owners may wish to include this letter as a part of a Real Estate Transfer Disclosure under California Civil Code Section 1102 et seq.

1425 SOUTH BON VIEW - ONTARIO, CALIFORNIA 91761-4406 - (909) 395-2605 - FAX (909) 395-2601

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA21-014, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO LLC., TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP 20449 (FILE NO. PMTT21-014), A 35.65 GROSS ACRE PROPERTY LOCATED NEAR THE SOUTHEAST CORNER OF HAVEN AVENUE AND ONTARIO RANCH ROAD, WITHIN PLANNING AREA 9A (RESIDENTIAL & COMMERCIAL) LAND USE DISTRICT OF THE RICH HAVEN SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0218-211-01.

WHEREAS, BrookCal Ontario, LLC., ("Applicant") has filed an Application for the approval of a Development Agreement, File No. PDA21-014, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 35.65 gross acres of land generally located near the southeast corner of Haven Avenue and Ontario Ranch road, within Planning Area 9A (Residential & Commercial) land use district of the Rich Haven Specific Plan; and

WHEREAS, the Applicant has submitted a Tentative Tract Map 20449 (File No. PMTT21-014) to subdivide approximately 35.65 gross acres of land into 92 numbered lots and 55 lettered common lots for residential and commercial uses, public/private streets, landscape neighborhood edges and common open space purposes; and

WHEREAS, the environmental impacts of this Project were previously analyzed in an Addendum to the Rich Haven Specific Plan Environmental Impact Report (State Clearinghouse No. 2006051081) and an Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140). This Application is consistent with the previously Certified Environmental Impact Reports and Approved Addendums and introduces no new significant environmental impacts; and

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

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

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

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan ("ALUCP"), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on April 26, 2022, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Resolution No. PC22-018, recommending the City Council approve the Application; and

WHEREAS, on May 17, 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 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 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 an Addendum to the Rich Haven Specific Plan Environmental Impact Report (State Clearinghouse No. 2006051081) and an Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140). This Application is consistent with the previously Certified Environmental Impact Reports (collectively the "Certified EIR") and Approved Addendums and introduces no new significant environmental impacts; and

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

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

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

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

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

(1) Does not constitute substantial changes to the Certified EIR that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

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

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

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

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

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

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

SECTION 3. ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending authority for the Project, the Planning Commission finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available

Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed project is consistent with the number of dwelling units (298) and density (13.97) specified in the Available Land Inventory.

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, 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 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:

a. The Development Agreement applies to approximately 35.65 gross acres of land located near the southeast corner of Haven Avenue and Ontario Ranch road, within Planning Area 9A (Residential & Commercial) land use district of the Rich Haven Specific Plan; and

b. The Development Agreement establishes parameters for the development of the Planning Area 9A (Residential & Commercial) land use district of the Rich Haven Specific Plan. The Development Agreement also grants the Applicant, the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the Rich Haven Specific Plan; and

c. The Development Agreement grants the Owner a vested right to develop Tentative Tract Map 20449 (File No. PMTT21-014) as long as the Owner complies with the terms and conditions of the Specific Plan and EIR. Tentative Tract Map 20449 is located near the southeast corner of Haven Avenue and Ontario Ranch Road, and proposes to subdivide 35.65 gross acres of land into 92 numbered lots and 55 lettered common lots; and

d. The Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

e. The Development Agreement does not conflict with the Land Use Policies of The Ontario Plan Policy Plan (General Plan) and will provide for development, within the district, in a manner consistent with the Policy Plan and with related development; and

f. This Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

g. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will not have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were previously reviewed in conjunction with an Addendum to the Rich Haven Specific Plan Environmental Impact Report (State Clearinghouse No. 2006051081) and an Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140). This Application is consistent with the previously Certified Environmental Impact Reports and Approved Addendums and introduces no new significant environmental impacts; and

h. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by this reference.

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 Application, subject to each and every condition set forth in the Development Agreement (File No. PDA21-014) attached hereto as "Attachment A," and incorporated herein by this reference.

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

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

SECTION 9. ***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 7th day of June 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. 3209 was duly introduced at a regular meeting of the City Council of the City of Ontario held May 17, 2022, and adopted at the regular meeting held June 7, 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. 3209 duly passed and adopted by the Ontario City Council at their regular meeting held June 7, 2022 and that Summaries of the Ordinance were published on May 24, 2022 and June 14, 2022, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

File No. PDA21-014

DEVELOPMENT AGREEMENT

By and Between

City of Ontario
a California municipal corporation

and

BrookCal Ontario LLC.,
a Delaware limited liability company

(Development Agreement to follow this page)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

CITY OF ONTARIO
CITY CLERK / RECORDS MANAGEMENT
303 EAST "B" STREET
ONTARIO, CA 91764-4196

Exempt from Fees Per Gov. Code § 6103

Space above this line for Recorder's Use Only

FILE NO. PDA21-014

DEVELOPMENT AGREEMENT

By and Between

City of Ontario
a California municipal corporation

and
BrookCal Ontario LLC
a Delaware limited liability company

_____, 2022

San Bernardino County, California

DEVELOPMENT AGREEMENT NO. PDA21-014

This Development Agreement (hereinafter "Agreement") is entered into effective as of the ____ day of _____, 2022 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and BrookCal Ontario, LLC., a Delaware limited liability company (hereinafter "OWNER"):

RECITALS

WHEREAS, CITY is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code; and

WHEREAS, OWNER has requested CITY to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of CITY; and

WHEREAS, by electing to enter into this Agreement, CITY shall bind future City Councils of CITY by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of CITY; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by CITY and the City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of the CITY and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement in that Rich-Haven Specific Plan (State Clearinghouse No. 2006051081 (the "FEIR"). The City Council found and determined that the FEIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the project described in the FEIR, which included consideration of this Agreement; and

WHEREAS, this Agreement and the Project are consistent with the CITY's Comprehensive General Plan and the Rich-Haven Specific Plan; and

WHEREAS, all actions taken and approvals given by CITY have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

WHEREAS, development of the Property in accordance with this Agreement will provide substantial benefits to CITY and will further important policies and goals of CITY; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, ensure progressive installation of necessary

improvements, provide for public services appropriate to the development of the Project, and generally serve the purposes for which development agreements under Sections 65864 et seq. of the Government Code are intended; and

WHEREAS, OWNER has incurred and will in the future incur substantial costs in excess of the generally applicable requirements in order to assure vesting of legal rights to develop the Property in accordance with this Agreement.

WHEREAS, the Property is located in an area of the City of Ontario that has been known as the "New Model Colony" area and the New Model Colony area has now been renamed as "Ontario Ranch."

WHEREAS, the property developer/owners are made aware of the South Archibald Trichloroethylene (TCE) Plume Disclosure Letter (Exhibit "G"). Property owner may wish to provide the attached Letter as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq. This may include notifications in the Covenants, Conditions and Restrictions (CC&Rs) or other documents related to property transfer and disclosures. Additional information on the plume is available from the Santa Ana Regional Water Quality Control Board at http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T10000004658.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "CITY" means the City of Ontario, California, a California municipal corporation.

1.1.3 "Construction Agreement" means that certain Agreement for the Financing and Construction of Phases I and II Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony, entered into between the CITY and NMC Builders as of the 4th day of October, 2005, and all amendments thereto and "Construction Agreement Amendment" means that First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve and Easterly Portion of the New Model Colony entered into between the CITY and NMC Builders as of the 21st day of August 2012.

1.1.4 “Development” means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of public infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping. “Development” does not include the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

1.1.5 “Development Approvals” means all permits and other entitlements for use subject to approval or issuance by CITY in connection with development of the Property including, but not limited to:

(a) specific plans and specific plan amendments;

(b) tentative and final subdivision and parcel maps;

(c) development plan review;

(d) conditional use permits (including model home use permits), public use permits and plot plans;

(e) zoning;

(f) grading and building permits.

1.1.6 “Development Exaction” means any requirement of CITY in connection with or pursuant to any Land Use Regulation or Development Approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

1.1.7 “Development Impact Fee” means a monetary exaction, other than a tax or special assessment, whether characterized as a fee or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4, For purposes of this Agreement only, "Development Impact Fee" shall not include processing fees and charges imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government

Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superceded, including by amendment or replacement.

1.1.8 "Development Plan" means the Existing Development Approvals and the Existing Land Use Regulations applicable to development of the Property.

1.1.9 "Effective Date" means the date that the ordinance approving this Agreement goes into effect.

1.1.10 "Existing Development Approvals" means all Development Approvals approved or issued prior to the Effective Date. Existing Development Approvals includes the Approvals incorporated herein as Exhibit "C" and all other Approvals which are a matter of public record on the Effective Date.

1.1.11 "Existing Land Use Regulations" means all Land Use Regulations in effect on the Effective Date. Existing Land Use Regulations includes the Regulations incorporated herein as Exhibit "D" and all other Land Use Regulations that are in effect and a matter of public record on the Effective Date.

1.1.12 "General Plan" means the General Plan adopted on January 27, 2010.

1.1.13 "Improvement" or "Improvements" means those public improvements required to support the development of the Project as described in the Tract Map conditions for Tract No. 20449 as further described in Exhibit "E" and depicted in Exhibit "F" (the "Infrastructure Improvements Exhibit").

1.1.14 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of CITY governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Property. "Land Use Regulations" does not include any CITY ordinance, resolution, code, rule, regulation or official policy, governing:

(a) the conduct of businesses, professions, and occupations;

(b) taxes and assessments;

(c) the control and abatement of nuisances;

(d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property;

(e) the exercise of the power of eminent domain.

1.1.15 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns.

1.1.16 "Model Units" means a maximum of nineteen (19) model units, private common recreation facilities and sales facilities constructed by OWNER prior to the construction of any Production units and not offered for sale and occupancy for a period of time after the issuance of permits for Production Units.

1.1.17 "OWNER" means the persons and entities listed as owner on page 1 of this Agreement and their permitted successors in interest to all or any part of the Property.

1.1.18 "Production Unit(s)" means all units constructed for sale and occupancy by OWNER and excludes the specified number of Model Units constructed by OWNER for promotion of sales.

1.1.19 "Project" means the development of the Property contemplated by the Development Plan, as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.1.20 "Property" means the real property described on Exhibit "A" and shown on Exhibit "B" to this Agreement.

1.1.21 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to OWNER under this Agreement and reserved to CITY under Section 3.6 of this Agreement.

1.1.22 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "Rich-Haven Specific Plan."

1.1.23 "Storm Water Treatment Capacity Availability" means a designated portion of the total Storm Water Treatment Capacity Availability made available through the completion of construction of a Phase of regional storm water treatment facilities by the NMC Builders LLC as described in the Construction Agreement Amendment. The amount, in acres, of Storm Water Treatment Capacity Availability required for the issuance of a grading permit shall be based upon the factors and assumptions listed in the Construction Agreement Amendment.

1.1.24 "Subsequent Development Approvals" means all Development Approvals required subsequent to the Effective Date in connection with development of the Property.

1.1.25 "Subsequent Land Use Regulations" means any Land Use Regulations adopted and effective after the Effective Date of this Agreement.

1.1.26 "Water Availability Equivalent (WAE)" means a designated portion of the total Net MDD made available through the construction of each Phase described in the Water Phasing Plan of the Construction Agreement. The number of Water Availability Equivalents (of portions thereof) required for the issuance of each building permit shall be based upon water demand factors and assumptions listed in the Construction Agreement and Construction Agreement Amendment as "Water Availability Equivalents by Land Use" for each land use category.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit "A" — Legal Description of the Property.

Exhibit "B" — Map showing Property and its location.

Exhibit "C" — Existing Development Approvals.

Exhibit "D" — Existing Land Use Regulations.

Exhibit "E" — Description of Required Infrastructure Improvements

Exhibit "F" — Depiction of Required Infrastructure Improvements Exhibit

Exhibit "G" - Form of Plume Disclosure Letter

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out only in accordance with the terms of this Agreement.

2.2 Ownership of Property. OWNER represents and covenants that it is the owner of the fee simple title to the Property or a portion thereof, or has the right to acquire fee simple title to the Property or a portion thereof from the current owner(s) thereof. To the extent OWNER does not own fee simple title to the Property, OWNER shall obtain written consent from the current fee owner of the Property agreeing to the terms of this Agreement and the recordation thereof.

2.3 Term. The term of this Agreement shall commence on the Effective Date and shall continue for an initial term of ten (10) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement. The term of this Agreement may be extended for an additional five (5) years following expiration of the initial ten (10) year term, provided the following have occurred:

(a) OWNER provides at least 180 days written notice to CITY prior to expiration of the initial term; and

(b) In non-mixed use and residential use only projects, the OWNER shall have obtained, as applicable, building permits for at least seventy percent (70%) of the actual number of residential units permitted under this Agreement; and

(c) OWNER is not then in uncured default of this Agreement.

2.4 Assignment.

2.4.1 Right to Assign. OWNER shall have the right to sell, transfer or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.), to any person, partnership, limited liability company, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following:

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property. OWNER may be required to provide disclosure that the Property is within the South Archibald Trichloroethylene (TCE) Plume. OWNER may wish to provide the attached Disclosure Letter (Exhibit G) as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq.

(b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, OWNER shall notify CITY's City Manager, in writing, of such sale, transfer or assignment and shall provide CITY with: (1) an executed agreement, in a form reasonably acceptable to CITY, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties and obligations of OWNER under this Agreement with respect to the portion of the Property so sold, transferred or assigned; and (2) the payment of the applicable processing charge to cover the CITY's review and consideration of such sale, transfer or assignment.

(c) Any sale, transfer or assignment not made in strict compliance with the foregoing conditions shall constitute a default by OWNER under this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by Paragraph (b) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee or assignee until and unless such agreement is executed. The City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny any proposed sale, transfer or assignment that is not made in compliance with this section 2.4.

2.4.2 Release of Transferring Owner. Notwithstanding any sale, transfer or assignment, a transferring OWNER shall continue to be obligated under this Agreement unless such transferring owner is given a release in writing by CITY, which release shall be provided by CITY upon the full satisfaction by such transferring owner of the following conditions:

(a) OWNER no longer has a legal or equitable interest in all or any part of the portion of the Property sold, transferred or assigned.

(b) OWNER is not then in default under this Agreement.

(c) OWNER has provided CITY with the notice and executed agreement required under Paragraph (b) of Subsection 2.4.1 above.

(d) The purchaser, transferee or assignee provides CITY with security equivalent to any security previously provided by OWNER to secure performance of its obligations hereunder.

2.4.3 Effect of Assignment and Release of Obligations. In the event of a sale, transfer or assignment pursuant to the provisions of Section 2.4.2 above:

(a) The assignee shall be liable for the performance of all obligations of OWNER with respect to transferred property, but shall have no obligations with respect to the portions of the Property, if any, not transferred (the "Retained Property").

(b) The owner of the Retained Property shall be liable for the performance of all obligations of OWNER with respect to Retained Property, but shall have no further obligations with respect to the transferred property.

(c) The assignee's exercise, use and enjoyment of the Property or portion thereof shall be subject to the terms of this Agreement to the same extent as if the assignee were the OWNER.

2.4.4 Subsequent Assignment. Any subsequent sale, transfer or assignment after an initial sale, transfer or assignment shall be made only in accordance with and subject to the terms and conditions of this Section 2.4.

2.4.5 Termination of Agreement with Respect to Individual Lots Upon Sale to Public and Completion of Construction. The provisions of Subsection 2.4.1 shall not apply to the sale or lease (for a period longer than one year) of any lot which has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

(a) The lot has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and,

(b) A certificate of occupancy has been issued for a building on the lot, and the fees set forth under Section 4 of this Agreement have been paid.

2.5 Amendment or Cancellation of Agreement. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section 65868.1. Any amendment of this Agreement, which amendment has been requested by OWNER, shall be considered by the CITY only upon the payment of the applicable processing charge. This provision shall not limit any remedy of CITY or OWNER as provided by this Agreement. Either Party or successor in interest, may propose an amendment to or cancellation, in whole or in part, of this Agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided otherwise in this Agreement or in Government Code Section 65865.1. For purposes of this section, the term "successor in interest" shall mean any person having a legal or equitable interest in the whole of the Property, or any portion thereof as to which such person wishes to amend or cancel this Agreement. The procedure for proposing and adopting an amendment to, or cancellation of, in whole or in part, this Agreement shall be the same as the procedure for adopting and entering into this Agreement in the first instance. Notwithstanding the foregoing sentence, if the CITY initiates the proposed amendment to, or cancellation of, in whole or in part, this Agreement, CITY shall first give notice to the OWNER of its intention to initiate such proceedings at least sixty (60) days in advance of the giving the public notice of intention to consider the amendment or cancellation.

2.5.1 Amendment to Reflect Consistency With Future Amendments to the Construction Agreement. To the extent any future amendment to the Construction Agreement provides for modifications to rights or obligations that differ from or alter the same or similar rights or obligations contained in this Development Agreement, OWNER reserves the right to request an amendment to the Development Agreement to reflect any or all of such modifications.

2.6 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 2.3.

(b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

(c) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.

(d) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by CITY or applicable public agency of all required dedications.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant to Section 4.2 of this Agreement by OWNER to CITY for residential units on which construction has not yet begun shall be refunded to OWNER by CITY.

2.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to CITY:
Scott Ochoa, City Manager
City of Ontario
303 East "B" Street
Ontario, CA 91764

If to OWNER:
Dave Bartlett
BrookCal Ontario LLC
3200 Park Center Drive, Suite 100
Costa Mesa, CA 92626
Phone: 714.200.1533

with a copy to:
Ruben Duran, City Attorney
Best Best & Krieger, LLP
2855 E Guasti Road
Ontario, CA 91761

with a copy to:
Tim Roberts
BrookCal Ontario LLC
3200 Park Center Drive, Suite 1000
Costa Mesa, CA 92626
Phone: 714.200.2483

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of

a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Development Plan.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, CITY shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

3.3 Timing of Development. The parties acknowledge that OWNER cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of OWNER, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Ca1. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that OWNER shall have the right to develop the Property in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment.

3.3.1 Infrastructure Improvement Exhibit. Attached hereto as Exhibits "E" and "F" are a description and depiction, respectively, of the improvements needed for the development of the Property. In the event of any discrepancy between Exhibit E and Exhibit F, Exhibit F shall control.

3.4 Requirement for Public Infrastructure Improvements. Development of the Property is contingent in part on the phasing of area-wide infrastructure improvements

over which the OWNER has control. The issuance of building permits by CITY for Model Units and Production Units is, in general, contingent on OWNER's completion of needed infrastructure improvements and the availability of improvements and services to serve the Property.

3.4.1 Attached hereto as Exhibit "E" and Exhibit "F" are the description and depiction of the infrastructure improvements needed for the development of the Property ("the Infrastructure Improvement Exhibit").

3.4.2 Subject to the prior submittal by OWNER and approval by CITY of a plan to provide sufficient public infrastructure for the construction of a maximum number of nineteen (19) Model Units, private common recreation facilities and sales facilities. CITY may issue a maximum of nineteen (19) building permits for Model Units, private common recreation facilities and sales facilities. The plan to be submitted by OWNER for CITY approval shall describe the utilities and other infrastructure necessary to provide sufficient fire protection and other public health and safety requirements for the Model Units and other facilities.

3.5 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event OWNER finds that a change in the Existing Development Approvals is necessary or appropriate, OWNER shall apply for a Subsequent Development Approval to effectuate such change and CITY shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. If approved, any such change in the Existing Development Approvals shall be incorporated herein as an addendum to Exhibit "C", and may be further changed from time to time as provided in this Section. Unless otherwise required by law, as determined in CITY's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

(a) Alter the permitted uses of the Property as a whole; or,

(b) Increase the density or intensity of use of the Property as a whole; or,

(c) Increase the maximum height and size of permitted buildings; or,

(d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,

(e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

3.6 Reservations of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the CITY shall not be prevented from applying new rules, regulations and policies upon the OWNER, nor shall a development agreement prevent the CITY from denying or conditionally approving any subsequent development project application on the basis of such new rules, regulations and policies where the new rules, regulations and policies consist of the following:

(a) Processing fees by CITY to cover costs of processing applications for development approvals or for monitoring compliance with any development approvals;

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records and any other matter of procedure;

(c) Regulations, policies and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the CITY and any local amendments to those codes adopted by the CITY; provided however that, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan;

(d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the residents of the project and/or of the immediate community from a condition perilous to their health or safety;

(e) Regulations that do not conflict with those rules, regulations and policies set forth in this Agreement or the Development Plan;

(f) Regulations that may conflict but to which the OWNER consents.

3.6.2 Subsequent Development Approvals. This Agreement shall not prevent CITY, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations that do not conflict with the Development Plan, nor shall this Agreement prevent CITY from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Plan.

3.6.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or

suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce. In the event OWNER alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Agreement, and the CITY does not agree, the OWNER may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided however, that nothing contained in this Section 3.6.3 shall impose on CITY any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

3.6.4 Intent. The parties acknowledge and agree that CITY is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations and exceptions are intended to reserve to CITY all of its police power which cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to CITY all such power and authority which cannot be restricted by contract.

3.7 Public Works; Utilities. If OWNER is required by this Agreement to construct any public works facilities which will be dedicated to CITY or any other public agency upon completion, and if required by applicable laws to do so, OWNER shall perform such work in the same manner and subject to the same requirements as would be applicable to CITY or such other public agency should it have undertaken such construction. As a condition of development approval, OWNER shall connect the Project to all utilities necessary to provide adequate water, recycled water, sewer, gas, electric, and other utility service to the Project. As a further condition of development approval, OWNER shall contract with the CITY for CITY-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the CITY.

3.7.1 OWNER agrees that development of the Project shall require the construction of storm drain improvements as described in Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the storm drain improvements, as described in Exhibit E and depicted in Exhibit F.

3.7.2 OWNER agrees that development of the Project shall require the construction of street improvements as described in Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the street improvements, as described in Exhibit E and depicted in Exhibit F.

3.7.3 OWNER agrees that development of the Property shall require the extension of water and recycled water utility infrastructure as described in Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the water and recycled

water improvements as described in Exhibit E and depicted in Exhibit F. OWNER also agrees that recycled water shall be available and utilized by OWNER for all construction-related water uses including prior to, and during, any grading of the Property.

3.7.4 OWNER agrees that development of the Property shall require the extension of sewer improvements, as described in the attached Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the sewer improvements, as described in Exhibit E and depicted in Exhibit F.

3.7.5 OWNER agrees that development of the Property shall require the extension of fiber optic communications improvements as described in the attached Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the fiber optic communication improvements, as described in Exhibit E and depicted in Exhibit F.

3.8 Acquisition of Offsite Provision of Real Property Interests. In any instance where OWNER is required by any Development Approval or Land Use Regulation and the Construction Agreement to construct any public improvement on land not owned by OWNER ("Offsite Improvements"), the CITY and OWNER shall cooperate in acquiring the necessary legal interest ("Offsite Property") in accordance with the procedures set forth in Section 2.4 of the Construction Agreement. This section 3.8 is not intended by the parties to impose upon the OWNER an enforceable duty to acquire land or construct any public improvements on land not owned by OWNER, except to the extent that the OWNER elects to proceed with the development of the Project, and then only in accordance with valid conditions imposed by the CITY upon the development of the Project under the Subdivision Map Act or other legal authority.

3.8.1 CITY Acquisition of Non-Construction Agreement Offsite Property. In the event OWNER is required to construct any public improvements on land not owned by OWNER, but such requirement is not based upon the Construction Agreement, Sections 3.8.1 and 3.8.2 shall control the acquisition of the necessary property interest(s) ("Non-Construction Agreement Offsite Property"). If the OWNER is unable to acquire such Non-Construction Agreement Offsite Property, and following the written request from the OWNER to CITY, CITY agrees to use reasonable and diligent good faith efforts to acquire the Non-Construction Agreement Offsite Property from the owner or owners of record by negotiation to the extent permitted by law and consistent with this Agreement. If CITY is unable to acquire the Non-Construction Agreement Offsite Property by negotiation within thirty (30) days after OWNER'S written request, CITY shall, initiate proceedings utilizing its power of eminent domain to acquire that Non-Construction Agreement Subject Property at a public hearing noticed and conducted in accordance with California Code of Civil Procedure Section 1245.235 for the purpose of considering the adoption of a resolution of necessity concerning the Non-Construction Agreement Offsite Property, subject to the

conditions set forth in this Section 3.8. The CITY and OWNER acknowledge that the timelines set forth in this Section 3.8.1 represent the maximum time periods which CITY and OWNER reasonably believe will be necessary to complete the acquisition of any Non-Construction Agreement Offsite Property. CITY agrees to use reasonable good faith efforts to complete the actions described within lesser time periods, to the extent that it is reasonably able to do so, consistent with the legal constraints imposed upon CITY.

3.8.2 Owner's Option to Terminate Proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to making an offer to the owner of the Non-Construction Agreement Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease all acquisition proceedings with respect to that Non-Construction Agreement Offsite Property, whereupon CITY shall cease such proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to the date of the hearing on CITY'S intent to consider the adoption of a resolution of necessity as to any Non-Construction Agreement Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease condemnation proceedings, whereupon CITY shall cease such proceedings. If OWNER does not notify CITY to cease condemnation proceedings within said fifteen (15) day period, then the CITY may proceed to consider and act upon the Non-Construction Agreement Offsite Property resolution of necessity. If CITY adopts such resolution of necessity, then CITY shall diligently institute condemnation proceedings and file a complaint in condemnation and seek an order of immediate possession with respect to the Non-Construction Agreement Offsite Property.

3.9 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of CITY possess authority to regulate aspects of the development of the Property separately from or jointly with CITY and this Agreement does not limit the authority of such other public agencies. CITY agrees to cooperate fully, at no cost to CITY, with OWNER in obtaining any required permits or compliance with the regulations of other public agencies provided such cooperation is not in conflict with any laws, regulations or policies of the CITY.

3.10 Tentative Tract Maps; Extension. With respect to applications by OWNER for tentative subdivision maps for portions of the Property, CITY agrees that OWNER may file and process tentative maps in accordance with Chapter 4.5 (commencing with Section 66498.1) of Division 2 of Title 7 of the California Government Code and the applicable provisions of CITY's subdivision ordinance, as the same may be amended from time to time. In accordance with the provisions of Section 66452.6 of the Government Code, each tentative subdivision map or tentative parcel map, heretofore or hereafter approved in connection with development of the Property, shall be deemed to have been granted an extension of time to and until the date that is five (5) years following the Effective Date of this Agreement.; The CITY's City Council may, in its discretion, extend any such map for an additional period of up to five (5) years beyond

its original term, so long as the subdivider files a written request for an extension with the City prior to the expiration of the initial five (5) year term.

4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs that will not be fully met by the Development Plan and further acknowledge and agree that this Agreement confers substantial private benefits on OWNER that should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on OWNER by providing more fully for the satisfaction of the public needs resulting from the Project.

4.2 Development Impact Fees.

4.2.1 Amount of Development Impact Fee. Development Impact Fees (DIF) shall be paid by OWNER. The Development Impact Fee amounts to be paid by OWNER shall be the amounts that are in effect at the time such amounts are due. Nothing contained in this Agreement shall affect the ability of the CITY to impose new Development Impact Fees or amend the amounts of existing Development Impact Fees. Additionally, nothing contained in this Agreement shall affect the ability of other public agencies that are not controlled by CITY to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by CITY.

4.2.2 Time of Payment. The Development Impact Fees required pursuant to Subsection 4.2.1 shall be paid to CITY prior to the issuance of building permit for each applicable residential or other unit, except for the Open Space and Habitat Acquisition Development Impact fee, which shall be paid by OWNER to CITY prior to the issuance of a grading permit. Deferral of the payment of Development Impact Fees may be granted pursuant to a separate agreement approved by City pursuant to City policy.

4.2.3 Parkland and Quimby Act Fees. Pursuant to the General Plan (Ontario Plan) Goal PR1, Policy PR1-5 (achievement of a park standard of 5 acres of parkland per 1,000 residents) OWNER shall provide improved parks, developed in accordance with the City's park standards in an amount equal to two (2) acres per 1,000 of projected population without credit, reimbursement, offset or consideration from City. Such areas shall either be dedicated to the City or transferred to a homeowners' association. If approved by the City Manager, OWNER may satisfy this requirement through the development of non-public recreation facilities such as private recreational clubhouses or pool facilities. Credit for such private recreational facilities areas shall be limited to a maximum of 50% of the foregoing park development requirement. If OWNER's Project does not provide dedicated and developed park acreage equal to two (2) acres per 1,000 projected population, OWNER shall pay a fee in-lieu equal to the per

acre estimated costs of acquisition and development of parkland in the City's Development Impact Fee for the calculated park acreage deficiency, at the time the fee becomes due and payable to the City. Such in-lieu fee shall be due and payable prior to the issuance of the first building permit for Production Units issued to OWNER. Any park dedication and/or improvements in excess of such two (2) acres per thousand standard, provided such park has been developed in accordance with the City's park standards and is open to the public generally, shall entitle OWNER to a credit toward its obligations under the Quimby Act (Gov. Code, § 64477) and the City's implementing ordinance and/or resolution (collectively "**Quimby Act Obligations**"), and to the extent OWNER's Quimby Act Obligations are satisfied, OWNER shall be entitled to have the City acquire such developed and publicly available parks as Non-Program Interests in accordance with Section 4.3.3 below.

4.3 Responsibility for Construction of Public Improvements.

4.3.1 Timely Construction of Public Infrastructure. The phasing of the areawide infrastructure construction within the New Model Colony will be as approved by the CITY. OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the Project as shown on the attached Exhibit "F" and any and all tentative tract map conditions. Unless otherwise specified in the Subdivision Agreement/Tract Map conditions, all other required Improvements for each Tract Map, shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of the first building permit for Production Units for each such Tract Map. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Tract Map conditions for Tract Map No. 20449.

4.3.2 Construction of DIF Program Infrastructure (Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and the Construction Agreement between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit in accordance with the provisions of the Construction Agreement and any amendments thereto. Use of DIF Credit issued to OWNER as a member of NMC Builders LLC to offset OWNER's DIF payment obligations shall also be subject to the provisions of the Construction Agreement and any amendments thereto.

4.3.3 Construction of DIF Program Infrastructure (Non-Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and such public improvements are not included the Construction Agreement between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitation on the use of DIF Credit issued to OWNER to offset OWNER's DIF payment obligations shall also be subject to the provisions of a separate Fee Credit Agreement. CITY and

OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements.

4.4 Affordable Housing Requirement.

4.4.1 Affordable Housing- Number of Units. OWNER shall provide a minimum number of affordable housing units, equivalent to 10% of the OWNER's total approved residential units within the Project, that are affordable to very low, low and moderate income households. Such requirement for affordable housing shall be met through one, or a combination of one or more, of the options provided in the following Sections 4.3.2.1 through 4.3.2.1. For the purposes of this Section, any term not defined in this Agreement shall be as defined by California Community Redevelopment Law (California Health and Safety Code Section 33000 et seq.).

4.4.2 Affordability Spread. Of the total number of residential dwelling units specified in Section 4.4.1, to be constructed or rehabilitated pursuant to Sections 4.4.2.1 or 4.4.2.2 respectively, thirty percent (30%) shall be available to very low income, thirty percent (30%) shall be available to low income and forty percent (40%) shall be available to moderate income households. "**Households**" shall be as defined by California Health and Safety Code Section 50053.

4.4.2.1 New Construction. If OWNER elects to fully or partially satisfy the affordable housing requirement by the construction of new residential units, it shall construct and restrict the affordability of residential dwelling units within its Project or, at OWNER's option and with the approval of the City, within another project elsewhere within the City. The affordable units constructed shall be intermingled with other units as part of the Project, and shall be built to the same construction, design and aesthetic standards, as well as number of rooms, as other units constructed as part of that OWNER's Project. In addition, the percentage ratio of affordable units offered for sale versus those offered for rent shall equal the percentage ratio of other units offered for sale versus for rent within OWNER's Project. Such construction shall be completed no later than the date that is five (5) years following the issuance of the first building permit for OWNER's Project; provided however that to the extent OWNER has not constructed the required percentage of units, based on the number of building permits for non-restricted units, OWNER shall, prior to the issuance of such building permits, provide security (in the form and substance approved by the City Manager and City Attorney) to City in order to ensure the faithful completion of such required percentage of construction of affordable units. If OWNER elects the option of constructing new affordable units, a detailed Affordable Housing Agreement specifying terms for the allowable monthly housing costs or rents (as applicable) and maintenance and occupancy standards shall be prepared, executed and recorded against such units as a condition to the issuance of a building permit. The Affordable Housing Agreement shall hold a recorded priority position senior to any other non-

statutory lien or encumbrance affecting the unit.

4.4.2.2 Rehabilitation. If OWNER elects to fully or partially satisfy the affordable housing requirement by the substantial rehabilitation of existing residential units in the City, it shall substantially rehabilitate and restrict the affordability of, the number of residential units specified in Section 4.4.1, provided that such units shall be provided elsewhere within the City. The rehabilitation work shall be substantial and of high quality and shall also address any deferred property maintenance issues on the property. "**Substantial rehabilitation**" shall mean rehabilitated multi-family rented dwelling units with three or more units and the value of the rehabilitation constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of land value pursuant to Health and Safety Code Section 33413(b)(2)(A)(iii-iv) as such section exists as of the Effective Date of this Agreement. If OWNER chooses the option of rehabilitation of existing housing units within the City, a detailed Affordable Housing Agreement specifying the terms for the allowable month housing costs or rents (as applicable) and maintenance and occupancy standards shall be prepared, executed and recorded against such units as a condition to the issuance of a building permit. Such rehabilitation shall be completed no later than the date that is five (5) years following the issuance of the first building permit for OWNER's Project; provided however that to the extent OWNER has not rehabilitated the required percentage of units, based on the number of building permits, OWNER shall, prior to the issuance of such building permits, provide security (in the form and substance approved by the City Manager and City Attorney) to the City in order to ensure the faithful completion of such required percentage of rehabilitation.

4.4.2.3 In-Lieu Fee. If OWNER has not fully complied with the requirements of Section 4.3.1 by providing the minimum number of affordable units through the construction of new affordable units or by the substantial rehabilitation of existing units, shall pay an "**Affordability In-Lieu Fee**". If OWNER has not provided any affordable residential units by construction or rehabilitation, the Affordability In-Lieu fee shall be equal to Two Dollars Sixty-One Cents ($2.61) per square foot of residential development within OWNER's Project or, if pre-paid as set forth below, Two Dollars Twenty-Eight Cents ($2.28) per square foot of residential development within OWNER's Project. If OWNER has partially complied with the requirements of Section 4.4.1 by construction or rehabilitation of less than the minimum number of units, then the Affordability In-lieu Fee shall be recalculated and reduced in consideration of the number and type of affordable units provided. The Affordability In-Lieu Fee shall be paid by OWNER to City no later than prior to the issuance of each building permit within OWNER's Project based on the square footage of the residential unit for which such building permit is sought; provided however that OWNER may, at OWNER's election, pre-pay such Affordability In-Lieu Fee by paying such Affordability In-Lieu Fee within thirty (30) days following the

earliest discretionary approval by the City for OWNER's Project, including, but not limited to, any general plan amendment, specific plan adoption, development agreement, tentative map approval, variance, conditional use permit, or resolution of intention to form any public financing mechanism. The Two Dollars, Thirty-Seven Cents ($2.37) and the Two Dollars Seven Cents ($2.07) per square foot amounts shall automatically be increased annually, commencing on July 1, 2022, and automatically each July 1 thereafter. Such adjustment shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Riverside - San Bernardino - Ontario, CA), (December 2017=100) over the preceding year. The pre-paid Affordability In-Lieu Fee shall be calculated based on the maximum floor area ratio (FAR) permitted within the General Plan and any applicable FAR contained within the applicable specific plan, whichever is greater, and the Maximum Development Density. For purposes of this Agreement, "**Maximum Development Density**" shall be determined by multiplying the OWNER's Project's density for residential development potential as set forth in the General Plan or the applicable Specific Plan, whichever is less, by the net acreage of land within OWNER's Project. All "Affordability In-Lieu Fees" collected by the City shall be used to promote the construction of affordable housing within the City.

4.4.2.4 Affordability Covenants. Prior to the issuance of the first building permit for any affordable unit, the City and OWNER shall enter into an Affordable Housing Agreement Affordability shall be assured for a period of forty-five (45) years for for-sale units and fifty-five (55) years for rentals. For rental units, base rents shall be established by the City and rental adjustments required by the City shall be performed on an annual basis. In addition, the Affordable Housing Agreement shall impose maximum occupancy limits of 2 occupants per bedroom plus 1 additional occupant per dwelling unit, and a requirement for the owner or tenant to properly maintain each dwelling unit.

4.4.2.5 Transfer of Affordable Project. No transfer of title to any affordable housing project shall occur without the prior written consent of the City. In the event OWNER transfers title to any affordable housing project required to be constructed pursuant to this Agreement to a non-profit entity, or other entity, that receives an exemption from ad valorem real property taxes, the City shall be required to assure payment of an annual in lieu fee to the City on July 1 of each year equal to one-tenth of one percent (0.1%) of the assessed value of such project. The City may permit OWNER to satisfy this obligation by recorded covenants against the property and enforceable against said entity by the City. Any such covenants shall be approved by the Planning Director and the City Attorney.

4.5 Schools Obligations.

4.5.1 Written Evidence of Compliance with Schools Obligations.
OWNER shall, either through joint or individual agreements between OWNER and the applicable school district(s), shall satisfy its new school obligations. The new school obligations for the Mountain View School District in the Ontario Ranch area have been projected to include the acquisition or dedication of school sites for, and construction of, up to eight (8) schools. Of these eight (8) schools, six (6) are to be elementary (K-5) grade schools and two (2) are to be middle grade schools. The new school obligations for the Chaffey Joint Union High School District in the Ontario Ranch area have been projected to include the dedication of a school site for, and construction of, an additional high school. The new school obligations for the applicable school district shall be met by a combination of the following: (1) designating and dedicating school site(s) within the Property as set forth in the General Plan, and/or (2) paying school impact fees, (3) entering into a joint mitigation agreement or individual mitigation agreements, or (4) any combination of the foregoing. Written evidence of approval by the applicable school district that OWNER has met their school obligations may be required by the City as the condition to the issuance by the City of any entitlements for OWNER's Project. In the event OWNER is unable to provide such written evidence from the applicable school district(s), the City shall have the right to decline to honor any DIF Credit, Certificates of MDD Availability, Certificates of Storm Water Treatment Capacity Availability, or any combination thereof, presented by such OWNER, without liability to the City. To the extent that a joint mitigation agreement is approved by the applicable school district(s), and OWNER is a participant in good standing in such mitigation agreement, OWNER shall be deemed to have mitigated its new school obligations under this Section 4.4.1.

4.6 Public Services Funding Fee.

4.6.1 Requirement for Payment of Public Services Funding Fee. In order to ensure that the adequate provision of public services, including without limitation, police, fire and other public safety services, are available to the residents of each Project in a timely manner, OWNER shall pay to CITY a "**Public Services Funding Fee**." The Public Services Funding Fee shall apply to residential and non-residential uses as set forth below.

4.6.2 Public Services Funding Fee Amount. OWNER shall pay a Public Services Funding fee in the total amount of Two Thousand Three Hundred Seventeen dollars ($2,317.00) per residential dwelling unit. The Public Services Funding Fee shall be paid in one (1) installment within one hundred eighty (180) calendar days after the effective date of the Development Agreement or in two (2) installments, at OWNER's option, as follows:

4.6.2.1 First Installment (Residential uses). The First Installment of the Public Services Funding Fee shall be One Thousand One Hundred Fifty Eight dollars and fifty cents ($1,158.50) per residential dwelling unit. The First Installment shall be based upon the "**Maximum Development**

Density" of the OWNER Project, as defined in Section 3.7.2.3 of the First Amended and Restated Construction Agreement. The First Installment shall be due and payable 30 days following the effective date of the Development Agreement.

If the First installment amount is not paid for all residential dwelling units within the Project (based on the Maximum Development Density, or the number of units described on "B Maps" if approved) by January 1, 2023, the amount of the First Installment shall be increased. Such increase shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Riverside - San Bernardino - Ontario, CA) (December 2017=100) over the preceding year. Additionally, the amount shall be further increased automatically by the percentage increase in the Consumer Price Index (Riverside - San Bernardino - Ontario, CA) (December 2017=100) on each January 1 thereafter.

4.6.2.2 Second Installment (Residential Uses). The Second Installment of the Public Services Funding Fee shall be One Thousand One Hundred Fifty Eight dollars and fifty cents ($1,158.50) per residential unit. The Second Installment shall be paid at the time of the issuance of each building permit for the Project. The amount of the Second Installment shall increase automatically by percentage increase (but no decrease) in the Consumer Price Index (Riverside - San Bernardino - Ontario, CA) (December 2017=100) over the preceding year on January 1st of each year, beginning on January 1, 2023. OWNER may exercise the option to pay the Second Installment amount for all residential units, a portion of the residential units, or for the remainder of the residential units within OWNER's Project on or before each December 31st, before the Second Installment amount is automatically increased.

4.6.2.3 Single Installment (Non-residential Uses). A single installment payment of the Public Services Funding Fee shall be required in the amount of Seventy Cents ($.70) per square foot of non-residential buildings. The single installment for non-residential uses shall be due and payable prior to the issuance of the building permit for a non-residential building. The amount of the Single Installment for non-residential uses shall automatically increase by percentage increase (but no decrease) in the Consumer Price Index (Riverside - San Bernardino - Ontario, CA), (December 2017=100) over the preceding year on January 1st of each year, beginning on January 1, 2023. OWNER may exercise the option to pay any single installment amounts for the remainder of the non-residential square footage within the Project on or before December 31st, before the Single Installment amount is automatically increased.

4.7 Net MDD/Water Availability Equivalents.

4.7.1 Assigned Net MDD/Water Availability Equivalents. The City has agreed with NMC Builders LLC to reserve exclusively for Members of NMC Builders, including OWNER, Net MDD made available through the construction of water system improvements funded by NMC Builders LLC. NMC Builders has assigned to OWNER its allocable share of the Net MDD issued by City. The provisions of the Construction Agreement Amendment requires that the City shall not approve a final tract map or issue building permits or certificates of occupancy for the area of development within the New Model Colony served by the water system improvements funded by NMC Builders LLC, except to the bearer of an Assignment of Net MDD Water Availability.

4.7.2 Use of Assigned Net MDD Water Availability. OWNER shall provide evidence of sufficient Net MDD Water Availability Equivalents (or portions thereof) prior to and as a condition precedent to, the City's approval of any and all tract maps for the Property. The amount of Net MDD Water Availability Equivalents required for City's approval of a tract map shall be based upon water demand factors and assumptions listed in Exhibit C-2R of the Construction Agreement Amendment as "Water Demand Equivalents by Land Use" for each land use category.

4.7.3 Requirement for other Water System Improvements. A Certificate of Net MDD Availability is evidence only of available water capacity and does not satisfy any other conditions applicable to an OWNER's Project, including those relating to design and construction of master-planned potable water and recycled water transmission and distribution system for the respective pressure zone and other public infrastructure requirements.

4.8 Storm Water Capacity Availability.

4.8.1 Requirement for Storm Water Treatment Capacity Availability. OWNER shall provide evidence of sufficient Storm Water Treatment Capacity Availability as reserved in a Certificate of Storm Water Treatment Capacity Availability the same manner and subject to the same limitations as provided for the assignment of Certificates of Net MDD Availability in Section 4.6 of this Agreement.

4.8.2 Use of Storm Water Treatment Capacity Availability. The amount of Storm Water Treatment Capacity Availability required for the issuance of a grading permit to OWNER shall be based upon the Net Residential Acreage of the area to be graded regardless of the corresponding use.

4.8.3 Requirement for other Storm Water Improvements. The Certificate of Storm Water Treatment Capacity Availability is evidence only of available storm water treatment capacity and does not satisfy any other conditions applicable to a particular development project, including those relating to on-site water treatment, water quality, connection to the storm water collection system, or other public infrastructure requirements.

4.9 Maintenance of Open Space. OWNER shall provide for the ongoing maintenance of all park, common areas and open space areas within the Project as more particularly set forth in the Specific Plan, through a homeowners' association as approved by the CITY. Covenants, conditions and restrictions establishing any homeowners' association shall be approved by the Planning Director and City Attorney.

4.10 Compliance with Public Benefits Requirements.

4.10.1 Failure to Provide Public Benefits. In the event OWNER fails or refuses to comply with any condition referenced in Section 4.1 through 4.10, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, OWNER shall be deemed in default of this Agreement pursuant to Section 8.4 hereof, thereby entitling the City to any and all remedies available to it, including, without limitation, the right of the City to withhold OWNER's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). In accordance with the Memorandum of Agreement between the CITY and NMC Builders, CITY will cooperate with OWNER in the formation of a CFD, or CFDs, to include all of the Project, to provide a financing mechanism to reimburse the OWNER for funds paid to NMC Builders LLC for OWNER's share of the costs of public infrastructure pursuant to the Construction Agreement and to acquire other public facilities constructed by OWNER subject to the provisions of the Memorandum of Agreement between CITY and NMC Builders LLC. Notwithstanding such reimbursements and acquisitions, OWNER shall remain entitled to DIF Credits as provided for in Article 3 of the Construction Agreement and/or as provided for in a separate Fee Credit Agreement between CITY and OWNER. OWNER agrees that, prior to the recordation of any Tract Map for the Property, the Property shall be included in a CFD to finance City services through annual special taxes that will initially be $1,560.77 per Single Family Detached Dwelling Unit, $1,352.59 per Multiple-Family Dwelling Unit, $1,134.29 per Gated Apartment Community Dwelling Unit, and $.29 per square foot for Non-Residential buildings. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year, unless otherwise modified by the CITY. CITY shall be the sole and exclusive lead agency in the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. In addition to the rights of the CITY pursuant to section 5.2 hereof, CITY shall have the right, but not the obligation, to condition the formation of any CFD, assessment district or other public financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the

condition to the formation of any CFD, assessment district or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit the City's ability to take any and all necessary steps requisite to the formation of the CFD to finance City services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district or to issue and sell bonds.

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

6.1.1 Time for and Initiation of Periodic Review. The CITY shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by the OWNER with the terms of this Agreement. The OWNER shall submit an Annual Monitoring Report to CITY, in a form acceptable to the City Manager, along with any applicable processing charge within ten (10) days after each anniversary date of the Effective Date of this Agreement. Within fifteen (15) days after the receipt of the Annual Monitoring Report, CITY shall review the Annual Monitoring Report. Prior to the expiration of the fifteen (15) day review period, CITY shall either issue a notice of continuing compliance or a notice of non-compliance and a notice of CITY's intent to conduct a Special Review pursuant to Sections 6.1.2 through 6.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his designee.

6.1.2 Initiation of Special Review. A special review may be called either by agreement between the parties or by initiation in one or more of the following ways:

(1) Recommendation of the Planning staff;

(2) Affirmative vote of at least four (4) members of the Planning Commission; or

(3) Affirmative vote of at least three (3) members of the City Council.

6.1.3 Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that the CITY intends to undertake a special

review of this Agreement to the OWNER. Such notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission.

6.1.4 Public Hearing. The Planning Commission shall conduct a hearing at which the OWNER must demonstrate good faith compliance with the terms of this Agreement. The burden of proof on this issue is upon the OWNER.

6.1.5 Findings Upon Public Hearing. The Planning Commission shall determine upon the basis of substantial evidence whether or not the OWNER has, for the period under review, complied in good faith with the terms and conditions of this Agreement.

6.1.6 Procedure Upon Findings.

(a) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.

(b) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has not complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission may recommend to the City Council to modify or terminate this Agreement.

(c) The OWNER may appeal a determination pursuant to paragraph (b) to the City Council in accordance with the CITY's rule for consideration of appeals in zoning matters generally.

6.2 Proceedings Upon Modification or Termination. If, upon a finding under Section 6.1.6(b), the CITY determines to proceed with modification or termination of this Agreement, the CITY shall give notice to the property OWNER of its intention so to do. The notice shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not the CITY proposes to terminate or to modify this Agreement; and

(c) Other information that the CITY considers necessary to inform the OWNER of the nature of the proceeding.

6.3 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, the OWNER shall be given an opportunity to be heard. The OWNER shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the OWNER. If the City Council finds, based upon substantial evidence in the

administrative record, that the OWNER has not complied in good faith with the terms and conditions of the agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the CITY. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, OWNER is found to be in compliance with this Agreement, CITY shall, upon written request by OWNER, issue a Certificate of Agreement Compliance ("Certificate") to OWNER stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) OWNER is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. OWNER may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or OWNER, CITY shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [RESERVED]

8. DEFAULT AND REMEDIES.

8.1 Remedies in General. It is acknowledged by the parties that CITY would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that CITY shall not be liable in damages to OWNER, or to any successor in interest of OWNER, or to any other person, and OWNER covenants not to sue for damages or claim any damages:

(a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or

(b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

(c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

8.2 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all parties for the following reasons:

(a) Money damages are unavailable against CITY as provided in Section 8.1 above.

(b) Due to the size, nature and scope of the project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts.

8.3 Release. Except for nondamage remedies, including the remedy of specific performance and judicial review as provided for in Section 6.5, OWNER, for itself, its successors and assignees, hereby releases the CITY, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the CITY because it entered into this Agreement or because of the terms of this Agreement.

8.4 Termination or Modification of Agreement for Default of OWNER. Subject to the provisions contained in Subsections 6.2 and 6.3 herein, CITY may terminate or modify this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate or modify this Agreement pursuant to this Section only after providing written notice to OWNER of default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

8.5 Termination of Agreement for Default of CITY. OWNER may terminate this Agreement only in the event of a default by CITY in the performance of a material term of this Agreement and only after providing written notice to CITY of default setting forth the nature of the default and the actions, if any, required by CITY to cure such default and, where the default can be cured, CITY has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

9. THIRD PARTY LITIGATION.

9.1 General Plan Litigation. CITY has determined that this Agreement is consistent with its Comprehensive General Plan, as such General Plan exists as of the Effective Date ("General Plan"), and that the General Plan meets all requirements of law. OWNER has reviewed the General Plan and concurs with CITY's determination. CITY shall have no liability in damages under this Agreement for any failure of CITY to perform under this Agreement or the inability of OWNER to develop the Property as contemplated by the Development Plan of this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

9.2 Third Party Litigation Concerning Agreement. OWNER shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless CITY, its agents, officers and employees from any claim, action or proceeding against CITY, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. CITY shall promptly notify OWNER of any such claim, action or proceeding, and CITY shall cooperate in the defense. If CITY fails to promptly notify OWNER of any such claim, action or proceeding, or if CITY fails to cooperate in the defense, OWNER shall not thereafter be responsible to defend, indemnify, or hold harmless CITY. CITY may in its discretion participate in the defense of any such claim, action or proceeding.

9.3 Indemnity. In addition to the provisions of 9.2 above, OWNER shall indemnify and hold CITY, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of OWNER, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (OWNER's employees included) or any other element of damage of any kind or nature, relating to or in any way connected with or arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, failure and conveyance of the public improvements, save and except claims for damages arising through the sole active negligence or sole willful misconduct of CITY. OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions. CITY may in its discretion participate in the defense of any such legal action.

9.4 Environment Assurances. OWNER shall indemnify and hold CITY, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any act or omission of OWNER, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions, and OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. CITY may in its discretion participate in the defense of any such action.

9.5 Reservation of Rights. With respect to Sections 9.2, 9.3 and 9.4 herein, CITY reserves the right to either (1) approve the attorney(s) which OWNER selects, hires or otherwise engages to defend CITY hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense, provided, however, that OWNER shall reimburse CITY forthwith for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefor.

9.6 Survival. The provisions of this Sections 9.1 through 9.6, inclusive, shall survive the termination of this Agreement.

10. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit OWNER, in any manner, at OWNER's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. CITY acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with OWNER and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. CITY will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee, has submitted a request in writing to the CITY in the manner specified herein for giving notices, shall be entitled to receive written notification from CITY of any default by OWNER in the performance of OWNER's obligations under this Agreement.

(c) If CITY timely receives a request from a Mortgagee requesting a copy of any notice of default given to OWNER under the terms of this Agreement, CITY shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to OWNER. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of OWNER's obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to

be performed by OWNER is a condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement.

11. MISCELLANEOUS PROVISIONS.

11.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the San Bernardino County Recorder by the City Clerk within the ten (10) days after the CITY executes this Agreement, as required by Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if the CITY terminates or modifies the agreement as provided for herein and in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the San Bernardino County Recorder.

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

11.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provision of the Public Benefits set forth in Section 4 of this Agreement, including the payment of the fees set forth therein, are essential elements of this Agreement and CITY would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

11.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

11.6 Singular and Plural. As used herein, the singular of any word includes the plural.

11.7 Joint and Several Obligations. Subject to section 2.4, if at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one owner, all obligations of such owners under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners. Notwithstanding the foregoing, no owner of a single lot which has been finally subdivided and sold to such owner as a member of the general public or otherwise as an ultimate user shall have any obligation under this Agreement except as provided under Section 4 hereof.

11.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

11.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

11.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

11.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control, (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

11.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

11.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to

do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

11.14 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

11.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Bernardino, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the development of private property and the owner of such property.

11.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The City Manager may delegate his powers and duties under this Agreement to an Assistant City Manager or other management level employee of the CITY.

11.18 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by CITY of its power of eminent domain.

11.19 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, OWNER shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement,

and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this County and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. OWNER for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

11.20 Estoppel Certificate. Within thirty (30) business days following a written request by any of the parties, the other party shall execute and deliver to the requesting party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party. OWNER shall pay to CITY all costs incurred by CITY in connection with the issuance of estoppel certificates under this Section 11.20 prior to CITY's issuance of such certificates.

11.21 Authority to Execute. The person or persons executing this Agreement on behalf of OWNER warrants and represents that he or she/they have the authority to execute this Agreement on behalf of his or her/their corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind OWNER to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT NO. PDA21-014

"OWNER"

BROOKCAL ONTARIO LLC, a Delaware limited liability company

By:_____
Name: David E. Bartlett
Title: Vice President
Date: _____

"CITY"

CITY OF ONTARIO

By:_____
Scott Ochoa
City Manager

Date: _____

ATTEST:

_____
City Clerk, Ontario

APPROVED AS TO FORM:
BEST BEST KRIEGER, LLP

_____
City Attorney

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
COUNTY OF_____)

On _____, 20_____, before me,_____,
Date *Insert Name and Title of the Officer*

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

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

WITNESS my hand and official seal.

Signature_____
Signature of Notary Public

Place Notary Seal Above

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
COUNTY OF_____)

On _____, 20_____, before me _____,
Date Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature_____
Signature of Notary Public

Place Notary Seal Above

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

Legal Description of Property

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

THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXHIBIT "B"
TO DEVELOPMENT AGREEMENT

Map showing Property and its location

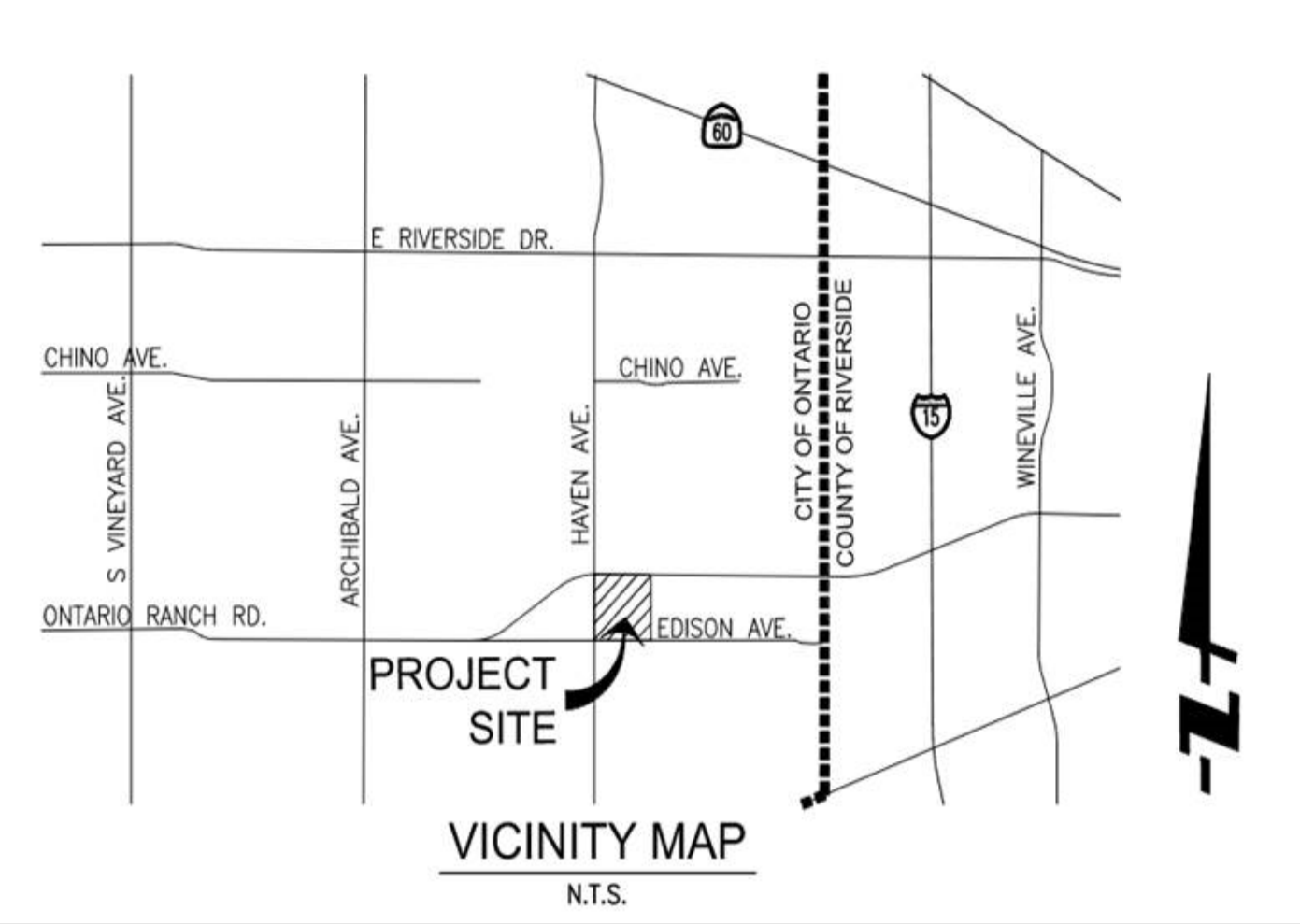


EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Existing Development Approvals

On October 23, 2007 the Planning Commission:

a) Issued Resolution No. PC07-125 recommending City Council certification of the Rich-Haven Specific Plan EIR (SCH#2006051081).
b) Issued Resolution No. PC07-127 recommending to City Council approval of the Rich-Haven Specific Plan (File No. PSP05-004).

On December 4, 2007, the City Council:

a) Issued Resolution No. 2007-145 certifying the Rich-Haven Specific Plan EIR (SCH#2006051081).
b) Adopted Ordinance No. 2884 approving the Rich-Haven Specific Plan.

On February 23, 2016, the Planning Commission:

a) Issued Resolution No. PC16-003 recommending City Council adoption of an Addendum to the Rich-Haven EIR.
b) Issued Resolution PC16-004 recommending approval of the Rich-Haven Specific Plan Amendment (File No. PSPA16-001).

On March 15, 2016, the City Council:

a) Issued Resolution No. 2016-024 for the adoption of an Addendum (File No. PSPA16-001) to the Rich-Haven Specific Plan EIR.
b) Issued Resolution No. 2016-025 approving an Amendment (File No. PSPA16-001) to the Rich-Haven Specific Plan.

On January 23, 2018, the Planning Commission:

a) Issued Resolution No. PC18-014 recommending City Council adoption of an Addendum to the Rich-haven EIR.
b) Issued Resolution No. PC18-015 recommending to City Council adoption of the Rich-Haven Specific Plan Amendment (File No. PSPA16-005).

On February 20, 2018, the City Council:

a) Issued Resolution No. 2018-017 for the adoption of an Addendum (File No. PSPA16-005) to the Rich-Haven Specific Plan EIR.
b) Issued Resolution No. 2018-018 approving an Amendment (File No. PSPA16-005) to the Rich-Haven Specific Plan.

EXHIBIT "D"
TO DEVELOPMENT AGREEMENT

Existing Land Use Regulations

These documents are listed for reference only:

1. The Rich-Haven Specific Plan (File No. PSP05-004) Environmental Impact Report, Resolution No. 2007-145.

2. The Rich-Haven Specific Plan (File No. PSP05-004), Ordinance No. 2884.

3. Addendum to the Rich-Haven Specific Plan (File No. PSPA16-001) Environmental Impact Report, Resolution No. 2016-024.

4. Amendment to the Rich-Haven Specific Plan (File No. PSPA16-001), Resolution No. 2016-025.

5. Addendum to the Rich-Haven Specific Plan (File No. PSPA16-005) Environmental Impact Report, Resolution No. 2018-017.

6. Amendment to the Rich-Haven Specific Plan (File No. PSPA16-005), Resolution No. 2018-018.

7. City of Ontario Municipal Code
    a. Six – Sanitation & Health
    b. Seven – Public Works
    c. Eight – Building Regulations
    d. Nine – Development Code
    e. Ten – Parks & Recreation

EXHIBIT "E"
TO DEVELOPMENT AGREEMENT

Description of Required Improvements

OWNER shall design, construct, and complete all improvements including but not limited to sewer, water, recycled water, storm drain, fiber, and street improvements necessary to serve the Property, prior to the request of any Production Units.

STREETS (ST)

(A) As part of the required ST improvements, OWNER shall include the ultimate signing and striping improvements along the Property frontage on Haven Avenue, including the northbound section of Haven Avenue, north of Schaefer Avenue to Aspen/Nelson, to install the two (2) northbound thru lanes with a trap right turn lane at the intersection of Aspen/Nelson.

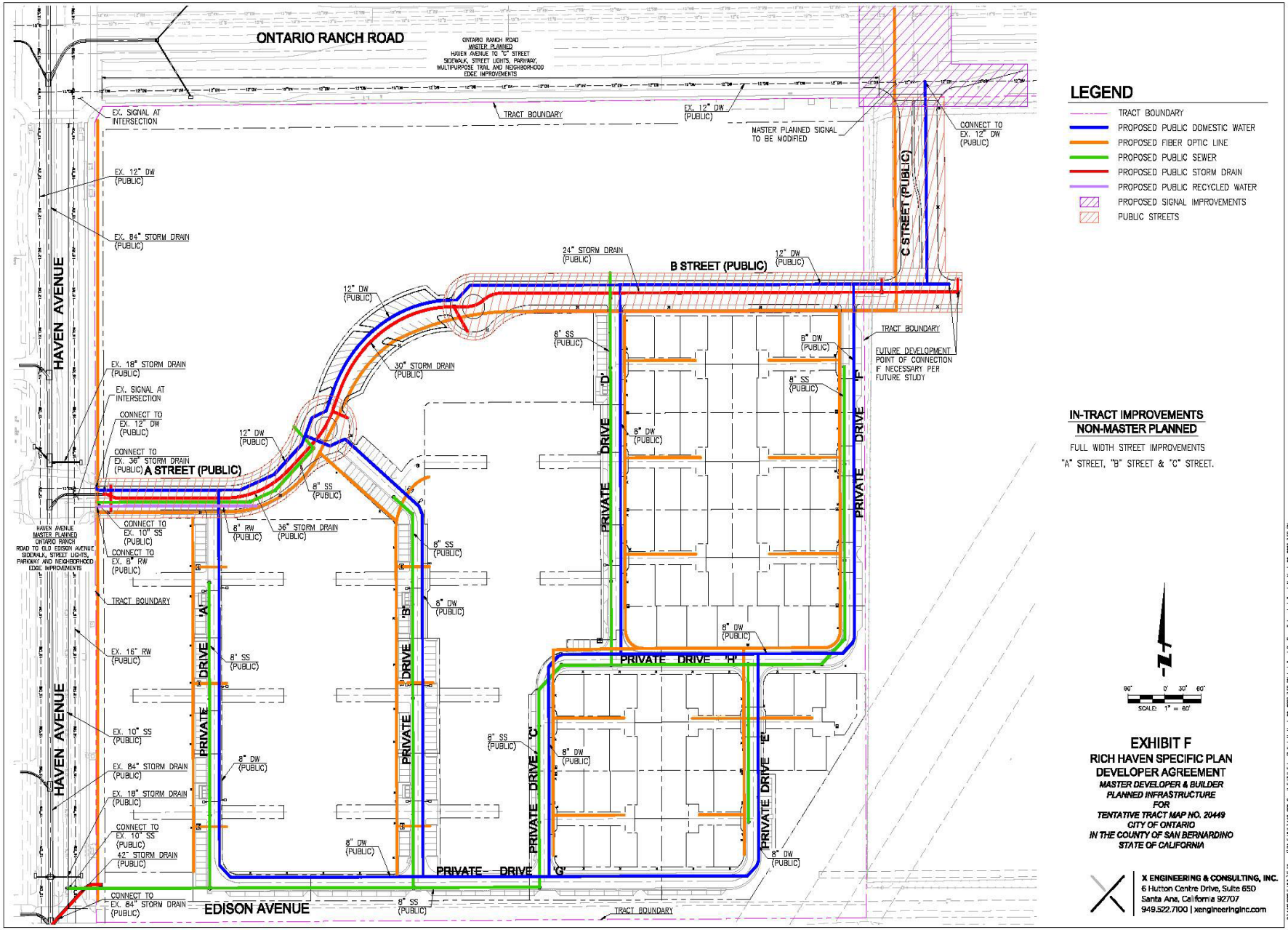
FIBER OPTIC (FO)

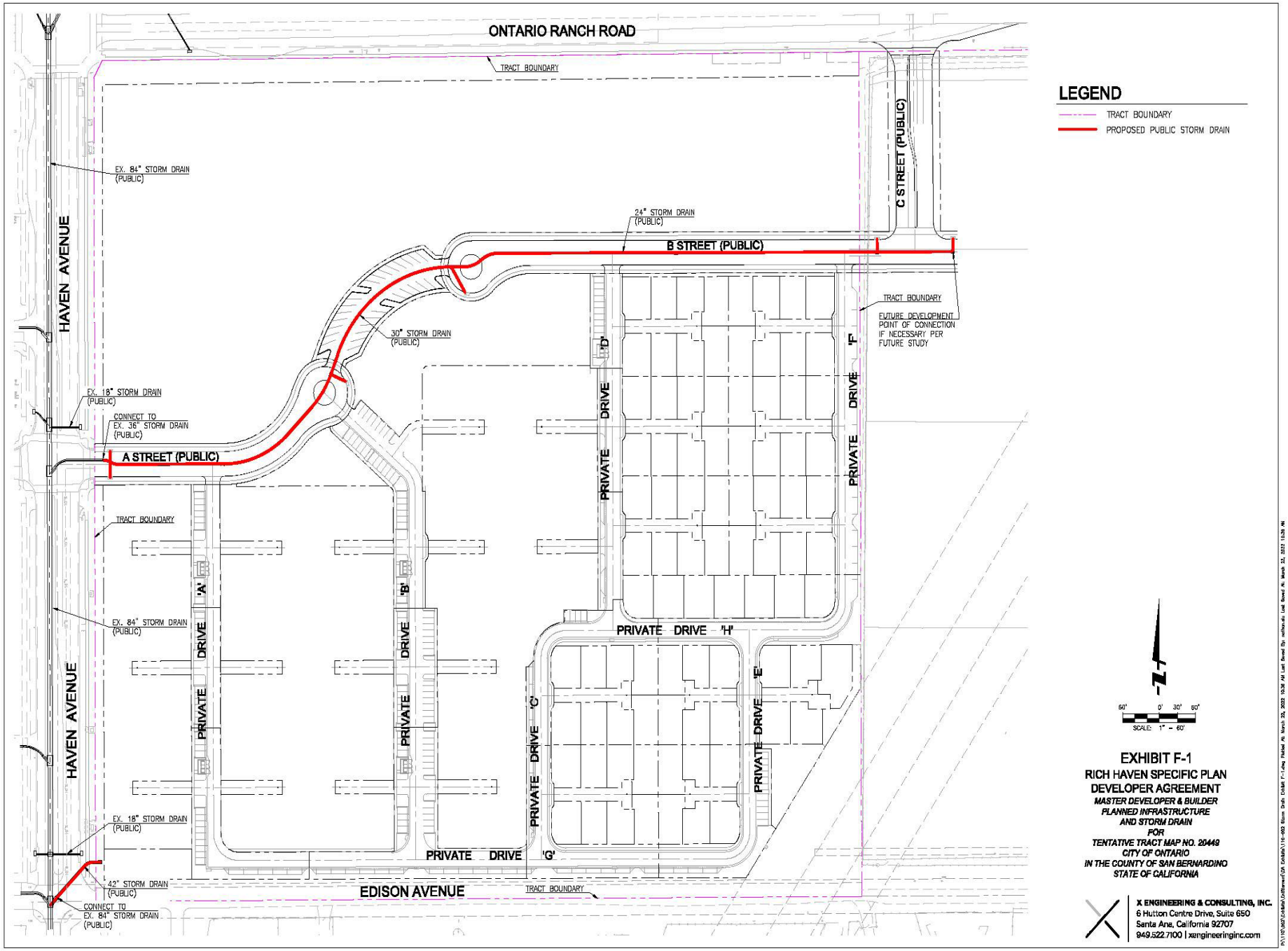
(A) OWNER shall design, construct, complete, and connect the FO improvements necessary for the vacant portion of the Property to the nearest point of connection that exist at the time the vacant Property develops. If the vacant Property develops as non-residential (e.g., retail/commercial), OWNER shall construct and complete the connection prior to the request of any occupancy. If the vacant Property develops as residential, OWNER shall construct and complete the connection prior to the request for occupancy of any Production Units.

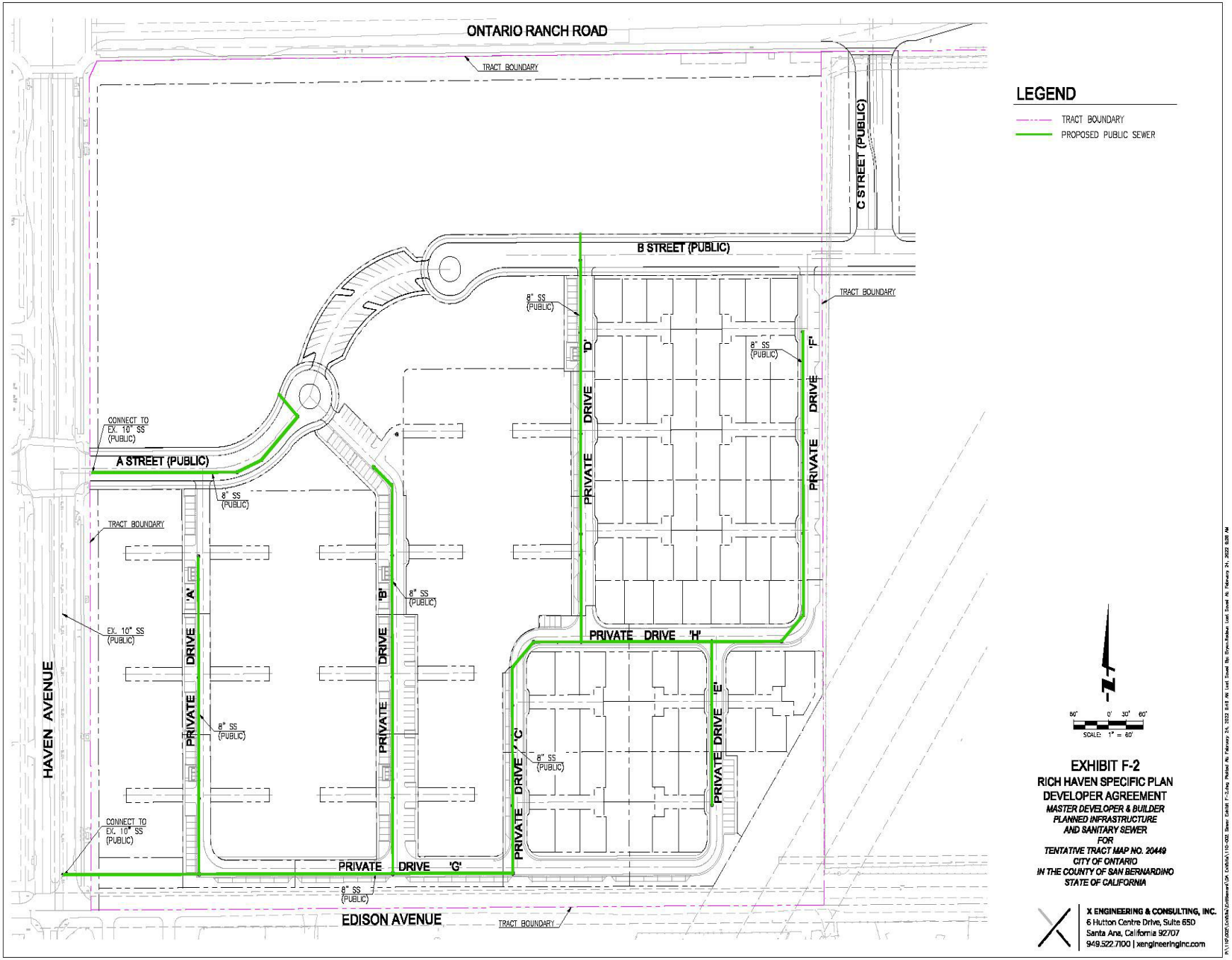
EXHIBIT "F"
TO DEVELOPMENT AGREEMENT

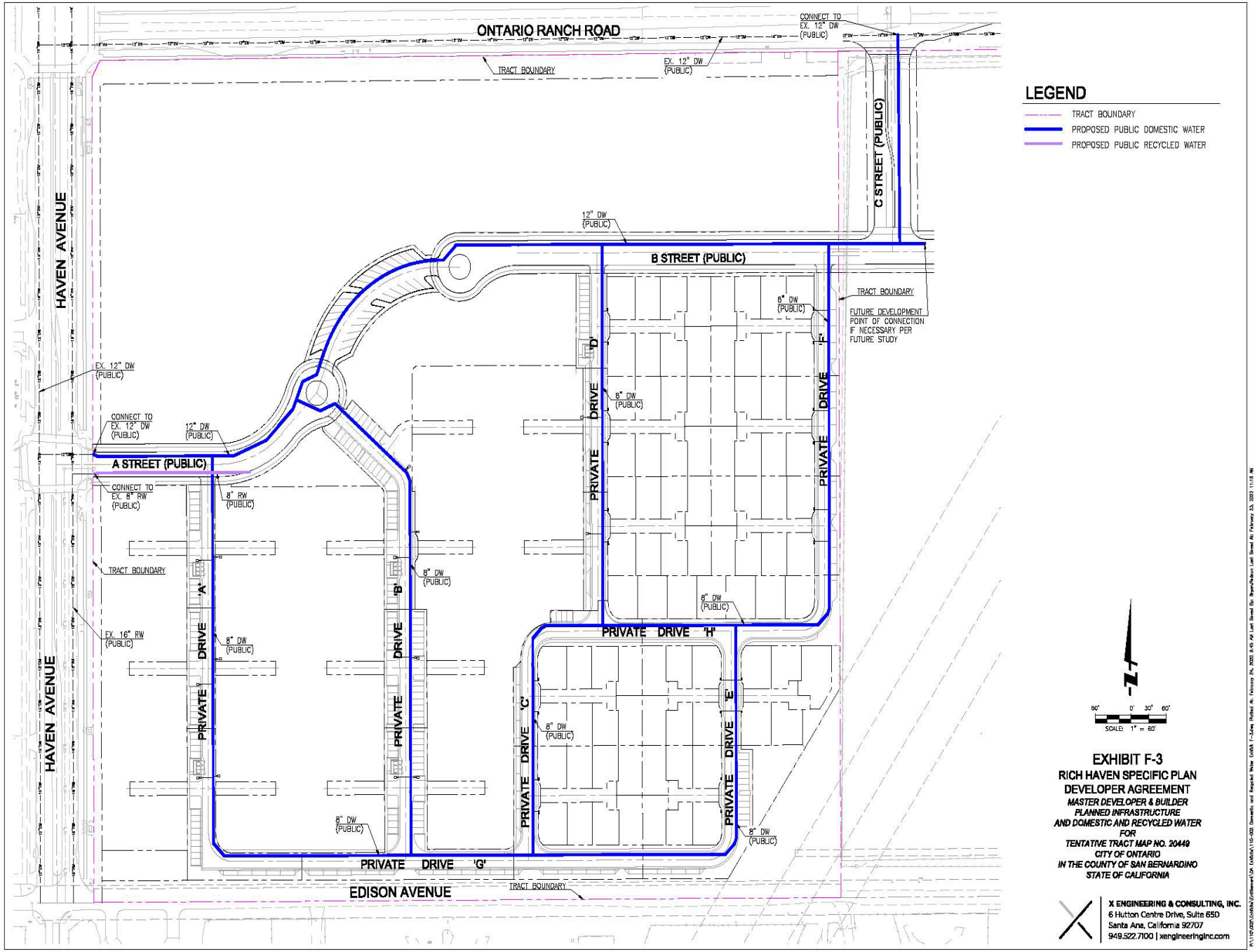
Depiction of Required Infrastructure Improvements

(SEE ATTACHED)


ONTARIO RANCH ROAD
ONTARIO RANCH ROAD MASTER PLANNED HAVEN AVENUE TO "C" STREET SIDEWALK, STREET LIGHTS, PARKWAY, MULTIPURPOSE TRAIL AND NEIGHBORHOOD EDGE IMPROVEMENTS
TRACT BOUNDARY
EX. SIGNAL AT INTERSECTION
EX. 12" DW (PUBLIC)
MASTER PLANNED SIGNAL TO BE MODIFIED
CONNECT TO EX. 12" DW (PUBLIC)
C STREET (PUBLIC)
EX. 84" STORM DRAIN (PUBLIC)
HAVEN AVENUE
24" STORM DRAIN (PUBLIC)
B STREET (PUBLIC)
12" DW (PUBLIC)
8" SS (PUBLIC)
8" DW (PUBLIC)
FUTURE DEVELOPMENT POINT OF CONNECTION IF NECESSARY PER FUTURE STUDY
EX. 18" STORM DRAIN (PUBLIC)
30" STORM DRAIN (PUBLIC)
CONNECT TO EX. 12" DW (PUBLIC)
CONNECT TO EX. 36" STORM DRAIN (PUBLIC)
A STREET (PUBLIC)
CONNECT TO EX. 10" SS (PUBLIC)
CONNECT TO EX. 8" RW (PUBLIC)
8" RW (PUBLIC)
36" STORM DRAIN (PUBLIC)
HAVEN AVENUE MASTER PLANNED ONTARIO RANCH ROAD TO OLD EDISON AVENUE SIDEWALK, STREET LIGHTS, PARKWAY AND NEIGHBORHOOD EDGE IMPROVEMENTS
EX. 16" RW (PUBLIC)
EX. 10" SS (PUBLIC)
42" STORM DRAIN (PUBLIC)
CONNECT TO EX. 84" STORM DRAIN (PUBLIC)
EDISON AVENUE
PRIVATE DRIVE 'A'
PRIVATE DRIVE 'B'
PRIVATE DRIVE 'C'
PRIVATE DRIVE 'D'
PRIVATE DRIVE 'E'
PRIVATE DRIVE 'F'
PRIVATE DRIVE 'G'
PRIVATE DRIVE 'H'
LEGEND
TRACT BOUNDARY
PROPOSED PUBLIC DOMESTIC WATER
PROPOSED FIBER OPTIC LINE
PROPOSED PUBLIC SEWER
PROPOSED PUBLIC STORM DRAIN
PROPOSED PUBLIC RECYCLED WATER
PROPOSED SIGNAL IMPROVEMENTS
PUBLIC STREETS
IN-TRACT IMPROVEMENTS
NON-MASTER PLANNED
FULL WIDTH STREET IMPROVEMENTS
"A" STREET, "B" STREET & "C" STREET.
SCALE: 1" = 60'
EXHIBIT F
RICH HAVEN SPECIFIC PLAN
DEVELOPER AGREEMENT
MASTER DEVELOPER & BUILDER PLANNED INFRASTRUCTURE
FOR
TENTATIVE TRACT MAP NO. 20449
CITY OF ONTARIO
IN THE COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA
X ENGINEERING & CONSULTING, INC.
6 Hutton Centre Drive, Suite 650
Santa Ana, California 92707
949.522.7100 | xengineeringinc.com


ONTARIO RANCH ROAD
TRACT BOUNDARY
EX. 84" STORM DRAIN (PUBLIC)
HAVEN AVENUE
24" STORM DRAIN (PUBLIC)
B STREET (PUBLIC)
C STREET (PUBLIC)
TRACT BOUNDARY
FUTURE DEVELOPMENT POINT OF CONNECTION IF NECESSARY PER FUTURE STUDY
30" STORM DRAIN (PUBLIC)
EX. 18" STORM DRAIN (PUBLIC)
CONNECT TO EX. 36" STORM DRAIN (PUBLIC)
A STREET (PUBLIC)
'D' DRIVE
'F' DRIVE
PRIVATE
TRACT BOUNDARY
'A' DRIVE
'B' DRIVE
'C' DRIVE
'E' DRIVE
EX. 84" STORM DRAIN (PUBLIC)
PRIVATE DRIVE 'H'
HAVEN AVENUE
EX. 18" STORM DRAIN (PUBLIC)
PRIVATE DRIVE 'G'
42" STORM DRAIN (PUBLIC)
CONNECT TO EX. 84" STORM DRAIN (PUBLIC)
EDISON AVENUE
TRACT BOUNDARY
LEGEND
TRACT BOUNDARY
PROPOSED PUBLIC STORM DRAIN
N
60' 0' 30' 60'
SCALE: 1" = 60'
EXHIBIT F-1
RICH HAVEN SPECIFIC PLAN
DEVELOPER AGREEMENT
MASTER DEVELOPER & BUILDER
PLANNED INFRASTRUCTURE
AND STORM DRAIN
FOR
TENTATIVE TRACT MAP NO. 20449
CITY OF ONTARIO
IN THE COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA
X ENGINEERING & CONSULTING, INC.
6 Hutton Centre Drive, Suite 650
Santa Ana, California 92707
949.522.7100 | xengineeringinc.com


ONTARIO RANCH ROAD
TRACT BOUNDARY
C STREET (PUBLIC)
B STREET (PUBLIC)
A STREET (PUBLIC)
HAVEN AVENUE
EDISON AVENUE
CONNECT TO EX. 10" SS (PUBLIC)
EX. 10" SS (PUBLIC)
8" SS (PUBLIC)
PRIVATE DRIVE 'A'
PRIVATE DRIVE 'B'
PRIVATE DRIVE 'C'
PRIVATE DRIVE 'D'
PRIVATE DRIVE 'E'
PRIVATE DRIVE 'F'
PRIVATE DRIVE 'G'
PRIVATE DRIVE 'H'
LEGEND
TRACT BOUNDARY
PROPOSED PUBLIC SEWER
N
80' 0' 30' 60'
SCALE: 1" = 60'
EXHIBIT F-2
RICH HAVEN SPECIFIC PLAN
DEVELOPER AGREEMENT
MASTER DEVELOPER & BUILDER
PLANNED INFRASTRUCTURE
AND SANITARY SEWER
FOR
TENTATIVE TRACT MAP NO. 20449
CITY OF ONTARIO
IN THE COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA
X ENGINEERING & CONSULTING, INC.
6 Hutton Centre Drive, Suite 650
Santa Ana, California 92707
949.522.7100 | xengineeringinc.com


ONTARIO RANCH ROAD
CONNECT TO EX. 12" DW (PUBLIC)
TRACT BOUNDARY
EX. 12" DW (PUBLIC)
C STREET (PUBLIC)
12" DW (PUBLIC)
B STREET (PUBLIC)
6" DW (PUBLIC)
TRACT BOUNDARY
FUTURE DEVELOPMENT
POINT OF CONNECTION IF NECESSARY PER FUTURE STUDY
HAVEN AVENUE
EX. 12" DW (PUBLIC)
CONNECT TO EX. 12" DW (PUBLIC)
12" DW (PUBLIC)
A STREET (PUBLIC)
CONNECT TO EX. 8" RW (PUBLIC)
8" RW (PUBLIC)
'D' DRIVE
8" DW (PUBLIC)
'F' DRIVE
PRIVATE
PRIVATE
TRACT BOUNDARY
'A' DRIVE
'B' DRIVE
8" DW (PUBLIC)
EX. 16" RW (PUBLIC)
8" DW (PUBLIC)
6" DW (PUBLIC)
PRIVATE DRIVE 'H'
PRIVATE
PRIVATE
'C' DRIVE
'E' DRIVE
8" DW (PUBLIC)
8" DW (PUBLIC)
8" DW (PUBLIC)
PRIVATE DRIVE 'G'
EDISON AVENUE
TRACT BOUNDARY
LEGEND
TRACT BOUNDARY
PROPOSED PUBLIC DOMESTIC WATER
PROPOSED PUBLIC RECYCLED WATER
N
60' 0' 30' 60'
SCALE: 1" = 60'
EXHIBIT F-3
RICH HAVEN SPECIFIC PLAN
DEVELOPER AGREEMENT
MASTER DEVELOPER & BUILDER
PLANNED INFRASTRUCTURE
AND DOMESTIC AND RECYCLED WATER
FOR
TENTATIVE TRACT MAP NO. 20449
CITY OF ONTARIO
IN THE COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA
X ENGINEERING & CONSULTING, INC.
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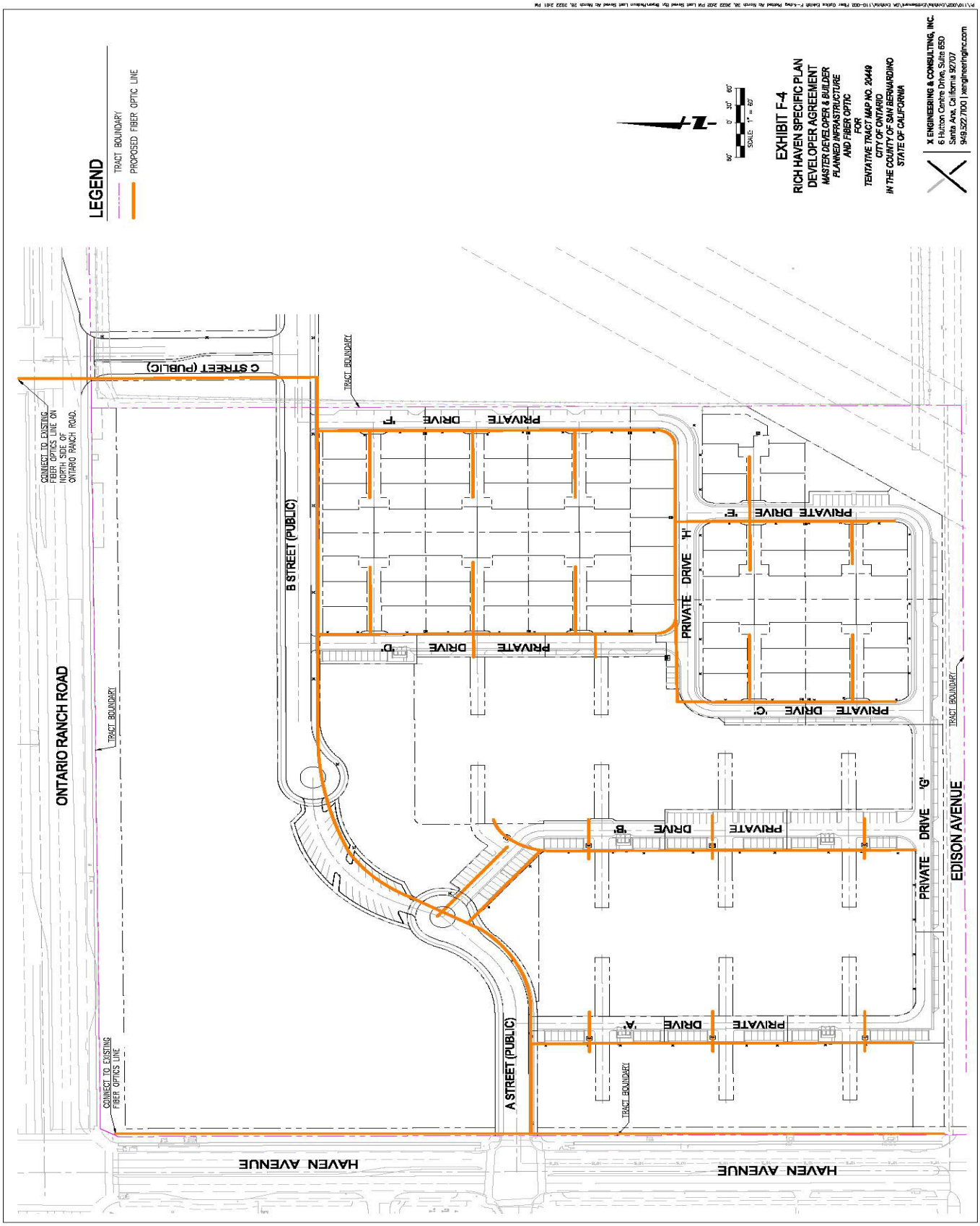
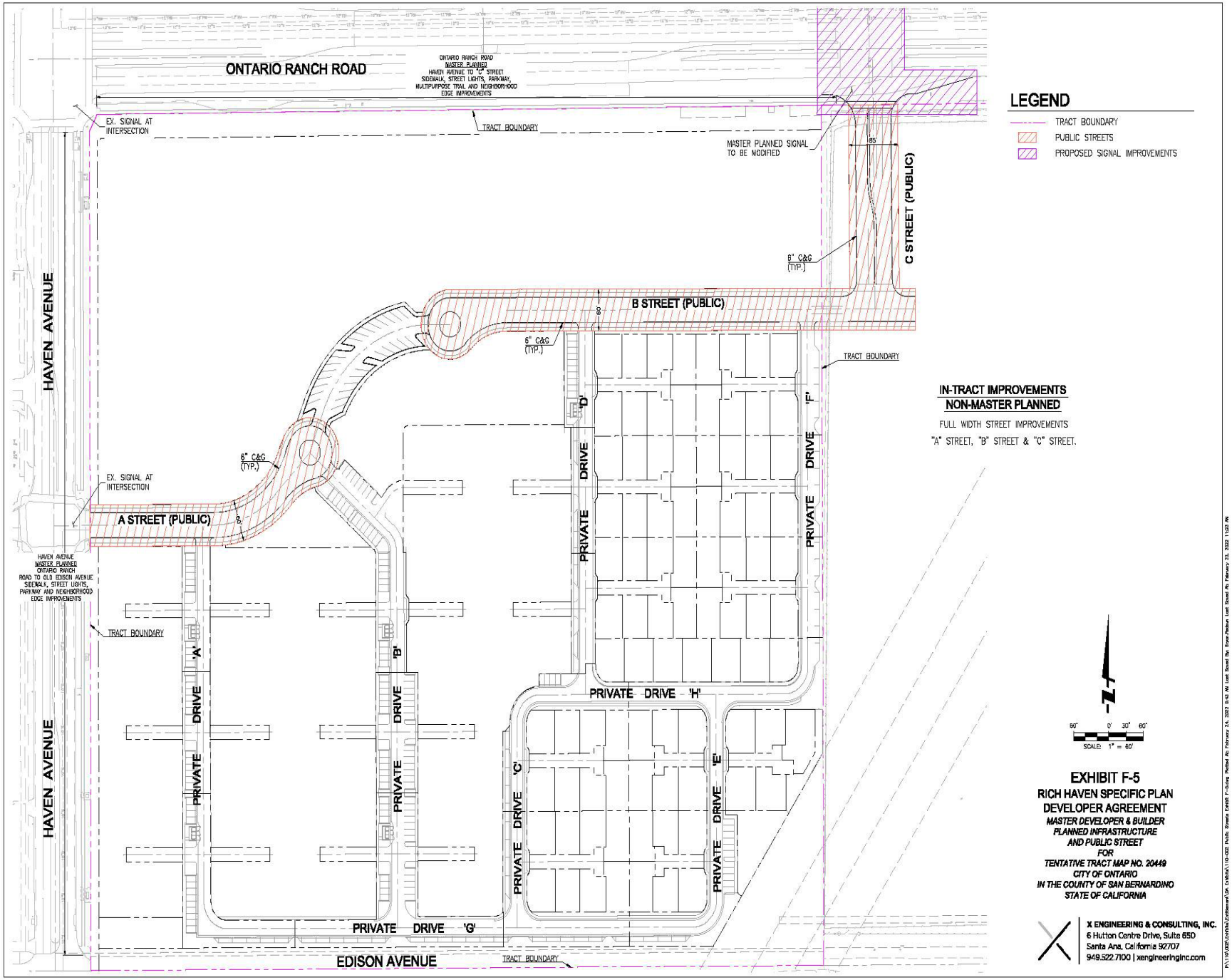

LEGEND
TRACT BOUNDARY
PROPOSED FIBER OPTIC LINE
EXHIBIT F-4
RICH HAVEN SPECIFIC PLAN
DEVELOPER AGREEMENT
MASTER DEVELOPER & BUILDER
PLANNED INFRASTRUCTURE
AND FIBER OPTIC
FOR
TENTATIVE TRACT MAP NO. 20449
CITY OF ONTARIO
IN THE COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA
SCALE: 1" = 60'
X ENGINEERING & CONSULTING, INC.
6 Hutton Centre Drive, Suite 650
Santa Ana, California 92707
949.522.7100 | xengineeringinc.com
ONTARIO RANCH ROAD
EDISON AVENUE
HAVEN AVENUE
HAVEN AVENUE
C STREET (PUBLIC)
B STREET (PUBLIC)
A STREET (PUBLIC)
PRIVATE DRIVE 'A'
PRIVATE DRIVE 'B'
PRIVATE DRIVE 'C'
PRIVATE DRIVE 'D'
PRIVATE DRIVE 'E'
PRIVATE DRIVE 'F'
PRIVATE DRIVE 'G'
PRIVATE DRIVE 'H'
TRACT BOUNDARY
CONNECT TO EXISTING FIBER OPTICS LINE
CONNECT TO EXISTING FIBER OPTICS LINE ON NORTH SIDE OF ONTARIO RANCH ROAD.


ONTARIO RANCH ROAD
ONTARIO RANCH ROAD MASTER PLANNED HAVEN AVENUE TO "C" STREET SIDEWALK, STREET LIGHTS, PARKWAY, MULTIPURPOSE TRAIL AND NEIGHBORHOOD EDGE IMPROVEMENTS
EX. SIGNAL AT INTERSECTION
TRACT BOUNDARY
MASTER PLANNED SIGNAL TO BE MODIFIED
85'
C STREET (PUBLIC)
6" C&G (TYP.)
B STREET (PUBLIC)
80'
HAVEN AVENUE
A STREET (PUBLIC)
88'
HAVEN AVENUE MASTER PLANNED ONTARIO RANCH ROAD TO OLD EDISON AVENUE SIDEWALK, STREET LIGHTS, PARKWAY AND NEIGHBORHOOD EDGE IMPROVEMENTS
PRIVATE DRIVE 'A'
PRIVATE DRIVE 'B'
PRIVATE DRIVE 'C'
PRIVATE DRIVE 'D'
PRIVATE DRIVE 'E'
PRIVATE DRIVE 'F'
PRIVATE DRIVE 'G'
PRIVATE DRIVE 'H'
EDISON AVENUE
LEGEND
TRACT BOUNDARY
PUBLIC STREETS
PROPOSED SIGNAL IMPROVEMENTS
IN-TRACT IMPROVEMENTS
NON-MASTER PLANNED
FULL WIDTH STREET IMPROVEMENTS
"A" STREET, "B" STREET & "C" STREET.
SCALE: 1" = 60'
EXHIBIT F-5
RICH HAVEN SPECIFIC PLAN
DEVELOPER AGREEMENT
MASTER DEVELOPER & BUILDER PLANNED INFRASTRUCTURE AND PUBLIC STREET
FOR
TENTATIVE TRACT MAP NO. 20449
CITY OF ONTARIO
IN THE COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA
X ENGINEERING & CONSULTING, INC.
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Santa Ana, California 92707
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Exhibit "G"
TO DEVELOPMENT AGREEMENT

Form of Plume Disclosure Letter

CITY OF ONTARIO

ONTARIO MUNICIPAL UTILITIES COMPANY

PAUL S. LEON
MAYOR

DEBRA DORST-PORADA
MAYOR PRO TEM

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

AL C. BOLING
CITY MANAGER

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT BURTON
UTILITIES GENERAL MANAGER

March 2017

DISCLOSURE NOTICE
SOUTH ARCHIBALD TRICHLOROETHYLENE PLUME

Dear Property Owner/Developer/Applicant:

The City of Ontario ("City") has approved or will be approving development in the Ontario Ranch area in the next few years, subject to the appropriate and required statutory process. This letter is intended to serve as notice to all potential property owners of the existence of a groundwater plume, known as the South Archibald Trichloroethylene (TCE) Plume which may exist in, under or near owner's property.

The groundwater plume is in an area in the central Chino Basin south of the Pomona Freeway, west of Turner Avenue, east of Grove Avenue, and north of Kimball Avenue. The plume primarily consists of TCE, a discontinued industrial solvent, and is subject to a clean-up under the oversight and direction of the Santa Ana Regional Water Quality Control Board ("Regional Board").

The Regional Board's approved clean-up procedure involves the removal and treatment of groundwater containing TCE via groundwater wells to reduce the plume concentrations and control its migration. In addition, the City is providing potable water supplies for domestic purposes to residences with private domestic wells affected by the plume. Finally, the Regional Board will continue to monitor all impacted areas and private domestic wells to ensure that residents' health and the environment are properly safeguarded. These remedial actions are documented in a Remedial Action Plan approved by the Regional Board in September 2016.

Further and current information may be found on the Regional Board's Geotracker website at https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000004658.

Property owners may wish to include this letter as a part of a Real Estate Transfer Disclosure under California Civil Code Section 1102 et seq.

1425 SOUTH BON VIEW - ONTARIO, CALIFORNIA 91761-4406 - (909) 395-2605 - FAX (909) 395-2601

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Utilities Prepared By: Omar Gonzalez 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: 27

SUBJECT: A PROFESSIONAL SERVICES AGREEMENT FOR WELL NO. 50 TREATMENT FACILITY DESIGN

RECOMMENDATION: That the City Council approve and authorize the City Manager or designee to execute a Professional Services Agreement (on file in the Records Management Department) with GHD, Inc., of Irvine, California, for Well No. 50 Treatment Facility Design, Contract No. UT 1019 in the amount of $399,310, plus a 5% contingency of $19,965, for a total amount of $419,275.

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

FISCAL IMPACT: The Fiscal Year 2021-22 Adopted Budget for Capital Improvement Program includes appropriations from the New Model Colony (NMC) Regional Water Development Impact Fee (DIF) Fund to provide design services for Well No. 50 (DIF Project No. WT08 and Capital Improvement Program No. WA1907). A contingency is requested due to the project location and potential unforeseen underground substructure mitigation. There is no impact to the General Fund.

BACKGROUND & ANALYSIS: The City's water system includes 17 active wells that provide 65% of the City's potable water supply, with a maximum total capacity of 33,100 gallons per minute. The Water Master Plan has identified wellhead treatment as a viable long-term solution to maximize the use of Ontario's local ground water resources and address water quality changes over time.

Well No. 50 is currently an inactive well and has a perchlorate concentration approaching the Maximum Contaminant Level (MCL) set by the State Division of Drinking Water. Water from Well No. 50 will be needed in the near future to meet growing potable water demand in Ontario Ranch. A Preliminary Design Report (PDR) completed in October 2020 by GHD, Inc. recommended a treatment process which consists of; an ion exchange treatment facility for Well No. 50, including on-site sodium hypochlorite generation system, mechanical piping, electrical, and instrumentation.

A location map is provided for reference (Exhibit A).

The scope of the design services for the Well No. 50 Treatment Facility includes; new treatment equipment, electrical instrumentation and control, sitework and piping, water treatment operations plan, final design, and a complete bid package set of plans and specifications for construction and bid support services.

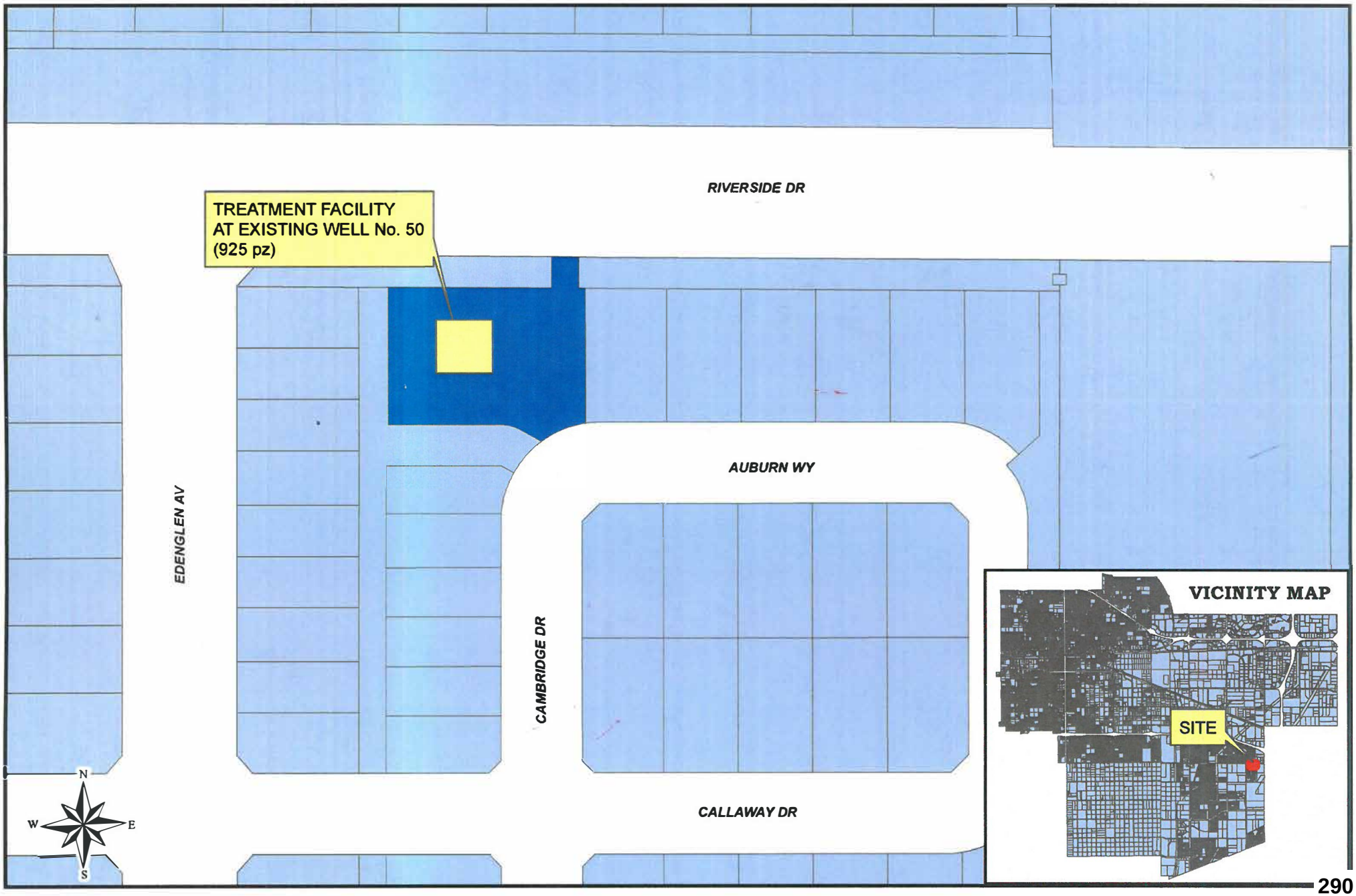
On March 10, 2022, two proposals were received for Bid No. 1496, Well No. 50 Treatment Facility Design Services:

Firm	**Location**
GHD, Inc.	Irvine, CA
Kleinfelder, Inc.	San Diego, CA

Using a qualifications-based selection process, Staff reviewed the proposals and recommends GHD, Inc. based on their expertise, understanding of the City's needs, and history of completing similar projects.

ONTARIO MUNICIPAL UTILITIES COMPANY

EXHIBIT A
OMUC Contract No. UT1019
CITY OF ONTARIO
WELL No. 50 TREATMENT FACILITY



CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Utilities Prepared By: Andy Marquez 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: 28

SUBJECT: AN AMENDMENT TO THE MAINTENANCE SERVICE AGREEMENT FOR METER MAINTENANCE

RECOMMENDATION: That the City Council approve and authorize the City Manager or his designee to execute Amendment No. 1 to the Maintenance Services Agreement (on file in the Records Management Department) with Master Meter, Inc., of Mansfield, Texas, in the amount of $40,000 for Fiscal Year 2022-23, extend the initial term of the Agreement through June of 2023, and authorize the option to extend the Agreement for up to two successive one-year periods in the annual amount of $50,000 each year (FY 2023-24 and FY 2024-25), for a new total not-to-exceed cost of $235,000 for the five years.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
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 Adopted Fiscal Year 2022-23 Budget includes appropriations in the Water Operating Fund in the amount of $40,000 for the proposed Meter Maintenance Services.

The original sole source agreement with Master Meter, Inc. was for a total contract amount of $95,000 and covered the initial term from February 2020 to February 2023. The proposed Amendment No. 1 will increase the Agreement by $40,000 to cover anticipated expenditures in FY 2022-23, extend the initial term of the Agreement to June of 2023, and provide the option to extend the Agreement for up to two successive one-year periods in the annual amount of $50,000 for each year (FY 2023-24 and FY 2024-25), for a new total not-to-exceed cost of $235,000 for the five years. Unit pricing for each additional year will be negotiated based on the number of new base stations, repeaters, and meter installations, and any increases to the unit cost for service will not exceed 5%. The total compensation paid to Master Meter, Inc. in any year under the term of the agreement will be commensurate with City Council approved plans and budgets. There is no impact to the General Fund.

BACKGROUND & ANALYSIS: Master Meter, Inc. manufactures the "Master Meter Radio Read Meter", which are installed and used to track water consumption and relay information to the City's billing system utilizing automated water meter reading capabilities via one Advance Metering Infrastructure (AMI) tower, and fifteen radio repeaters throughout the City. There are currently more than 39,000 water meters citywide that serve residential, industrial, and commercial accounts, as well as landscaped areas, with about 19,000 of these being radio frequency (RF) water meters. The City currently installs approximately 4,000 new and replacement meters each fiscal year.

The accuracy of RF meters has a direct relationship to accounting and billing for water service. To maintain accuracy and functionality of these meters, Master Meter, Inc. provides preventative maintenance for the network infrastructure which includes communications and system failure monitoring, signal strength accuracy, and services to maintain RF meters at optimized signal strength.

The Master Meter Radio Read Meter was selected as the City's standard specification for all new and replacement meter installations through a public bid process and product evaluation that took place in 2001. Staff recommends approval of a sole source Amendment to Master Meter, Inc. as they are the manufacturer of the equipment and are the one vendor who provides system monitoring on their manufactured product. Master Meter, Inc. has continuously provided satisfactory work and has performed the required work in a timely manner.

CITY OF ONTARIO *Agenda Report* **June 7, 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: 29

SUBJECT: A CONSTRUCTION CONTRACT FOR THE MISSION LANDSCAPE AND IRRIGATION PROJECT

RECOMMENDATION: That the City Council take the following action:

A. Reject Golden Gate Steel, Inc.'s protest against SGD Enterprises for PM2122-8 for the Mission Landscape and Irrigation Project;
B. Authorize the City Manager or his designee to execute Construction Contract No. PM2122-8 with SGD Enterprises for the Mission Landscape and Irrigation Project for a total bid amount of $626,292;
C. Authorize a 10% contingency of $62,629 to address any unforeseen issues that may arise during construction; and
D. Authorize the City Manager or his designee to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, reductions of retention accounts, and filing a notice of completion at the conclusion of all construction related activities.

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

FISCAL IMPACT: The construction cost for the Mission Landscape and Irrigation Project is $626,292, plus a 10% contingency of $62,629, for a total of $688,921. The Fiscal Year 2021-22 Adopted Budget includes appropriations of $688,921 in the Capital Projects Fund.

BACKGROUND & ANALYSIS: The Mission Boulevard median runs from Benson Avenue to Milliken Avenue and includes landscaped and un-landscaped areas. The Mission Boulevard median from Benson Avenue to Mountain Avenue is landscaped and irrigated with potable water. The landscaping consisted of turf, shrubs, groundcover, and trees. In 2015, the City moved into Stage 2 water restrictions, which prohibited watering of turf medians with potable water. To comply with the Stage 2 water restrictions, the City turned the water off to all the turf areas on the median.

Subsequently, all the existing turf died. Shrub, groundcover, and trees remained and continued to be irrigated. In an effort to enhance and beautify the median from Benson Avenue to Mountain Avenue, drought tolerant/climate ready plant material has been selected for the median. Additionally included as part of the scope for this project is a new high efficient drip irrigation and a monument sign welcoming visitors to the City of Ontario. The new landscaping will be compliant with the state required Model Water Efficient Landscape Ordinance and Stage 2 water restrictions.

The scope of this project also includes landscaping and irrigation on the south side parkway of G Street from Benson Avenue to Mountain Avenue that will also meet the state required Model Water Efficient Landscape Ordinance and comply with Stage 2 water restrictions. The new landscaping will beautify the area and provide a nice walking path.

In April 2022, the City solicited bids for construction services for Construction Contract No. PM2122-8, Mission Landscape and Renovation Project. Six (6) bids were received and SGD Enterprises, located in Van Nuys, California, was the low bidder. On May 9, 2022, the City received a protest letter from Golden Gate Steel, Inc.. The protest asserts that Golden Gate Steel, Inc. is the lowest responsible bidder submitting a responsive bid because the lowest bid should be determined by the total amount of the base bid and two bid alternates. Specifically, Golden Gate Steel, Inc.'s base bid and two bid alternates totaled $592,700 while SGD Enterprises' same items totaled $626,292. Golden Gate Steel, Inc. claims that this should be the basis for award because the City stated in an answer to a question during the bidding period that the basis of award would be based on the base bid plus specified alternates.

The City responded to Golden Gate Steel, Inc. in a letter dated May 13, 2022, stating that the contract documents, or the Notice Inviting Bids and Instructions to Bidders, made clear that the basis of award is determined by the base bid alone. To revise the Notice Inviting Bids and Instructions to Bidders, revisions must be made by written addenda and issued by the City through PlanetBids, the City's online bidding process. The City never issued an addendum revising the basis of award from base bid only to base bid plus specified alternates. The answer by the City regarding the basis of award is not a contract document, and the Notice Inviting Bids and Instructions to Bidders take precedence over the answer. Since the City never specified in the bid forms that the bid alternates would be used along with the base bid to determine the low bidder, SGD Enterprises remains the lowest responsive and responsible bidder.

All the bids received are listed below:

Vendor	**Location**	**Base Bid Amount**	**Alternate Bid #1 Amt**	**Alternate Bid #2 Amt**	**Total Bid Amount**
SGD Enterprises	Van Nuys, California	$246,292.00	$50,000.00	$330,000.00	$626,292.00
Golden Gate Steel, Inc.	Norwalk, California	$281,400.00	$43,000.00	$268,300.00	$592,700.00
Conserve LandCare	Thousand Palms, California	$386,100.00	$36,500.00	$295,200.00	$717,000.00

Southern California Landscape, Inc.	Fontana, California	$384,000.00	$39,000.00	$296,000.00	$719,000.00
Kasa Construction, Inc.	Chino, California	$344,825.00	$76,600.00	$318,600.00	$740,025.00
BrightView Landscape Services, Inc.	Calabasas, California	$495,865.12	$39,998.00	$343,739.59	$879,602.71

SGD Enterprises, of Van Nuys, California, submitted the lowest responsible bid. Based on credentials, pricing, and favorable reference checks, Staff recommends awarding the Mission Landscape and Irrigation Project to SGD Enterprises.

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Police Department Prepared By: Lizceth Zazueta Staff Member Presenting: Mike Lorenz, Chief of Police Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 30

SUBJECT: **SECOND READING AND ADOPTION OF ORDINANCE NO. 1766 APPROVING A MILITARY EQUIPMENT USE POLICY PURSUANT TO GOVERNMENT CODE SECTIONS 7070, ET. SEQ.**

RECOMMENDATION: That the City Council adopt an Ordinance adopting a Military Equipment Use Policy.

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

FISCAL IMPACT: There is no direct fiscal impact associated with this action.

BACKGROUND & ANALYSIS: Assembly Bill No. 481 ("AB 481") was approved by Governor Newsom on September 30, 2021. AB 481 requires law enforcement agencies to obtain approval of the applicable governing body, by adoption of a Military Equipment Use Policy, as specified, by Ordinance at a regular meeting held pursuant to specified open meeting laws, prior to taking certain actions relating to the funding, acquisition, or use of military equipment.

In addition, state or local law enforcement agencies must publish the policy on the agency's internet website and provide a copy of the policy to the Governor or the Governor's designee. AB 481 allows the governing body to approve the funding, acquisition, or use of military equipment within its jurisdiction only if it determines that the military equipment meets specified standards. AB 481 also requires the governing body to annually review the Ordinance and either approve, disapprove a renewal of the authorization for itemized military equipment, or amend the Military Equipment Use Policy if it determines, based on an annual military equipment report prepared by the law enforcement agency, that the military equipment does not comply with standards for approval.

This is the second reading of Ordinance No. 1766 to approve the Ontario Police Department's Military Equipment Use Policy.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING A MILITARY EQUIPMENT USE POLICY PURSUANT TO GOVERNMENT CODE §§ 7070, ET. SEQ.

THE CITY COUNCIL OF THE CITY OF ONTARIO DOES HEREBY FIND AND RESOLVE AS FOLLOWS:

WHEREAS, on September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill 481 ("AB 481"), adding Chapter 12.8, "Funding, Acquisition and Use of Military Equipment", to Division 7 of Title 1 of the Government Code (sections 7070 – 7075), relating to the use of military equipment by California law enforcement agencies; and

WHEREAS, AB 481 seeks to provide transparency, oversight, and an opportunity for meaningful public input on decisions regarding whether and how military equipment is funded, acquired, or used; and

WHEREAS, the Ontario Police Department is in possession of certain items of equipment that qualify as "military equipment" under AB 481 and further intends to acquire other items of military equipment; and

WHEREAS, AB 481 requires, inter alia, that a law enforcement agency possessing and using such qualifying equipment must prepare a publicly released, written, military equipment use policy document covering the inventory, description, quantity, purpose, capabilities, use, lifespan, acquisition, maintenance, authorized use, fiscal impacts, procedures, training, oversight, and complaint process, applicable to the Department's use of such equipment; and

WHEREAS, the policy must be approved by the City Council by ordinance, and reviewed annually thereafter; and

WHEREAS, the military equipment inventoried and presented to the City Council is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety; and

WHEREAS, the proposed Military Equipment Use Policy ("Policy") will safeguard the public's health, welfare, safety, civil rights, and civil liberties; and

WHEREAS, the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety; and

WHEREAS, prior military equipment use complied with the applicable equipment use policy (which included equipment now defined as military equipment) that was in effect at the time, or if prior uses did not comply with the accompanying military equipment use policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance; and

WHEREAS, the Police Department has submitted the proposed Policy to the City Council and thereafter has made those documents available on the Police Department's website for at least 30 days prior to the public hearing concerning the military equipment at issue; and

WHEREAS, the Policy satisfies the requirements of Government Code Section 7070(d); and

WHEREAS, the City Council of the City of Ontario, having received the information required under AB 481 regarding the Ontario Police Department's use of military equipment as defined in said law, deems it to be in the best interest of the City to and hereby does approve the Military Equipment Policy.

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

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO HERBY ORDAINS AS FOLLOWS:

SECTION 1. Recitals. The City Council finds that all the recitals, facts, findings, and conclusions set forth above in the preamble of this Ordinance are true and correct.

SECTION 2. Approval of Military Equipment Policy.

Military Equipment Policy.

(a) The Military Equipment Policy shall govern the use of military equipment by the Ontario Police Department. (*Exhibit A)*

(b) The Policy shall be made publicly available on the Police Department's website for as long as the military equipment is available for use or as otherwise ordained by the City Council.

(c) The Police Department shall submit an annual military equipment report to the City Council containing the information required by Government Code Section 7072 and the City Council shall thereafter determine whether each type of military equipment identified therein complied with the standards for approval set forth in Government Code Section 7071(d). (Exhibit B)

(d) The City Council shall on an annual basis and at a regular meeting thereof review this ordinance and vote on whether to renew it pursuant to Government Code Section 7071(e)(2).

(e) The definitions set forth in Government Code section 7070 shall apply to this ordinance. Any provision of state law referred to herein shall mean and include any amended or successor provision thereof.

SECTION 3. Compliance with CEQA. Adoption of this Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061 (b)(3) (General Rule) of the CEQA Guidelines because it is not a "project" and because it can be seen with certainty that there is no possibility that the passage of this Ordinance will have a significant effect on the environment.

SECTION 4. Inconsistencies. Any provision of the Ontario Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

SECTION 5. Uncodified Ordinance. This Ordinance shall not be codified in the Ontario Municipal Code unless and until the City Council so ordains.

SECTION 6. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, state, or federal law, regulation, or codes dealing with life safety factors.

SECTION 7. Effective Date. This Ordinance shall become effective thirty (30) days following from its adoption.

SECTION 8. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 7th day of June 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. 3210 was duly introduced at a regular meeting of the City Council of the City of Ontario held May 17, 2022 and adopted at the regular meeting held June 7, 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. 3210 duly passed and adopted by the Ontario City Council at their regular meeting held June 7, 2022 and that Summaries of the Ordinance were published on May 24, 2022 and June 14, 2022, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

Military Equipment

708.1 PURPOSE AND SCOPE

The purpose of this policy ("Policy") is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment pursuant to Assembly Bill 481 ("AB 481") (California Government Code section 7070, et seq.).

708.1.1 DEFINITIONS

Definitions related to this Policy include those provided in Government Code section 7070, and as follows:

Governing body – The City of Ontario City Council ("City Council").

Military equipment – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected ("MRAP") vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles ("HMMWV)", two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of.50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than.50 caliber, including firearms and accessories identified as assault weapons in Penal Code section 30510 and Penal Code section 30515, with the exception of standard-issue firearms.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices ("LRADs").
- Kinetic energy weapons and munitions.
- Any other equipment as determined by the City Council to require additional oversight.

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708.2 POLICY

It is the Policy of the City of Ontario Police Department ("Department") that members of this Department comply with the provisions of Government Code section 7070 et seq. with respect to the funding, acquisition, and use of military equipment.

708.3 MILITARY EQUIPMENT COORDINATOR

The Chief of Police will designate a member of this Department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

(a) Acting as liaison to the City Council for matters related to the requirements of this Policy.

(b) Identifying Department equipment that qualifies as military equipment in the current possession of the Department, or equipment the Department intends to acquire, that requires approval by the City Council.

(c) Conducting an inventory of all military equipment annually.

(d) Collaborating with any allied agency that may use military equipment within the jurisdiction of the Department.

(e) Preparing for, scheduling, and coordinating the annual community engagement meeting to include:

1. Publicizing the details of the meeting; and
2. Preparing for public questions regarding the Department's funding, acquisition, and use of equipment.

(f) Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the Department website (Government Code § 7072).

(g) Establishing the procedure for a person to register a complaint or concern, or how that person may submit a question about the use of a type of military equipment, and how the Department will respond in a timely manner.

708.4 MILITARY EQUIPMENT INVENTORY

The list of qualifying military equipment for the Department is attached to this Policy.

708.5 APPROVAL

The Chief of Police or the authorized designee shall obtain approval from the City Council by way of an ordinance adopting the Policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed Policy is submitted to the City Council and is available on the Department website at least thirty (30) days prior to any public hearing concerning the military equipment at issue. The Policy must be approved by the governing body prior to engaging in any of the following:

a) Requesting military equipment made available pursuant to 10 USC § 2576(a).

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b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.

c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.

d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this Department.

e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the City Council.

f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.

g) Acquiring military equipment through any means not provided above.

708.6 COORDINATION WITH OTHER JURISDICTIONS

On occasion, the Department may be required to assist other law enforcement agencies in a formal Law Enforcement Mutual Aid Request ("LEMA") or support with day-to-day operational collaboration (i.e., pursuits, investigative unit assistance, joint law enforcement operations, etc.). In certain mutual aid or operational collaboration circumstances, it may be necessary for sworn Department members to utilize military equipment in order to fulfill an assigned mission (i.e., civil unrest, SWAT requests, barricaded suspects in a vehicle, etc.). When sworn Department members utilize military equipment in instances of mutual aid or law enforcement collaboration, the following shall apply:

a) Department members are required to adhere to the Department's Military Equipment Procedure and all policies and procedures outlined within the Department's Policy and Procedures Manual, regardless of operational jurisdiction.

b) Should the Police Department request mutual aid from another law enforcement agency within the City and military equipment is required during the course of the response, the following shall apply:

i. The Department will remain in charge of the overall incident command.

ii. The Incident Commander or designee will brief the supervisor from the assisting agency and inform them of the mission, enforcement posture, and any pertinent information related to the incident.

iii. The assisting agency will adhere to their respective policies and procedures, particularly those governing the use of military equipment.

iv. If the Incident Commander or their designee is informed of or witnesses the utilization of military equipment by an assisting agency inconsistent with the guidelines set forth in this

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procedure, the Incident Commander may elect to cancel the request for mutual aid or re-assign the assisting agency to a different support mission.

708.7 COMPLIANCE

The use of military equipment is subject to individual Department Policies and Procedures, is restricted for use only in certain instances and, in some cases, only by certain units. It is incumbent upon incident commanders, supervisors, and individual officers to recognize the specific circumstances wherein military equipment should be employed to enhance the safety of the public and officers and to bring a critical incident to a safe resolution.

Department members are bound to adhere to this Department Policies and Procedures, in addition to state and local laws and ordinances when employing the use of themilitary equipment at any time. Violations of the law or Department Policies or Procedures may result in criminal or administrative investigations, and/or actions.

Administrative Investigations concerning complaints related to military equipment will be conducted in accordance with Department policy. These investigations may be subject to review by the Office of the Chief of Police to ensure that compliance with this military equipment procedure is maintained.

Any corrective action or discipline imposed as a result of a violation of this Department Procedure will be administered in accordance with the department policy, relevant employee organization memorandum of understanding (MOU), Civil Service Rules, and state law.

708.8 COMPLAINT PROCESS

In some instances, the application and use of military equipment can cause questions and/ or concerns for members of the community. It is of vital importance that community members' questions regarding the application and use of military equipment are addressed.

The Department is committed to full and fair investigation of citizen complaints. As such, the Department has sound internal procedures for thorough and impartial investigations of citizen complaints. Resolving complaints in a fair, impartial, and expeditious manner will ensure the consistent high level of integrity and efficiency maintained by the Department.

Complaints directly related to the application or use of military equipment shall be handled in accordance with department policy. The Department values open communication and transparency. Community questions and/or concerns regarding the application and use of specified military equipment should be addressed in the following manner:

a) Via the Department internet website where the public can email specific military equipment related questions to the Department.

b) At pre-determined Community Engagement Meetings related to military equipment.

c) At City-Council Meetings related to military equipment.

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d) In all other circumstances, the public should be directed to the Department Military Equipment Procedure and Annual Military Equipment Report available on the Department's internet website.

708.9 ANNUAL REPORT

The Department shall submit to City Council an annual military equipment report for each type of military equipment approved by the City Council within one (1) year of approval, and annually thereafter for as long as the military equipment is available for use.

The Department shall also make each annual military equipment report required by this section publicly available on its internet website for as long as the military equipment is available for use. The Commanding Officer or their designee shall be responsible for the preparation and submission of the annual military equipment report. The annual military equipment report shall, at a minimum, include the following information for the immediate previous calendar year for each type of military equipment:

a) A summary of how the military equipment was used and the purpose of its use.

b) A summary of any complaints or concerns received concerning the military equipment.

c) The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response, consistent with state law employee privacy restrictions.

d) The total annual cost for each type of military equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the military equipment in the calendar year following submission of the annual military equipment report.

e) The quantity possessed for each type of military equipment.

f) If the Department intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.

g) Within thirty (30) days of submitting and publicly releasing the annual military equipment report, the Department shall hold at least one (1) community engagement meeting, at which the general public may discuss and ask questions regarding the annual military equipment report and the Department's funding, acquisition, or use of military equipment.

h) The City Council will determine, based on the annual military equipment report, whether each type of military equipment identified in the report has complied with the standards for approval as set forth by AB 481. If the City Council determines that a type of military equipment identified in the annual military equipment report has not complied with the standards as set forth by AB 481, it may either disapprove a renewal of the authorization for that type of military equipment or require modifications to this military equipment use procedure in a manner that will resolve lack of compliance.

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Ontario Police Department Military Equipment Inventory

I. MILITARY EQUIPMENT TYPES AND USAGE GUIDELINES

The Department recognizes that critical incidents are unpredictable and can be very dynamic in nature. A variety of military equipment options can greatly assist incident commanders, officers, and specific units in bringing those incidents to a swift resolution in a safe manner. The use of military equipment is restricted for use only in certain instances and in some cases only by certain units. While this procedure is wide-ranging, it is not all inclusive. There may be instances wherein unpredictable critical incidents demand the need for incident commanders to authorize military equipment to be used in a manner not outlined within this procedure. In scrutinizing those particular instances, the judgment of the incident commander influenced by the totality of the circumstances, public safety, officer safety, civil rights, and information available at the time will be used.

It is incumbent upon incident commanders, supervisors, individual officers, and specific units to recognize the particular circumstances wherein military equipment should be employed to enhance the safety of the public and officers, and to bring a critical incident to a safe resolution.

The following are the various types, descriptions, and guidelines for usage of military equipment currently employed by the Department.

A. Unmanned remotely piloted, powered aerial or ground vehicles

1. **Small Unmanned Aircraft Systems (sUAS):** An unmanned aircraft of any type that is capable of sustaining directed flight, whether pre-programmed or remotely controlled, and all of the supporting or attached systems designed for gathering information through imaging, recording or by any other means.

   Capability: sUAS can support first responders in any hazardous incident which would benefit from an aerial perspective. These uses could include search and rescue, barricaded suspects or high-risk tactical operations, disaster response, and video and photographic documentation of crime scenes.

   Usage: sUAS are to be used by trained pilots during high-risk operations, tactical operations, disaster response, and video and photographic documentation. These pilots receive regular training and flight hours and when applicable adhere to FAA regulations.

   Training Requirements: Drone operators attended continual yearly training.

   Fiscal Impact: See Appendix A

   Lifespan: Approximately five (5) years.

   The Department currently possesses the following types of sUAS:

a. Parrot Anafi Thermal (Quantity: 2)
Manufacturer: Parrot
Description: To balance the resolutions of the thermal image and visible image, and therefore benefit from information not visible in thermal, the displayed image is a fusion of the information from the two cameras.

b. LOKI 1 (Quantity: 6)
Manufacturer: Sky-Hero
Description: A handheld drone designed for interior searches. The drone is controlled by a handheld remote control.

c. Evo II (Quantity: 1)
Manufacturer: Autel Robotics
Description: A handheld drone designed for exterior searches. The drone is controlled by a handheld remote control. It has the ability to record video for use with evidence collection.

2. **Small Unmanned Tracked Robots:** An unmanned tracked robot of any type that is capable of being remotely controlled as well as all of the supporting or attached systems designed for gathering information through imaging, recording or by any other means.

Capability: Small Unmanned Tracked Robots can support first responders in any hazardous incident which would benefit from a ground level perspective. These uses could include barricaded suspects or high-risk tactical operations, disaster response, and use in crawl spaces or confined isolated areas to assist in searches for suspects or evidence.

Usage: Small Unmanned Tracked Robots are to be used exclusively by the Special Weapons and Tactics (SWAT) unit during high-risk operations, disaster response, and in crawl spaces or confined isolated areas to assist in searches for suspects or evidence.

Training Requirements: SWAT Officers regularly train on safe robot deployment in a variety of operational settings.

Fiscal Impact: See Appendix A

Lifespan: Dragon Runner – Lifespan varies with operational usage and wear.

The Department currently possesses the following types of Small Unmanned Tracked Robot:

a. **Dragon Runner** (Quantity: 1)
Manufacturer: QinetiQm

Description: Lightweight, expandable, and one-man portable robot that offers protection and support to officers. Designed to provide situational awareness by 'scouting out' while the officers remain at a safe distance.

Designed for rapid tactical missions, the robot is simple to operate and quick to deploy for searching rooms, hallways, stairwells, and confined spaces. With rubber tracks, the Dragon Runner effortlessly climbs stairs. It also includes an extendible rotating claw arm that simplifies opening door handles.

B. Armored Personnel Carriers

1. **BearCat:** An armored rescue vehicle capable of providing high ballistic protection, cover, limited breaching capability, and transport of officers and/or civilians at critical incidents and high-risk tactical operations.

   Capability: BearCats can support first responders in any hazardous, high risk, or critical incident which would benefit from having a vehicle that provides a high level of ballistic protection.

   Usage: These uses could include active shooters, armed barricaded suspects, hostage situations, high-risk tactical operations, disaster response, officer/citizen rescues, and CBRNE (Chemical, Biological, Radiological, Nuclear, and Explosive) attacks and detection.

   Training Requirements: Officers authorized to operate the BearCat are required to successfully complete in house training on its capabilities and must complete a driving assessment during the training period.

   Fiscal Impact: See Appendix A

   Lifespan: Approximately 20 years depending on operational usage and

   wear. The Department currently possesses the following types of BearCats:

   a. **BearCat G2** – 2 Door Model (Quantity: 1)
   Manufacturer: Lenco
   Description: The Lenco BearCat G2 is the standard armored rescue vehicle for special operations units within the US Law Enforcement community. The G2 has excellent on-road driving characteristics and maneuverability in tight urban settings. The large floor plan seats 10–12 fully equipped officers or citizens.

   b. **BearCat G3** – 4 Door Model (Quantity: 1)
   Manufacturer: Lenco
   Description: The BearCat G3 provides Lenco's proven armor system in a ruggedized off-road platform. The G3 utilizes the same body design, interior

features, and tactical options as the G2, but it comes standard with a heavier duty upgraded suspension and off-road tires, rims & run flats to provide enhanced off-road performance. The increased ground clearance and robust suspension allows for emergency response in rural regions and natural disaster scenarios where standard armored rescue vehicles would experience challenges.

c. **BearCat G3 w/ P3E MARS Ramp System** – 3 Door Model (Quantity: 1)
Manufacturer: Lenco
Description: The BearCat G3 provides Lenco's proven armor system in a ruggedized off-road platform. The G3 utilizes the same body design, interior features, and tactical options as the G2, but it comes standard with a heavier duty upgraded suspension and off-road tires, rims & run flats to provide enhanced off-road performance. The increased ground clearance and robust suspension allows for emergency response in rural regions and natural disaster scenarios where standard armored rescue vehicles would experience challenges. This armored rescue vehicle is outfitted with the P3E MARS ramp system which allows officers to safely make entry into or rescue citizens from elevated structures.

d. **Rook** – (Quantity: 1)
Manufacturer: Ring Power
Description: The Rook is a tracked armored vehicle capable of deploying officers into a critical incident or rescue citizens during a critical incident. It features several attachments capable of moving objects, or vehicles to aide in the peace resolution of a critical incident. The attachments and vehicle also can be used in various natural disaster incidents.

C. Command and Control Vehicles

1. **Mobile Command Vehicles:** Completely self-contained command posts designed to provide the Incident Commander with a mobile base of operation.

Capability: As a mobile base of operation, these vehicles contain specialized command, control, and communications equipment to assist with this mission.

Usage: Mobile Command Vehicles are to be utilized as an Incident Command Post for planned or unplanned events. Vehicles are also equipped with specialized equipment to assist with numerous types of incidents.

Training Requirements: Officers are frequently train in the operations of Command vehicles.

Fiscal Impact: See Appendix A

Lifespan: No lifespan indicated by manufacturer. Dependent on operational usage and wear.

The Department currently possesses the following types of Mobile Command Vehicles:

a. SWAT Special Equipment Vehicle – (Quantity: 1)

The SWAT Special Equipment Vehicle is a non-armored vehicle used by SWAT personnel to transport special weapons and equipment to the scene of critical incidents. Once at an incident, it is also used as a SWAT and Tactical Operations Center (TOC).

Manufacturer: Custom Built International Chassis
Description: This vehicle is a custom build. It is capable of transporting various SWAT equipment to a critical incident. It is also outfitted with various radio and computers to aid the Incident Commander.

b. CP131 – Command Post Vehicle - (Quantity: 1)
Manufacturer: Custom Built Freightliner Chassis
Description: This vehicle is a custom-built truck which allows officers to aide in communicating with subjects during critical incidents or can be utilized as a command post during any type of situation.

D. Explosive Breaching Equipment

1. **Explosive Breaching Equipment:** During crisis situations, it may become necessary for a SWAT team to facilitate an entry into a target location. It is critical the point of entry is breached quickly and as safely as possible. A quick and effective breach is one key to a successful tactical mission**.** In some instances, an explosive breach may be required to provide an added degree of safety and tactical advantage in order to accomplish a mission.

   A variety of specialized breaching equipment consisting of explosive materials are possessed by the Department. Explosive Breaching Equipment can only be used exclusively by the SWAT team's dedicated breaching personnel.

   Capability / Usage: Explosive breaching, the use of explosive materials to affect a breach, can be an effective option in SWAT team tactics. An effective breach is a design where the least amount of explosive material is used and still accomplishes its goal. An effective Explosive Breach can defeat fortified doors and walls. Effective breaching techniques allow tactical officers immediate entry with minimal risk to victims, officers, and suspects. An Explosive Breach should only be utilized after taking into consideration the overall mission, officer and citizen safety, the overall construction of the structure, the presence of unstable chemicals, explosives, or incendiary materials, and whether other means of

mechanical breaching would be effective and safe to use. The option to use an explosive breach shall be at the discretion of the SWAT Commander.

Training Requirements: Only SWAT Officers that are certified Explosive Breachers are authorized to utilize explosive breaches. SWAT Explosive Breachers must successfully complete a certified Explosive Breaching Course. Additionally, SWAT Explosive Breachers must maintain proficiency with the use and handling of explosives and explosive breaching techniques.

Fiscal Impact: See Appendix A

Lifespan: Approximately five (5) years.

The Department currently possesses the following types of Explosive Breaching Equipment:

a. **Explosive Breaching Equipment Kit** – (Quantity: Various)
Explosive Breaching Equipment consists of:
1. 50 grain Detonation Cord
2. 20 grain Boosters
3. C2 sheets
4. Shock-tube Blasting Cap

Manufacturer: Southwest Explosives

Description: Explosive breaching, the use of explosive materials to affect a breach, can be an effective option in SWAT team tactics. An effective breach is a design where the least amount of explosive material is used and still accomplishes its goal.

2. **Breaching Shotguns and Breaching Ammunition:** During crisis situations, it may become necessary for a SWAT team to facilitate an entry into a target location. It is critical the point of entry is breached quickly and as safely as possible. A quick and effective breach is one key to a successful tactical mission**.** In some instances, a breach initiated by a breaching shotgun loaded with specialized breaching rounds may be required to provide an added degree of safety and tactical advantage in order to accomplish a mission.

Specialized Breaching Rounds, also referred to as TKO round, are frangible and are designed to break into a powder form upon impact with a solid object (i.e., dead bolt lock, door frame, etc.)

The Department possesses a limited inventory of Breaching Shotguns and Breaching Shotgun Ammunition. Breaching Shotguns are to be used exclusively by trained members of the SWAT team.

Capability / Usage: Shotgun breaching, the use of a breaching shotgun to affect a breach, can be an effective option in SWAT team tactics. An effective breach is a

design where the least amount of breaching shotgun rounds is used and still accomplishes its goal. An effective shotgun breach can defeat fortified doors and locks. Effective breaching techniques allow tactical officers immediate entry with minimal risk to victims, officers, and suspects.

Training Requirements: SWAT team members regularly train on the use of shotgun breaching.
Fiscal Impact: See Annual Military Report

Lifespan: Remington 870 Police Magnum – Limited lifetime warranty. Lifespan varies on operational usage and wear

Breaching Shotgun Ammunition – Five (5) year limited warranty. Five (5) year shelf life.

The Department currently possesses the following types of breaching shotguns and breaching shotgun ammunition:

a. **Remington 870 Police Magnum –** (Quantity: 5)
Manufacturer: Remington
Description: The Remington 870 Police Magnum pump-action shotgun is a rugged 12-gauge with a short barrel backed by a stout 3" chamber. The all-matte black gun is parkerized for generalized durability and rust-resistance. Both the pump action for-end and stock are robust and tough synthetic.

b. **TKO 12-Gauge Breaching Shotgun Rounds** – (Quantity: 60)
Manufacturer: Defense Technology
Description: The 12-Gauge TKO Breaching Round is a 12-Gauge shell loaded with a compressed zinc slug, utilizing smokeless powder as a propellant. This is a widely used method to breach door locks or hinges for entry during tactical operations. When properly deployed, the TKO is capable of defeating door lock mechanisms, doorknobs, hinges, dead bolts, safety chains, and pad locks on both wooden or hollow core doors. Upon impact with the target, the zinc slug disintegrates into a fine powder eliminating fragmentation.

E. Firearms of .50 Caliber or greater

1. **.50 Caliber Rifles:** A heavy-duty, bolt-action rifle rated for .50 caliber ammunition that is capable for delivering precision rifle fire at great distances with effective results.

Due to the ever-increasing number of deadly incidents involving vehicle borne attacks and fortified structures both in Southern California and around the country, the SWAT Sniper Team currently employs the use of a .50 caliber rifle to address the unique operational needs presented by these threats.

The requirement and implementation of a .50 caliber rifle are now the standard for many SWAT Teams both in the US and abroad to combat vehicular threats that may arise out of conventional SWAT operations or domestic and international terror attacks.

Capability / Usage: These weapons provide the capability to pierce hard armor, multiple layers of mild steel, or substantial brick, concrete and other materials that may give hard cover to potential suspects. In limited circumstances, these weapons can also be used to disable the engine block of a vehicle posing a clear and present threat to the public (i.e., a vehicle laden with explosives).

Training Requirements: SWAT Snipers receive specific .50 caliber rifle training and must undergo regular training and weapons qualifications to be able to deploy the .50 caliber rifle.

Fiscal Impact: See Appendix A

Lifespan: EDM ARMS – Barrel life rated to approximately 20,000 rounds.

a. **EDM ARMS Windrunner -** (Quantity: 1)
Manufacturer: Bushmaster Firearms
Description: The Windrunner is built to outshine all previous standards for long-range accuracy.

F. Ammunition of .50 caliber or greater

1. **.50 Caliber Rifle Ammunition:** Rifle ammunition manufactured specifically for .50 caliber Special Application Rifles. This caliber is also referred to as .50 BMG.

Match Ammunition: Designed for when greater distance from a target is encountered and accuracy is needed. Match ammunition rounds excel against heavy barriers and penetrating thick glass.

Fiscal Impact: See Appendix A

Lifespan: Approximately 10-year shelf life.

a. **A-Max Match Ammo - .50 BMG 750 grain** (Quantity: See Appendix A)
Manufacturer: Engel Ballistic Research
Description: 50BMG match grade 750 grain. Match ammunition rounds excel against heavy barriers and penetrating thick glass.

G. Specialized firearms and ammunition of less than .50 caliber, including assault weapons

1. **AR-15 Rifles:** A semi-automatic shoulder-fired long gun that fires a rifle caliber cartridge. The Department-approved AR-15 style weapon system is designed to fire a .223/5.56 caliber projectile.

Capability/Usage: The rifle caliber carbine provides officers the ability to engage hostile suspects at distances generally greater than the effective distance of their handguns. Additionally, AR-15 rifles offer advantages over handguns, such as increased accuracy potential and the ability to defeat soft body armor but are not appropriate for every situation.

Training Requirements: All officers attend a POST rifle course and regularly qualify with their rifle. SWAT Officers partake in regular rifle training, and consistent weapons qualifications to maintain proficiency with the AR-15.

Fiscal Impact: See Appendix A

Lifespan: Colt M4 Carbine LWRC IC-45 – Barrel life rated to approximately 12,000 rounds.

Colt M4 Carbine – Barrel life rated to approximately 12,000 rounds.

a. **Colt M4 Carbine LWRC M6IC** (Quantity: 142)
Manufacturer: LWRC International
Description: Colt style M4 rifle chambered in .223 caliber. These rifles are outfitted with a collapsible stock and flashlight.

b. **Colt M4 Carbine** (Quantity: 158)
Manufacturer: Colt Manufacturing LLC
Description: Colt M4 rifle chambered in .223 caliber. These rifles are outfitted with a collapsible stock.

2. **.308 Caliber Rifles:** Rifle's chambered in a .308 caliber round. These rifles are set up as a semi-automatic rifle or a bolt action. They can be outfitted with various optics and accessories depending on the mission.

Capability / Usage: The .308 rifle provides SWAT Snipers and Air Support personnel the ability to engage hostile suspects at great distances with accuracy. The .308 rifle platform are typically deployed with the SWAT Team during high-risk SWAT operations and special events or instances wherein Sniper Over Watch Teams are needed. These rifles can also be deployed by the Ontario Air Support Unit for similar situations.

Training Requirements: SWAT team members and the Air Support Unit regularly train and qualify with various weapons systems including the .308 rifle to maintain proficiency.

Fiscal Impact: See Appendix A

Lifespan: HK 91 – Barrel life rated to approximately 3,000 to 6,000 rounds.
Tactical Ops Tango 51– Barrel life rated to approximately 5,000 rounds.
Sig Sauer 716 – Barrel life rated to approximately 3,000 to 6,000 rounds.

Fiscal Impact: See Appendix A

a. HK 91 Rifle (Quantity: 1)
Manufacturer: Heckler and Koch
Description: Semi-automatic .308 rifle with optic attached.

b. Tactical Ops Tango 51 .308 Bolt Action Rifle (Quantity: 6)
Manufacturer: Accuracy International
Description: The bolt action Tango 51 is chambered in .308 caliber and is a bolt action rifle.

c. Sig Sauer 716 Rifle (Quantity: 2)
Manufacturer: Sig Sauer
Description: Semi-automatic .308 rifle with optic attached.

3. **MP-5 Submachine Guns:** A compact, modular, lightweight, shoulder fired, submachine gun capable of semi-automatic or automatic fire chambered in 9mm.

Capability / Usage: The MP-5 submachine gun provides the ability to deliver precision gun fire with a shoulder fired weapons system that is accurate, reliable, and safe. Its compact design allows for ease of maneuverability when operating in the open or within interior environments. The use of the MP-5 submachine gun is relegated to SWAT officers.

Training Requirements: Officers authorized to carry the MP-5 have completed numerous hours of live fire and movement training. Additionally, officers authorized to use the MP-5 must complete weapons qualifications on a regular basis to maintain proficiency.

Fiscal Impact: See Appendix A

Lifespan: Barrel life rated for approximately 50,000+ rounds.

a. **HK MP5 Submachine Gun** (Quantity: 8)

Manufacturer: Heckler & Koch

Description: Probably the most popular series of submachine guns in the world, it functions according to the proven roller-delayed blowback principle. Tremendously reliable, with maximum safety for the user, easy to handle, modular, extremely accurate and extraordinarily easy to control when firing.

4. **.223 Caliber or 5.56mm Rifle Ammunition:** Rifle ammunition manufactured specifically for rifles chambered in 5.56mm or .223 Remington. Currently there are two types of .223/5.56mm caliber rifle ammunition in use operationally by the Department.

   Capability / Usage: .223 caliber or 5.56mm rifle ammunition used in conjunction with an AR-15 type rifle provides officers the ability to engage hostile suspects at distances generally greater than the effective distance of their handguns. Rifle ammunition fired from AR-15 rifles offer advantages over handguns, such as increased accuracy potential and the ability to defeat soft body armor but are not appropriate for every situation. For the SWAT Team, the AR-15 is the primary weapons system utilized by the team. SWAT Officers regularly utilize the AR-15 as their primary weapons system on tactical operations.

   Training Requirements: Officers receive POST training and regularly qualify with their weapon.

   Fiscal Impact: See Appendix A

   Lifespan: Approximately 10-year shelf life.

   The Department currently possesses the following types of .223 caliber or 5.56mm rifle ammunition:

   a. **Federal** – **FMJ .223 55 grain** (Quantity: 100,000)
      Manufacturer: Federal
      Description: American Eagle rifle ammunition offers consistent, accurate performance at a price that's perfect for high-volume shooting. The loads feature quality bullets, reloadable brass cases and dependable primers.

   b. **Federal** – **Gold Dot .223 62 grain** (Quantity: 30,000)
      Manufacturer: Federal
      Description: Gold Dot Duty Rifle brings proven bullet technology to rifle platform. Gold Dot rifle bullets are optimized to ensure expansion out of barrels down to 10" at a wide variety of velocities out to 200 yards.

5. **.308 Caliber Rifle Ammunition:** Rifle ammunition manufactured specifically for rifles chambered in .308 Winchester. Currently there are various types of .308 Winchester caliber rifle ammunition in use by the Department.

   Fiscal Impact: See Appendix A

Lifespan: Approximately 10-year shelf life.
The Department currently possesses the following types of .308 Winchester ammunition:

a. **Federal.308 Winchester LE308TT2 Ammunition** (Quantity: 2,400)
Manufacturer: Federal
Description: Tactical bonded ammunition is made exclusively for law enforcement. It is designed to defeat barriers with minimal deflection.

H. Flashbangs, Chemical Agents, Chemical Agent Delivery Devices, and Pepper Ball Launchers

1. **Noise Flash Diversionary Devices (NFDD):** Canisters that emit a loud noise and bright light.

Capability / Usage: Diversionary Devices are capable of releasing large amounts of stored energy in the form of heat, light, pressure, and noise. They are intended to temporarily distract, confuse, and disorient subjects. They can also be used as "attention-getting" devices. Diversionary Devices are to be used exclusively by the SWAT team. Noise Flash Diversionary Devices can be used in high-risk tactical operations as an attention getting device. They can also be used during high-risk warrants, and hostage rescue incidents to provide an added degree of officer safety by disorienting subjects.

Training Requirements: SWAT Officers regularly train on safe device deployment in a variety of operational settings.

Fiscal Impact: See Appendix A

Lifespan: Defense Technology Multi Port Distraction Device – Five (5) year shelf life.

Liberty Dynamics Distraction Device –Five (5) year shelf life.

The Department currently possesses the following types of Diversionary Devices:

a. Defense Technology Multi Port Distraction Device (Quantity: 80)
Manufacturer: Defense Technology
Description: These noise flash diversionary devices have a highly reliable functionality and very precise delay times.

b. Defense Technology Multi-bang (Quantity: 3)
Manufacturer: Defense Technology

Description: This distraction device is capable of multiple consecutive detonations on one device.

c. Low-roll Distraction Device (Training Device) (Quantity: 50)
Manufacturer: Defense Technology
Description: Training device utilizes the same deployment methods with minimal load for training purposes.

d. Liberty Dynamics Distraction Device (Quantity: 175)
Manufacturer: Liberty Dynamics
Description: This diversionary device has the binary energetic material contained within the Enhanced Noise Flash Diversionary device allows for drastically lowered volatility levels, creating a vastly safer and more reliable noise-flash event.

2. **Chemical Agents and Chemical Agent Delivery Devices**: Compounds, devices, and delivery systems utilized by SWAT, Mobile Field Force, and patrol officers. Compounds can include irritants such as Chlorobenzalmalononitrile (CS) or an inflammatory agent such as Oleoresin Capsicum (OC) or Pava (synthetic OC). Chemical agents can be liquid, powder, or gaseous. Delivery systems can be pyrotechnic, blast dispersion, OC Fogger, or aerosol.

Chemical agent delivery devices consist of the following:

Gas Ram: A metal device resembling a handheld pointed battering ram that can be loaded with a chemical agent canister. The gas ram can be used to introduce chemical agents into a location by piercing the wall, door, or roof of a structure.

Burn Safe: A cylindrical metal container designed to contain a pyrotechnic chemical agent canister and reduce fire hazard upon deployment into a structure.

Capability / Usage: Depending on the delivery method, chemical agents are capable of being introduced in close proximity or from a distance. Depending on the type of delivery system and/or quantity, chemical agents can be used to saturate individual suspects, violent crowds, or areas of varied size. Chemical agents are to be used by the SWAT Team, Mobile Field Force, and/or patrol officers. Generally, during high-risk tactical incidents chemical agents can be used to dislodge a suspect from a stronghold location with the least possible danger to citizens, police, and the suspect. Chemical agents can also be used to prevent an armed suspect from accurately firing at citizens and/or officers. They can also be used in limited instances during civil unrest to disperse violent crowds.

Training Requirements: Officers receive regular training on the deployment and use of chemical agents. Officers are required to pass annual qualifications with the use of chemical agents and chemical agent delivery systems in order to maintain proficiency.

Fiscal Impact: See Appendix A

Lifespan: Defense Technology Chemical Agent Canisters and Munitions - Five (5) year shelf life.

Chemical Agent Delivery Devices - No lifespan indicated by manufacturer. Lifespan varies on operational usage and wear.

The Department currently possesses the following types of chemical agents:

a. SPEDE-HEAT CS Model - (Quantity: 62)
Manufacturer: Defense Technology
Description: The Spede-Heat CS munition is a high volume, continuous burn it expels its payload in approximately 20-40 seconds. The payload is discharged through four gas ports on top of the canister, three on the side and one on the bottom. This munition holds approximately 2.9 oz. of active agent.

b. 40mm Liquid Ferret - (Quantity: 175)
Manufacturer: Defense Technology
Description: These launchable munitions are capable of being deployed into a structure, through barriers, to deploy chemical agent into a structure at a safe distance.

c. Chemical Agent CS Pocket Tactical – **Model 1016** (Quantity: 4)
Manufacturer: Defense Technology
Description: The Pocket Tactical CS munition is small, and lightweight. The 0.9 oz. of active agent will burn approximately 20-40 seconds. At 4.75 in. by 1.4 inches in size, it easily fits in most tactical pouches.

d. Maximum HC Smoke Model 1073 - (Quantity: 29)
Manufacturer: Defense Technologies
Description: Pyrotechnic smoke grenade used for concealment or as a signaling device.

e. 37mm Multiple Foam Baton – **Model 6299** (Quantity: 379)
Manufacturer: Defense Technology
Description: The 37mm foam baton round contains three foam projectiles.

f. 40mm Skat Shell – **Model 6172** (Quantity: 62)
Manufacturer: Defense Technology

Description: The 40mm Skat shell is designed to deliver multiple CS canisters from a 40mm launcher. It has a maximum effective range of 80-100 yards.

g. Instantaneous Blast CS – **Model 1042** (Quantity: 52)
Manufacturer: Defense Technology
Description: The instantaneous blast CS munition is designed for indoor or outdoor use; this munitions powder is expelled upon initiation of a small internal detonator that has sufficient force to split the canister at six machined groves on the outside surface.

h. Pocket Tactical Saf-Smoke – **Model 1017** (Quantity: 38)
Manufacturer: Defense Technology
Description: This munition is small and lightweight. It will burn approximately 20-40 seconds.

i. CS Flameless Tri-Chamber – **Model 1032** (Quantity: 43)
Manufacturer: Defense Technology
Description: The flameless tri-chamber allows the contents to burn within an internal can and disperse the agent safely with reduced risk of fire.

j. CS Triple-Chaser Canister – **Model 1026** (Quantity: 52)
Manufacturer: Defense Technology
Description: The triple-chaser CS consists of three separate canisters pressed together with separating charges between each. When deployed, the canisters separate and land approximately 20 feet apart allowing increased area coverage.

k. 40mm Muzzle Blast – **Model 6042** (Quantity: 79)
Manufacturer: Defense Technology
Description: The 40mm muzzle blast CS round is widely used as a crowd management tool for the immediate and close deployment.

l. Gas Ram – **Chemical Agent Delivery Device** (Quantity: 3)
Manufacturer: Custom build
Manufacturer Description: The gas ram is a double walled container constructed of steel designed to contain the flames of a pyrotechnic chemical agent canister. There is a large metal probe attached to one end designed to penetrate walls to deploy the chemical agent inside a structure from outside.

m. Burn Safe – **Chemical Agent Delivery Device** (Quantity: 2)
Manufacturer: Burn Safe
Manufacturer Description: The Burn Safe is a double walled container constructed of aluminum. It is designed to contain the flames inside the inner chamber thereby reducing the probability of starting a fire. The Burn Safe allows the introduction of significant amounts of pyrotechnic non-lethal

chemical agent into the target, which increases the probability of a successful resolution.

3. **Pepper Ball Launchers and Pepper Ball Munitions:** A non-lethal munitions system that employs paint ball launchers to fire "pepper balls" that contain powdered synthetic OC in place of the paint. The pepper ball delivery system combines chemical agent exposure with kinetic energy impact to aid in its effectiveness in addressing armed and/or violent individuals or crowds. Pepper ball munitions also include glass breaking rounds.

   Capability / Usage: Pepper ball launchers give officers the ability to address an armed and/or violent suspect(s) with a non-lethal munition that delivers both chemical agent and kinetic energy impact. This combination can be extremely effective in gaining compliance or reducing threat potential with an armed and/or violent suspect(s). Due to its design, pepper balls can be delivered from a larger standoff distance allowing for an added degree of officer safety. Pepper ball launchers and pepper ball munitions can be used to address armed and/or violent individuals or crowds, limited instances of violent civil unrest, suicidal individuals, and individuals believed to possess or have immediate access to a deadly weapon. Pepper ball munitions can be effective in driving suspects from confined spaces or vehicles.

   Training Requirements: Officers undergo regular live fire proficiency training. Additionally, Officers are required to qualify with pepper ball launchers on a consistent basis to maintain proficiency.

   Fiscal Impact: See Appendix A

   Lifespan: Pepper Ball Launcher – No manufacturer life span indicated by manufacturer.

   Pepper Ball Munitions – Approximately three (3) year shelf life.

   The Department currently possesses the following types of pepper ball launchers and pepper ball munitions:

   a. **Tippman FTC Pepper Ball Launcher** (Quantity: 12)
      Manufacturer: Tippman
      Manufacturer Description: The Tippmann FTC paintball marker is a compact marker launcher.

   b. **PepperBall Live –** (Quantity: 4,000)
      Manufacturer: PepperBall
      Description: A potent and powerful concentration of PAVA pepper powder. One round of LIVE-X contains 2% PAVA.

n. PepperBall Glass Breaker – (Quantity:80)
Manufacturer: PepperBall
Description: Used to break side glass of vehicles and residential glass windows.

o. PepperBall Inert – (Quantity: 3,000)
Manufacturer: PepperBall
Description: Containing a harmless, scented powder, this projectile is best suited for training, qualifications, and direct impact when chemical exposure is not desired.

I. Extended Range Impact Weapons, Projectile Launcher Platforms, Munitions, and Specialty Impact Munitions (SIM)

1. **40mm Launchers (Projectile Launch Platforms):** A single shot or multi-shot Extended Range Impact Weapon launcher capable for firing a variety of 40mm rounds. The Department also has a limited inventory of 37mm launchers that share the same characteristics as 40mm launchers but are chambered for 37mm munitions.

Capability / Usage: 40mm launchers are capable of firing a variety of munitions with a maximum effective range of one hundred twenty (120) feet. 40mm launchers can deliver 40mm munitions in the form of chemical agents, and sponge baton rounds. The 40mm launchers utilized with less lethal sponge baton rounds are designed to impact armed and/or violent suspects so officers can gain compliance, overcome resistance, or prevent serious injury or death to bystanders, officers, and the suspect. 40mm single launchers combined with less lethal 40mm sponge baton rounds are authorized to be used by any officer that has been trained in its use and maintains current qualifications.

Training Requirements: Officers that have been trained in the use of the 40mm single launcher undergo thorough training in its use. Additionally, officers trained in the use of the 40mm single launcher must pass annual qualifications to maintain proficiency.

Fiscal Impact: See Appendix A

Lifespan:

Defense Technology 40mm Launchers – Two (2) year limited warranty. No lifespan indicated by manufacturer. Dependent on operational usage and wear.

Defense Technology 37mm Launchers – No lifespan indicated by manufacturer. Lifespan varies on operational usage and wear.

The Department currently possesses the following types of 40mm launchers:

a. Def Tech – Model 1425 (Quantity: 11)
Manufacturer: Defense Technology
Description: The 40mm will fire standard 40mm Less Lethal ammunition, up to 4.8 inches in cartridge length.

b. LMT – 40mm Launcher (Quantity: 20)
Manufacturer: Lewis Machine & Tool
Description: The 40mm will fire standard 40mm Less Lethal ammunition, up to 4.8 inches in cartridge length.

c. Def-Tec – Model 1415 (Quantity: 4)
Manufacturer: Defense Technology
Manufacturer Description: The 37mm will fire standard 37mm Less Lethal ammunition, up to 8 inches in cartridge length.

d. Def-Tec 40mm 6-Shot Launcher (Quantity: 2)
Manufacturer: Defense Technology
Description: Designed for riot and tactical situations, the 40mm 6-Shot Launcher is low-profile and lightweight, providing multi-shot capability in an easy to carry launcher.

2. **40mm Ammunition:** The 40MM round is a sponge baton cartridge. The sponge round has a blue-colored nose with a black base. The casing is stainless.

Fiscal Impact: See Appendix A

Lifespan: Five (5) year shelf life.

The Department currently possesses the following types of 40mm direct impact ammunition:

a. **eXact iMpact 40mm Sponge Round – Model 6325** (Quantity: 900)
Manufacturer: Defense Technology
Description: The eXact iMpact 40 mm Sponge Round is a point-of-aim, point-of-impact direct-fire round. This lightweight, high-speed projectile consisting of a plastic body and sponge nose that is spin stabilized via the incorporated rifling collar and the 40 mm launcher's rifled barrel. Used for Crowd Control, Patrol, and Tactical Applications.

J. Night Vision Equipment and Infrared Sighting Systems

1. **Night Vision Optical Devices:** A night-vision device (NVD), also known as night optical/observation device (NOD) or night-vision goggles (NVG) is an

optoelectronic device that allows images to be produced in low levels of light approaching total darkness.

Capability / Usage: Night Vision Optical Devices provide the user the ability to see an enhanced image during darkness. The use of this equipment allows a tactical advantage for officers especially when operating in low light or dark environments. The majority of SWAT tactical operations occur at night or are conducted in low light environments. Having NVD's allows for SWAT Officers to have a tactical advantage and an added degree of officer safety when operating in those conditions. The use of NVD's is extremely advantageous during high-risk operations, hostage rescue, active shooter, and tactical operations in a wide range of environments.

Training Requirements: SWAT Officers maintain proficiency by continual training and annual weapons qualifications with NVD's.

Fiscal Impact: See Appendix A

Lifespan: Approximately 10,000 hours.

The Department currently possesses the following types of Night Vision Optical Devices:

a. **Pinnacle Gen3 Night Vision –** (Quantity: 30)
Manufacturer: Night Vision Depot
Description: Pinnacle Gen3 Night Vision Device is a compact, lightweight, high-performance white phosphor dual-tube goggle.

b. **L3 Warrior –** (Quantity: 3)
Manufacturer: L3
Description: The L3 Warrior Night vision scope can be attached quickly to the rifle to allow for enhanced vision during nighttime operations. It works in conjunction with the rifle's optics for improved vision.

2. **Infrared Sighting Systems:** A device attached to a firearm to aid in target acquisition. Unlike optical and iron sights where the user looks through the device to aim at the target, laser sights project a beam onto the target that provides a visual reference point. This device is used in conjunction with NVD's to aid in rapid and accurate target acquisition.

Capability / Usage: This equipment, when combined with NVD's, provide the user the ability to see an enhanced image during low light conditions or darkness. The use of this equipment allows for a tactical advantage for officers. It allows officers to obtain accurate and rapid target acquisition especially when operating in a multitude of low light or dark environments. Most SWAT operations occur at night or are conducted in low light environments. Having NVD's in conjunction

with infrared sighting systems allows for SWAT Officers to have a tactical advantage and an added degree of officer safety when operating in those conditions. The use of NVD's combined with infrared sighting systems are extremely advantageous during high-risk operations, hostage rescue, active shooter, and tactical operations in a wide range of environments. Infrared sighting systems are to be used exclusively by the SWAT Unit. Night Vision optical enhancement devices combined with infrared sighting systems may be utilized during tactical missions with approval from the SWAT Commanding Officer or SWAT Executive Officer.

Training Requirements: SWAT Officers maintain proficiency by continual training and annual weapons qualifications with NVD's and infrared sighting systems.

Fiscal Impact: See Appendix A

Lifespan: Approximately 10,000 hours.

The Department currently possesses the following types of infrared sighting systems:

a. **MAWL IR Designator** (Quantity: 30)
Manufacturer: B.E. Meyers
Description: The MAWL has an IR light and IR laser which work in
conjunctions with night vision devices to illuminate and aide in aiming a
weapon system.

II. MILITARY EQUIPMENT MAINTENANCE AND INVENTORY

All military equipment shall be maintained and inventoried in accordance with department policy.

MILITARY PROCEDURE APPENDIX – A
FISCAL IMPACT – Fiscal Year 2022 (May 2022 – May 2023)

Equipment Name and Model / Manufacturer	Initial Cost	Ongoing Annual Cost FY22 (approximate)
Loki I	$13,600	Varies on Usage
Anafi Thermal	$7,439	Varies on Usage
Evo II	$1,825	Varies on Usage

Equipment Name and Model / Manufacturer	Initial Cost	Ongoing Annual Cost FY22 (approximate)
Dragon Runner	$46,000	Varies on Usage

Equipment Name and Model / Manufacturer	Initial Cost	Ongoing Annual Cost FY22 (approximate)
Bearcat G2 (2 Door)	$205,568	Varies on Usage
Bearcat G3 (4 Door)	$315,835	Varies on Usage
Bearcat G3 (Ramp)	$302,609	Varies on Usage
Rook	$570,000	Varies on Usage

Equipment Name and Model / Manufacturer	Initial Unit Cost	Ongoing Annual Cost FY22 (approximate)
SWAT Equipment Vehicle	$271,715	Varies on Usage
CP131	$124,708	Varies on Usage

Equipment Name and Model / Manufacturer	Initial Cost	Ongoing Annual Cost FY22 (approximate)
Explosive Breaching Kit	$3,850	$202,010 (total SWAT equipment budget)

Equipment Name and Model / Manufacturer	Initial Cost	Ongoing Annual Cost FY22 (approximate)
Remington 870 Breaching Shotgun	$800 Each	$150,000 (total ammo budget)
TKO 12 Gauge Breaching Shotgun Rounds	$8.15 Per Box (6)	$150,000 (total ammo budget)

Equipment Name and Model / Manufacturer	Initial Cost	Ongoing Annual Cost FY22 (approximate)
Windrunner .50 cal	$7,144	Varies on Usage
Match Ammunition - .50 BMG .510" 750 grain	$59 Per Box (10)	$150,000 (total ammo budget)

Equipment Name and Model / Manufacturer	Initial Cost	Ongoing Annual Cost FY22 (approximate)
AR-15 Colt LWRC	$1,949 Each	Varies on Usage
.308 Semi-auto HK91	$3,899 Each	Varies on Usage
.308 Tango 51	$7,999 Each	Varies on Usage
HK MP5	$3,275 Each	Varies on Usage
.380 Sig Sauer 716	$1,350 Each	Varies on Usage
Federal FMJ 55 grain	$179 Per Case	$150,000 (total ammo budget)
Gold Dot .223 62 grain	$287 Per Case	$150,000 (total ammo budget)
HSM 750g A-Max .308	$49 Per Box	$150,000 (total ammo budget)

Equipment Name and Model / Manufacturer	Initial Cost	Ongoing Annual Cost FY22 (approximate)
Def Tec Flashbang	$38.60 Each	$202,010 (total SWAT equipment budget)
Def Tec Multi-bang	$70.00 Each	$202,010 (total SWAT equipment budget)
Training Flash Bang	$58.50 Each	$202,010 (total SWAT equipment budget)
Liberty Dynamics Flash Bang	$18,694 Total	$202,010 (total SWAT equipment budget)
SPEDE Heat	$33.05 Each	$202,010 (total SWAT equipment budget)
40mm CS Ferret	$26.15 Each	$202,010 (total SWAT equipment budget)
Pocket Tactical CS	$28.00 Each	$202,010 (total SWAT equipment budget)
Maximum HC Smoke	$32.60 Each	$202,010 (total SWAT equipment budget)
37mm Foam Baton	$24.50 Each	$202,010 (total SWAT equipment budget)
40mm Skat Shell	$40.65 Each	$202,010 (total SWAT equipment budget)
Instantaneous Blast CS	$54.60 Each	$202,010 (total SWAT equipment budget)
Pocket Tactical Smoke	$32.60 Each	$202,010 (total SWAT equipment budget)
CS Flameless Tri Chamber	$46.25 Each	$202,010 (total SWAT equipment budget)
CS Triple Chaser	$46.25 Each	$202,010 (total SWAT equipment budget)
40mm Muzzle Blast CS	$26.75 Each	$202,010 (total SWAT equipment budget)
Gas Ram	$3,250 Each	$202,010 (total SWAT equipment budget)
Burn Safe	$155.40 Each	$202,010 (total SWAT equipment budget)
Tippman FTC	$499 Each	$13,850 (Department equipment budget)
PepperBall Live	$899 Box	$13,850 (Department equipment budget)
PepperBall Glass Breaker	$3.00 Per Round	$13,850 (Department equipment budget)
PepperBall Inert	$300 Per Case	$13,850 (Department equipment budget)

Equipment Name and Model / Manufacturer	Initial Cost	Ongoing Annual Cost FY22 (approximate)
Def-Tec 40mm Launcher	$985 Each	$13,850 (Department equipment budget)
LMT 40mm Launcher	$985 Each	$13,850 (Department equipment budget)
Def-Tec 37mm Launcher	$884.50 Each	$13,850 (Department equipment budget)
Def-Tec 40mm multi-Launcher	$2,369 Each	$13,850 (Department equipment budget)
eXact iMpact 40mm Sponge Round	$30 Each	$13,850 (Department equipment budget)

Equipment Name and Model / Manufacturer	Initial Cost	Ongoing Annual Cost FY22 (approximate)
Pinnacle Gen3 NODs	$6,995 Each	Varies on Usage
L3 Warrior Optic	$7,999 Each	Varies on Usage
MAWL Designator	$2,999 Each	Varies on Usage

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Community Life & Culture Prepared By: Lacey A Rightmer Staff Member Presenting: Helen McAlary, Executive Director Community Life and Culture Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 31

SUBJECT: AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT FOR MUSEUM EXHIBIT DESIGN FOR THE BUILT ON WATER EXHIBIT

RECOMMENDATION: That the City Council approve and authorize the City Manager or his designee to execute Amendment No. 3 (on file with the Records Management Department) to the Professional Services Agreement with Picnic Design of Los Angeles, California. This agreement encompasses design services for the Built on Water exhibit currently under construction at the Ontario Museum of History & Art. Amendment No. 3 adds $13,800 to the agreement, for a revised total contract amount of $105,000.

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

FISCAL IMPACT: Amendment No. 3 increases the existing agreement by $13,800 for a total contract amount of $105,000. To date, $50,000 of the contracted amount has been paid from grant funding awarded by the Institute of Museum and Library Services (IMLS), $22,250 has been paid from Capital Improvement Project (CIP) funds, and $18,950 has been paid from the city's general fund through a cash match as required by the IMLS grant. The remaining $13,800 will be paid through funding already budgeted in the Museum general fund operating budget for FY 2021-22.

BACKGROUND & ANALYSIS: In 2018, the Ontario Museum of History & Art received a federal grant from the Institute of Museum and Library Services (IMLS) for a new permanent exhibit called *Built on Water: Ontario and Inland Southern California*. This exhibit will focus on the history and future of water in Ontario and the surrounding region. This multi-year project supports the development of the exhibit, related programming, and technological components. The exhibit planning process is a collaboration among Museum staff, local water conservation districts, expert researchers, local archives, area school districts, Ovitt Family Community Library, Ontario Municipal Utilities Company, and local residents.

On July 22, 2019, the Ontario Museum of History & Art entered into a Professional Services Agreement with Picnic Design to conceptualize and design the exhibit space. Due to the COVID-19

pandemic, a separate vendor that had been selected to design and fabricate a modular wall for the exhibit went out of business. This event established a need for Picnic Design to also complete the design for the modular wall. Amendment No. 1 to the Professional Services Agreement was entered into on January 30, 2020, to expand the scope of services to include the design of the modular wall. This expansion increased the contract amount by $22,250 for a revised agreement not to exceed $72,500.

On June 21, 2021, the City entered into Amendment No. 2 of the Professional Services Agreement to expand the scope of services and extend the term of the agreement. The changes were desired after gathering feedback from Staff, Museum Board of Trustees, Museum stakeholders, and the community. The expanded scope included the development of interactive components in the exhibit. These components are designed to enhance the visitor experience by visualizing abstract concepts such as the water cycle. The interactive components will also encourage visitors to engage with the exhibit content through infographics, a mobile app, and in-gallery activity tables where visitors can discuss and digest the information on display. The additional scope of service increased the amount contracted to Picnic Design by $18,700 resulting in Amendment No. 2, not to exceed $91,200.

Staff received positive feedback on the interactive components as part of the ongoing conversations with stakeholder groups. In the fall of 2021 the Museum Board, along with other stakeholders, requested the addition of an immersive experience. The immersive Virtual Reality (VR) experience will complement the interactive components that were already approved. Together these components will create a rich and engaging experience for visitors to the exhibit. This expansion of scope will require Amendment No. 3.

The VR component of the exhibit provides visitors the opportunity to engage with the subject matter in three-dimensions that will surround and fully engage the visitors' senses. It will also cater to K-12 school groups and coincide with California education content standards. Under the expanded scope of service, Picnic Design will identify possible locations for the VR experience, create design options for integrating VR into the exhibit space, and facilitate the search and selection of the VR fabricator.

Due to rising construction costs and the addition of the VR component, the Agreement will increase by $13,800, resulting in an overall cost of $105,000. This amount exceeds the $100,000 threshold for agreements, thus requiring City Council approval. The scope of service, contract amount, and agreement term have been revised, as reflected in Amendment No. 3.

City Council's approval is requested to enter Amendment No. 3 with Picnic Design, requiring an additional $13,800 in design costs. If approved, Staff anticipates the Built on Water exhibit to open to the public in February 2023.

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Community Life and Culture Prepared By: Lacey A Rightmer Staff Member Presenting: Helen McAlary, Executive Director Community Life and Culture Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 32

SUBJECT: AN AMENDMENT TO THE AMERICORPS STATE & NATIONAL COMPETITIVE GRANT FOR THE 2021-2022 PROGRAM YEAR

RECOMMENDATION: That the City Council approve an amendment and budget adjustments for FY 2021-22 to the AmeriCorps State & National Competitive Grant in the amount of $74,001.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Pursue City's Goals and Objectives by Working with Other Governmental Agencies
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities

FISCAL IMPACT: The City of Ontario has been awarded $74,001 from AmeriCorps, a federal agency, through funding provided by the American Rescue Plan Act (ARPA). This funding will be added to the existing $325,999 AmeriCorps State & National Grant (AmeriCorps Grant) for the 2021-2022 Ontario Promise Corps program year. Additional budget appropriations for both revenue and expenditures of $74,001 will need to be added to the FY 2021-22 budget, for a total award amount of $400,000, minus administrative fees of $6,516.

A cash match is required by the AmeriCorps Grant. The city's cash match commitment will not increase with this additional grant funding. The cash match is $235,851 and when added to the grant funding, the grand total is $635,851 for the Ontario Promise Corps program.

BACKGROUND & ANALYSIS: The AmeriCorps Grant was awarded to the City of Ontario to develop a cradle-to-career collective impact program called Ontario Promise Corps. The program implements services that aim to improve school readiness, improve school attendance, and increase college access and success to the local community. Ontario Promise Corps focuses on AmeriCorps' national service focus area of education and provides services that contribute to improved educational outcomes for economically disadvantaged children and youth. The program provides these services through partnerships with Hope Through Housing Foundation, Ontario-Montclair Schools Foundation, Ontario City Library, and Ontario Recreation & Community Services Department.

The City of Ontario's Community Life & Culture Agency was initially awarded an AmeriCorps grant in the amount of $325,999 in 2021. The grant was for the implementation of year two of the Ontario Promise Corps program. These funds were accepted by the Ontario City Council at the July 20, 2021, Ontario City Council meeting.

The AmeriCorps grant is administered on the state level by California Volunteers, an office of the State of California. The Community Life & Culture Agency has been awarded the additional $74,001 in ARPA funds, administered by California Volunteers (the granting agency), for the 2021-2022 Ontario Promise Corps program year. After the allocation of administrative fees of $6,516 paid to the granting agency, the City is eligible to invoice $393,484 for reimbursement.

The Community Life & Culture Agency requests that the Ontario City Council approve this amendment and budget adjustment for the 2021-2022 Ontario Promise Corps program year.

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Economic Development Prepared By: Charity Hernandez Staff Member Presenting: Jennifer McLain Hiramoto, Economic Development Director Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 33

SUBJECT: FIRST AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT FOR LEGAL SERVICES

RECOMMENDATION: That the City Council ("City") approve and authorize the City Manager to execute a First Amendment to a Professional Services Agreement with Kane Ballmer & Berkman in the amount not to exceed $150,000.

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

FISCAL IMPACT: The Fiscal Year 2021-22 Adopted Budget includes, and any subsequent Adopted Budget shall include, appropriations from the General Fund for these services. The proposed Amendment No. 1 increases the Agreement amount by $75,000 for a revised total not to exceed amount of $150,000.

BACKGROUND & ANALYSIS: In October of 2019, the City entered into a Professional Services Agreement for special legal services related to ongoing, project specific, redevelopment projects that require expertise in California Community Redevelopment Law and other related specialty practices.

Due to the fact that Economic Development continues to work on high profile redevelopment activities and projects that require special legal counsel, Staff recommends approval of First Amendment to the Professional Services Agreement.

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **PUBLIC HEARINGS**
Department: Planning Prepared By: Charles Mercier Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 34

SUBJECT: **A PUBLIC HEARING TO CONSIDER FILE NO. PDCA22-003, A DEVELOPMENT CODE AMENDMENT PROPOSING CERTAIN CLARIFICATIONS AND REVISIONS TO THE CITY OF ONTARIO DEVELOPMENT CODE, ADDRESSING: [1] TIME EXTENSIONS FOR DISCRETIONARY PROJECTS (SECTION 2.02.025.B.2.C); [2] PUBLIC NOTIFICATION REQUIREMENTS FOR MINOR VARIANCES (SECTION 2.03.010); [3] ADMINISTRATIVE EXCEPTIONS (SECTIONS 4.02.020 AND 4.03.050, AND TABLES 2.02-1 AND 2.03-1); [4] SPECIFIC PLAN MINOR AMENDMENTS (SECTION 4.02.080); [5] HOUSING AND REASONABLE ACCOMMODATIONS (SECTIONS 4.02.035 AND 4.03.055, AND TABLES 2.02-1 AND 2.03-1); [6] ACCESSORY DWELLING UNITS (SECTION 5.03.010); [7] MINIMUM USEABLE REAR YARD AREA FOR SINGLE-FAMILY DWELLINGS (SECTION 5.03.011); [8] BANQUET FACILITIES ON HISTORIC PROPERTIES (SECTION 5.03.067); [9] RETAIL SALES EVENTS (SECTION 5.03.395 AND TABLE 8.01-1); [10] CONVERSION OF GARAGES TO ACCOMMODATE ACCESSORY DWELLING UNITS (SECTION 6.01.010); [11] DEFINITION FOR "GARAGE" (SECTION 9.01.010.G); [12] SINGLE-FAMILY TWO-UNIT PROJECTS AND URBAN LOT SPLITS, RESCINDING URGENCY ORDINANCE NO. 3200 AND ADOPTING STANDARDS (SECTIONS 5.03.403 AND 6.08.060, AND TABLES 2.02-1 AND 2.03-1); AND [13] CERTAIN ALLOWED LAND USES (TABLE 5.02-1)**

RECOMMENDATION: That the City Council introduce and waive further reading of the ordinance approving File No. PDCA22-003, a Development Code Amendment proposing certain clarifications and revisions to the City of Ontario Development Code, addressing time extensions for discretionary projects; public notification requirements for minor variances; administrative exceptions; specific plan minor amendments; housing and reasonable accommodations; accessory dwelling units; minimum useable rear yard area for single-family dwellings; banquet facilities on historic properties; retail sales events; conversion of garages to accommodate accessory dwelling units; the definition for “garage;” and, single-family two-unit projects and urban lot splits, rescinding urgency Ordinance No. 3200 and adopting standards, and certain allowed land uses.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Maintain the Current High Level of Public Safety

Operate in a Businesslike Manner
Pursue City's Goals and Objectives by Working with Other Governmental Agencies
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: There is no direct fiscal impact to the City associated with this Development Code Amendment.

BACKGROUND & ANALYSIS: Staff has initiated several revisions to the City's Development Code to address State mandates as a result of changes in State law, as well as revisions to correct or clarify existing provisions, as described below:

1. Provisions addressing time extension limits for discretionary projects (Development Code Section 2.02.025.B.2.c) will be revised to clarify that a total of three one-year time extensions may be granted for discretionary actions, such as Development Plans, Conditional Use Permits, and Variances. Time extensions for Tentative Tract and Parcel Maps will continue to be subject to the requirements of the State's Subdivision Map Act, which allows one or more extensions, not exceed a total of six years;
2. Public notification requirements for Minor Variances will be added to clarify that the notification of the owners of any property that abuts a property with a proposed Minor Variance will be required to be notified of the proposed application. Additionally, Minor Variances will be retitled as "Minor Adjustments and Alterations" to reflect the limited nature of the application type (Development Code Sections 2.03.010 and 4.02.020);
3. Provisions governing Specific Plan Minor Amendments will be retitled as "Specific Plan Minor Adjustments and Alterations" to reflect the limited scope of the application (Development Code Section 4.02.080). Specific Plan Minor Adjustments and Alterations include: (a) maximum 15 percent change in the number of units within an individual residential area; (b) maximum 15 percent change in land area of a residential planning area boundary; (c) minor changes to landscape materials, wall materials, wall alignment, entry design, and streetscape design; (d) minor changes to design guidelines that are intended to be conceptual in nature and are clearly intended to be flexible in implementation; (e) other modifications of a similar nature to those listed above, which are deemed minor by the Planning Director and are in keeping with the purpose and intent of the affected specific plan; and (f) adjustments in street alignments and dimensions that are deemed appropriate by the City Engineer and are in keeping with the purpose and intent of the specific plan;
4. Current provisions governing Administrative Exceptions incorrectly classify the application as requiring a discretionary action and will be rescinded. New provisions are proposed that correctly establish Administrative Exceptions as a ministerial action (Development Code Sections 4.02.020 and 4.03.050, and Tables 2.02-1 and 2.03-1);
5. Current provisions governing Housing and Reasonable Accommodations incorrectly classify the application as requiring a discretionary action and will be rescinded. New provisions are proposed that correctly establish Housing and Reasonable Accommodations as a ministerial action (Development Code Sections 4.02.035 and 4.03.055, and Tables 2.02-1 and 2.03-1);
6. Provisions governing Accessory Dwelling Units (ADUs) will be modified, adding the requirements of Assembly Bill 345, which allows for the conveyance of an ADU separate from the primary residence if the ADU or primary dwelling was built or developed by a qualified nonprofit corporation, provided certain conditions are met (Development Code Section

5.03.010);

7. Current provisions stipulating the minimum useable rear yard area for single-family dwellings will be simplified, requiring that a traditional single-family dwelling maintain a useable rear yard area having minimum dimension of 20 FT in any horizontal direction and small lot single-family dwelling maintain a useable rear yard having a minimum dimension of 10 FT in any horizontal direction (Development Code Section 5.03.011). This revision has been proposed to eliminate a conflict with current ADU provisions;
8. Current provisions governing banquet facilities established in conjunction with commercial structures on historic properties will be amended to clarify that no banquet facilities are to be allowed in the MU-1 (Downtown Mixed Use) zoning district (Development Code Section 5.03.067). This revision will eliminate an existing conflict with Development Code Table 5.02-1 (Land Use Matrix);
9. Current provisions governing Retail Sales Events will be modified to clarify that the provisions also cover "other similar business events." Additionally, current provisions that limit retail sales events to the holiday sale periods of President's Day, Memorial Day, Independence Day, Labor Day, and four additional periods per year will be amended, eliminating the four stated holidays, and allowing a maximum of eight, one-week periods per calendar year (Development Code Section 5.03.395 and Table 8.01-1);
10. Current provisions stipulating that no garage can be converted to another use unless a replacement garage is constructed on-site will be clarified to provide that a garage conversion that accommodates an ADU is exempt from the replacement garage requirement (Development Code section 6.01.010). This revision will eliminate a conflict with the Development Code's current ADU provisions, as well as a conflict with State law;
11. The current definition for "garage" will be amended to clarify that a garage must be enclosed on all four sides (Development Code Section 9.01.010.G);
12. On December 21, 2021, the City Council adopted an Urgency establishing interim standards for single-family two-unit projects and urban lot splits as required by State law (Senate Bill 9). This Development Code Amendment will rescind the urgency ordinance and adopt permanent standards for inclusion in the Development Code (Development Code Sections 5.03.403 and 6.08.060, and Tables 2.02-1 and 2.03-1); and
13. The Land Use Matrix (Development Code Table 5.02-1) will be amended to: (a) allow technical, trade, and vocational schools in the IG (General Industrial) zoning district, subject to Conditional Use Permit approval. This revision would allow for the location of technical, trade and vocational schools that specialize in education and training for industrial-related industries, such as schools for car and truck repair, maintenance, and customization; truck driving schools; forklift driving and operation certification; and other industrial activities; and (b) adult residential care facilities for more than 6 persons, that do not require a State-issued license to operate, would be prohibited. This would include facilities such as halfway group homes for sex-offenders, group homes for unwed mothers, group homes for the disabled without nursing care, and group sober living facilities.

The specific Development Code provisions to be amended are detailed in Exhibit A of this report. Provisions proposed for deletion are shown in red strikeout text and all additions are shown in yellow highlighted text.

PLANNING COMMISSION REVIEW AND ACTION: On April 26, 2022, the Planning Commission conducted a public hearing to consider the proposed Development Code Amendment. Upon conclusion of the public hearing, the Planning Commission voted unanimously (6-0-1) to approve Resolution No. PC22-019 recommending the City Council approve the proposed Development Code Amendment.

COMPLIANCE WITH THE ONTARIO PLAN: The proposed project is consistent with the principles, goals and policies contained within the Vision, Governance, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan ("TOP"). Goals and policies of TOP that are furthered by the proposed Development Code Amendment are addressed in the attached Planning Commission Backup material.

HOUSING ELEMENT COMPLIANCE: The Project will be consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project furthers the purposes, principals, goals, and policies of the Housing Element, in that it will provide for urban lot splits and the construction of two-unit single-family development projects, and, under certain circumstances, provides for the conveyance of accessory dwelling units separate from the main dwelling, thereby further promoting alternate forms of home rental and fee-simple homeownership.

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.

ENVIRONMENTAL REVIEW: The proposed Development Code Amendment is exempt from the requirements of the California Environmental Quality Act ("CEQA") and the guidelines promulgated thereunder, pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the activity is covered by the common sense exemption (general rule) that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

ATTACHMENT A:
DEVELOPMENT CODE AMENDMENT

PART I: Subparagraph B.2.c Development Code Section 2.02.025 (Time Limits and Extensions) shall be amended to read as follows:

"**c.** A discretionary permit or action may be granted Time Extensions in one-year increments, ~~for a period or periods~~ not to exceed a total of ~~5 years~~ three one-year time extensions, excepting tentative subdivision maps, which shall be subject to the provisions of GC Section 66452.6."

PART II: Subparagraph C.1.b(1) of Development Code Section 2.03.010 (Public Hearing Notification) shall be amended to read as follows:

"**(1)** ~~For large family daycare facilities, the area of notification shall be within 100 FT of the exterior boundaries of the property that is the subject of the hearing~~ For Minor Variances, the area of notification shall include all properties having a property line common with the affected property; and"

PART III: Subsection D (Minor Variances) of Development Code Section 4.02.020 (Departures from Development Standards) shall be amended to read as follows:

~~D~~ C.Minor Variances.

1. Purpose. Minor ~~Variances~~ Adjustments and Alterations, like Variances, are intended to allow for departures from the strict application of the numerical development standards established by this Development Code, when their strict application would result in practical difficulties, unnecessary hardships, or results inconsistent with the general purpose of the development regulations. Minor ~~Variances~~ Adjustments and Alterations, however, are determined to have a lesser (minor) measure of impact than Variances, due to the limited measure of adjustment allowed; therefore, requiring a modified review process.

2. Applicability.

a. Pursuant to Table 2.02-1 (Review Matrix) of this Development Code, the Approving Authority is hereby empowered to approve, approve in modified form, or deny a Minor ~~Variances~~ Adjustments and Alterations, and to impose reasonable conditions upon the approval of the application.

b. Minor ~~Variances~~ Adjustments and Alterations may be approved for:

(1) A reduction of up to 25 percent from minimum setback and separation requirements, excepting nonresidential setback requirements from property lines that are common with any residentially zoned property; or

(2) A 10 percent increase in the maximum height of structures.

c. A Minor ~~Variances~~ Adjustments and Alterations shall not be approved for reductions in minimum lot size, lot coverage, lot dimension, landscape coverage, parking requirements, or for an increase in maximum density or floor area ratio.

3. Application Filing, Processing and Hearing.

a. A Minor ~~Variances~~ Adjustments and Alterations shall be filed and processed pursuant to Division 2.02 (Application Filing and Processing) of this Development Code and the provisions of this Section.

b. The applicant and the owners of all properties having a property line common with the affected property shall be notified of the proposed Minor ~~Variances~~ Adjustments and Alterations pursuant to Section 2.03.010 (Public Hearing Notification) of this Development Code. Furthermore, the notice shall state that a public hearing shall not be required unless requested by the applicant or an affected person.

c. A public hearing, if requested, shall be conducted pursuant to Division 2.03 (Public Hearings) of this Development Code.

d. If no public hearing is requested, the Zoning Administrator shall approve, approve in modified form, or deny a Minor ~~Variances~~ Adjustments and Alterations no less than 10 days following distribution of the notice required by Subparagraph ~~D~~ C.3.b, above.

4. Findings and Decision. A Minor ~~Variances~~ Adjustments and Alterations shall be acted upon by the Approving Authority based upon the information provided in the submitted application, evidence presented in the Planning Department's written report, and testimony provided during the public hearing, only after considering and clearly establishing all of the below-listed findings, and giving supporting reasons for each finding. The application shall be denied if one or more of the below-listed findings cannot be clearly established.

a. The strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of the development regulations contained in this Development Code;

b. There are exceptional or extraordinary circumstances or conditions applicable to the property involved, or to the intended use of the property, that do not apply generally to other properties in the vicinity and in the same zoning district;

c. The strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties in the same zoning district;

d. The granting of the Minor ~~Variances~~ Adjustments and Alterations will not be detrimental to the public health, safety, or welfare, or be materially injurious to properties or improvements in the vicinity.

e. The proposed Minor ~~Variances~~ Adjustments and Alterations 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, and the purposes of any applicable specific plan or planned unit development, and the purposes of this Development Code.

5. Conditions of Approval.

a. In approving a Minor Variance, the Approving Authority may require certain safeguards and impose certain conditions established to ensure that the purposes of this Development Code are maintained; ensure that the project will not endanger the public health, safety or general welfare; ensure that the project will not result in any significant environmental impacts; ensure that the project will be in harmony with the area in which it is located; and ensure that the project will be in conformity with The Ontario Plan and any applicable specific and/or area plan(s).

b. All conditions or requirements authorized by this section are enforceable in the same manner and to the same extent as any other applicable requirement of this Development Code.

PART IV: Development Code Section 4.02.080 (Minor Specific Plan Amendments) shall be amended to read as follows:

"4.02.080: Specific Plan Minor ~~Amendments~~ Adjustments and Alterations

A. Purpose. The purpose of this Section is to establish a procedure by which minor departures from the strict application of the development standards and/or design guidelines established by a Specific Plan may be approved, provided the requested departure is in the interest of furthering the goals and policies of the affected Specific Plan and The Ontario Plan.

B. Applicability.

1. Pursuant to Table 2.02-1 (Review Matrix) of this Development Code, the Approving Authority is hereby empowered to approve, approve in modified form, or deny a Specific Plan Minor ~~Amendment~~ Adjustments and Alterations application, and to impose reasonable conditions upon the approval of the application.

2. The following constitute minor ~~modifications~~ adjustments and/or alterations, not requiring a Specific Plan Amendment and/or update of the affected specific plan:

a. A net change of not more than 15 percent to the number of units within an individual residential area, provided the total number of units for the entire specific plan area does not exceed that established in the affected specific plan;

b. Adjustment of a residential planning area boundary, provided the total acreage of the affected area does not increase or decrease the total acreage stated in the affected specific plan by more than 15 percent;

c. Minor ~~changes~~ adjustments and/or alterations to landscape materials, wall materials, wall alignment, entry design, and streetscape design, which are consistent with the conceptual design set forth in the affected specific plan's development standards and design guidelines;

d. Minor ~~changes~~ adjustments and/or alterations to design guidelines, which are intended to be conceptual in nature, and are clearly intended to be flexible in implementation;

e. Other ~~modifications~~ adjustments and/or alterations of a similar nature to those listed above, which are deemed minor by the Planning Director to be in keeping with the purpose and intent of the affected specific plan and are in conformance with The Ontario Plan; and

f. Adjustments in street alignments and dimensions that as deemed appropriate by the City Engineer, which are in keeping with the purpose and intent of the specific plan and are consistent with the purpose, principles, goals, and policies, of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan, provided the changes do not impact the sizing of master planned infrastructure,

C. Application Filing, Processing and Hearing. A Specific Plan Minor Amendment application shall be filed, processed, and acted upon pursuant to Division 2.02 (Application Filing and Processing) of this Development Code and the provisions of this Section. A noticed hearing pursuant to Division 2.03 (Public Hearings) of this Development Code shall not be required.

D. Findings and Decision. A Specific Plan Minor ~~Amendment~~ Adjustment and/or Alteration shall be acted upon by the Approving Authority based upon the information provided in the submitted application, evidence presented in the Planning Department's written report, and testimony provided during the public hearing, only after considering and clearly establishing all of the below-listed findings, and giving supporting reasons for each finding. The application shall be denied if one or more of the below-listed findings cannot be clearly established.

1. The proposed Specific Plan Minor ~~Amendment~~ Adjustment and/or Alteration 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, and the specific plan;

2. The proposed Specific Plan Minor ~~Amendment~~ Adjustment and/or Alteration is reasonable and beneficial, and in the interest of good planning practice; and

3. The proposed Specific Plan Minor ~~Amendment~~ Adjustment and/or Alteration will not adversely affect the harmonious relationship with adjacent properties and land uses."

PART V: Subsection C (Administrative Exceptions) of Development Code Section 4.02.020 (Administrative Exceptions, Minor Variances and Variances) shall be rescinded and all subsequent existing provisions of Development Code Section 4.02.020 shall be renumbered in correct alphanumeric order. Development Code Section 4.03.050 (Administrative Exceptions) shall be added to read as follows:

"4.03.050: Administrative Exceptions

A. Purpose. The Administrative Exception is hereby established for the purpose of granting minor departures from the strict application of certain numerical development standards established by this Development Code, when the departure would result in superior site, landscape, or architectural design features that could not otherwise be incorporated into a development project under the strict application of the development standards contained in this Development Code.

B. Applicability.

a. Pursuant to Table 2.02-1 (Review Matrix) of this Development Code, the Approving Authority is hereby empowered to approve, approve in modified form, or deny an Administrative Exception application, and to impose reasonable conditions upon the approval of the application.

b. Administrative Exceptions may be approved for reductions of up to 10 percent from:

(1) Minimum setback and separation requirements, excepting nonresidential setback requirements from property lines that are common with any residentially zoned property; and

(2) Off-street parking required for nonresidential land uses pursuant to Table 6.03-1 (Off-Street Parking Requirements).

c. An Administrative Exception shall not be approved for reductions from minimum lot size, lot dimensions, landscape coverage, or residential parking requirements, or for an increase in maximum density, floor area ratio, or the height of a structure.

C. Application Filing, Processing and Hearing.

1. An Administrative Exception shall be filed and processed pursuant to Division 2.02 (Application Filing and Processing) of this Development Code and the provisions of this Section.

2. A hearing shall not be required; however, the owners of all properties having a property line common with the affected property shall be notified of the proposed Administrative Exception pursuant to Section 2.03.010 (Public Hearing Notification) of this Development Code and shall be invited to comment on the application.

D. Findings and Decision. An Administrative Exception shall be acted upon by the Approving Authority based upon the information provided in the submitted application, evidence presented in the Planning Department's written report, and any comments received from property owners notified pursuant to Subparagraph C.3.b of this Section, only after considering and clearly establishing all of the below-listed findings, and giving supporting reasons for each finding. The application shall be denied if one or more of the below-listed findings cannot be clearly established.

1. The approval of the Administrative Exception is necessary to the production of a comprehensive development, incorporating an enhanced environment and architectural excellence (e.g., appropriate variety of structure placement and orientation opportunities, high quality architectural design, increased amounts of landscaping and open space, improved solutions to the design and placement of parking facilities, etc.) than would normally be possible under the strict application of the applicable development standards;

2. The approval of the Administrative Exception will allow for the inclusion of site, architectural, or landscape features that could not otherwise be incorporated into the design of the project under the strict application of the provisions of the applicable development standards; and

3. The approval of the Administrative Exception will not adversely affect the overall quality of development on the project site and will not adversely affect neighboring properties.

4. The proposed Administrative Exception 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, and the purposes of any applicable Specific Plan or Planned Unit Development, and the purposes of this Development Code.

E. Conditions of Approval.

1. In approving an Administrative Exception, the Approving Authority may require certain safeguards and impose certain conditions established to ensure that the purposes of this Development Code are maintained; ensure that the project will not endanger the public health, safety or general welfare; ensure that the project will not result in any significant environmental impacts; ensure that the project will be in harmony with the area in which it is located; and ensure that the project will be in conformity with The Ontario Plan and any applicable specific and/or area plan(s).

2. All conditions of approval or requirements authorized by this Section are enforceable in the same manner and to the same extent as any other applicable requirement of this Development Code."

PART VI: Development Code Section 4.02.035 (Fair Housing and Reasonable Accommodations) shall be rescinded and Development Code Section 4.03.055 (Fair Housing and Reasonable Accommodations) shall be added to read as follows:

"4.03.055: Fair Housing and Reasonable Accommodations

A. Purpose. Pursuant to Federal and State fair housing laws, the purpose of this Section is to provide a procedure whereby exceptions from specific applications of this Development Code may be considered and properly evaluated in order to assure that no person is discriminated against on the basis of race, color, religion, sex, sexual orientation, family status, marital status, disability, national origin, source of income, or ancestry, by being denied an equal opportunity to use and enjoy a dwelling.

B. Applicability.

1. Pursuant to Table 2.02-1 (Review Matrix) of this Development Code, the Approving Authority is hereby empowered to approve, approve in modified form, or deny a Fair Housing and Reasonable Accommodation application and to impose reasonable conditions upon the approval of the application.

2. The Approving Authority may approve reasonable exceptions from the provisions of this Development Code, except that a Fair Housing and Reasonable Accommodation request shall not be approved that would allow the establishment of a land use that would not otherwise be allowed in the zoning district in which the affected property is located, or for increases in residential density.

C. Application Filing, Processing and Hearing. A Fair Housing and Reasonable Accommodation application shall be filed, processed, and heard pursuant to Division 2.02 (Application Filing and Processing) of this Development Code and the provisions of this Section.

D. Findings and Decision. A Fair Housing and Reasonable Accommodation request shall be acted upon by the Approving Authority based upon the information provided in the submitted application, evidence presented in the Planning Department's written report, and testimony provided during the public hearing, only after considering and clearly establishing all of the below-listed findings, and giving supporting reasons for each finding. The application shall be denied if one or more of the below-listed findings cannot be clearly established.

1. The persons who will use the subject property are protected under federal and state fair housing laws;

2. The requested exception is necessary to make specific housing available to a person who will occupy the subject property and who is protected under federal and state fair housing laws;

3. The requested exception will not impose an undo financial or administrative burden upon the City; and

4. The requested exception will comply with all applicable Building and Fire Codes and will not result in a fundamental alteration of the planning, zoning and development laws and procedures of the City.

E. Conditions of Approval.

1. In approving a Fair Housing and Reasonable Accommodation application, the Approving Authority may require certain safeguards and impose certain conditions established to ensure that the purposes of this Development Code are maintained; ensure that the project will not endanger the public health, safety or general welfare; ensure that the project will not result in any significant environmental impacts; ensure that the project will be in harmony with the area in which it is located; and ensure that the project will be in conformity with The Ontario Plan and any applicable specific and/or area plan(s).

2. All conditions of approval or requirements authorized by this Section are enforceable in the same manner and to the same extent as any other applicable requirement of this Development Code."

PART VII: Paragraphs C.11 (Qualified Buyer) and C.12 (Qualified Nonprofit Corporation) of Development Code Section 5.03.010 (Accessory Dwelling Units) shall be added to read as stated below. All subsequent existing provisions contained in Subsection C (Definitions) shall be renumbered in correct alphanumeric order.

"**11**. Qualified Buyer. Persons and families of low or moderate income, as that term is defined in Health and Safety Code Section 50093.

12. Qualified Nonprofit Corporation. A nonprofit corporation organized pursuant to Internal Revenue Code Section 501(c)(3), which has received a welfare exemption under Revenue and Taxation Code Section 214.15, for properties intended to be sold to low-income families who participate in a special no-interest loan program."

PART VIII: Paragraph E.4 (No Separate Conveyance) of Section 5.03.010 (Accessory Dwelling Units) shall be amended to read as follows:

"**4.** No Separate Sale or Conveyance. An ADU or JADU may be rented; however, no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all other dwellings (in the case of a multiple-family lot), except as provided by Subsection H (Sale or Conveyance of ADUs Separate from the Primary Residence)of this Section."

PART VIX: Subsection H (Sale or Conveyance of ADUs Separate from the Primary Residence) of Section 5.03.010 (Accessory Dwelling Units) shall be added to read as follows:

"**H. Sale or Conveyance of ADUs Separate from the Primary Residence.** Notwithstanding Paragraph E.4 (No Separate Sale or Conveyance) of this Section, an ADU can be sold or conveyed separately from the primary residence to a qualified buyer; provided, all of the following conditions are met:

1. The ADU or the primary dwelling was built or developed by a qualified nonprofit corporation.

2. There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in Revenue and Taxation Code Section 402.1(10(a).

3. The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:

a. The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling that each qualified buyer occupies.

b. A repurchase option that requires the qualified buyer to first offer the purchase of the ADU or primary dwelling to the qualified nonprofit corporation should the buyer desire to later sell or convey the property.

c. A requirement that the qualified buyer occupy the ADU or primary dwelling as the buyer's principal residence.

d. Affordability restrictions on the sale and conveyance of the accessory dwelling unit or primary dwelling that ensures the ADU and primary dwelling will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.

e. Delineation of all areas of the property that are for the exclusive use of a cotenant. Each cotenant shall agree not to claim a right of occupancy to an area delineated for the exclusive use of another cotenant, provided that the latter cotenant's obligations to each of the other cotenants have been satisfied.

f. Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, improvements, and any other costs, obligations, or liabilities associated with the property. This delineation shall only be binding on the parties to the agreement, and shall not supersede or obviate the liability, whether joint and several or otherwise, of the parties for any cost, obligation, or liability associated with the property where such liability is otherwise established by law or by agreement with a third party.

g. Procedures for dispute resolution among the parties before resorting to legal action.

4. A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Revenue and Taxation Code Section 480.3.

5. Notwithstanding the requirements of Paragraph G.2 (Utility Fees) of this Section, if requested by a utility providing service to the primary residence, the ADU shall be provided separate water, sewer, or electrical connection to that utility."

PART X: Paragraph D.14 of Development Code Section 5.03.011 (Accessory Dwelling Units) shall be amended to read as follows:

"**14.** A lot developed with an Accessory Residential Structure shall maintain a useable rear yard as follows: ~~that is equal to a minimum of 10 percent of the net lot area. In addition, a~~

a. A traditional single-family dwelling shall maintain a useable rear yard area having minimum dimension of 20 FT in any horizontal direction; and

b. A small lot single-family dwelling shall maintain a useable rear yard having a minimum dimension of 10 FT in any horizontal direction."

PART XI: Section 5.03.067 (Banquet Facilities - Historic Properties) shall be amended to read as follows:

"**A.** A banquet facility shall be allowed in all zoning districts within a commercial structure or on property designated as a local historic landmark, or a contributing structure within a designated historic district, established pursuant to Section 4.02.040 (Historic Preservation—Local Historic Landmark and Local District Designations, Historic Resource Tiering, and Architectural Conservations Areas) of this Development Code, and shall be subject to the regulations therein during the life of the permit, except that no banquet facility shall be allowed in the MU-1 (Downtown Mixed Use) zoning district.

B. The minimum number of parking spaces required shall be provided pursuant to Division 6.03 (Off-Street Parking and Loading) of this Development Code. A parking demand study may be prepared by a qualified traffic consultant or engineer to support a reduction in the required number of parking spaces. The intent is to provide lower, flexible parking standards wherever possible and appropriate. Consideration shall be given to shared parking systems, on and off-street parking resources, compatibility with historic patterns of development, and the availability of mass transit resources.

C. Live entertainment shall be prohibited. Request for live entertainment shall require conditional use permit approval by the Zoning Administrator. Karaoke, DJs, live musical acts, and other similar forms of entertainment are considered live entertainment. Amplified prerecorded music may be permitted; however, the sound emitted from the premises shall not be audible beyond the property lines of the business establishment.

D. Alcohol beverage sales shall be ~~prohibited. Request for service of alcohol beverage sales shall require a conditional use permit by the Zoning Administrator~~ allowed subject to the approval of a Conditional Use Permit issued pursuant to the requirements of Section 4.02.015 (Conditional Use Permits) and Section 5.03.025 (Alcoholic Beverage Sales) of this Development Code.

E. The applicant shall comply with all applicable building code regulations related to the change of use of the structure to a banquet facility."

PART XII: Subparagraph G.1 (Retail Sales Events) of Development Code Section 5.03.395 (Temporary and Interim Land Uses, Buildings, and Structures) shall be amended to read as follows:

"**1.** Retail Sales Events and Other Similar Business Events. Retail sales events and other similar business events, including but not limited to special outdoor sales, sidewalk sales, and parking lot sales, are subject to the following:

a. A retail sales event or other similar business event shall only be allowed in conjunction with a legally established business that has been operated for a period of at least 180 days prior to the retail sales event or other similar business event.

b. Retail sales events and other similar business events shall be limited to ~~the holiday sale periods of President's Day, Memorial Day, Independence Day, and Labor Day, and 4 additional periods~~ eight, one-week periods per calendar year, ~~for each~~ per business location. The ~~additional~~ one-week periods may be used consecutively, not to exceed a total of 56 days per calendar year.

~~**c.** Retail sales events shall be limited to maximum 7 days duration.~~

c. The outdoor display of merchandise shall be restricted to an area directly adjacent to the business' exterior storefront; however, in the case of shopping centers, when it is not practical for the outdoor display area to be located directly adjacent to the business front, the sale area shall be located in an area as close as practically possible, to the business' exterior storefront.

d. The display of merchandise shall not impede pedestrian or vehicular circulation.

e. All merchandise, materials, signs, and debris shall be removed from the outdoor area by 9:00AM following the last day of the retail sales event."

PART XIII: Paragraph F.8 of Development Code Section 6.01.010 (Residential Zoning Districts) shall be amended to read as follows:

"**8.** Conversion of Garages. No garage shall be converted to another use unless a replacement garage is constructed on-site, which meets the minimum requirements of Division 6.03 (Off-Street Parking and Loading) of this Chapter, excepting a garage conversion to accommodate an Accessory Dwelling Units conforming to Section 5.03.010 (Accessory Dwelling Units) of this Development Code."

PART XIV: Subsection G (Definition of Words Beginning with the Letter "G") of Development Code Section 9.01.010 (Terms and Phrases) shall be amended, revising the definition of "garage" as follows:

"Garage. An accessory structure or portion of a main structure that is fully enclosed ~~on 3 or more sides~~ and designed for the shelter or storage of motor vehicles."

PART XV: Rescind Ordinance No. 3200, an urgency ordinance establishing standards for the development of Single-Family Two-Unit Projects and Urban Lot Splits, and Development Code Section 5.03.403 (Single-Family Two-Unit Projects) and Section 6.08.060 (Urban Lot Splits) shall be added to read as follows:

“Section 5.03.403: Single-Family Two-Unit Projects

A. Purpose. The purpose of this Section is to allow and appropriately regulate Single-Family Two-Unit Projects pursuant to GC Section 65852.21.

B. Definition. A “Two-Unit Project” means the development of two primary dwelling units or, if there is already a primary dwelling unit on the lot, the development of a second primary dwelling unit on a legally subdivided lot pursuant to the requirements of this Section.

C. Application.

1. Only individual property owners may apply for a Two-Unit Project. “Individual property owner” means a natural person holding fee title individually or jointly in the person’s own name or a beneficiary of a trust that holds fee title. “Individual property owner” does not include any corporation or corporate person of any kind (partnership, LP, LLC, C corporation, S corporation, etc.) except for a community land trust (as defined by Revenue and Taxation Code Section 402.1(a)(11)(C)(ii)) or a qualified nonprofit corporation (as defined by Section 214.15).

2. An application for a Two-Unit Project shall be submitted on a City application form.

3. The applicant shall obtain a certificate of compliance with the Subdivision Map Act for the lot and provide the certificate with the application.

4. Only a complete application will be considered. The City will inform the applicant in writing of any incompleteness within 30 days following application submittal.

5. The City may establish a fee to recover its costs for adopting, implementing, and enforcing this Section of the Development Code, pursuant to applicable law. The City council may establish and change the fee by resolution. The fee shall be paid with the application.

D. Approval.

1. An application for a Two-Unit Project is approved or denied ministerially, by the Planning Director, without discretionary review.

2. The ministerial approval of a Two-Unit Project does not take effect until the City has confirmed that all required documents have been recorded, such as the deed restriction and easements.

3. The approval shall require the owner and applicant to hold the City harmless from all claims and damages related to the approval and its subject matter.

4. The approval shall require the owner and applicant to reimburse the City for all costs of enforcement, including attorneys' fees and costs associated with enforcing the requirements of this Development Code.

E. Requirements. A Two-Unit Project shall satisfy all of the following requirements:

1. Subdivision Map Act (SMA) Compliance. The lot shall have been legally subdivided.

2. Zoning District. The lot is in a single-family residential zoning district. For the purpose of this Section, the term "single-family residential zoning district" shall mean the LRD-5 (Low Density Residential – 2.1 to 5.0 DU/Acre) zoning district.

3. Lot Location. Pursuant to the GC Section 65913.4(a)(6)(B) through (K), the lot to be split shall not be located on a site that is any of the following:

a. Prime farmland, farmland of statewide importance, or land that is zoned or designated for agricultural protection or preservation by the voters.

b. A wetland.

c. Within a very high fire hazard severity zone, unless the site complies with all fire-hazard mitigation measures required by existing building standards.

d. A hazardous waste site that has not been cleared for residential use.

e. Within a delineated earthquake fault zone, unless all development on the site complies with applicable seismic protection building code standards.

f. Within a 100-year flood hazard area, unless the site has either:

(1) Been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction; or

(2) Meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program.

g. Within a regulatory floodway, unless all development on the site has received a no-rise certification.

h. Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.

i. Habitat for protected species.

j. Land under conservation easement.

4. Not Historic. The lot shall not be a historic property or within a historic district that is included on the State Historic Resources Inventory. Nor may the lot be or be within a site that is designated by ordinance as a city or county landmark, or as a historic property or district.

5. No Impact on Protected Housing. The Two-Unit Project shall not require or include the demolition or alteration of any of the following types of housing:

a. Housing that is income-restricted for households of moderate, low, or very low income.

b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its policy power.

c. Housing, or a lot that used to have housing, that has been withdrawn from rental or lease under the Ellis Act (GC Sections 7060–7060.7) at any time in the 15 years prior to submission of the Urban Lot Split application.

d. Housing that has been occupied by a tenant in the last 3 years. The applicant and the owner of a property for which an Urban Lot Split is sought shall provide a sworn statement as to this fact with the application for the tentative parcel map. The City may conduct its own inquiries and investigation to ascertain the veracity of the sworn statement, including but not limited to, surveying owners of nearby properties; and the City may require additional evidence of the applicant and owner as necessary to determine compliance with this requirement.

6. Unit Standards.

a. *Quantity*.

(1) No more than two dwelling units of any kind may be built on a lot that results from an Urban Lot Split. For purposes of this paragraph, "unit" means any dwelling unit, including, but not limited to, a primary dwelling unit, a unit created pursuant to Section 5.03.403 (Two-Unit Projects) of this Development Code, or an ADU or JADU created pursuant to State law and

Section 5.03.010 (Accessory Dwelling Unit) of this Development Code.

(2) A lot that is not created by an Urban Lot Split may have a Two-Unit Project as provided by this Section, plus any ADU or JADU that shall be allowed pursuant to State law and Section 5.03.010 (Accessory Dwelling Unit) of this Development Code.

b. *Unit Size*.

(1) The total floor area of each primary dwelling that is developed under this Section shall be a minimum of 500 SF in area and a maximum of 800 SF in area.

(2) A primary dwelling that was legally established on the lot prior to the Two-Unit Project and is larger than 800 SF is limited to the lawful floor area at the time of the Two-Unit Project. The unit may not be expanded.

(3) A primary dwelling that was legally established prior to the Two-Unit Project and is smaller than 800 SF may be expanded to 800 SF after or as part of the Two-Unit Project.

c. *Height Restrictions*.

(1) On a lot that is larger than 2,000 SF, no new primary dwelling unit may exceed one-story or 16 FT in height, measured from grade to peak of the structure.

(2) On a lot that is smaller than 2,000 SF, no new primary dwelling unit may exceed two-stories or 22 FT in height, measured from grade to peak of the structure. Any portion of a new primary dwelling that exceeds one story in height shall be stepped back by an additional 5 FT from the ground floor; no balcony deck or other portion of the second story may project into the stepback.

(3) No rooftop deck is permitted on any new or remodeled dwelling or structure on a lot with a Two-Unit Project.

d. *Demo Cap*. The Two-Unit Project shall not involve the demolition of more than 25 percent of the existing exterior walls of an existing dwelling unless the site has not been occupied by a tenant in the last 3 years.

e. *Lot Coverage*. [Include a lot coverage standard here if desired.] This lot coverage standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at 800 SF each.

f. *Setback Requirements*.

(1) **Generally**. All setbacks shall conform to the minimum requirements of the underlying zoning district.

(2) **Exceptions**. Notwithstanding subpart E.6.f above:

(a) Existing Structures. No setback is required for an existing legally established structure or for a new structure that is constructed in the same location and to the same dimensions as an existing legally established structure.

(b) Cannot Preclude Construction of Two 800-SF Units and 4-FT Side/Rear Setbacks. The setbacks imposed by the underlying zoning district shall yield to the degree necessary to avoid physically precluding the construction of up to two units on the lot or either of the two units from being at least 800 SF in floor area; but in no event may any structure be less than 4 FT from a side or rear property line.

(3) **Front Setback Area**. Notwithstanding any other part of this code, dwellings that are constructed under this Section shall conform to the front setback requirement of the underlying zoning district. The front setback area shall:

(a) Be kept free from all structures greater than 3 FT high; and

(b) Allow for vehicular and fire-safety access to the front structure.

g. *Parking*. Each new primary dwelling unit shall have at least one off-street parking space per unit within a fully enclosed garage having a minimum interior clear area measuring 10 FT in width and 20 FT in length, unless one of the following applies:

(1) The lot is located within one-half mile walking distance of either

(a) A corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours or

(b) A site that contains:

(i) An existing rail or bus rapid transit station,

(ii) A ferry terminal served by either a bus or rail transit service, or

(iii) The intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

(2) The site is located within one block of a permanently established car-share vehicle pickup/drop-off location.

h. *Architecture*.

(1) If there is a legal primary dwelling on the lot that was established before the Two-Unit Project, any new primary dwelling unit shall match the existing primary dwelling unit with respect to exterior materials, finishes, color, and dominant roof pitch. The dominant roof pitch means the slope shared by the largest portion of the roof.

(2) If there is no legal primary dwelling on the lot before the Two-Unit Project, and if two primary dwellings are developed on the lot, the dwellings shall match each other with respect to exterior materials, finishes, color, and dominant roof pitch. The dominant roof pitch means the slope shared by the largest portion of the roof.

(3) All exterior lighting shall be limited to down-lights.

(4) No window or door of a dwelling that is constructed on the lot may have a direct line of sight to an adjoining residential property. Decorative masonry block walls, dense landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.

(5) If any portion of a dwelling is less than 30 FT from a property line that is not a public street right-of-way line, then all windows and doors in that portion shall either be (for windows) clerestory with the bottom of the glass at least 6 FT above the finished floor, or (for windows and doors) utilize frosted or obscure glass.

i. *Walls, Fences, and Obstructions*.

(1) A lot comprising a Two-Unit Project shall be provided with 6-FT high decorative masonry block walls (reduced to 3 FT in height within front setback areas) at the following locations:

(a) Interior side and rear lot lines of each lot; and

(b) Street side property lines and along the rear property line of through lots, setback a minimum of 5 FT behind the sidewalk.

(2) The construction and maintenance of walls, fences, and other obstructions shall comply with the requirements of Chapter 6.0 (Development and Subdivision Regulations), (Division 6.02 (Walls, Fences, and Obstructions) of this Development Code.

j. *Landscaping*. A lot comprising a Two-Unit Project shall be fully landscaped and provided with a permanent automatic irrigation system pursuant to the requirements Chapter 6.0 (Development and Subdivision Regulations), Division 6.05 (Landscaping) of this Development Code.

k. *Nonconforming Conditions*. A Two-Unit Project shall be approved only if all nonconforming zoning conditions are corrected.

l. *Utilities*.

(1) Each primary dwelling unit on the resulting lots shall have its own direct utility connection to the utility service provider.

(2) Each primary dwelling unit on the resulting lots that is or that is proposed to be connected to an onsite wastewater treatment system shall first have a percolation test completed within the last 5 years or, if the percolation test has been recertified, within the last 10 years.

m. *Building & Safety*. All structures built on a lot comprising a Two-Unit Project shall comply with all current local building standards. A project under this Section is a change of use and subjects the whole of the lot, and all structures, to the City's current code.

7. Fire-Hazard Mitigation Measures. A lot in a very high fire hazard severity zone shall comply with each of the following fire-hazard mitigation measures:

a. It shall have direct access to a public street right-of-way with a paved street with a width of at least 40 FT. The public street right-of-way

shall have at least two independent points of access for fire and life safety to access and for residents to evacuate.

b. All dwellings on the site shall comply with current fire code requirements for dwellings in a very high fire hazard severity zone.

c. All enclosed structures on the site shall have fire sprinklers.

d. All sides of all dwellings on the site shall be within a 150-FT hose-pull distance from either the public street right-of-way or of an onsite fire hydrant or standpipe.

e. If the lot does not have a swimming pool, the lot shall have a water reservoir of at least 5,000 gallons per dwelling, with fire-authority approved hookups compatible with fire-authority standard pump and hose equipment.

8. Separate Conveyance.

a. Primary dwelling units on the lot may not be owned or conveyed separately from each other.

b. Condominium airspace divisions and common interest developments are prohibited.

c. All fee interest in a lot and all dwellings on the lot shall be held equally and undivided by all individual property owners.

9. Regulation of Uses.

a. *Residential-Only*. No non-residential use is permitted on the lot.

b. *No Short Term Rentals*. No dwelling unit on a lot comprising a Two-Unit Project shall be rented for a period of less than 30 days.

c. *Owner Occupancy*. Unless the lot comprising a Two-Unit Project was formed by an Urban Lot Split, the individual property owners of a lot with a Two-Unit Project shall occupy one of the dwellings on the lot as the owners' principal residence and legal domicile.

10. Notice of Construction.

a. At least 30 business days before starting any construction of a Two-Unit Project, the property owner shall give written notice to all the owners of record of each of the adjacent residential parcels, which notice shall include the following information:

(1) Notice that construction has been authorized,

(2) The anticipated start and end dates for construction,

(3) The hours of construction,

(4) Contact information for the project manager (for construction-related complaints), and

(5) Contact information for the Building & Safety Department.

b. This notice requirement does not confer a right on the noticed persons or on anyone else to comment on the project before permits are issued. Approval is ministerial. Under state law, the City has no discretion in approving or denying a particular project under this Section. This notice requirement is purely to promote neighborhood awareness and expectation.

11. Deed Restriction. The owner shall record a deed restriction, acceptable to the City, that does each of the following:

a. Expressly prohibits any rental of any dwelling on the property for a period of less than 30 days.

b. Expressly prohibits any non-residential use of the lot.

c. Expressly prohibits any separate conveyance of a primary dwelling on the property, any separate fee interest, and any common interest development within the lot.

d. If the lot is not created by an Urban Lot Split: Expressly requires the individual property owners to live in one of the dwelling units on the lot as the owners' primary residence and legal domicile.

e. States that the property is formed by an Urban Lot Split and is therefore subject to the City's Urban Lot Split regulations, including all applicable limits on dwelling size and development.

F. Specific Adverse Impacts.

1. Notwithstanding anything else in this Section, the City may deny an application for a Two-Unit Project if the building official makes a written finding, based on a preponderance of the evidence, that the project would have a "specific, adverse impact" on either public health and safety or on the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

2. The term "specific adverse impact" has the same meaning as in GC Section 65589.5(d)(2): "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards,

policies, or conditions as they existed on the date the application was deemed complete" and does not include (1) inconsistency with the zoning ordinance or general plan land use designation or (2) the eligibility to claim a welfare exemption under Revenue and Taxation Code Section 214(g).

3. The building official may consult with and be assisted by planning staff and others as necessary in making a finding of specific, adverse impact.

G. Remedies. If a Two-Unit Project violates any part of this Development Code or any other legal requirement:

1. The buyer, grantee, or lessee of any part of the property has an action for damages or to void the deed, sale, or contract.

2. The City may:

a. Bring an action to enjoin any attempt to sell, lease, or finance the property.

b. Bring an action for other legal, equitable, or summary remedy, such as declaratory and injunctive relief.

c. Pursue criminal prosecution, punishable by imprisonment in county jail or state prison for up to one year, by a fine of up to $10,000, or both; or a misdemeanor.

d. Record a notice of violation.

e. Withhold any or all future permits and approvals.

f. Pursue all other administrative, legal, or equitable remedies that are allowed by law, this Development Code, or the City's Municipal Code."

"**Section 6.08.060: Urban Lot Splits**

A. Purpose. The purpose of this Section is to allow and appropriately regulate Urban Lot Splits pursuant to GC Section 66411.7.

B. Definition. An "Urban Lot Split" means the subdivision of an existing, legally subdivided lot into two lots pursuant to the requirements of this Section.

C. Application.

1. Only individual property owners may apply for an Urban Lot Split. "Individual property owner" means a natural person holding fee title individually or jointly in the person's own name or a beneficiary of a trust that holds fee

title. “Individual property owner” does not include any corporation or corporate person of any kind (partnership, LP, LLC, C corporation, S corporation, etc.) except for a community land trust (as defined by Revenue and Taxation Code Section 402.1(a)(11)(C)(ii)) or a qualified nonprofit corporation (as defined by Section 214.15).

2. An application for an Urban Lot Split shall be submitted on a City application form. Only a complete application will be considered. The City will inform the applicant in writing of any incompleteness within 30 days following application submittal.

3. The City may establish a fee to recover its costs for adopting, implementing, and enforcing this Section of the Development Code, pursuant to applicable law. The City council may establish and change the fee by resolution. The fee shall be paid with the application.

D. Approval.

1. An application for a parcel map for an Urban Lot Split is approved or denied ministerially, by the City Engineer, without discretionary review.

2. A tentative parcel map for an Urban Lot Split shall be approved ministerially if it complies with all the requirements of this Section. The tentative parcel map may not be recorded. A final parcel map shall be approved ministerially as well, but not until the owner demonstrates that all required documents have been recorded, such as the deed restriction and easements. The tentative parcel map shall expire 3 months following approval.

3. The approval shall require the owner and applicant to hold the City of Ontario harmless from all claims and damages related to the approval and its subject matter.

4. The approval shall require the owner and applicant to reimburse the City for all costs of enforcement, including attorneys’ fees and costs associated with enforcing the requirements of this Development Code.

E. Requirements. An Urban Lot Split shall satisfy each of the following requirements:

1. Subdivision Map Act Compliance.

a. The Urban Lot Split shall conform to all applicable objective requirements of the Subdivision Map Act (GC Section 66410 et seq., “SMA”), including implementing requirements in this Development Code, except as otherwise expressly provided in this Section.

b. If an Urban Lot Split violates any part of the SMA, the City’s subdivision regulations, including this Section, or any other legal requirement:

(1) The buyer or grantee of a lot that is created by the Urban Lot Split has all the remedies available under the SMA, including but not limited to an action for damages or to void the deed, sale, or contract.

(2) The City has all the remedies available to it under the SMA, including but not limited to the following:

(a) An action to enjoin any attempt to sell, lease, or finance the property.

(b) An action for other legal, equitable, or summary remedy, such as declaratory and injunctive relief.

(c) Criminal prosecution, punishable by imprisonment in county jail or state prison for up to one year, by a fine of up to $10,000, or both; or a misdemeanor.

(d) Record a notice of violation.

(e) Withhold any or all future permits and approvals.

c. Notwithstanding Section 66411.1 of the SMA, no dedication of rights-of-way or construction of offsite improvements is required for an Urban Lot Split.

2. Zoning District. The lot to be split is in a single-family residential zoning district. For purposes of this Section, the term "single-family residential zoning district" shall mean the LDR-5 (Low Density Residential – 2.1 to 5.0 DU/Acre) zoning district.

3. Lot Location. Pursuant to the GC Section 65913.4(a)(6)(B) through (K), the lot to be split shall not be located on a site that is any of the following:

a. Prime farmland, farmland of statewide importance, or land that is zoned or designated for agricultural protection or preservation by the voters.

b. A wetland.

c. Within a very high fire hazard severity zone, unless the site complies with all fire-hazard mitigation measures required by existing building standards.

d. A hazardous waste site that has not been cleared for residential use.

e. Within a delineated earthquake fault zone, unless all development on the site complies with applicable seismic protection building code standards.

f. Within a 100-year flood hazard area, unless the site has either:

(1) Been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction; or

(2) Meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program.

g. Within a regulatory floodway, unless all development on the site has received a no-rise certification.

h. Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.

i. Habitat for protected species.

j. Land under conservation easement.

4. Not Historic. The lot to be split shall not be a historic property or within a historic district that is included on the State Historic Resources Inventory. Nor may the lot be or be within a site that is designated by ordinance as a city or county landmark or as a historic property or district.

5. No Prior Urban Lot Split.

a. The lot to be split was not established through a prior Urban Lot Split.

b. The lot to be split is not adjacent to any lot that was established through a prior Urban Lot Split by the owner of the lot to be split or by any person acting in concert with the owner. For the purposes of this Section, the term “any person acting in concert with the owner” shall include any third-party that coordinates or assists the owners of two adjacent lots with their respective Urban Lot Splits.

6. No Impact on Protected Housing. The Urban Lot Split shall not require or include the demolition or alteration of any of the following types of housing:

a. Housing that is income-restricted for households of moderate, low, or very low income.

b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its policy power.

c. Housing, or a lot that used to have housing, that has been withdrawn from rental or lease under the Ellis Act (GC Sections 7060–7060.7) at any time in the 15 years prior to submission of the Urban Lot Split application.

d. Housing that has been occupied by a tenant in the last 3 years. The applicant and the owner of a property for which an Urban Lot Split is sought shall provide a sworn statement as to this fact with the application for the tentative parcel map. The City may conduct its own inquiries and investigation to ascertain the veracity of the sworn statement, including but not limited to, surveying owners of nearby properties; and the City may require additional evidence of the applicant and owner as necessary to determine compliance with this requirement.

7. Lot Size.

a. The lot to be split shall be at least 2,400 SF.

b. Each lot created by an Urban Lot Split shall be at least 1,200 SF.

c. Each lot created by an Urban Lot Split shall be between 60 percent and 40 percent of the original lot area.

8. Easements.

a. The owner shall enter into an easement agreement with each public-service provider to establish easements that are sufficient for the provision of public services and facilities to each of the resulting lots.

b. Each easement shall be shown on the parcel map.

c. Copies of the unrecorded easement agreements shall be submitted with the application. The easement agreements shall be recorded against the property before the final parcel map may be approved pursuant to subpart D.2 above.

9. Lot Access.

a. Each lot created by an Urban Lot Split shall adjoin a public street right-of-way.

b. Each lot created by an Urban Lot Split shall have frontage on the public street right-of-way of at least 20 FT.

10. Unit Standards.

a. *Quantity*. No more than two dwelling units of any kind may be built on a lot that results from an Urban Lot Split. For purposes of this paragraph, "unit" means any dwelling unit, including, but not limited to, a primary dwelling unit, a unit created pursuant to State law and Section 5.03.403 (Two-Unit Projects) of this Development Code, or an ADU or JADU created pursuant to Section 5.03.010 (Accessory Dwelling Unit) of this Development Code.

b. *Unit Size*.

(1) The total floor area of each primary dwelling that is developed on a lot resulting from an Urban Lot Split shall be a minimum of 500 SF in area and a maximum of 800 SF in area.

(2) A primary dwelling that was legally established prior to the Urban Lot Split and that is larger than 800 SF is limited to the lawful floor area at the time of the Urban Lot Split and shall not be expanded

(3) A primary dwelling that was legally established prior to the Urban Lot Split and is smaller than 800 SF may be expanded to a maximum of 800 SF after the Urban Lot Split.

c. *Height Restrictions*.

(1) On a resulting lot that is 2,000 SF or larger, no new primary dwelling unit may exceed one-story or 16 FT in height, measured from grade to peak of the structure.

(2) On a resulting lot that is smaller than 2,000 SF, no new primary dwelling unit may exceed two-stories or 22 FT in height, measured from grade to peak of the structure. Any portion of a new primary dwelling that exceeds one story in height shall be stepped back by an additional 5 FT from the ground floor; no balcony deck or other portion of the second story may project into the stepback.

(3) No rooftop deck is permitted on any new or remodeled dwelling or structure on a lot resulting from an Urban Lot Split.

d. *Lot Coverage*. Maximum lot coverage shall conform to the requirement of the underlying zoning district. This lot coverage standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at 800 SF each.

e. *Setback Requirements*.

(1) **Generally**. All setbacks shall conform to the minimum requirements of the underlying zoning district.

(2) **Exceptions**. Notwithstanding subpart 0 above:

(a) Existing Structures. No setback is required for an existing legally established structure or for a new structure that is constructed in the same location and to the same dimensions as an existing legally established structure.

(b) Cannot Preclude Construction of Two 800-SF Units and 4-FT Side/Rear Setbacks. The setbacks imposed by the underlying zoning district shall yield to the degree necessary to avoid physically precluding the construction of up to two units on the lot or either of the two units from being at least 800 SF in floor area; but in no event may any structure be less than 4 FT from a side or rear property line.

(3) **Front Setback Area**. Notwithstanding any other part of this Development Code, dwellings that are constructed after an Urban Lot Split shall conform to the front setback requirement of the underlying zoning district. The front setback area shall:

(a) Be kept free from all structures greater than 3 FT high; and

(b) Allow for vehicular and fire-safety access to the front structure.

f. *Parking*. Each new primary dwelling unit shall have at least one off-street parking space per unit within a fully enclosed garage having a minimum interior clear area measuring 10 FT in width and 20 FT in length, unless one of the following applies:

(1) The lot is located within one-half mile walking distance of either

(a) A corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours or

(b) A site that contains:

(i) An existing rail or bus rapid transit station,

(ii) A ferry terminal served by either a bus or rail transit service, or

(iii) The intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

(2) The site is located within one block of a permanently established car-share vehicle pickup/drop-off location.

g. *Architecture*.

(1) If there is a legal primary dwelling on the lot that was established before the Urban Lot Split, any new primary dwelling unit shall match the existing primary dwelling unit with respect to exterior materials, finishes, color, and dominant roof pitch. The dominant roof pitch means the slope shared by the largest portion of the roof.

(2) If there is no legal primary dwelling on the lot before the Urban Lot Split, and if two primary dwellings are developed on the lot, the dwellings shall match each other with respect to exterior materials, finishes, color, and dominant roof pitch. The dominant roof pitch means the slope shared by the largest portion of the roof.

(3) All exterior lighting shall be limited to down-lights.

(4) No window or door of a dwelling that is constructed on the lot may have a direct line of sight to an adjoining residential property. Decorative masonry block walls, dense landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.

(5) If a dwelling is constructed on a lot after an Urban Lot Split and any portion of the dwelling is less than 30 FT from a property line that is not a public street right-of-way line, then all windows and doors in that portion shall either be (for windows) clerestory with the bottom of the glass at least 6 FT above the finished floor, or (for windows and for doors) utilize frosted or obscure glass.

h. *Walls, Fences, and Obstructions*.

(1) Lots created as a result of an Urban Lot Split shall be provided with 6-FT high decorative masonry block walls (reduced to 3

FT in height within front setback areas) at the following locations:

(a) Interior side and rear lot lines of each lot; and

(b) Street side property lines and along the rear property line of through lots, setback a minimum of 5 FT behind the sidewalk.

(2) The construction and maintenance of walls, fences, and other obstructions shall comply with the requirements of Division 6.02 (Walls, Fences, and Obstructions) of this Chapter.

i. *Landscaping***.** Lots created as a result of an Urban Lot Split shall be fully landscaped and provided with a permanent automatic irrigation system pursuant to the requirements Division 6.05 (Landscaping) of this Chapter.

j. *Nonconforming Conditions*. An Urban Lot Split may be approved without requiring a legal nonconforming zoning condition to be corrected.

k. *Utilities*.

(1) Each primary dwelling unit on the resulting lots shall have its own direct utility connection to the utility service provider.

(2) Each primary dwelling unit on the resulting lots that is or that is proposed to be connected to an onsite wastewater treatment system shall first have a percolation test completed within the last 5 years or, if the percolation test has been recertified, within the last 10 years.

l. *Building & Safety*. All structures built on a lot resulting from an Urban Lot Split shall comply with all current local building standards. An Urban Lot Split is a change of use.

11. Fire-Hazard Mitigation Measures.

a. A lot in a very high fire hazard severity zone shall comply with each of the following fire-hazard mitigation measures:

(1) It shall have direct access to a public street right-of-way with a paved street with a width of at least 40 FT. The public street right-of-way shall have at least two independent points of access for fire and life safety to access and for residents to evacuate.

(2) All dwellings on the site shall comply with current Fire Code requirements for dwellings in a very high fire hazard severity zone.

(3) All enclosed structures on the site shall have fire sprinklers.

(4) All sides of all dwellings on the site shall be within a 150-FT hose-pull distance from either the public street right-of-way or of an onsite fire hydrant or standpipe.

(5) If the lot does not have a swimming pool, the lot shall have a water reservoir of at least 5,000 gallons per dwelling, with fire-authority approved hookups compatible with fire-authority standard pump and hose equipment.

b. Prior to submitting an application for an Urban Lot Split, the applicant shall obtain a certificate of compliance with all applicable fire-hazard mitigation measures pursuant to this subpart E.11. The City or its authorized agent shall inspect the site, including all structures on the site, and certify as to its compliance. The certificate shall be included with the application. The applicant shall pay the City's costs for inspection. Failure to pay is grounds for denying the application.

12. Separate Conveyance.

a. On a lot created by an Urban Lot Split:

(1) Primary dwelling units cannot be owned or conveyed separately from each other.

(2) Condominium airspace divisions and common interest developments are prohibited.

(3) All fee interest in a lot and all dwellings on the lot shall be held equally and undivided by all individual property owners.

b. Separate conveyance of lots created by an Urban Lot Split is permitted. If dwellings or other structures (such as garages) on different lots are adjacent or attached to each other, the Urban Lot Split boundary may separate them for conveyance purposes if the structures meet Building Code safety standards and are sufficient to allow separate conveyance. If any attached structures span or will span the new lot line, the owner shall record appropriate CC&Rs, easements, or other documentation that is necessary to allocate rights and responsibility between the owners of the two lots.

13. Regulation of Uses**.**

a. *Residential-Only*. Nonresidential land uses shall be prohibited on any lot created by Urban Lot Split.

b. *No Short Term Rentals*. No dwelling unit on a lot that is created by an Urban Lot Split may be rented for a period of less than 30 days.

c. *Owner Occupancy*. The applicant for an Urban Lot Split shall sign an affidavit stating that the applicant intends to occupy one of the dwelling units on one of the resulting lots as the applicant's principal residence for a minimum of 3 years after the Urban Lot Split is approved.

14. Notice of Construction.

a. At least 30 business days prior to the starting any construction of a structure on a lot created by an Urban Lot Split, the property owner shall give written notice to all the owners of record of each of the adjacent residential parcels, which notice shall include the following information:

(1) Notice that construction has been authorized,

(2) The anticipated start and end dates for construction,

(3) The hours of construction,

(4) Contact information for the project manager (for construction-related complaints), and

(5) Contact information for the Building & Safety Department.

b. This notice requirement does not confer a right on the noticed persons or on anyone else to comment on the project before permits are issued. The approval of an Urban Lot Split is ministerial and under state law, the City has no discretion in approving or denying a particular project under this Section. This notice requirement is purely to promote neighborhood awareness and expectation.

15. Deed Restriction. The owner shall record a deed restriction, acceptable to the City, that does each of the following:

a. Expressly prohibits any rental of any dwelling on the property for a period of less than 30 days.

b. Expressly prohibits any nonresidential land use of the lots created by the Urban Lot Split.

c. Expressly prohibits any separate conveyance of a primary dwelling on the property, any separate fee interest, and any common interest development within the lot.

d. States that the property is formed by an Urban Lot Split and is, therefore, subject to the City's Urban Lot Split regulations, including all applicable limits on dwelling size and development.

F. Specific Adverse Impacts.

1. Notwithstanding anything else in this Section, the City may deny an application for an Urban Lot Split if the building official makes a written finding, based on a preponderance of the evidence, that the project would have a "specific, adverse impact" on either public health and safety or on the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

2. The term "specific adverse impact" has the same meaning as in GC Section 65589.5(d)(2): "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete" and does not include (1) inconsistency with the zoning ordinance or general plan land use designation or (2) the eligibility to claim a welfare exemption under Revenue and Taxation Code Section 214(g).

3. The building official may consult with and be assisted by planning staff and others as necessary in making a finding of specific, adverse impact."

PART XVI: Development Code Table 2.02-1 (Review Matrix) shall be amended to read as follows:

R = Advisory (Recommending) Authority
X = Approving Authority
A = Appeal Authority

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]									
	PLANNING DIRECTOR	City Engineer	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
A. LEGISLATIVE ACTIONS										
1. Airport Land Use Compatibility Plan and Amendments **[1]** (Ref: ODC Section 4.01.010)								R	X	
2. Development Agreements **[1]** (Ref: ODC Section 4.01.015)								R	X	
3. Development Code Amendments **[1]** (Ref: ODC Section 4.01.020)								R	X	
4. Amendment to the Policy Plan (General Plan) Component of The Ontario Plan **[1]** (Ref: ODC Section 4.01.025)								R	X	
5. Planned Unit Developments and Amendments **[1]** (Ref: ODC Section 4.01.030)								R	X	
6. Specific Plans and Amendments **[1]** (Ref: ODC Section 4.01.035)								R	X	
7. Williamson Act Contract Cancellations **[1]** (Ref: GC Section 51200 et seq.)								R	X	
8. Zone Changes **[1]** (Ref: ODC Section 4.01.040)								R	X	
B. DISCRETIONARY PERMITS AND ACTIONS										
~~1. Administrative Exceptions (Ref: ODC Section 4.02.020.C)~~				~~X~~				~~A~~	~~A~~	
2. Billboard Relocation Agreements **[1]** (Ref: ODC Section 4.02.010)								R	X	
3. Conditional Use Permits (Ref: ODC Section 4.02.015)										
a. Hotels, Motels and Residence Inns **[1]**								R	X	
b. Use established in conjunction with a Development Plan **[1]**					R			X	A	
c. Use established within an existing structure **[1]**				X				A	A	
d. Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**								X	A	
e. Revocation due to abandonment of use per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**				X				A	A	
4. Density Bonus and Other Incentives per ODC Section 6.01.010.G (Density Bonus and Other Incentives) **[1]**								R	X	
5. Development Plans (Ref: ODC Section 4.02.025)										

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]									
	PLANNING DIRECTOR	City Engineer	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
a. Residential developments totaling 5 or more dwelling units or the development of 3 or more dwelling units on a single lot or parcel					R			X	A	
b. Commercial developments, and developments in the CIV, OS-R, OS-C and UC zoning districts, greater than 500 SF in area					X			A	A	
c. Industrial developments equal to or less than 0.45 FAR					X			A	A	
d. Industrial developments exceeding 0.45 FAR					R			X	A	
e. Wireless telecommunications facilities pursuant to Section 5.03.415 (Wireless Telecommunications Facilities) of this Development Code										
(1) Tier 2 facilities					X			A	A	
(2) Tier 3 facilities **[1]**					R			X	A	
f. All others					X			A	A	
6. Extensions of Legal Nonconforming Status **[1]** (Ref: ODC Section 4.02.030)				X				A	A	
~~7. Fair Housing and Reasonable Accommodation (Ref: ODC Section 4.02.035)~~				~~X~~				~~A~~	~~A~~	
8. Historic Preservation										
a. Certificates of Appropriateness (Ref: ODC Section 4.02.050)										
(1) Designated Historic Landmarks and Contributors, and Architectural Conservation Areas; and Demolition of an Historic Resource **[1]**						R	X		A	
(2) Deferral of Replacement Structure **[1]**						R	X		A	
(3) Eligible Historic Resources **[1]**						X	A		A	
(4) Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**						R	X		A	
(5) Waivers for Minor Improvements	X					A[6]	A[6]			
b. Certificates of Economic Hardship **[1]** (Ref: ODC Section 4.02.055) **[1]**						R	X		A	
c. Certificates of Economic Hardship—Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**						R	X		A	
d. Conservation Plans (Ref: ODC Section 4.02.060)						X	A		A	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]									
	PLANNING DIRECTOR	City Engineer	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
e. Historic Resource Tiering (Ref: ODC Section 4.02.040), including Rescinding or Amending Status (Ref: ODC Section 4.02.045)						X	A		A	
f. Local Historic Landmark and Local District Designations, and Architectural Conservation Areas (Ref: ODC Section 4.02.040), including Rescinding or Amending Status (Ref: ODC Section 4.02.045)						R	R		X	
g. Mills Act Contracts (Ref: ODC Section 4.02.065)						R	R		X	
h. Mills Act Cancellations **[1]** (Ref: ODC Section 4.02.065)						R	R		X	
i. Addition/Removal of Resources to/from the Ontario Register (Ref: ODC Section 4.02.045)										
(1) At the request of the property owner, or upon City initiation if the most recently prepared Historic Resource Survey evaluating the resource is more than 5 years old.						X	A		A	
(2) Loss of all historic and/or cultural significance due to a catastrophe causing a loss of integrity, or due to extensive legally performed alterations performed after the property was initially surveyed.	X						A		A	
9. Interpretations and Land Use Determinations (Ref: ODC Section 1.02.010)				X				A	A	
10. Master Plans and Amendments **[1]** (Ref: ODC Section 4.02.070)								R	X	
11. Minor ~~Variances~~ Adjustments and Alterations (Ref: ODC Section 4.02.020.D)				X				A	A	
12. Nonconforming Structure Reconstruction **[1]** (Ref: ODC Section 3.01.020)								X	A	
13. Parking Reduction (Ref: ODC Section 6.03.025)								X	A	
14. Sign Programs (Ref: ODC Section 4.02.075)	X							A	A	
15. Specific Plan Minor ~~Amendments~~ Adjustments and Alterations (Ref: ODC Section 4.02.080)	X							A	A	
16. Stays of Permit Approval Time Limit (Ref: ODC Section 2.02.025.A.8)				X[5]	X[5]	X[5]	X[5]	X[5]	X[5]	
17. Subdivisions										
a. Lot Merger (Merger of Contiguous Parcels) **[1]** (Ref: ODC Section 4.02.085)					R			X	A	
b. Reversions to Acreage **[1]** (Ref: ODC Section 4.02.090)					R			X	A	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]									
	PLANNING DIRECTOR	City Engineer	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
c. Tentative Tract and Parcel Maps, and Vesting Maps **[1]** (Ref: ODC Section 4.02.095)					R			X	A	
d. Tentative Tract and Parcel Map Time Extensions (Ref: ODC Section 2.02.025.A.3 & 4)					R			X	A	
18. Time Extensions, excepting tentative subdivision maps (Ref: ODC Section 2.02.025)	X							A	A	
19. Variances (Ref: ODC Section 4.02.020.E)										
a. Homeowner **[1]**				X				A	A	
b. Other **[1]**					R			X	A	
C. MINISTERIAL (ADMINISTRATIVE) PERMITS AND DECISIONS										
1. Administrative Exceptions (Ref: ODC Section 4.02.020.C)	X							A	A	
2. Administrative Use Permits (Ref: ODC Section 4.03.015)	X									
3. Airport Land Use Compatibility Plan (ALUCP) Interagency Reviews **[7]** (Ref: ALUCP)	X								A[8]	
4. Business License - Zoning/Land Use Compliance (Ref: OMC 3-1.129 (Zoning Compliance)	X							A	A	
5. Development Applications within the ONT zoning district	X									
6. Landscape and Irrigation Plans (Ref. ODC Section 6.05.005)	X							A	A	
7. Off-Site (Public) Improvement Plans (Ref: ODC Section 6.08.040)		X						A	A	
8. Other Plan Checks required by this Development Code	X							A	A	
9. Shopping Cart Retention Plans (Ref: ODC Section 6.11.020)	X							A	A	
10. Sign Plans (Ref: ODC Section 4.03.020)	X							A	A	
11. Single-Family Two-Unit Developments (Ref: ODC Section 5.03.403)	X							A	A	
12. Subdivisions										
a. Certificates of Compliance (Ref: ODC Section 4.03.025)		X						A	A	
b. Final Tract and Parcel Maps, and Vesting Maps (Ref: ODC Section 4.03.030)									X	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]									
	PLANNING DIRECTOR	City Engineer	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
c. Lot Line Adjustments (Ref: ODC Section 4.03.035)		X						A	A	
d. Map Corrections and Amendments (Ref: ODC Section 4.03.040)		X						A	A	
e. Street Address Numbering (Ref. ODC Section 6.06.010)			X					A	A	
f. Street Name Assignment (Ref. ODC Section 6.06.010)	X							A	A	
g. Subdivision Improvement Agreement (Ref: ODC Section 6.08.040.G)		X						A	A	
h. Urban Lot Split (Ref: ODC Section 6.08.060)		X						A	A	
13. Tier 1 wireless telecommunications facility pursuant to ODC Section 5.03.420 (Wireless Telecommunications Facilities)				X				A	A	
14. Wall, Fence, and Obstructions Plans (Ref. ODC Section 6.02.005)	X							A	A	
15. Fair Housing and Reasonable Accommodation (Ref: ODC Section 4.02.035)	X							A	A	
D. ENVIRONMENTAL DETERMINATIONS AND ACTIONS										
1. Environmental Impact Reports (EIRs) (Ref: CCR Section 15080 et seq.)								X[3]	X[3]	
2. Exempt Projects (Ref: CCR Section 15300 et seq.)	X[3]			X[3]	X[3]	X[3]	X[3]	A	A	
3. Ministerial Projects (Ref: CCR Section 15268)	**Ministerial projects are exempt from the requirements of CEQA [10]**									
4. Negative Declarations (NDs) and Mitigated Negative Declarations (MNDs) (Ref: CCR Section 15070 et seq.)				X[3]	X[3]	X[3]	X[3]	X[3]	X[3]	
5. Addendums to previously certified EIRs and previously adopted NDs and MNDs (Ref: CCR Section 15164)				X[3]	X[3]	X[3]	X[3]	X[3]	X[3]	
6. Environmental review for projects located within the ONT zoning district **[9]**										X

Notes:

[1] A public hearing is required pursuant to the procedures set forth in Division 2.03 (Public Hearings) of this Development Code; however, public notification shall not be required for Development Advisory Board or Historic Preservation Subcommittee hearings when acting in the capacity of an Advisory Authority.

[2] The Approving Authority may refer any application subject to their review to the next higher authority (Appeal Authority).

[3] The Approving Authority for environmental determinations/actions shall be the same as the related legislative or discretionary actions. NDs and MNDs, and Addendums to previously certified EIRs, and previously adopted NDs or MNDs, which are not associated with, or are independent of, legislative or discretionary actions, shall be subject to Development Advisory Board review and adoption. EIRs that are not associated with, or are independent of, legislative or discretionary actions shall be subject to Planning Commission review and certification.

[4] An application submitted for concurrent review and action with another application, action or decision requiring review and action by a higher Reviewing Authority may be subject to concurrent review and action by that higher Reviewing Authority upon their request.

[5] The Approving Authority responsible for issuing a "Stay of Permit Approval Time Limit" pursuant to Section 2.02.025 (Projects Involving Pending Litigation) of the Development Code, shall be the same as for the related application, action or decision.

[6] An appeal of an Historic Preservation—Certificate of Appropriateness—Waiver shall be considered by the Historic Preservation Subcommittee, except that an Historic Preservation—Waiver for an Historic Landmark shall be considered by the Historic Preservation Commission

[7] Refer to the ALUCP for procedures for application processing and administration, and appeals processing.

[8] Appeal shall be subject to review by the Mediation Board established pursuant to ALUCP Section 4.

[9] Pursuant to the Joint Powers Authority agreement between the City of Ontario and the County of San Bernardino, the Ontario International Airport Authority shall be the lead agency.

[10] Ministerial projects are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15268 of the CEQA Guidelines. The following projects or actions shall be deemed ministerial:

- *Administrative Exceptions;*
- *Administrative Use Permit issuance;*
- *ALUCP inter agency reviews;*
- *Building permit issuance;*
- *Business license issuance;*
- *Encroachment permit issuance;*
- *Final subdivision map approval;*
- *Individual utility service connection and disconnection approval;*
- *Landscape and irrigation plan approval;*
- *Lot Line Adjustment approval;*
- *Public improvement plan approval;*
- *Shopping cart retention plan approval;*
- *Sign Plan approval;*
- *Single-Family Two-Unit Developments;*
- *Street address number issuance;*
- *Subdivision Improvement Agreement approval;*
- *Subdivision map corrections and amendments approval;*
- *Temporary Use Permit issuance;*
- *Tier 1 wireless telecommunications facility approval; ~~and~~*
- *Urban Lot Splits; and*
- *Wall and/or fence plan approval.*

[11] Applications that do not require a public Hearing pursuant to Note 1, above, may be reviewed and acted upon under the "Consent Calendar" portion of the Approving Authority meeting agenda.

PART XVII: Development Code Table 2.03-1 (Notification Matrix) shall be amended to read as follows:

Table 2.03-1: Notification Matrix

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	NOT REQUIRED	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
A. LEGISLATIVE ACTIONS				
1. Airport Land Use Compatibility Plan and Amendments **[1]** (Ref: ODC Section 4.01.010)		X	X	X
2. Development Agreements **[1]** (Ref: ODC Section 4.01.015)		X	X	X
3. Development Code Amendments **[1]** (Ref: ODC Section 4.01.020)				X
4. Amendment to the Policy Plan (General Plan) Component of The Ontario Plan **[1]** (Ref: ODC Section 4.01.025)		X	X	X
5. Planned Unit Developments and Amendments **[1]** (Ref: ODC Section 4.01.030)		X	X	X
6. Specific Plans and Amendments **[1]** (Ref: ODC Section 4.01.035)		X	X	X
7. Williamson Act Contract Cancellations **[1]** (Ref: GC Section 51200 et.seq.)		X	X	X
8. Zone Changes **[1]** (Ref: ODC Section 4.01.040)		X	X	X
B. DISCRETIONARY PERMITS AND ACTIONS				
~~**1.** Administrative Exceptions (Ref: ODC Section 4.02.020.C)~~	~~X~~			
2. Billboard Relocation Agreements **[1]** (Ref: ODC Section 4.02.010)	X			
3. Conditional Use Permits (Ref: ODC Section 4.02.015)				
a. Hotels, Motels and Residence Inns **[1]**		X	X	
b. Use established in conjunction with a Development Plan **[1]**		X	X	
c. Use established within an existing structure **[1]**		X	X	
d. Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**		X	X	
e. Revocation due to abandonment of use per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**		X	X	
4. Density Bonus and Other Incentives per ODC Section 6.01.010.G (Density Bonus and Other Incentives) **[1]**		X	X	

Table 2.03-1: Notification Matrix

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	NOT REQUIRED	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
5. Development Plans (Ref: ODC Section 4.02.025)				
a. Residential developments totaling 5 or more dwelling units or the development of 3 or more dwelling units on a single lot or parcel		X		
b. Commercial developments, and developments in the CIV, OS-R, OS-C and UC zoning districts, greater than 500 SF in area		X		
c. Industrial developments equal to or less than 0.45 FAR		X		
d. Industrial developments exceeding 0.45 FAR		X		
e. Wireless telecommunications facilities pursuant to Section 5.03.415 (Wireless Telecommunications Facilities) of this Development Code				
(1) Tier 2 facilities		X		
(2) Tier 3 facilities **[1]**		X	X	
f. All others		X		
6. Extensions of Legal Nonconforming Status **[1]** (Ref: ODC Section 4.02.030)		X	X	
~~**7.** Fair Housing and Reasonable Accommodation Ref: ODC Section 4.02.035)~~	~~X~~			
8. Historic Preservation				
a. Certificates of Appropriateness (Ref: ODC Section 4.02.050)				
(1) Designated Historic Landmarks and Contributors, and Architectural Conservation Areas; and Demolition of an Historic Resource **[1]**		X	X	
(2) Deferral of Replacement Structure **[1]**		X	X	
(3) Eligible Historic Resources **[1]**		X	X	
(4) Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**		X	X	
(5) Waivers and Minor Improvements	X			
b. Certificates of Economic Hardship **[1]** (Ref: ODC Section 4.02.055)		X	X	

Table 2.03-1: Notification Matrix

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	NOT REQUIRED	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
c. Certificates of Economic Hardship—Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**		X	X	
d. Conservation Plans (Ref: ODC Section 4.02.060)		X		
e. Historic Resource Tiering (Ref: ODC Section 4.02.040), including Rescinding or Amending Status (Ref: ODC Section 4.02.045)	X			
f. Local Historic Landmark and Local District Designations, and Architectural Conservation Areas [Ref: ODC Section 4.02.040), including Rescinding or Amending Status (Ref: ODC Section 4.02.045)		X		
g. Mills Act Contracts (Ref: ODC Section 4.02.065)		X		
h. Mills Act Cancellations **[1]**		X	X	
i. Addition/Removal of Resources to/from the Ontario Register (Ref: ODC Section 4.02.045)				
(1) At the request of the property owner, or upon City initiation if the most recently prepared Historic Resource Survey evaluating the resource is more than 5 years old.	X			
(2) Loss of all historic and/or cultural significance due to a catastrophe causing a loss of integrity, or due to extensive legally performed alterations performed after the property was initially surveyed.	X			
9. Interpretations and Land Use Determinations (Ref: ODC Section 1.02.010)	X			
10. Master Plans and Amendments **[1]** (Ref: ODC Section 4.02.070)		X	X	X
11. Minor Variances **[5]** (Ref: ODC Section 4.02.020.D)		X	X	
12. Nonconforming Structure Reconstruction **[1]** (Ref: ODC Section 3.01.020)		X	X	
13. Parking Reduction (Ref: ODC Section 6.03.025)	X			
14. Sign Programs (Ref: ODC Section 4.02.075)	X			
15. Specific Plan Minor Amendments (Ref: ODC Section 4.02.080)	X			

Table 2.03-1: Notification Matrix

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	NOT REQUIRED	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
16. Stays of Permit Approval Time Limit (Ref: ODC Section 2.02.025.A.8)	X			
17. Subdivisions				
a. Lot Merger (Merger of Contiguous Parcels) **[1]** (Ref: ODC Section 4.02.085)		X	X	
b. Reversions to Acreage **[1]** (Ref: ODC Section 4.02.090)		X	X	
c. Tentative Tract and Parcel Maps, and Vesting Maps **[1]** (Ref: ODC Section 4.02.095)		X	X	
d. Tentative Tract and Parcel Map Time Extensions (Ref: ODC Section 2.02.025.A.3 & 4)		X		
18. Time Extensions, excepting tentative subdivision maps (Ref: ODC Section 2.02.025)	X			
19. Variances (Ref: ODC Section 4.02.020.E)				
a. Homeowner **[1]**		X	X	
b. Other **[1]**		X	X	
C. MINISTERIAL (ADMINISTRATIVE) PERMITS AND DECISIONS				
1. Administrative Exceptions (Ref: ODC Section 4.02.020.C)	X			
2. Administrative Use Permit (Ref: ODC Section 4.02.015)	X			
3. Airport Land Use Compatibility Plan (ALUCP) Interagency Reviews **[4]** (Ref: ALUCP)	X			
4. Fair Housing and Reasonable Accommodation Ref: ODC Section 4.02.035)	X			
5. Landscape and Irrigation Documentation Plans (Ref. ODC Section 6.05.015)	X			
6. Off-Site (Public) Improvement Plans (Ref: ODC Section 6.08.040)	X			
7. Sign Plans (Ref: ODC Section 4.03.020)	X			
8. Single-Family Two-Unit Developments (Ref: ODC Section 5.03.403)	X			
9. Subdivisions				
a. Certificates of Compliance (Ref: ODC Section 4.03.025)	X			
b. Final Tract and Parcel Maps, and Vesting Maps (Ref: ODC Section 4.03.030)	X			

Table 2.03-1: Notification Matrix

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	NOT REQUIRED	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
c. Lot Line Adjustments (Ref: ODC Section 4.03.035)	X			
d. Map Corrections and Amendments (Ref: ODC Section 4.03.040)	X			
e. Street Address Numbering (Ref. ODC Section 6.06.010)	X			
f. Street Name Assignment (Ref. ODC Section 6.06.010)	X			
g. Subdivision Improvement Agreement (Ref: ODC Section 6.08.040.G)	X			
h. Urban Lot Split (Ref: ODC Section 6.08.060)	X			
10. Tier 1 wireless telecommunications facility pursuant to ODC Section 5.03.415 (Wireless Telecommunications Facilities)	X			
D. ENVIRONMENTAL DETERMINATIONS AND ACTIONS				
1. Environmental Impact Reports (EIRs) (Ref: CCR Section 15080 et seq.)		X	X	X
2. Exempt Projects (Ref: CCR Section 15300 et seq.)	X			
3. Ministerial Projects (Ref: CCR Section 15268)	X			
4. Negative Declarations (NDs) and Mitigated Negative Declarations (MNDs) (Ref: CCR Section 15070 et seq.)		X		
5. Addendums to previously certified EIRs and previously adopted NDs and MNDs (Ref: CCR Section 15164)	X			

Notes:

[1] Public hearing notification is required pursuant to Section 2.03.010 (Public Hearing Notification) of this Division.

[2] Public notification shall not be required for Development Advisory Board or Historic Preservation Subcommittee hearings when acting in the capacity of an Advisory Authority.

[3] A Large Family Day Care facility shall require notification pursuant to Subparagraph 2.03.010.C.1.b(1) of this Division.

[4] Refer to the LA/Ontario International Airport Land Use Compatibility Plan for procedures for application processing and administration, and appeals processing.

[5] A Minor Variance shall require notification pursuant to Paragraph 4.02.020.D.3 (Application Filing, Processing and Hearing) of this Development Code.

PART XVIII: Development Code Table 8.01-1 (Sign Regulation Matrix) shall be amended, revising the Special Regulations for Retail Sales Events in Commercial zoning districts (Subparagraph C.1.c[2]) and Industrial zoning districts (Subparagraph E.1.c[2]), to read as follows:

"[2] Retail Sales Events and Other Similar Business Events. A retail sales event or other similar business event permitted pursuant to Subparagraph 5.03.395.G.1 of this Development Code, may be allowed temporary signage for maximum of eight, one-week periods per calendar year ~~7 days duration during the specified "holiday sale periods," and during the specified "additional periods" for which a Temporary Use Permit has been issued~~, not to exceed a total of 56 days per calendar year. ~~Each "additional period" may be used consecutively with "holiday sale periods," not to exceed a total of 6 consecutive periods (42 consecutive days).~~

PART XIX: Development Code Table 5.02-1 (Land Use Matrix) shall be amended as shown in Exhibit A: Portion of Table 5.02-1 (Land Use Matrix), of this attachment.

Exhibit A: Portion of Table 5.02-1 (Land Use Matrix)

		Residential Zoning Districts				Commercial Zoning Districts							Mixed Use Zoning Districts							Industrial Zoning Districts					Specialized Use and Overlay Zoning Districts								
													MU-1																			
~~2012~~ ~~2022~~ NAICS Code	Land Uses, Activities, and Facilities Note: In addition to the requirements of this Table, properties located within the Airport Influence Area (AIA) established by the LA/Ontario International Airport Land Use Compatibility Plan (ALUCP) shall be subject to the land use requirements and standards of the ALUCP.	AR-2 & RE-2	RE-4 & LDR-5	MDR-11, 18 & 25	HDR-45	CS	CN	CC	CR	CCS	OL	OH	LUA-1	LUA-2N	LUA-2S	LUA-3	LUA-4	MU-2	MU-11	BP	IP	IL	IG	IH	AG	CIV	MHP	ONT	OS-C	OS-R	RC	UC	Additional Regulations
61	EDUCATION SERVICES																															
611	Educational Services																															
6115	Technical, ~~and~~ Trade, and Vocational Schools	---	---	---	---	---	---	C	C	---	---	C	---	---	---	---	C	C	C	C	C	C	C	---	---	C	---	---	---	---	---	---	
62	HEALTH CARE AND SOCIAL ASSISTANCE																															
623	Nursing and Residential Care Facilities																															
6239	Other Residential Care Facilities for 6 or fewer persons (includes facilities providing adult residential care services, which do not require a State-issued license to operate, such as but not limited to group homes for the hearing or visually impaired, ~~child group foster homes,~~ halfway group homes for ex-offenders, group homes for unwed mothers, group homes for the disabled without nursing care, ~~orphanages, etc~~ and sober living facilities.)	*P	*P	*P	*P	---	---	---	---	---	---	---	*P	*P	*P	*P	---	*P	*P	---	---	---	---	---	*P	---	---	---	---	---	---	---	* Allowed only in conjunction with an existing single-family residence. See Section 5.03.345 (Residential Care Facilities, Other—6 or Fewer Persons)
	~~• 6 or fewer persons~~	~~*P~~	~~*P~~	~~*P~~	~~*P~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~*P~~	~~*P~~	~~*P~~	~~*P~~	~~---~~	~~*P~~	~~*P~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~*P~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~* Allowed only in conjunction with an existing single-family residence.~~ ~~See Section 5.03.345 (Residential Care Facilities, Other—6 or Fewer Persons)~~
	~~• More than 6 persons~~	~~---~~	~~---~~	~~---~~	~~C~~	~~---~~	~~---~~	~~C~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~C~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~C~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	

PLANNING COMMISSION STAFF REPORT

April 26, 2022

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

FILE NO.: PDCA22-003

SUBJECT: A public hearing to consider certain clarifications and revisions to the City of Ontario Development Code, addressing: [1] time extensions for discretionary projects (Section 2.02.025.B.2.c); [2] public notification requirements for Minor Variances (Section 2.03.010); [3] administrative exceptions (Sections 4.02.020 and 4.03.050, and Tables 2.02-1 and 2.03-1); [4] specific plan minor amendments (Section 4.02.080); [5] housing and reasonable accommodations (Sections 4.02.035 and 4.03.055, and Tables 2.02-1 and 2.03-1); [6] accessory dwelling units (Section 5.03.010); [7] minimum useable rear yard area for single-family dwellings (Section 5.03.011); [8] banquet facilities on historic properties (Section 5.03.067); [9] retail sales events (Section 5.03.395 and Table 8.01-1); [10] conversion of garages to accommodate accessory dwelling units (section 6.01.010); [11] definition for "garage" (Section 9.01.010.G); [12] single-family two-unit projects and urban lot splits, rescinding Urgency Ordinance No. 3200 and adopting standards (Sections 5.03.403 and 6.08.060, and Tables 2.02-1 and 2.03-1); and [13] certain allowed land uses (Table 5.02-1); **City Initiated. City Council action is required.**

RECOMMENDED ACTION: That the Planning Commission consider and adopt the resolution recommending the City Council approve File No. PDCA22-003, pursuant to the facts and reasons contained in the staff report and attached resolution.

PROJECT SETTING: The proposed Development Code Amendment is of citywide impact, affecting approximately 50 square miles (31,789 acres) of land, which is generally bordered by Benson Avenue and Euclid Avenue on the west; Interstate 10 Freeway, Eighth Street, and Fourth Street on the north; Etiwanda Avenue and Hamner Avenue on the east; and Merrill Avenue and the San Bernardino County/Riverside County boundary on the south. The City of Ontario is substantially built-out with a mix of residential, commercial, industrial, agricultural, airport, recreational, and institutional/public land uses. According to the latest US Census forecast, the City of Ontario's 2022 estimated population is 197,866 persons and in terms of population, is ranked the 23rd largest city in the State and the 126th largest in the nation.

PROJECT ANALYSIS: The proposed Development Code Amendment consists of certain clarifications and revisions to the City of Ontario Development Code, as follows:

Case Planner:	Charles Mercier, Principal Planner
Planning Director Approval:	
Submittal Date:	3/8/2022

Hearing Body	*Date*	*Decision*	*Action*
PC	4/26/2022		Recommend
CC-1st Reading	6/7/2022		Introduction
CC-2nd Reading	6/21/2022		Final

(1) Provisions addressing time extension limits for discretionary projects (Development Code Section 2.02.025.B.2.c) will be revised to clarify that a total of three one-year time extensions may be granted for discretionary actions, such as Development Plans, Conditional Use Permits, and Variances. Time extensions for Tentative Tract and Parcel Maps will continue to be subject to the requirements of the State's Subdivision Map Act, which allows one or more extensions, not exceed a total of six years.

(2) Public notification requirements for Minor Variances will be added to clarify that the notification of the owners of any property that abuts a property with a proposed Minor Variance will be required to be notified of the proposed application (Development Code Section 2.03.010). Additionally, Minor Variances will be retitled as "Minor Adjustments and Alterations."

(3) Development Code provisions governing Specific Plan Minor Amendments will be retitled as "Specific Plan Minor Adjustments and Alterations" to reflect the limited scope of the application (Development Code Section 4.02.080).

(4) Development Code provisions governing Administrative Exceptions currently incorrectly classify the application as requiring a discretionary action and will, therefore, be rescinded. New provisions are proposed that correctly establish Administrative Exceptions as a ministerial action (Development Code Sections 4.02.020 and 4.03.050, and Tables 2.02-1 and 2.03-1).

(5) The current Development Code provisions governing Housing and Reasonable Accommodations are incorrectly classified as requiring a discretionary action and will, therefore, be rescinded. New provisions are proposed that correctly establish Housing and Reasonable Accommodations as a ministerial action (Development Code Sections 4.02.035 and 4.03.055, and Tables 2.02-1 and 2.03-1).

(6) Development Code provisions governing Accessory Dwelling Units (ADUs) will be modified, adding the requirements of Assembly Bill 345, which allows for the conveyance of an ADU separate from the primary residence if the ADU or primary dwelling was built or developed by a qualified nonprofit corporation and certain conditions are met (Development Code Section 5.03.010).

(7) The current Development Code provisions stipulating the minimum useable rear yard area for single-family dwellings will be simplified, requiring that a traditional single-family dwelling maintain a useable rear yard area having minimum dimension of 20 FT in any horizontal direction and small lot single-family dwelling maintain a useable rear yard having a minimum dimension of 10 FT in any horizontal direction (Development Code Section 5.03.011). This revision has been proposed eliminate a conflict with current ADU provisions.

(8) Current Development Code provisions governing banquet facilities established in conjunction with commercial structures on historic properties will be amended to clarify

that no banquet facilities shall be allowed in the MU-1 (Downtown Mixed Use) zoning district (Development Code Section 5.03.067). This revision will eliminate an existing conflict with Development Code Table 5.02-1 (Land Use Matrix).

(9) Current Development Code provisions governing Retail Sales Events will be modified to clarify that the provisions also cover "other similar business events." Additionally, the current provisions that limit such events to the holiday sale periods of President's Day, Memorial Day, Independence Day, Labor Day, and four additional periods per year will be amended, eliminating the four stated holidays, and allowing a maximum of eight, one-week periods per calendar year (Development Code Section 5.03.395 and Table 8.01-1).

(10) Current Development Code provisions stipulating that no garage can be converted to another use unless a replacement garage is constructed on-site will be clarified to provide that a garage conversion that accommodates an ADU is exempt from the replacement garage requirement (Development Code section 6.01.010). This revision will eliminate a conflict with the Development Code's current ADU provisions, as well as a conflict with State law.

(11) The current Development Code definition for "garage" will be amended to clarify that a garage must be enclosed on all four sides (Development Code Section 9.01.010.G).

(12) Urgency Ordinance No. 3200 was adopted by the City Council on December 21, 2021, establishing standards for single-family two-unit projects and urban lot splits in accordance with State law (Senate Bill 9). This Development Code Amendment will rescind the urgency ordinance and adopt permanent standards to be included in the Development Code (Development Code Sections 5.03.403 and 6.08.060, and Tables 2.02-1 and 2.03-1).

(13) Amend provisions for certain allowed land uses, as follows (Development Code Table 5.02-1):

(a) Technical, Trade and Vocational Schools — Conditionally permit technical, trade and vocational schools in the IG (General Industrial) zoning district. This revision would allow for the location of technical, trade and vocational schools that specialize in education and training for industrial-related industries, such as motor vehicle fabrication, repair, maintenance, and customization; truck driving; forklift driving and operation; and other industrial activities

(b) Other Residential Care Facilities — Prohibit adult residential care facilities for more than 6 persons, which do not require a State-issued license to operate, such as but not limited to group homes for the hearing or visually impaired, halfway group homes for ex-offenders, group homes for unwed mothers, group homes for the disabled without nursing care, and group sober living facilities.

The proposed provisions of the Development Code Amendment are shown in Exhibit A (Development Code Amendment) of this report. Any provisions proposed for deletion are shown in red strikeout text (~~Abcdefg~~) and all additions are shown in yellow highlighted text (Abcdefg).

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

(1) City Council Goals.

- Invest in the Growth and Evolution of the City's Economy
- Maintain the Current High Level of Public Safety
- Operate in a Businesslike Manner
- Pursue City's Goals and Objectives by Working with Other Governmental Agencies
- Focus Resources in Ontario's Commercial and Residential Neighborhoods

(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.

  - LU1-1: Strategic Growth. We concentrate growth in strategic locations that help create place and identity, maximize available and planned infrastructure, and foster the development of transit.

  - LU1-2 Sustainable Community Strategy. We integrate state, regional and local Sustainable Community/Smart Growth principles into the development and entitlement process.

  - LU1-3 Adequate Capacity. We require adequate infrastructure and services for all development.

  - LU1-4 Mobility. We require development and urban design, where appropriate, that reduces reliance on the automobile and capitalizes on multi-modal transportation opportunities.

  - 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.

  - LU1-7 Revenues and Costs. We require future amendments to our Land Use Plan to be accompanied by analyses of fiscal impacts.

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

  - LU2-6: Infrastructure Compatibility: We require infrastructure to be aesthetically pleasing and in context with the community character.

- Goal LU4: Development that provides short-term value only when the opportunity to achieve our Vision can be preserved.

  - LU4-3 Infrastructure Timing. We require that the necessary infrastructure and services be in place prior to or concurrently with development.

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.

- H2-1 Corridor Housing. We revitalize transportation corridors by encouraging the production of higher density residential and mixed-uses that are architecturally, functionally, and aesthetically suited to corridors.

- H2-3 Ontario Airport Metro Center. We foster vibrant, urban, intense and highly amenitized community in the Ontario Airport Metro Center Area through a mix of residential, entertainment, retail and office-oriented uses.

- 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.

- CE1-1 Jobs-Housing Balance. We pursue improvement to the Inland Empire's balance between jobs and housing by promoting job growth that reduces the regional economy's reliance on out-commuting.

- CE1-7 Retail Goods and Services. We seek to ensure a mix of retail businesses that provide the full continuum of goods and services for the community.

- Goal CE2: A City of distinctive neighborhoods, districts, and corridors, where people choose to be.

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

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

- CE2-6 Public Maintenance. We require the establishment and operation of maintenance districts or other vehicles to fund the long-term operation and maintenance of the public realm whether on private land, in rights-of-way, or on publicly owned property.

Community Design Element:

- Goal CD1: A dynamic, progressive city containing distinct neighborhoods and commercial districts that foster a positive sense of identity and belonging among residents, visitors, and businesses.

  - CD1-2 Growth Areas. We require development in growth areas to be distinctive and unique places within which there are cohesive design themes.

  - 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.

  - CD1-4 Transportation Corridors. We will enhance our major transportation corridors within the City through landscape, hardscape, signage, and lighting.

- 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;
    - 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.

  - CD2-2 Neighborhood Design. We create distinct residential neighborhoods that are functional, have a sense of community, emphasize livability and social interaction, and are uniquely identifiable places through such elements as:

    - A pattern of smaller, walkable blocks that promote access, activity, and safety;
    - Variable setbacks and parcel sizes to accommodate a diversity of housing types;
    - Traffic calming measures to slow traffic and promote walkability while maintaining acceptable fire protection and traffic flows;
    - Floor plans that encourage views onto the street and de-emphasize the visual and physical dominance of garages (introducing the front porch as the "outdoor living room"), as appropriate; and
    - Landscaped parkways, with sidewalks separated from the curb.

- CD2-3 Commercial Centers. We desire commercial centers to be distinctive, pedestrian friendly, functional, and vibrant with a range of businesses, places to gather, and connectivity to the neighborhoods they serve.

- CD2-5 Streetscapes. We design new and, when necessary, retrofit existing streets to improve walkability, bicycling and transit integration, strengthen connectivity, and enhance community identity through improvements to the public right of way such as sidewalks, street trees, parkways, curbs, street lighting and street furniture.

- CD2-7 Sustainability. We collaborate with the development community to design and build neighborhoods, streetscapes, sites, outdoor spaces, landscaping, and buildings to reduce energy demand through solar orientation, maximum use of natural daylight, passive solar and natural ventilation, building form, mechanical and structural systems, building materials and construction techniques.

- 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.

- CD2-10 Surface Parking Areas. We require parking areas visible to or used by the public to be landscaped in an aesthetically pleasing, safe and environmentally sensitive manner. Examples include shade trees, pervious surfaces, urban run-off capture and infiltration, and pedestrian paths to guide users through the parking field.

- CD2-11 Entry Statements. We encourage the inclusion of amenities, signage and landscaping at the entry to neighborhoods, commercial centers, mixed use areas, industrial developments, and public places that reinforce them as uniquely identifiable places.

- CD2-12 Site and Building Signage. We encourage the use of sign programs that utilize complementary materials, colors, and themes. Project signage should be designed to effectively communicate and direct users to various aspects of the development and complement the character of the structures.

- Goal CD3: Vibrant urban environments that are organized around intense buildings, pedestrian and transit areas, public plazas, and linkages between and within developments that are conveniently located, visually appealing and safe during all hours.

- CD3-1 Design. We require that pedestrian, vehicular, bicycle and equestrian circulation on both public and private property be coordinated and designed to maximize safety, comfort, and aesthetics.

- CD3-2 Connectivity Between Streets, Sidewalks, Walkways and Plazas. We require landscaping and paving be used to optimize visual connectivity between streets, sidewalks, walkways, and plazas for pedestrians.

- 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.

- CD5-2 Maintenance of Infrastructure. We require the continual maintenance of infrastructure.

HOUSING ELEMENT COMPLIANCE: The Project will be consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project furthers the purposes, principals, goals, and policies of the Housing Element, in that it will provide for urban lot splits and the construction of two-unit single-family development projects, and, under certain circumstances, provides for the conveyance of accessory dwelling units separate from the main dwelling, thereby further promoting alternate forms of home rental and fee-simple homeownership.

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 proposed Development Code Amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) and the guidelines promulgated thereunder, pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the activity is covered by the common sense exemption (general rule) that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Exhibit A: DEVELOPMENT CODE AMENDMENT

PART I: Subparagraph B.2.c Development Code Section 2.02.025 (Time Limits and Extensions) shall be amended to read as follows:

"**c.** A discretionary permit or action may be granted Time Extensions in one-year increments, ~~for a period or periods~~ not to exceed a total of ~~5 years~~ three one-year time extensions, excepting tentative subdivision maps, which shall be subject to the provisions of GC Section 66452.6."

PART II: Subparagraph C.1.b(1) of Development Code Section 2.03.010 (Public Hearing Notification) shall be amended to read as follows:

"**(1)** ~~For large family daycare facilities, the area of notification shall be within 100 FT of the exterior boundaries of the property that is the subject of the hearing~~ For Minor Variances, the area of notification shall include all properties having a property line common with the affected property; and"

PART III: Development Code Section 4.02.080 (Minor Specific Plan Amendments) shall be amended to read as follows:

"4.02.080: Specific Plan Minor ~~Amendments~~ Adjustments and Alterations

A. Purpose. The purpose of this Section is to establish a procedure by which minor departures from the strict application of the development standards and/or design guidelines established by a Specific Plan may be approved, provided the requested departure is in the interest of furthering the goals and policies of the affected Specific Plan and The Ontario Plan.

B. Applicability.

1. Pursuant to Table 2.02-1 (Review Matrix) of this Development Code, the Approving Authority is hereby empowered to approve, approve in modified form, or deny a Specific Plan Minor ~~Amendment~~ Adjustments and Alterations application, and to impose reasonable conditions upon the approval of the application.

2. The following constitute minor ~~modifications~~ adjustments and/or alterations, not requiring a Specific Plan Amendment and/or update of the affected specific plan:

a. A net change of not more than 15 percent to the number of units within an individual residential area, provided the total number of units for the entire specific plan area does not exceed that established in the affected specific plan;

b. Adjustment of a residential planning area boundary, provided the total acreage of the affected area does not increase or decrease the total acreage stated in the affected specific plan by more than 15 percent;

c. Minor ~~changes~~ adjustments and/or alterations to landscape materials, wall materials, wall alignment, entry design, and streetscape design, which are consistent with the conceptual design set forth in the affected specific plan's development standards and design guidelines;

d. Minor ~~changes~~ adjustments and/or alterations to design guidelines, which are intended to be conceptual in nature, and are clearly intended to be flexible in implementation;

e. Other ~~modifications~~ adjustments and/or alterations of a similar nature to those listed above, which are deemed minor by the Planning Director to be in keeping with the purpose and intent of the affected specific plan and are in conformance with The Ontario Plan; and

f. Adjustments in street alignments and dimensions that as deemed appropriate by the City Engineer, which are in keeping with the purpose and intent of the specific plan and are consistent with the purpose, principles, goals, and policies, of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan, provided the changes do not impact the sizing of master planned infrastructure,

C. Application Filing, Processing and Hearing. A Specific Plan Minor Amendment application shall be filed, processed, and acted upon pursuant to Division 2.02 (Application Filing and Processing) of this Development Code and the provisions of this Section. A noticed hearing pursuant to Division 2.03 (Public Hearings) of this Development Code shall not be required.

D. Findings and Decision. A Specific Plan Minor ~~Amendment~~ Adjustment and/or Alteration shall be acted upon by the Approving Authority based upon the information provided in the submitted application, evidence presented in the Planning Department's written report, and testimony provided during the public hearing, only after considering and clearly establishing all of the below-listed findings, and giving supporting reasons for each finding. The application shall be denied if one or more of the below-listed findings cannot be clearly established.

1. The proposed Specific Plan Minor ~~Amendment~~ Adjustment and/or Alteration 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, and the specific plan;

2. The proposed Specific Plan Minor ~~Amendment~~ Adjustment and/or Alteration is reasonable and beneficial, and in the interest of good planning practice; and

3. The proposed Specific Plan Minor ~~Amendment~~ Adjustment and/or Alteration will not adversely affect the harmonious relationship with adjacent properties and land uses."

PART IV: Subsection C (Administrative Exceptions) of Development Code Section 4.02.020 (Administrative Exceptions, Minor Variances and Variances) shall be rescinded and all subsequent existing provisions of Development Code Section 4.02.020 shall be renumbered in correct alphanumeric order. Development Code Section 4.03.050 (Administrative Exceptions) shall be added to read as follows:

"4.03.050: Administrative Exceptions

A. Purpose. The Administrative Exception is hereby established for the purpose of granting minor departures from the strict application of certain numerical development standards established by this Development Code, when the departure would result in superior site, landscape, or architectural design features that could not otherwise be incorporated into a development project under the strict application of the development standards contained in this Development Code.

B. Applicability.

a. Pursuant to Table 2.02-1 (Review Matrix) of this Development Code, the Approving Authority is hereby empowered to approve, approve in modified form, or deny an Administrative Exception application, and to impose reasonable conditions upon the approval of the application.

b. Administrative Exceptions may be approved for reductions of up to 10 percent from:

(1) Minimum setback and separation requirements, excepting nonresidential setback requirements from property lines that are common with any residentially zoned property; and

(2) Off-street parking required for nonresidential land uses pursuant to Table 6.03-1 (Off-Street Parking Requirements).

c. An Administrative Exception shall not be approved for reductions from minimum lot size, lot dimensions, landscape coverage, or residential parking requirements, or for an increase in maximum density, floor area ratio, or the height of a structure.

C. Application Filing, Processing and Hearing.

1. An Administrative Exception shall be filed and processed pursuant to Division 2.02 (Application Filing and Processing) of this Development Code and the provisions of this Section.

2. A hearing shall not be required; however, the owners of all properties having a property line common with the affected property shall be notified of the proposed Administrative Exception pursuant to Section 2.03.010 (Public Hearing Notification) of this Development Code and shall be invited to comment on the application.

D. Findings and Decision. An Administrative Exception shall be acted upon by the Approving Authority based upon the information provided in the submitted application, evidence presented in the Planning Department's written report, and any comments received from property owners notified pursuant to Subparagraph C.3.b of this Section, only after considering and clearly establishing all of the below-listed findings, and giving supporting reasons for each finding. The application shall be denied if one or more of the below-listed findings cannot be clearly established.

1. The approval of the Administrative Exception is necessary to the production of a comprehensive development, incorporating an enhanced environment and architectural excellence (e.g., appropriate variety of structure placement and orientation opportunities, high quality architectural design, increased amounts of landscaping and open space, improved solutions to the design and placement of parking facilities, etc.) than would normally be possible under the strict application of the applicable development standards;

2. The approval of the Administrative Exception will allow for the inclusion of site, architectural, or landscape features that could not otherwise be incorporated into the design of the project under the strict application of the provisions of the applicable development standards; and

3. The approval of the Administrative Exception will not adversely affect the overall quality of development on the project site and will not adversely affect neighboring properties.

4. The proposed Administrative Exception 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, and the purposes of any applicable Specific Plan or Planned Unit Development, and the purposes of this Development Code.

E. Conditions of Approval.

1. In approving an Administrative Exception, the Approving Authority may require certain safeguards and impose certain conditions established to ensure that the purposes of this Development Code are maintained; ensure that the project will not endanger the public health, safety or general welfare; ensure that the project will not result in any significant environmental impacts; ensure that the project will be in harmony with the area in which it is located; and ensure that the project will be in conformity with The Ontario Plan and any applicable specific and/or area plan(s).

2. All conditions of approval or requirements authorized by this Section are enforceable in the same manner and to the same extent as any other applicable requirement of this Development Code."

PART V: Development Code Section 4.02.035 (Fair Housing and Reasonable Accommodations) shall be rescinded and Development Code Section 4.03.055 (Fair Housing and Reasonable Accommodations) shall be added to read as follows:

"4.03.055: Fair Housing and Reasonable Accommodations

A. Purpose. Pursuant to Federal and State fair housing laws, the purpose of this Section is to provide a procedure whereby exceptions from specific applications of this Development Code may be considered and properly evaluated in order to assure that no person is discriminated against on the basis of race, color, religion, sex, sexual orientation, family status, marital status, disability, national origin, source of income, or ancestry, by being denied an equal opportunity to use and enjoy a dwelling.

B. Applicability.

1. Pursuant to Table 2.02-1 (Review Matrix) of this Development Code, the Approving Authority is hereby empowered to approve, approve in modified form, or deny a Fair Housing and Reasonable Accommodation application and to impose reasonable conditions upon the approval of the application.

2. The Approving Authority may approve reasonable exceptions from the provisions of this Development Code, except that a Fair Housing and Reasonable Accommodation request shall not be approved that would allow the establishment of a land use that would not otherwise be allowed in the zoning district in which the affected property is located, or for increases in residential density.

C. Application Filing, Processing and Hearing. A Fair Housing and Reasonable Accommodation application shall be filed, processed, and heard pursuant to Division 2.02 (Application Filing and Processing) of this Development Code and the provisions of this Section.

D. Findings and Decision. A Fair Housing and Reasonable Accommodation request shall be acted upon by the Approving Authority based upon the information provided in the submitted application, evidence presented in the Planning Department's written report, and testimony provided during the public hearing, only after considering and clearly establishing all of the below-listed findings, and giving supporting reasons for each finding. The application shall be denied if one or more of the below-listed findings cannot be clearly established.

1. The persons who will use the subject property are protected under federal and state fair housing laws;

2. The requested exception is necessary to make specific housing available to a person who will occupy the subject property and who is protected under federal and state fair housing laws;

3. The requested exception will not impose an undo financial or administrative burden upon the City; and

4. The requested exception will comply with all applicable Building and Fire Codes and will not result in a fundamental alteration of the planning, zoning and development laws and procedures of the City.

E. Conditions of Approval.

1. In approving a Fair Housing and Reasonable Accommodation application, the Approving Authority may require certain safeguards and impose certain conditions established to ensure that the purposes of this Development Code are maintained; ensure that the project will not endanger the public health, safety or general welfare; ensure that the project will not result in any significant environmental impacts; ensure that the project will be in harmony with the area in which it is located; and ensure that the project will be in conformity with The Ontario Plan and any applicable specific and/or area plan(s).

2. All conditions of approval or requirements authorized by this Section are enforceable in the same manner and to the same extent as any other applicable requirement of this Development Code."

PART VI: Paragraphs C.11 (Qualified Buyer) and C.12 (Qualified Nonprofit Corporation) of Development Code Section 5.03.010 (Accessory Dwelling Units) shall be added to read as stated below. All subsequent existing provisions contained in Subsection C (Definitions) shall be renumbered in correct alphanumeric order.

"**11**. Qualified Buyer. Persons and families of low or moderate income, as that term is defined in Health and Safety Code Section 50093.

12. Qualified Nonprofit Corporation. A nonprofit corporation organized pursuant to Internal Revenue Code Section 501(c)(3), which has received a welfare exemption under Revenue and Taxation Code Section 214.15, for properties intended to be sold to low-income families who participate in a special no-interest loan program."

PART VII: Paragraph E.4 (No Separate Conveyance) of Section 5.03.010 (Accessory Dwelling Units) shall be amended to read as follows:

"**4.** No Separate Sale or Conveyance. An ADU or JADU may be rented; however, no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all other dwellings (in the case of a multiple-family lot), except as provided by Subsection H (Sale or Conveyance of ADUs Separate from the Primary Residence)of this Section."

PART VIII: Subsection H (Sale or Conveyance of ADUs Separate from the Primary Residence) of Section 5.03.010 (Accessory Dwelling Units) shall be added to read as follows:

"**H. Sale or Conveyance of ADUs Separate from the Primary Residence.** Notwithstanding Paragraph E.4 (No Separate Sale or Conveyance) of this Section, an ADU can be sold or conveyed separately from the primary residence to a qualified buyer; provided, all of the following conditions are met:

1. The ADU or the primary dwelling was built or developed by a qualified nonprofit corporation.

2. There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in Revenue and Taxation Code Section 402.1(10(a).

3. The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:

a. The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling that each qualified buyer occupies.

b. A repurchase option that requires the qualified buyer to first offer the purchase of the ADU or primary dwelling to the qualified nonprofit corporation should the buyer desire to later sell or convey the property.

c. A requirement that the qualified buyer occupy the ADU or primary dwelling as the buyer's principal residence.

d. Affordability restrictions on the sale and conveyance of the accessory dwelling unit or primary dwelling that ensures the ADU and primary dwelling will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.

e. Delineation of all areas of the property that are for the exclusive use of a cotenant. Each cotenant shall agree not to claim a right of occupancy to an area delineated for the exclusive use of another cotenant, provided that the latter cotenant's obligations to each of the other cotenants have been satisfied.

f. Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, improvements, and any other costs, obligations, or liabilities associated with the property. This delineation shall only be binding on the parties to the agreement, and shall not supersede or obviate the liability, whether joint and several or otherwise, of the parties for any cost, obligation, or liability associated with the property where such liability is otherwise established by law or by agreement with a third party.

g. Procedures for dispute resolution among the parties before resorting to legal action.

4. A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Revenue and Taxation Code Section 480.3.

5. Notwithstanding the requirements of Paragraph G.2 (Utility Fees) of this Section, if requested by a utility providing service to the primary residence, the ADU shall be provided separate water, sewer, or electrical connection to that utility."

PART IX: Paragraph D.14 of Development Code Section 5.03.011 (Accessory Dwelling Units) shall be amended to read as follows:

"**14.** A lot developed with an Accessory Residential Structure shall maintain a useable rear yard as follows: ~~that is equal to a minimum of 10 percent of the net lot area. In addition, a~~

a. A traditional single-family dwelling shall maintain a useable rear yard area having minimum dimension of 20 FT in any horizontal direction; and

b. A small lot single-family dwelling shall maintain a useable rear yard having a minimum dimension of 10 FT in any horizontal direction."

PART X: Section 5.03.067 (Banquet Facilities - Historic Properties) shall be amended to read as follows:

"**A.** A banquet facility shall be allowed in all zoning districts within a commercial structure or on property designated as a local historic landmark, or a contributing structure within a designated historic district, established pursuant to Section 4.02.040 (Historic Preservation—Local Historic Landmark and Local District Designations, Historic Resource Tiering, and Architectural Conservations Areas) of this Development Code, and shall be subject to the regulations therein during the life of the permit, except that no banquet facility shall be allowed in the MU-1 (Downtown Mixed Use) zoning district.

B. The minimum number of parking spaces required shall be provided pursuant to Division 6.03 (Off-Street Parking and Loading) of this Development Code. A parking demand study may be prepared by a qualified traffic consultant or engineer to support a reduction in the required number of parking spaces. The intent is to provide lower, flexible parking standards wherever possible and appropriate. Consideration shall be given to shared parking systems, on and off-street parking resources, compatibility with historic patterns of development, and the availability of mass transit resources.

C. Live entertainment shall be prohibited. Request for live entertainment shall require conditional use permit approval by the Zoning Administrator. Karaoke, DJs, live musical acts, and other similar forms of entertainment are considered live entertainment. Amplified prerecorded music may be permitted; however, the sound emitted from the premises shall not be audible beyond the property lines of the business establishment.

D. Alcohol beverage sales shall be ~~prohibited. Request for service of alcohol beverage sales shall require a conditional use permit by the Zoning Administrator~~ allowed subject to the approval of a Conditional Use Permit issued pursuant to the requirements of Section 4.02.015 (Conditional Use Permits) and Section 5.03.025 (Alcoholic Beverage Sales) of this Development Code.

E. The applicant shall comply with all applicable building code regulations related to the change of use of the structure to a banquet facility."

PART XI: Subparagraph G.1 (Retail Sales Events) of Development Code Section 5.03.395 (Temporary and Interim Land Uses, Buildings, and Structures) shall be amended to read as follows:

"**1.** Retail Sales Events and Other Similar Business Events. Retail sales events and other similar business events, including but not limited to special outdoor sales, sidewalk sales, and parking lot sales, are subject to the following:

a. A retail sales event or other similar business event shall only be allowed in conjunction with a legally established business that has been operated for a period of at least 180 days prior to the retail sales event or other similar business event.

b. Retail sales events and other similar business events shall be limited to ~~the holiday sale periods of President's Day, Memorial Day, Independence Day, and Labor Day, and 4 additional periods~~ eight, one-week periods per calendar year, ~~for each~~ per business location. The ~~additional~~ one-week periods may be used consecutively, not to exceed a total of 56 days per calendar year.

~~**c.** Retail sales events shall be limited to maximum 7 days duration.~~

c. The outdoor display of merchandise shall be restricted to an area directly adjacent to the business' exterior storefront; however, in the case of shopping centers, when it is not practical for the outdoor display area to be located directly adjacent to the business front, the sale area shall be located in an area as close as practically possible, to the business' exterior storefront.

d. The display of merchandise shall not impede pedestrian or vehicular circulation.

e. All merchandise, materials, signs, and debris shall be removed from the outdoor area by 9:00AM following the last day of the retail sales event."

PART XII: Paragraph F.8 of Development Code Section 6.01.010 (Residential Zoning Districts) shall be amended to read as follows:

"**8.** Conversion of Garages. No garage shall be converted to another use unless a replacement garage is constructed on-site, which meets the minimum requirements of Division 6.03 (Off-Street Parking and Loading) of this Chapter, excepting a garage conversion to accommodate an Accessory Dwelling Units conforming to Section 5.03.010 (Accessory Dwelling Units) of this Development Code."

PART XIII: Subsection G (Definition of Words Beginning with the Letter "G") of Development Code Section 9.01.010 (Terms and Phrases) shall be amended, revising the definition of "garage" as follows:

"Garage. An accessory structure or portion of a main structure that is fully enclosed ~~on 3 or more sides~~ and designed for the shelter or storage of motor vehicles."

PART XIV: Rescind Ordinance No. 3200, an urgency ordinance establishing standards for the development of Single-Family Two-Unit Projects and Urban Lot Splits, and Development Code Section 5.03.403 (Single-Family Two-Unit Projects) and Section 6.08.060 (Urban Lot Splits) shall be added to read as follows:

"Section 5.03.403: Single-Family Two-Unit Projects

A. Purpose. The purpose of this Section is to allow and appropriately regulate Single-Family Two-Unit Projects pursuant to GC Section 65852.21.

B. Definition. A "Two-Unit Project" means the development of two primary dwelling units or, if there is already a primary dwelling unit on the lot, the development of a second primary dwelling unit on a legally subdivided lot pursuant to the requirements of this Section.

C. Application.

1. Only individual property owners may apply for a Two-Unit Project. "Individual property owner" means a natural person holding fee title individually or jointly in the person's own name or a beneficiary of a trust that holds fee title. "Individual property owner" does not include any corporation or corporate person of any kind (partnership, LP, LLC, C corporation, S corporation, etc.) except for a community land trust (as defined by Revenue and Taxation Code Section 402.1(a)(11)(C)(ii)) or a qualified nonprofit corporation (as defined by Section 214.15).

2. An application for a Two-Unit Project shall be submitted on a City application form.

3. The applicant shall obtain a certificate of compliance with the Subdivision Map Act for the lot and provide the certificate with the application.

4. Only a complete application will be considered. The City will inform the applicant in writing of any incompleteness within 30 days following application submittal.

5. The City may establish a fee to recover its costs for adopting, implementing, and enforcing this Section of the Development Code, pursuant to applicable law. The City council may establish and change the fee by resolution. The fee shall be paid with the application.

D. Approval.

1. An application for a Two-Unit Project is approved or denied ministerially, by the Planning Director, without discretionary review.

2. The ministerial approval of a Two-Unit Project does not take effect until the City has confirmed that all required documents have been recorded, such as the deed restriction and easements.

3. The approval shall require the owner and applicant to hold the City harmless from all claims and damages related to the approval and its subject matter.

4. The approval shall require the owner and applicant to reimburse the City for all costs of enforcement, including attorneys' fees and costs associated with enforcing the requirements of this Development Code.

E. Requirements. A Two-Unit Project shall satisfy all of the following requirements:

1. Subdivision Map Act (SMA) Compliance. The lot shall have been legally subdivided.

2. Zoning District. The lot is in a single-family residential zoning district. For the purpose of this Section, the term "single-family residential zoning district" shall mean the LRD-5 (Low Density Residential – 2.1 to 5.0 DU/Acre) zoning district.

3. Lot Location. Pursuant to the GC Section 65913.4(a)(6)(B) through (K), the lot to be split shall not be located on a site that is any of the following:

a. Prime farmland, farmland of statewide importance, or land that is zoned or designated for agricultural protection or preservation by the voters.

b. A wetland.

c. Within a very high fire hazard severity zone, unless the site complies with all fire-hazard mitigation measures required by existing building standards.

d. A hazardous waste site that has not been cleared for residential use.

e. Within a delineated earthquake fault zone, unless all development on the site complies with applicable seismic protection building code standards.

f. Within a 100-year flood hazard area, unless the site has either:

(1) Been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction; or

(2) Meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program.

g. Within a regulatory floodway, unless all development on the site has received a no-rise certification.

h. Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.

i. Habitat for protected species.

j. Land under conservation easement.

4. Not Historic. The lot shall not be a historic property or within a historic district that is included on the State Historic Resources Inventory. Nor may the lot be or be within a site that is designated by ordinance as a city or county landmark, or as a historic property or district.

5. No Impact on Protected Housing. The Two-Unit Project shall not require or include the demolition or alteration of any of the following types of housing:

a. Housing that is income-restricted for households of moderate, low, or very low income.

b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its policy power.

c. Housing, or a lot that used to have housing, that has been withdrawn from rental or lease under the Ellis Act (GC Sections 7060–7060.7) at any time in the 15 years prior to submission of the Urban Lot Split application.

d. Housing that has been occupied by a tenant in the last 3 years. The applicant and the owner of a property for which an Urban Lot Split is sought shall provide a sworn statement as to this fact with the application for the tentative parcel map. The City may conduct its own inquiries and investigation to ascertain the veracity of the sworn statement, including but not limited to, surveying owners of nearby properties; and the City may require additional evidence of the applicant and owner as necessary to determine compliance with this requirement.

6. Unit Standards.

a. *Quantity*.

(1) No more than two dwelling units of any kind may be built on a lot that results from an Urban Lot Split. For purposes of this paragraph, "unit" means any dwelling unit, including, but not limited to, a primary dwelling unit, a unit created pursuant to Section 5.03.403 (Two-Unit Projects) of this Development Code, or an ADU or JADU created pursuant to State law and Section 5.03.010 (Accessory Dwelling Unit) of this Development Code.

(2) A lot that is not created by an Urban Lot Split may have a Two-Unit Project as provided by this Section, plus any ADU or JADU that shall be allowed pursuant to State law and Section 5.03.010 (Accessory Dwelling Unit) of this Development Code.

b. *Unit Size*.

(1) The total floor area of each primary dwelling that is developed under this Section shall be a minimum of 500 SF in area and a maximum of 800 SF in area.

(2) A primary dwelling that was legally established on the lot prior to the Two-Unit Project and is larger than 800 SF is limited to the lawful floor area at the time of the Two-Unit Project. The unit may not be expanded.

(3) A primary dwelling that was legally established prior to the Two-Unit Project and is smaller than 800 SF may be expanded to 800 SF after or as part of the Two-Unit Project.

c. *Height Restrictions*.

(1) On a lot that is larger than 2,000 SF, no new primary dwelling unit may exceed one-story or 16 FT in height, measured from grade to peak of the structure.

(2) On a lot that is smaller than 2,000 SF, no new primary dwelling unit may exceed two-stories or 22 FT in height, measured from grade to peak of the structure. Any portion of a new primary dwelling that exceeds one story in height shall be stepped back by an additional 5 FT from the ground floor; no balcony deck or other portion of the second story may project into the stepback.

(3) No rooftop deck is permitted on any new or remodeled dwelling or structure on a lot with a Two-Unit Project.

d. *Demo Cap*. The Two-Unit Project shall not involve the demolition of more than 25 percent of the existing exterior walls of an existing dwelling unless the site has not been occupied by a tenant in the last 3 years.

e. *Lot Coverage*. [Include a lot coverage standard here if desired.] This lot coverage standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at 800 SF each.

f. *Setback Requirements*.

(1) **Generally**. All setbacks shall conform to the minimum requirements of the underlying zoning district.

(2) **Exceptions**. Notwithstanding subpart E.6.f above:

(a) Existing Structures. No setback is required for an existing legally established structure or for a new structure that is constructed in the same location and to the same dimensions as an existing legally established structure.

(b) Cannot Preclude Construction of Two 800-SF Units and 4-FT Side/Rear Setbacks. The setbacks imposed by the underlying zoning district shall yield to the degree necessary to avoid physically precluding the construction of up to two units on the lot or either of the two units from being at least 800 SF in floor area; but in no event may any structure be less than 4 FT from a side or rear property line.

(3) **Front Setback Area**. Notwithstanding any other part of this code, dwellings that are constructed under this Section shall conform to the front setback requirement of the underlying zoning district. The front setback area shall:

(a) Be kept free from all structures greater than 3 FT high; and

(b) Allow for vehicular and fire-safety access to the front structure.

g. *Parking*. Each new primary dwelling unit shall have at least one off-street parking space per unit within a fully enclosed garage having

a minimum interior clear area measuring 10 FT in width and 20 FT in length, unless one of the following applies:

(1) The lot is located within one-half mile walking distance of either

(a) A corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours or

(b) A site that contains:

(i) An existing rail or bus rapid transit station,

(ii) A ferry terminal served by either a bus or rail transit service, or

(iii) The intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

(2) The site is located within one block of a permanently established car-share vehicle pickup/drop-off location.

h. *Architecture*.

(1) If there is a legal primary dwelling on the lot that was established before the Two-Unit Project, any new primary dwelling unit shall match the existing primary dwelling unit with respect to exterior materials, finishes, color, and dominant roof pitch. The dominant roof pitch means the slope shared by the largest portion of the roof.

(2) If there is no legal primary dwelling on the lot before the Two-Unit Project, and if two primary dwellings are developed on the lot, the dwellings shall match each other with respect to exterior materials, finishes, color, and dominant roof pitch. The dominant roof pitch means the slope shared by the largest portion of the roof.

(3) All exterior lighting shall be limited to down-lights.

(4) No window or door of a dwelling that is constructed on the lot may have a direct line of sight to an adjoining residential property. Decorative masonry block walls, dense

landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.

(5) If any portion of a dwelling is less than 30 FT from a property line that is not a public street right-of-way line, then all windows and doors in that portion shall either be (for windows) clerestory with the bottom of the glass at least 6 FT above the finished floor, or (for windows and doors) utilize frosted or obscure glass.

i. *Walls, Fences, and Obstructions*.

(1) A lot comprising a Two-Unit Project shall be provided with 6-FT high decorative masonry block walls (reduced to 3 FT in height within front setback areas) at the following locations:

(a) Interior side and rear lot lines of each lot; and

(b) Street side property lines and along the rear property line of through lots, setback a minimum of 5 FT behind the sidewalk.

(2) The construction and maintenance of walls, fences, and other obstructions shall comply with the requirements of Chapter 6.0 (Development and Subdivision Regulations), (Division 6.02 (Walls, Fences, and Obstructions) of this Development Code.

j. *Landscaping*. A lot comprising a Two-Unit Project shall be fully landscaped and provided with a permanent automatic irrigation system pursuant to the requirements Chapter 6.0 (Development and Subdivision Regulations), Division 6.05 (Landscaping) of this Development Code.

k. *Nonconforming Conditions*. A Two-Unit Project shall be approved only if all nonconforming zoning conditions are corrected.

l. *Utilities*.

(1) Each primary dwelling unit on the resulting lots shall have its own direct utility connection to the utility service provider.

(2) Each primary dwelling unit on the resulting lots that is or that is proposed to be connected to an onsite wastewater treatment system shall first have a percolation test completed

within the last 5 years or, if the percolation test has been recertified, within the last 10 years.

m. *Building & Safety*. All structures built on a lot comprising a Two-Unit Project shall comply with all current local building standards. A project under this Section is a change of use and subjects the whole of the lot, and all structures, to the City's current code.

7. Fire-Hazard Mitigation Measures. A lot in a very high fire hazard severity zone shall comply with each of the following fire-hazard mitigation measures:

a. It shall have direct access to a public street right-of-way with a paved street with a width of at least 40 FT. The public street right-of-way shall have at least two independent points of access for fire and life safety to access and for residents to evacuate.

b. All dwellings on the site shall comply with current fire code requirements for dwellings in a very high fire hazard severity zone.

c. All enclosed structures on the site shall have fire sprinklers.

d. All sides of all dwellings on the site shall be within a 150-FT hose-pull distance from either the public street right-of-way or of an onsite fire hydrant or standpipe.

e. If the lot does not have a swimming pool, the lot shall have a water reservoir of at least 5,000 gallons per dwelling, with fire-authority approved hookups compatible with fire-authority standard pump and hose equipment.

8. Separate Conveyance.

a. Primary dwelling units on the lot may not be owned or conveyed separately from each other.

b. Condominium airspace divisions and common interest developments are prohibited.

c. All fee interest in a lot and all dwellings on the lot shall be held equally and undivided by all individual property owners.

9. Regulation of Uses.

a. *Residential-Only*. No non-residential use is permitted on the lot.

b. *No Short Term Rentals*. No dwelling unit on a lot comprising a Two-Unit Project shall be rented for a period of less than 30 days.

c. *Owner Occupancy*. Unless the lot comprising a Two-Unit Project was formed by an Urban Lot Split, the individual property owners of a lot with a Two-Unit Project shall occupy one of the dwellings on the lot as the owners' principal residence and legal domicile.

10. Notice of Construction.

a. At least 30 business days before starting any construction of a Two-Unit Project, the property owner shall give written notice to all the owners of record of each of the adjacent residential parcels, which notice shall include the following information:

(1) Notice that construction has been authorized,

(2) The anticipated start and end dates for construction,

(3) The hours of construction,

(4) Contact information for the project manager (for construction-related complaints), and

(5) Contact information for the Building & Safety Department.

b. This notice requirement does not confer a right on the noticed persons or on anyone else to comment on the project before permits are issued. Approval is ministerial. Under state law, the City has no discretion in approving or denying a particular project under this Section. This notice requirement is purely to promote neighborhood awareness and expectation.

11. Deed Restriction. The owner shall record a deed restriction, acceptable to the City, that does each of the following:

a. Expressly prohibits any rental of any dwelling on the property for a period of less than 30 days.

b. Expressly prohibits any non-residential use of the lot.

c. Expressly prohibits any separate conveyance of a primary dwelling on the property, any separate fee interest, and any common interest development within the lot.

d. If the lot is not created by an Urban Lot Split: Expressly requires the individual property owners to live in one of the dwelling units on the lot as the owners' primary residence and legal domicile.

e. States that the property is formed by an Urban Lot Split and is therefore subject to the City's Urban Lot Split regulations, including all applicable limits on dwelling size and development.

F. Specific Adverse Impacts.

1. Notwithstanding anything else in this Section, the City may deny an application for a Two-Unit Project if the building official makes a written finding, based on a preponderance of the evidence, that the project would have a "specific, adverse impact" on either public health and safety or on the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

2. The term "specific adverse impact" has the same meaning as in GC Section 65589.5(d)(2): "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete" and does not include (1) inconsistency with the zoning ordinance or general plan land use designation or (2) the eligibility to claim a welfare exemption under Revenue and Taxation Code Section 214(g).

3. The building official may consult with and be assisted by planning staff and others as necessary in making a finding of specific, adverse impact.

G. Remedies. If a Two-Unit Project violates any part of this Development Code or any other legal requirement:

1. The buyer, grantee, or lessee of any part of the property has an action for damages or to void the deed, sale, or contract.

2. The City may:

a. Bring an action to enjoin any attempt to sell, lease, or finance the property.

b. Bring an action for other legal, equitable, or summary remedy, such as declaratory and injunctive relief.

c. Pursue criminal prosecution, punishable by imprisonment in county jail or state prison for up to one year, by a fine of up to $10,000, or both; or a misdemeanor.

d. Record a notice of violation.

e. Withhold any or all future permits and approvals.

f. Pursue all other administrative, legal, or equitable remedies that are allowed by law, this Development Code, or the City's Municipal Code."

"**Section 6.08.060: Urban Lot Splits**

A. Purpose. The purpose of this Section is to allow and appropriately regulate Urban Lot Splits pursuant to GC Section 66411.7.

B. Definition. An "Urban Lot Split" means the subdivision of an existing, legally subdivided lot into two lots pursuant to the requirements of this Section.

C. Application.

1. Only individual property owners may apply for an Urban Lot Split. "Individual property owner" means a natural person holding fee title individually or jointly in the person's own name or a beneficiary of a trust that holds fee title. "Individual property owner" does not include any corporation or corporate person of any kind (partnership, LP, LLC, C corporation, S corporation, etc.) except for a community land trust (as defined by Revenue and Taxation Code Section 402.1(a)(11)(C)(ii)) or a qualified nonprofit corporation (as defined by Section 214.15).

2. An application for an Urban Lot Split shall be submitted on a City application form. Only a complete application will be considered. The City will inform the applicant in writing of any incompleteness within 30 days following application submittal.

3. The City may establish a fee to recover its costs for adopting, implementing, and enforcing this Section of the Development Code, pursuant to applicable law. The City council may establish and change the fee by resolution. The fee shall be paid with the application.

D. Approval.

1. An application for a parcel map for an Urban Lot Split is approved or denied ministerially, by the City Engineer, without discretionary review.

2. A tentative parcel map for an Urban Lot Split shall be approved ministerially if it complies with all the requirements of this Section. The tentative parcel map may not be recorded. A final parcel map shall be approved ministerially as well, but not until the owner demonstrates that all required documents have been recorded, such as the deed restriction and easements. The tentative parcel map shall expire 3 months following approval.

3. The approval shall require the owner and applicant to hold the City of Ontario harmless from all claims and damages related to the approval and its subject matter.

4. The approval shall require the owner and applicant to reimburse the City for all costs of enforcement, including attorneys' fees and costs associated with enforcing the requirements of this Development Code.

E. Requirements. An Urban Lot Split shall satisfy each of the following requirements:

1. Subdivision Map Act Compliance.

a. The Urban Lot Split shall conform to all applicable objective requirements of the Subdivision Map Act (GC Section 66410 et seq., "SMA"), including implementing requirements in this Development Code, except as otherwise expressly provided in this Section.

b. If an Urban Lot Split violates any part of the SMA, the City's subdivision regulations, including this Section, or any other legal requirement:

(1) The buyer or grantee of a lot that is created by the Urban Lot Split has all the remedies available under the SMA, including but not limited to an action for damages or to void the deed, sale, or contract.

(2) The City has all the remedies available to it under the SMA, including but not limited to the following:

(a) An action to enjoin any attempt to sell, lease, or finance the property.

(b) An action for other legal, equitable, or summary remedy, such as declaratory and injunctive relief.

(c) Criminal prosecution, punishable by imprisonment in county jail or state prison for up to one year, by a fine of up to $10,000, or both; or a misdemeanor.

(d) Record a notice of violation.

(e) Withhold any or all future permits and approvals.

c. Notwithstanding Section 66411.1 of the SMA, no dedication of rights-of-way or construction of offsite improvements is required for an Urban Lot Split.

2. Zoning District. The lot to be split is in a single-family residential zoning district. For purposes of this Section, the term "single-family residential zoning district" shall mean the LDR-5 (Low Density Residential – 2.1 to 5.0 DU/Acre) zoning district.

3. Lot Location. Pursuant to the GC Section 65913.4(a)(6)(B) through (K), the lot to be split shall not be located on a site that is any of the following:

a. Prime farmland, farmland of statewide importance, or land that is zoned or designated for agricultural protection or preservation by the voters.

b. A wetland.

c. Within a very high fire hazard severity zone, unless the site complies with all fire-hazard mitigation measures required by existing building standards.

d. A hazardous waste site that has not been cleared for residential use.

e. Within a delineated earthquake fault zone, unless all development on the site complies with applicable seismic protection building code standards.

f. Within a 100-year flood hazard area, unless the site has either:

(1) Been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction; or

(2) Meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program.

g. Within a regulatory floodway, unless all development on the site has received a no-rise certification.

h. Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.

i. Habitat for protected species.

j. Land under conservation easement.

4. Not Historic. The lot to be split shall not be a historic property or within a historic district that is included on the State Historic Resources Inventory. Nor may the lot be or be within a site that is designated by ordinance as a city or county landmark or as a historic property or district.

5. No Prior Urban Lot Split.

a. The lot to be split was not established through a prior Urban Lot Split.

b. The lot to be split is not adjacent to any lot that was established through a prior Urban Lot Split by the owner of the lot to be split or by any person acting in concert with the owner. For the purposes of this Section, the term "any person acting in concert with the owner" shall include any third-party that coordinates or assists the owners of two adjacent lots with their respective Urban Lot Splits.

6. No Impact on Protected Housing. The Urban Lot Split shall not require or include the demolition or alteration of any of the following types of housing:

a. Housing that is income-restricted for households of moderate, low, or very low income.

b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its policy power.

c. Housing, or a lot that used to have housing, that has been withdrawn from rental or lease under the Ellis Act (GC Sections 7060–7060.7) at any time in the 15 years prior to submission of the Urban Lot Split application.

d. Housing that has been occupied by a tenant in the last 3 years. The applicant and the owner of a property for which an Urban Lot Split is sought shall provide a sworn statement as to this fact with the application for the tentative parcel map. The City may conduct its own inquiries and investigation to ascertain the veracity of the sworn statement, including but not limited to, surveying owners of nearby properties; and the City may require additional evidence of the applicant and owner as necessary to determine compliance with this requirement.

7. Lot Size.

a. The lot to be split shall be at least 2,400 SF.

b. Each lot created by an Urban Lot Split shall be at least 1,200 SF.

c. Each lot created by an Urban Lot Split shall be between 60 percent and 40 percent of the original lot area.

8. Easements.

a. The owner shall enter into an easement agreement with each public-service provider to establish easements that are sufficient for the provision of public services and facilities to each of the resulting lots.

b. Each easement shall be shown on the parcel map.

c. Copies of the unrecorded easement agreements shall be submitted with the application. The easement agreements shall be recorded against the property before the final parcel map may be approved pursuant to subpart D.2 above.

9. Lot Access.

a. Each lot created by an Urban Lot Split shall adjoin a public street right-of-way.

b. Each lot created by an Urban Lot Split shall have frontage on the public street right-of-way of at least 20 FT.

10. Unit Standards.

a. *Quantity*. No more than two dwelling units of any kind may be built on a lot that results from an Urban Lot Split. For purposes of this paragraph, "unit" means any dwelling unit, including, but not limited to, a primary dwelling unit, a unit created pursuant to State law and Section 5.03.403 (Two-Unit Projects) of this Development Code, or an ADU or JADU created pursuant to Section 5.03.010 (Accessory Dwelling Unit) of this Development Code.

b. *Unit Size*.

(1) The total floor area of each primary dwelling that is developed on a lot resulting from an Urban Lot Split shall be a minimum of 500 SF in area and a maximum of 800 SF in area.

(2) A primary dwelling that was legally established prior to the Urban Lot Split and that is larger than 800 SF is limited to the lawful floor area at the time of the Urban Lot Split and shall not be expanded

(3) A primary dwelling that was legally established prior to the Urban Lot Split and is smaller than 800 SF may be expanded to a maximum of 800 SF after the Urban Lot Split.

c. *Height Restrictions*.

(1) On a resulting lot that is 2,000 SF or larger, no new primary dwelling unit may exceed one-story or 16 FT in height, measured from grade to peak of the structure.

(2) On a resulting lot that is smaller than 2,000 SF, no new primary dwelling unit may exceed two-stories or 22 FT in height, measured from grade to peak of the structure. Any portion of a new primary dwelling that exceeds one story in height shall be stepped back by an additional 5 FT from the ground floor; no balcony deck or other portion of the second story may project into the stepback.

(3) No rooftop deck is permitted on any new or remodeled dwelling or structure on a lot resulting from an Urban Lot Split.

d. *Lot Coverage*. Maximum lot coverage shall conform to the requirement of the underlying zoning district. This lot coverage standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at 800 SF each.

e. *Setback Requirements*.

(1) **Generally**. All setbacks shall conform to the minimum requirements of the underlying zoning district.

(2) **Exceptions**. Notwithstanding subpart E.10.e above:

(a) Existing Structures. No setback is required for an existing legally established structure or for a new structure that is constructed in the same location and to the same dimensions as an existing legally established structure.

(b) Cannot Preclude Construction of Two 800-SF Units and 4-FT Side/Rear Setbacks. The setbacks imposed by the underlying zoning district shall yield to the degree necessary to avoid physically precluding the construction of up to two units on the lot or either of the two units from being at least 800 SF in floor area; but in no event may any structure be less than 4 FT from a side or rear property line.

(3) **Front Setback Area**. Notwithstanding any other part of this Development Code, dwellings that are constructed after an Urban Lot Split shall conform to the front setback requirement of the underlying zoning district. The front setback area shall:

(a) Be kept free from all structures greater than 3 FT high; and

(b) Allow for vehicular and fire-safety access to the front structure.

f. *Parking*. Each new primary dwelling unit shall have at least one off-street parking space per unit within a fully enclosed garage having a minimum interior clear area measuring 10 FT in width and 20 FT in length, unless one of the following applies:

(1) The lot is located within one-half mile walking distance of either

(a) A corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours or

(b) A site that contains:

(i) An existing rail or bus rapid transit station,

(ii) A ferry terminal served by either a bus or rail transit service, or

(iii) The intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

(2) The site is located within one block of a permanently established car-share vehicle pickup/drop-off location.

g. *Architecture*.

(1) If there is a legal primary dwelling on the lot that was established before the Urban Lot Split, any new primary dwelling unit shall match the existing primary dwelling unit with respect to exterior materials, finishes, color, and dominant roof pitch. The dominant roof pitch means the slope shared by the largest portion of the roof.

(2) If there is no legal primary dwelling on the lot before the Urban Lot Split, and if two primary dwellings are developed on the lot, the dwellings shall match each other with respect to exterior materials, finishes, color, and dominant roof pitch. The dominant roof pitch means the slope shared by the largest portion of the roof.

(3) All exterior lighting shall be limited to down-lights.

(4) No window or door of a dwelling that is constructed on the lot may have a direct line of sight to an adjoining residential property. Decorative masonry block walls, dense landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.

(5) If a dwelling is constructed on a lot after an Urban Lot Split and any portion of the dwelling is less than 30 FT from a property line that is not a public street right-of-way line, then all windows and doors in that portion shall either be (for windows) clerestory with the bottom of the glass at least 6 FT above the finished floor, or (for windows and for doors) utilize frosted or obscure glass.

h. *Walls, Fences, and Obstructions*.

(1) Lots created as a result of an Urban Lot Split shall be provided with 6-FT high decorative masonry block walls (reduced to 3 FT in height within front setback areas) at the following locations:

(a) Interior side and rear lot lines of each lot; and

(b) Street side property lines and along the rear property line of through lots, setback a minimum of 5 FT behind the sidewalk.

(2) The construction and maintenance of walls, fences, and other obstructions shall comply with the requirements of Division 6.02 (Walls, Fences, and Obstructions) of this Chapter.

i. *Landscaping*. Lots created as a result of an Urban Lot Split shall be fully landscaped and provided with a permanent automatic irrigation system pursuant to the requirements Division 6.05 (Landscaping) of this Chapter.

j. *Nonconforming Conditions*. An Urban Lot Split may be approved without requiring a legal nonconforming zoning condition to be corrected.

k. *Utilities*.

(1) Each primary dwelling unit on the resulting lots shall have its own direct utility connection to the utility service provider.

(2) Each primary dwelling unit on the resulting lots that is or that is proposed to be connected to an onsite wastewater treatment system shall first have a percolation test completed within the last 5 years or, if the percolation test has been recertified, within the last 10 years.

l. *Building & Safety*. All structures built on a lot resulting from an Urban Lot Split shall comply with all current local building standards. An Urban Lot Split is a change of use.

11. Fire-Hazard Mitigation Measures.

a. A lot in a very high fire hazard severity zone shall comply with each of the following fire-hazard mitigation measures:

(1) It shall have direct access to a public street right-of-way with a paved street with a width of at least 40 FT. The public street right-of-way shall have at least two independent points of access for fire and life safety to access and for residents to evacuate.

(2) All dwellings on the site shall comply with current Fire Code requirements for dwellings in a very high fire hazard severity zone.

(3) All enclosed structures on the site shall have fire sprinklers.

(4) All sides of all dwellings on the site shall be within a 150-FT hose-pull distance from either the public street right-of-way or of an onsite fire hydrant or standpipe.

(5) If the lot does not have a swimming pool, the lot shall have a water reservoir of at least 5,000 gallons per dwelling, with fire-authority approved hookups compatible with fire-authority standard pump and hose equipment.

b. Prior to submitting an application for an Urban Lot Split, the applicant shall obtain a certificate of compliance with all applicable fire-

hazard mitigation measures pursuant to this subpart E.11. The City or its authorized agent shall inspect the site, including all structures on the site, and certify as to its compliance. The certificate shall be included with the application. The applicant shall pay the City's costs for inspection. Failure to pay is grounds for denying the application.

12. Separate Conveyance.

a. On a lot created by an Urban Lot Split:

(1) Primary dwelling units cannot be owned or conveyed separately from each other.

(2) Condominium airspace divisions and common interest developments are prohibited.

(3) All fee interest in a lot and all dwellings on the lot shall be held equally and undivided by all individual property owners.

b. Separate conveyance of lots created by an Urban Lot Split is permitted. If dwellings or other structures (such as garages) on different lots are adjacent or attached to each other, the Urban Lot Split boundary may separate them for conveyance purposes if the structures meet Building Code safety standards and are sufficient to allow separate conveyance. If any attached structures span or will span the new lot line, the owner shall record appropriate CC&Rs, easements, or other documentation that is necessary to allocate rights and responsibility between the owners of the two lots.

13. Regulation of Uses.

a. *Residential-Only*. Nonresidential land uses shall be prohibited on any lot created by Urban Lot Split.

b. *No Short Term Rentals*. No dwelling unit on a lot that is created by an Urban Lot Split may be rented for a period of less than 30 days.

c. *Owner Occupancy*. The applicant for an Urban Lot Split shall sign an affidavit stating that the applicant intends to occupy one of the dwelling units on one of the resulting lots as the applicant's principal residence for a minimum of 3 years after the Urban Lot Split is approved.

14. Notice of Construction.

a. At least 30 business days prior to the starting any construction of a structure on a lot created by an Urban Lot Split, the property owner shall give written notice to all the owners of record of each of the adjacent residential parcels, which notice shall include the following information:

(1) Notice that construction has been authorized,

(2) The anticipated start and end dates for construction,

(3) The hours of construction,

(4) Contact information for the project manager (for construction-related complaints), and

(5) Contact information for the Building & Safety Department.

b. This notice requirement does not confer a right on the noticed persons or on anyone else to comment on the project before permits are issued. The approval of an Urban Lot Split is ministerial and under state law, the City has no discretion in approving or denying a particular project under this Section. This notice requirement is purely to promote neighborhood awareness and expectation.

15. Deed Restriction. The owner shall record a deed restriction, acceptable to the City, that does each of the following:

a. Expressly prohibits any rental of any dwelling on the property for a period of less than 30 days.

b. Expressly prohibits any nonresidential land use of the lots created by the Urban Lot Split.

c. Expressly prohibits any separate conveyance of a primary dwelling on the property, any separate fee interest, and any common interest development within the lot.

d. States that the property is formed by an Urban Lot Split and is, therefore, subject to the City's Urban Lot Split regulations, including all applicable limits on dwelling size and development.

F. Specific Adverse Impacts.

1. Notwithstanding anything else in this Section, the City may deny an application for an Urban Lot Split if the building official makes a written finding, based on a preponderance of the evidence, that the project would have a "specific, adverse impact" on either public health and safety

or on the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

2. The term "specific adverse impact" has the same meaning as in GC Section 65589.5(d)(2): "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete" and does not include (1) inconsistency with the zoning ordinance or general plan land use designation or (2) the eligibility to claim a welfare exemption under Revenue and Taxation Code Section 214(g).

3. The building official may consult with and be assisted by planning staff and others as necessary in making a finding of specific, adverse impact."

PART XV: Development Code Table 2.02-1 (Review Matrix) shall be amended to read as follows:

R = Advisory (Recommending) Authority
X = Approving Authority
A = Appeal Authority

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	*Reviewing Authorities [4]*									
	PLANNING DIRECTOR	*City Engineer*	*Building Official*	*Zoning Administrator [2]*	*Development Advisory Board*	*Historic Preservation Subcommittee [2] [11]*	*Historic Preservation Commission [11]*	*Planning Commission [11]*	*City Council [11]*	*Ontario International Airport Authority*
A. LEGISLATIVE ACTIONS										
1. Airport Land Use Compatibility Plan and Amendments **[1]** (Ref: ODC Section 4.01.010)								**R**	**X**	
2. Development Agreements **[1]** (Ref: ODC Section 4.01.015)								**R**	**X**	
3. Development Code Amendments **[1]** (Ref: ODC Section 4.01.020)								**R**	**X**	
4. Amendment to the Policy Plan (General Plan) Component of The Ontario Plan **[1]** (Ref: ODC Section 4.01.025)								**R**	**X**	
5. Planned Unit Developments and Amendments **[1]** (Ref: ODC Section 4.01.030)								**R**	**X**	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	*Reviewing Authorities [4]*									
	PLANNING DIRECTOR	*City Engineer*	*Building Official*	*Zoning Administrator [2]*	*Development Advisory Board*	*Historic Preservation Subcommittee [2] [11]*	*Historic Preservation Commission [11]*	*Planning Commission [11]*	*City Council [11]*	*Ontario International Airport Authority*
6. Specific Plans and Amendments **[1]** (Ref: ODC Section 4.01.035)								**R**	**X**	
7. Williamson Act Contract Cancellations **[1]** (Ref: GC Section 51200 et seq.)								**R**	**X**	
8. Zone Changes **[1]** (Ref: ODC Section 4.01.040)								**R**	**X**	
B. DISCRETIONARY PERMITS AND ACTIONS										
~~**1.** Administrative Exceptions (Ref: ODC Section 4.02.020.C)~~				~~**X**~~				~~**A**~~	~~**A**~~	
2. Billboard Relocation Agreements **[1]** (Ref: ODC Section 4.02.010)								**R**	**X**	
3. Conditional Use Permits (Ref: ODC Section 4.02.015)										
a. Hotels, Motels and Residence Inns **[1]**								**R**	**X**	
b. Use established in conjunction with a Development Plan **[1]**					**R**			**X**	**A**	
c. Use established within an existing structure **[1]**				**X**				**A**	**A**	
d. Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**								**X**	**A**	
e. Revocation due to abandonment of use per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**				**X**				**A**	**A**	
4. Density Bonus and Other Incentives per ODC Section 6.01.010.G (Density Bonus and Other Incentives) **[1]**								**R**	**X**	
5. Development Plans (Ref: ODC Section 4.02.025)										
a. Residential developments totaling 5 or more dwelling units or the development of 3 or more dwelling units on a single lot or parcel					**R**			**X**	**A**	
b. Commercial developments, and developments in the CIV, OS-R, OS-C and UC zoning districts, greater than 500 SF in area					**X**			**A**	**A**	
c. Industrial developments equal to or less than 0.45 FAR					**X**			**A**	**A**	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	***Reviewing Authorities [4]***									
	PLANNING DIRECTOR	***City Engineer***	***Building Official***	***Zoning Administrator [2]***	***Development Advisory Board***	***Historic Preservation Subcommittee [2] [11]***	***Historic Preservation Commission [11]***	***Planning Commission [11]***	***City Council [11]***	***Ontario International Airport Authority***
d. Industrial developments exceeding 0.45 FAR					**R**			**X**	**A**	
e. Wireless telecommunications facilities pursuant to Section 5.03.415 (Wireless Telecommunications Facilities) of this Development Code										
(1) Tier 2 facilities					**X**			**A**	**A**	
(2) Tier 3 facilities **[1]**					**R**			**X**	**A**	
f. All others					**X**			**A**	**A**	
6. Extensions of Legal Nonconforming Status **[1]** (Ref: ODC Section 4.02.030)				**X**				**A**	**A**	
~~**7.** Fair Housing and Reasonable Accommodation (Ref: ODC Section 4.02.035)~~				~~**X**~~				~~**A**~~	~~**A**~~	
8. Historic Preservation										
a. Certificates of Appropriateness (Ref: ODC Section 4.02.050)										
(1) Designated Historic Landmarks and Contributors, and Architectural Conservation Areas; and Demolition of an Historic Resource **[1]**						**R**	**X**		**A**	
(2) Deferral of Replacement Structure **[1]**						**R**	**X**		**A**	
(3) Eligible Historic Resources **[1]**						**X**	**A**		**A**	
(4) Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**						**R**	**X**		**A**	
(5) Waivers for Minor Improvements	**X**					**A[6]**	**A[6]**			
b. Certificates of Economic Hardship **[1]** (Ref: ODC Section 4.02.055) **[1]**						**R**	**X**		**A**	
c. Certificates of Economic Hardship—Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**						**R**	**X**		**A**	
d. Conservation Plans (Ref: ODC Section 4.02.060)						**X**	**A**		**A**	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	***Reviewing Authorities [4]***									
	PLANNING DIRECTOR	***City Engineer***	***Building Official***	***Zoning Administrator [2]***	***Development Advisory Board***	***Historic Preservation Subcommittee [2] [11]***	***Historic Preservation Commission [11]***	***Planning Commission [11]***	***City Council [11]***	***Ontario International Airport Authority***
e. Historic Resource Tiering (Ref: ODC Section 4.02.040), including Rescinding or Amending Status (Ref: ODC Section 4.02.045)						**X**	**A**		**A**	
f. Local Historic Landmark and Local District Designations, and Architectural Conservation Areas (Ref: ODC Section 4.02.040), including Rescinding or Amending Status (Ref: ODC Section 4.02.045)						**R**	**R**		**X**	
g. Mills Act Contracts (Ref: ODC Section 4.02.065)						**R**	**R**		**X**	
h. Mills Act Cancellations **[1]** (Ref: ODC Section 4.02.065)						**R**	**R**		**X**	
i. Addition/Removal of Resources to/from the Ontario Register (Ref: ODC Section 4.02.045)										
(1) At the request of the property owner, or upon City initiation if the most recently prepared Historic Resource Survey evaluating the resource is more than 5 years old.						**X**	**A**		**A**	
(2) Loss of all historic and/or cultural significance due to a catastrophe causing a loss of integrity, or due to extensive legally performed alterations performed after the property was initially surveyed.	**X**						**A**		**A**	
9. Interpretations and Land Use Determinations (Ref: ODC Section 1.02.010)				**X**				**A**	**A**	
10. Master Plans and Amendments **[1]** (Ref: ODC Section 4.02.070)								**R**	**X**	
11. Minor Variances (Ref: ODC Section 4.02.020.D)				**X**				**A**	**A**	
12. Nonconforming Structure Reconstruction **[1]** (Ref: ODC Section 3.01.020)								**X**	**A**	
13. Parking Reduction (Ref: ODC Section 6.03.025)								**X**	**A**	
14. Sign Programs (Ref: ODC Section 4.02.075)	**X**							**A**	**A**	
15. Specific Plan Minor Amendments (Ref: ODC Section 4.02.080)	**X**							**A**	**A**	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	*Reviewing Authorities [4]*									
	PLANNING DIRECTOR	*City Engineer*	*Building Official*	*Zoning Administrator [2]*	*Development Advisory Board*	*Historic Preservation Subcommittee [2] [11]*	*Historic Preservation Commission [11]*	*Planning Commission [11]*	*City Council [11]*	*Ontario International Airport Authority*
16. Stays of Permit Approval Time Limit (Ref: ODC Section 2.02.025.A.8)				**X[5]**	**X[5]**	**X[5]**	**X[5]**	**X[5]**	**X[5]**	
17. Subdivisions										
a. Lot Merger (Merger of Contiguous Parcels) **[1]** (Ref: ODC Section 4.02.085)					**R**			**X**	**A**	
b. Reversions to Acreage **[1]** (Ref: ODC Section 4.02.090)					**R**			**X**	**A**	
c. Tentative Tract and Parcel Maps, and Vesting Maps **[1]** (Ref: ODC Section 4.02.095)					**R**			**X**	**A**	
d. Tentative Tract and Parcel Map Time Extensions (Ref: ODC Section 2.02.025.A.3 & 4)					**R**			**X**	**A**	
18. Time Extensions, excepting tentative subdivision maps (Ref: ODC Section 2.02.025)	**X**							**A**	**A**	
19. Variances (Ref: ODC Section 4.02.020.E)										
a. Homeowner **[1]**				**X**				**A**	**A**	
b. Other **[1]**					**R**			**X**	**A**	
C. MINISTERIAL (ADMINISTRATIVE) PERMITS AND DECISIONS										
1. Administrative Exceptions (Ref: ODC Section 4.02.020.C)	**X**							**A**	**A**	
2. Administrative Use Permits (Ref: ODC Section 4.03.015)	**X**									
3. Airport Land Use Compatibility Plan (ALUCP) Interagency Reviews **[7]** (Ref: ALUCP)	**X**								**A[8]**	
4. Business License - Zoning/Land Use Compliance (Ref: OMC 3-1.129 (Zoning Compliance)	**X**							**A**	**A**	
5. Development Applications within the ONT zoning district	**X**									
6. Landscape and Irrigation Plans (Ref. ODC Section 6.05.005)	**X**							**A**	**A**	
7. Off-Site (Public) Improvement Plans (Ref: ODC Section 6.08.040)		**X**						**A**	**A**	
8. Other Plan Checks required by this Development Code	**X**							**A**	**A**	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	*Reviewing Authorities [4]*									
	PLANNING DIRECTOR	*City Engineer*	*Building Official*	*Zoning Administrator [2]*	*Development Advisory Board*	*Historic Preservation Subcommittee [2] [11]*	*Historic Preservation Commission [11]*	*Planning Commission [11]*	*City Council [11]*	*Ontario International Airport Authority*
9. Shopping Cart Retention Plans (Ref: ODC Section 6.11.020)	X							A	A	
10. Sign Plans (Ref: ODC Section 4.03.020)	X							A	A	
11. Single-Family Two-Unit Developments (Ref: ODC Section 5.03.403)	X							A	A	
12. Subdivisions										
a. Certificates of Compliance (Ref: ODC Section 4.03.025)		X						A	A	
b. Final Tract and Parcel Maps, and Vesting Maps (Ref: ODC Section 4.03.030)									X	
c. Lot Line Adjustments (Ref: ODC Section 4.03.035)		X						A	A	
d. Map Corrections and Amendments (Ref: ODC Section 4.03.040)		X						A	A	
e. Street Address Numbering (Ref. ODC Section 6.06.010)			X					A	A	
f. Street Name Assignment (Ref. ODC Section 6.06.010)	X							A	A	
g. Subdivision Improvement Agreement (Ref: ODC Section 6.08.040.G)		X						A	A	
h. Urban Lot Split (Ref: ODC Section 6.08.060)		X						A	A	
13. Tier 1 wireless telecommunications facility pursuant to ODC Section 5.03.420 (Wireless Telecommunications Facilities)				X				A	A	
14. Wall, Fence, and Obstructions Plans (Ref. ODC Section 6.02.005)	X							A	A	
15. Fair Housing and Reasonable Accommodation (Ref: ODC Section 4.02.035)	X							A	A	
D. ENVIRONMENTAL DETERMINATIONS AND ACTIONS										
1. Environmental Impact Reports (EIRs) (Ref: CCR Section 15080 et seq.)								X[3]	X[3]	
2. Exempt Projects (Ref: CCR Section 15300 et seq.)	X[3]			X[3]	X[3]	X[3]	X[3]	A	A	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	***Reviewing Authorities [4]***									
	PLANNING DIRECTOR	***City Engineer***	***Building Official***	***Zoning Administrator [2]***	***Development Advisory Board***	***Historic Preservation Subcommittee [2] [11]***	***Historic Preservation Commission [11]***	***Planning Commission [11]***	***City Council [11]***	***Ontario International Airport Authority***
3. Ministerial Projects (Ref: CCR Section 15268)	**Ministerial projects are exempt from the requirements of CEQA [10]**									
4. Negative Declarations (NDs) and Mitigated Negative Declarations (MNDs) (Ref: CCR Section 15070 et seq.)				**X[3]**	**X[3]**	**X[3]**	**X[3]**	**X[3]**	**X[3]**	
5. Addendums to previously certified EIRs and previously adopted NDs and MNDs (Ref: CCR Section 15164)				**X[3]**	**X[3]**	**X[3]**	**X[3]**	**X[3]**	**X[3]**	
6. Environmental review for projects located within the ONT zoning district **[9]**										**X**

Notes:

[1] A public hearing is required pursuant to the procedures set forth in Division 2.03 (Public Hearings) of this Development Code; however, public notification shall not be required for Development Advisory Board or Historic Preservation Subcommittee hearings when acting in the capacity of an Advisory Authority.

[2] The Approving Authority may refer any application subject to their review to the next higher authority (Appeal Authority).

[3] The Approving Authority for environmental determinations/actions shall be the same as the related legislative or discretionary actions. NDs and MNDs, and Addendums to previously certified EIRs, and previously adopted NDs or MNDs, which are not associated with, or are independent of, legislative or discretionary actions, shall be subject to Development Advisory Board review and adoption. EIRs that are not associated with, or are independent of, legislative or discretionary actions shall be subject to Planning Commission review and certification.

[4] An application submitted for concurrent review and action with another application, action or decision requiring review and action by a higher Reviewing Authority may be subject to concurrent review and action by that higher Reviewing Authority upon their request.

[5] The Approving Authority responsible for issuing a "Stay of Permit Approval Time Limit" pursuant to Section 2.02.025 (Projects Involving Pending Litigation) of the Development Code, shall be the same as for the related application, action or decision.

[6] An appeal of an Historic Preservation—Certificate of Appropriateness—Waiver shall be considered by the Historic Preservation Subcommittee, except that an Historic Preservation—Waiver for an Historic Landmark shall be considered by the Historic Preservation Commission

[7] Refer to the ALUCP for procedures for application processing and administration, and appeals processing.

[8] Appeal shall be subject to review by the Mediation Board established pursuant to ALUCP Section 4.

[9] Pursuant to the Joint Powers Authority agreement between the City of Ontario and the County of San Bernardino, the Ontario International Airport Authority shall be the lead agency.

[10] Ministerial projects are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15268 of the CEQA Guidelines. The following projects or actions shall be deemed ministerial:

- *Administrative Exceptions;*
- *Administrative Use Permit issuance;*
- *ALUCP inter agency reviews;*

- *Building permit issuance;*
- *Business license issuance;*
- *Encroachment permit issuance;*
- *Final subdivision map approval;*
- *Individual utility service connection and disconnection approval;*
- *Landscape and irrigation plan approval;*
- *Lot Line Adjustment approval;*
- *Public improvement plan approval;*
- *Shopping cart retention plan approval;*
- *Sign Plan approval;*
- *Single-Family Two-Unit Developments;*
- *Street address number issuance;*
- *Subdivision Improvement Agreement approval;*
- *Subdivision map corrections and amendments approval;*
- *Temporary Use Permit issuance;*
- *Tier 1 wireless telecommunications facility approval; ~~and~~*
- *Urban Lot Splits; and*
- *Wall and/or fence plan approval.*

[11] Applications that do not require a public Hearing pursuant to Note 1, above, may be reviewed and acted upon under the "Consent Calendar" portion of the Approving Authority meeting agenda.

PART XVI: Development Code Table 2.03-1 (Notification Matrix) shall be amended to read as follows:

Table 2.03-1: Notification Matrix

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	NOT REQUIRED	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
A. LEGISLATIVE ACTIONS				
1. Airport Land Use Compatibility Plan and Amendments **[1]** (Ref: ODC Section 4.01.010)		**X**	**X**	**X**
2. Development Agreements **[1]** (Ref: ODC Section 4.01.015)		**X**	**X**	**X**
3. Development Code Amendments **[1]** (Ref: ODC Section 4.01.020)				**X**
4. Amendment to the Policy Plan (General Plan) Component of The Ontario Plan **[1]** (Ref: ODC Section 4.01.025)		**X**	**X**	**X**
5. Planned Unit Developments and Amendments **[1]** (Ref: ODC Section 4.01.030)		**X**	**X**	**X**

Table 2.03-1: Notification Matrix

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	NOT REQUIRED	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
6. Specific Plans and Amendments **[1]** (Ref: ODC Section 4.01.035)		X	X	X
7. Williamson Act Contract Cancellations **[1]** (Ref: GC Section 51200 et.seq.)		X	X	X
8. Zone Changes **[1]** (Ref: ODC Section 4.01.040)		X	X	X
B. DISCRETIONARY PERMITS AND ACTIONS				
~~**1.** Administrative Exceptions (Ref: ODC Section 4.02.020.C)~~	~~X~~			
2. Billboard Relocation Agreements **[1]** (Ref: ODC Section 4.02.010)	X			
3. Conditional Use Permits (Ref: ODC Section 4.02.015)				
a. Hotels, Motels and Residence Inns **[1]**		X	X	
b. Use established in conjunction with a Development Plan **[1]**		X	X	
c. Use established within an existing structure **[1]**		X	X	
d. Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**		X	X	
e. Revocation due to abandonment of use per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**		X	X	
4. Density Bonus and Other Incentives per ODC Section 6.01.010.G (Density Bonus and Other Incentives) **[1]**		X	X	
5. Development Plans (Ref: ODC Section 4.02.025)				
a. Residential developments totaling 5 or more dwelling units or the development of 3 or more dwelling units on a single lot or parcel		X		
b. Commercial developments, and developments in the CIV, OS-R, OS-C and UC zoning districts, greater than 500 SF in area		X		

Table 2.03-1: Notification Matrix

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	NOT REQUIRED	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
c. Industrial developments equal to or less than 0.45 FAR		X		
d. Industrial developments exceeding 0.45 FAR		X		
e. Wireless telecommunications facilities pursuant to Section 5.03.415 (Wireless Telecommunications Facilities) of this Development Code				
(1) Tier 2 facilities		X		
(2) Tier 3 facilities **[1]**		X	X	
f. All others		X		
6. Extensions of Legal Nonconforming Status **[1]** (Ref: ODC Section 4.02.030)		X	X	
~~**7.** Fair Housing and Reasonable Accommodation Ref: ODC Section 4.02.035)~~	~~X~~			
8. Historic Preservation				
a. Certificates of Appropriateness (Ref: ODC Section 4.02.050)				
(1) Designated Historic Landmarks and Contributors, and Architectural Conservation Areas; and Demolition of an Historic Resource **[1]**		X	X	
(2) Deferral of Replacement Structure **[1]**		X	X	
(3) Eligible Historic Resources **[1]**		X	X	
(4) Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**		X	X	
(5) Waivers and Minor Improvements	X			
b. Certificates of Economic Hardship **[1]** (Ref: ODC Section 4.02.055)		X	X	
c. Certificates of Economic Hardship—Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**		X	X	

Table 2.03-1: Notification Matrix

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	NOT REQUIRED	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
d. Conservation Plans (Ref: ODC Section 4.02.060)		X		
e. Historic Resource Tiering (Ref: ODC Section 4.02.040), including Rescinding or Amending Status (Ref: ODC Section 4.02.045)	X			
f. Local Historic Landmark and Local District Designations, and Architectural Conservation Areas [Ref: ODC Section 4.02.040), including Rescinding or Amending Status (Ref: ODC Section 4.02.045)		X		
g. Mills Act Contracts (Ref: ODC Section 4.02.065)		X		
h. Mills Act Cancellations **[1]**		X	X	
i. Addition/Removal of Resources to/from the Ontario Register (Ref: ODC Section 4.02.045)				
(1) At the request of the property owner, or upon City initiation if the most recently prepared Historic Resource Survey evaluating the resource is more than 5 years old.	X			
(2) Loss of all historic and/or cultural significance due to a catastrophe causing a loss of integrity, or due to extensive legally performed alterations performed after the property was initially surveyed.	X			
9. Interpretations and Land Use Determinations (Ref: ODC Section 1.02.010)	X			
10. Master Plans and Amendments **[1]** (Ref: ODC Section 4.02.070)		X	X	X
11. Minor Variances **[5]** (Ref: ODC Section 4.02.020.D)		X	X	
12. Nonconforming Structure Reconstruction **[1]** (Ref: ODC Section 3.01.020)		X	X	
13. Parking Reduction (Ref: ODC Section 6.03.025)	X			
14. Sign Programs (Ref: ODC Section 4.02.075)	X			

Table 2.03-1: Notification Matrix

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	NOT REQUIRED	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
15. Specific Plan Minor Amendments (Ref: ODC Section 4.02.080)	X			
16. Stays of Permit Approval Time Limit (Ref: ODC Section 2.02.025.A.8)	X			
17. Subdivisions				
a. Lot Merger (Merger of Contiguous Parcels) **[1]** (Ref: ODC Section 4.02.085)		X	X	
b. Reversions to Acreage **[1]** (Ref: ODC Section 4.02.090)		X	X	
c. Tentative Tract and Parcel Maps, and Vesting Maps **[1]** (Ref: ODC Section 4.02.095)		X	X	
d. Tentative Tract and Parcel Map Time Extensions (Ref: ODC Section 2.02.025.A.3 & 4)		X		
18. Time Extensions, excepting tentative subdivision maps (Ref: ODC Section 2.02.025)	X			
19. Variances (Ref: ODC Section 4.02.020.E)				
a. Homeowner **[1]**		X	X	
b. Other **[1]**		X	X	
C. MINISTERIAL (ADMINISTRATIVE) PERMITS AND DECISIONS				
1. Administrative Exceptions (Ref: ODC Section 4.02.020.C)	X			
2. Administrative Use Permit (Ref: ODC Section 4.02.015)	X			
3. Airport Land Use Compatibility Plan (ALUCP) Interagency Reviews **[4]** (Ref: ALUCP)	X			
4. Fair Housing and Reasonable Accommodation Ref: ODC Section 4.02.035)	X			
5. Landscape and Irrigation Documentation Plans (Ref. ODC Section 6.05.015)	X			
6. Off-Site (Public) Improvement Plans (Ref: ODC Section 6.08.040)	X			
7. Sign Plans (Ref: ODC Section 4.03.020)	X			

Table 2.03-1: Notification Matrix

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	NOT REQUIRED	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
8. Single-Family Two-Unit Developments (Ref: ODC Section 5.03.403)	X			
9. Subdivisions				
a. Certificates of Compliance (Ref: ODC Section 4.03.025)	X			
b. Final Tract and Parcel Maps, and Vesting Maps (Ref: ODC Section 4.03.030)	X			
c. Lot Line Adjustments (Ref: ODC Section 4.03.035)	X			
d. Map Corrections and Amendments (Ref: ODC Section 4.03.040)	X			
e. Street Address Numbering (Ref. ODC Section 6.06.010)	X			
f. Street Name Assignment (Ref. ODC Section 6.06.010)	X			
g. Subdivision Improvement Agreement (Ref: ODC Section 6.08.040.G)	X			
h. Urban Lot Split (Ref: ODC Section 6.08.060)	X			
10. Tier 1 wireless telecommunications facility pursuant to ODC Section 5.03.415 (Wireless Telecommunications Facilities)	X			
D. ENVIRONMENTAL DETERMINATIONS AND ACTIONS				
1. Environmental Impact Reports (EIRs) (Ref: CCR Section 15080 et seq.)		X	X	X
2. Exempt Projects (Ref: CCR Section 15300 et seq.)	X			
3. Ministerial Projects (Ref: CCR Section 15268)	X			
4. Negative Declarations (NDs) and Mitigated Negative Declarations (MNDs) (Ref: CCR Section 15070 et seq.)		X		
5. Addendums to previously certified EIRs and previously adopted NDs and MNDs (Ref: CCR Section 15164)	X			

Notes:

[1] Public hearing notification is required pursuant to Section 2.03.010 (Public Hearing Notification) of this Division.

[2] Public notification shall not be required for Development Advisory Board or Historic Preservation Subcommittee hearings when acting in the capacity of an Advisory Authority.

[3] A Large Family Day Care facility shall require notification pursuant to Subparagraph 2.03.010.C.1.b(1) of this Division.

[4] Refer to the LA/Ontario International Airport Land Use Compatibility Plan for procedures for application processing and administration, and appeals processing.

[5] A Minor Variance shall require notification pursuant to Paragraph 4.02.020.D.3 (Application Filing, Processing and Hearing) of this Development Code.

PART XVII: Development Code Table 8.01-1 (Sign Regulation Matrix) shall be amended, revising the Special Regulations for Retail Sales Events in Commercial zoning districts (Subparagraph C.1.c[2]) and Industrial zoning districts (Subparagraph E.1.c[2]), to read as follows:

"[2] Retail Sales Events and Other Similar Business Events. A retail sales event or other similar business event permitted pursuant to Subparagraph 5.03.395.G.1 of this Development Code, may be allowed temporary signage for maximum of eight, one-week periods per calendar year ~~7 days duration during the specified "holiday sale periods," and during the specified "additional periods" for which a Temporary Use Permit has been issued~~, not to exceed a total of 56 days per calendar year. ~~Each "additional period" may be used consecutively with "holiday sale periods," not to exceed a total of 6 consecutive periods (42 consecutive days).~~

PART XVIII: Development Code Table 5.02-1 (Land Use Matrix) shall be amended as shown in Exhibit A: Portion of Table 5.02-1 (Land Use Matrix), of this attachment.

Exhibit A: Portion of Table 5.02-1 (Land Use Matrix)

		Residential Zoning Districts				Commercial Zoning Districts							Mixed Use Zoning Districts							Industrial Zoning Districts					Specialized Use and Overlay Zoning Districts								
													MU-1																			
2012 2022 NAICS Code	Land Uses, Activities, and Facilities Note: In addition to the requirements of this Table, properties located within the Airport Influence Area (AIA) established by the LA/Ontario International Airport Land Use Compatibility Plan (ALUCP) shall be subject to the land use requirements and standards of the ALUCP.	AR-2 & RE-2	RE-4 & LDR-5	MDR-11, 18 & 25	HDR-45	CS	CN	CC	CR	CCS	OL	OH	LUA-1	LUA-2N	LUA-2S	LUA-3	LUA-4	MU-2	MU-11	BP	IP	IL	IG	IH	AG	CIV	MHP	ONT	OS-C	OS-R	RC	UC	Additional Regulations
61	EDUCATION SERVICES																															
611	Educational Services																															
6115	Technical, ~~and~~ Trade, and Vocational Schools	---	---	---	---	---	---	C	C	---	---	C	---	---	---	---	C	C	C	C	C	C	C	---	---	C	---	---	---	---	---	---	
62	HEALTH CARE AND SOCIAL ASSISTANCE																															
623	Nursing and Residential Care Facilities																															
6239	Other Residential Care Facilities for 6 or fewer persons (includes facilities providing adult residential care services, which do not require a State-issued license to operate, such as but not limited to group homes for the hearing or visually impaired, ~~child group foster homes,~~ halfway group homes for ex-offenders, group homes for unwed mothers, group homes for the disabled without nursing care, ~~orphanages, etc~~ and sober living facilities.)	*P	*P	*P	*P	---	---	---	---	---	---	---	*P	*P	*P	*P	---	*P	*P	---	---	---	---	---	*P	---	---	---	---	---	---	---	* Allowed only in conjunction with an existing single-family residence. See Section 5.03.345 (Residential Care Facilities, Other—6 or Fewer Persons)
	~~• 6 or fewer persons~~	~~*P~~	~~*P~~	~~*P~~	~~*P~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~*P~~	~~*P~~	~~*P~~	~~*P~~	~~---~~	~~*P~~	~~*P~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~*P~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~* Allowed only in conjunction with an existing single-family residence.~~ ~~See Section 5.03.345 (Residential Care Facilities, Other—6 or Fewer Persons)~~
	~~• More than 6 persons~~	~~---~~	~~---~~	~~---~~	~~C~~	~~---~~	~~---~~	~~C~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~C~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~C~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	

RESOLUTION NO. PC22-019

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THE CITY COUNCIL APPROVE FILE NO. PDCA22-003, A DEVELOPMENT CODE AMENDMENT REVISING AND CLARIFYING CERTAIN PROVISIONS ADDRESSING [1] TIME EXTENSIONS FOR DISCRETIONARY PROJECTS (SECTION 2.02.025.B.2.C); [2] PUBLIC NOTIFICATION REQUIREMENTS FOR MINOR VARIANCES (SECTION 2.03.010); [3] ADMINISTRATIVE EXCEPTIONS (SECTIONS 4.02.020 AND 4.03.050, AND TABLES 2.02-1 AND 2.03-1); [4] SPECIFIC PLAN MINOR AMENDMENTS (SECTION 4.02.080); [5] HOUSING AND REASONABLE ACCOMMODATIONS (SECTIONS 4.02.035 AND 4.03.055, AND TABLES 2.02-1 AND 2.03-1); [6] ACCESSORY DWELLING UNITS (SECTION 5.03.010); [7] MINIMUM USEABLE REAR YARD AREA FOR SINGLE-FAMILY DWELLINGS (SECTION 5.03.011); [8] BANQUET FACILITIES ON HISTORIC PROPERTIES (SECTION 5.03.067); [9] RETAIL SALES EVENTS (SECTION 5.03.395 AND TABLE 8.01-1); [10] CONVERSION OF GARAGES TO ACCOMMODATE ACCESSORY DWELLING UNITS (SECTION 6.01.010); [11] DEFINITION FOR “GARAGE” (SECTION 9.01.010.G); [12] SINGLE-FAMILY TWO-UNIT PROJECTS AND URBAN LOT SPLITS, RESCINDING URGENCY ORDINANCE NO. 3200 AND ADOPTING STANDARDS (SECTIONS 5.03.403 AND 6.08.060, AND TABLES 2.02-1 AND 2.03-1); AND [13] CERTAIN ALLOWED LAND USES (TABLE 5.02-1), AND MAKING FINDINGS IN SUPPORT THEREOF.

WHEREAS, The City of Ontario ("Applicant") has initiated a Development Code Amendment, File No. PDCA22-003, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the City of Ontario Development Code (Ontario Municipal Code Title 9) provides the legislative framework for the implementation of The Ontario Plan, which establishes long term principals, goals, and policies for guiding the growth and development of the City in a manner that achieves Ontario' s vision, and promotes and protects the public health, safety, comfort, convenience, prosperity, and welfare of its citizens; and

WHEREAS, the Development Code Amendment is of citywide impact, affecting approximately 50 square miles (31,789 acres) of land, which is generally bordered by Benson Avenue and Euclid Avenue on the west; Interstate 10 Freeway, Eighth Street, and Fourth Street on the north; Etiwanda Avenue and Hamner Avenue on the east; and Merrill Avenue and the San Bernardino County/Riverside County boundary on the south; and

WHEREAS, certain clarifications and revisions to the City of Ontario Development Code are proposed, as follows:

(1) Provisions addressing time extension limits for discretionary projects (Development Code Section 2.02.025.B.2.c) will be revised to clarify that a total of three one-year time extensions may be granted for discretionary actions, such as Development Plans, Conditional Use Permits, and Variances. Time extensions for Tentative Tract and Parcel Maps will continue to be subject to the requirements of the State's Subdivision Map Act.

(2) Public notification requirements for Minor Variances will be added to clarify that the notification of the owners of any property that abuts a property with a proposed Minor Variance will be required to be notified of the proposed application (Development Code Section 2.03.010).

(3) Development Code provisions governing Specific Plan Minor Amendments will be retitled as "Specific Plan Minor Adjustments and Alterations" to help clarify the limited scope of the application (Development Code Section 4.02.080).

(4) The current Development Code provisions governing Administrative Exceptions are incorrectly classified as requiring a discretionary action and will, therefore, be rescinded. New provisions are proposed that correctly establish Administrative Exceptions as a ministerial action (Development Code Sections 4.02.020 and 4.03.050, and Tables 2.02-1 and 2.03-1).

(5) The current Development Code provisions governing Housing and Reasonable Accommodations are incorrectly classified as requiring a discretionary action and will, therefore, be rescinded. New provisions are proposed that correctly establish Housing and Reasonable Accommodations as a ministerial action (Development Code Sections 4.02.035 and 4.03.055, and Tables 2.02-1 and 2.03-1).

(6) Development Code provisions governing Accessory Dwelling Units (ADUs) will be modified, adding the requirements of Assembly Bill 345, which allows for the separate conveyance of an ADU separate from the primary residence if the ADU or primary dwelling was built or developed by a qualified nonprofit corporation and certain conditions are met (Development Code Section 5.03.010).

(7) The current Development Code provisions stipulating the minimum useable rear yard area for single-family dwellings will be simplified, requiring that a traditional single-family dwelling maintain a useable rear yard area having minimum dimension of 20 FT in any horizontal direction and small lot single-family dwelling maintain a useable rear yard having a minimum dimension of 10 FT in any horizontal direction (Development Code Section 5.03.011). This revision has been proposed eliminate a conflict with current ADU provisions.

(8) Current Development Code provisions governing banquet facilities established in conjunction with commercial structures on historic properties will be amended to clarify that no banquet facilities shall be allowed in the MU-1 (Downtown Mixed Use) zoning district (Development Code Section 5.03.067). This revision will eliminate an existing conflict with Development Code Table 5.02-1 (Land Use Matrix).

(9) Current Development Code provisions governing Retail Sales Events will be modified to clarify that the provisions also cover "other similar business events." Additionally, the current provisions that limit such events to the holiday sale periods of President's Day, Memorial Day, Independence Day, Labor Day, and four additional periods per year will be amended, eliminating the four stated holidays, and allowing a maximum of eight, one-week periods per calendar year (Development Code Section 5.03.395 and Table 8.01-1).

(10) Current Development Code provisions stipulating that no garage can be converted to another use unless a replacement garage is constructed on-site will be clarified to provide that a garage conversion that accommodates an ADU is exempt from the replacement garage requirement (Development Code section 6.01.010). This revision will eliminate a conflict with the Development Code's current ADU provisions, as well as a conflict with State law.

(11) The current Development Code definition for "garage" will be amended to clarify that a garage must be enclosed on all four sides (Development Code Section 9.01.010.G).

(12) Urgency Ordinance No. 3200 was adopted by the City Council on December 21, 2021, establishing standards for single-family two-unit projects and urban lot splits in accordance with State law (Senate Bill 9). This Development Code Amendment will rescind the urgency ordinance and adopt permanent standards to be included in the Development Code (Development Code Sections 5.03.403 and 6.08.060, and Tables 2.02-1 and 2.03-1).

(13) Amend provisions for certain allowed land uses, as follows (Development Code Table 5.02-1):

(a) Technical, Trade and Vocational Schools — Conditionally permit technical, trade and vocational schools in the IG (General Industrial) zoning district. This revision would allow for the location of technical, trade and vocational schools that specialize in education and training for industrial-related industries, such as motor vehicle fabrication, repair, maintenance, and customization; truck driving; forklift driving and operation; and other industrial activities

(b) Other Residential Care Facilities — Prohibit adult residential care facilities for more than 6 persons, which do not require a State-issued license to operate, such as but not limited to group homes for the hearing or visually impaired, halfway group

homes for ex-offenders, group homes for unwed mothers, group homes for the disabled without nursing care, and group sober living facilities; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"); and

WHEREAS, the Project is exempt from CEQA pursuant to a categorical exemption (listed in CEQA Guidelines Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

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

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, 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, which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on April 26, 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 administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) The Project is exempt from the requirements of the California Environmental Quality Act (CEQA) and the guidelines promulgated thereunder, pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the activity is covered by the "common sense exemption" (also known as the "general rule exemption") that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA; and

(3) The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2: ***Housing Element Compliance.*** The Project will be consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project furthers the purposes, principals, goals, and policies of the Housing Element, in that it will provide for urban lot splits and the construction of two-unit single-family development projects, and, under certain circumstances, provides for the conveyance of accessory dwelling units separate from the main dwelling, thereby further promoting alternate forms of home rental and fee-simple homeownership.

SECTION 3: ***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, 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 4: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) The proposed Development Code Amendment 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 Development Code Amendment will: (a) promote public participation and foster greater transparency in decision making as encouraged by The Ontario Plan; (b) serve to encourage pedestrian friendly, functional, and vibrant commercial development with a range of businesses, places to gather, and connectivity to the neighborhoods they serve, as promoted by Community Design Element CD2-3, Commercial Centers; and (c) provide for a variety of land uses and building types in our land use planning efforts that result in a complete community where residents at all stages of life, have a wide spectrum of choices of where they can live and recreate, as promoted by Land Use Element Policy LU1-6, Complete Community.

(2) The proposed Development Code Amendment would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City. The Development Code Amendment incorporates safeguards intended to ensure that the purposes of the Development Code are preserved; the project will not be contrary to or damage the public health, safety, convenience, or general welfare; the project will not result in any significant environmental impacts; and the project will be in full conformity with the Vision, City Council Priorities, and Policy Plan components of The Ontario Plan.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby RECOMMENDS THE CITY COUNCIL APPROVE the herein described Development Code Amendment, File No. PDCA22-003, amending the City of Ontario Development Code as stipulated in “Attachment A”, incorporated herein by this reference..

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify, and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East “B” Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 26th day of April 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. PC22-019, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on April 26, 2022, by the following roll call vote, to wit:

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

NOES: None

ABSENT: Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:
Development Code Amendment
File No. PDCA22-003;

PART I: Subparagraph B.2.c of Development Code Section 2.02.025 (Time Limits and Extensions) shall be amended to read as follows:

"**c.** A discretionary permit or action may be granted Time Extensions in one-year increments, not to exceed a total of three, one-year time extensions, excepting tentative subdivision maps, which shall be subject to the provisions of GC Section 66452.6."

PART II: Subparagraph C.1.b(1) of Development Code Section 2.03.010 (Public Hearing Notification) shall be amended to read as follows:

"**(1)** For Minor Variances, the area of notification shall include all properties having a property line common with the affected property; and"

PART III: Subsection D (Minor Variances) of Development Code Section 4.02.020 (Departures from Development Standards) shall be amended to read as follows:

C. Minor Adjustments and Alterations.

1. Purpose. Minor Adjustments and Alterations, like Variances, are intended to allow for departures from the strict application of the numerical development standards established by this Development Code, when their strict application would result in practical difficulties, unnecessary hardships, or results inconsistent with the general purpose of the development regulations. Minor Adjustments and Alterations, however, are determined to have a lesser (minor) measure of impact than Variances, due to the limited measure of adjustment allowed; therefore, requiring a modified review process.

2. Applicability.

a. Pursuant to Table 2.02-1 (Review Matrix) of this Development Code, the Approving Authority is hereby empowered to approve, approve in modified form, or deny a Minor Adjustments and Alterations, and to impose reasonable conditions upon the approval of the application.

b. Minor Adjustments and Alterations may be approved for:

(1) A reduction of up to 25 percent from minimum setback and separation requirements, excepting nonresidential setback requirements from property lines that are common with any residentially zoned property; or

(2) A 10 percent increase in the maximum height of structures.

c. A Minor Adjustments and Alterations shall not be approved for reductions in minimum lot size, lot coverage, lot dimension, landscape coverage, parking requirements, or for an increase in maximum density or floor area ratio.

3. Application Filing, Processing and Hearing.

a. A Minor Adjustments and Alterations shall be filed and processed pursuant to Division 2.02 (Application Filing and Processing) of this Development Code and the provisions of this Section.

b. The applicant and the owners of all properties having a property line common with the affected property shall be notified of the proposed Minor Adjustments and Alterations pursuant to Section 2.03.010 (Public Hearing Notification) of this Development Code. Furthermore, the notice shall state that a public hearing shall not be required unless requested by the applicant or an affected person.

c. A public hearing, if requested, shall be conducted pursuant to Division 2.03 (Public Hearings) of this Development Code.

d. If no public hearing is requested, the Zoning Administrator shall approve, approve in modified form, or deny a Minor Adjustments and Alterations no less than 10 days following distribution of the notice required by Subparagraph C.3.b, above.

4. Findings and Decision. A Minor Adjustments and Alterations shall be acted upon by the Approving Authority based upon the information provided in the submitted application, evidence presented in the Planning Department's written report, and testimony provided during the public hearing, only after considering and clearly establishing all of the below-listed findings, and giving supporting reasons for each finding. The application shall be denied if one or more of the below-listed findings cannot be clearly established.

a. The strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of the development regulations contained in this Development Code;

b. There are exceptional or extraordinary circumstances or conditions applicable to the property involved, or to the intended use of the property, that do not apply generally to other properties in the vicinity and in the same zoning district;

c. The strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties in the same zoning district;

d. The granting of the Minor Adjustments and Alterations will not be detrimental to the public health, safety, or welfare, or be materially injurious to properties or improvements in the vicinity.

e. The proposed Minor Adjustments and Alterations 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, and the purposes of any applicable specific plan or planned unit development, and the purposes of this Development Code.

5. Conditions of Approval.

a. In approving a Minor Variance, the Approving Authority may require certain safeguards and impose certain conditions established to ensure that the purposes of this Development Code are maintained; ensure that the project will not endanger the public health, safety or general welfare; ensure that the project will not result in any significant environmental impacts; ensure that the project will be in harmony with the area in which it is located; and ensure that the project will be in conformity with The Ontario Plan and any applicable specific and/or area plan(s).

b. All conditions or requirements authorized by this section are enforceable in the same manner and to the same extent as any other applicable requirement of this Development Code.

PART IV: Development Code Section 4.02.080 (Minor Specific Plan Amendments) shall be amended to read as follows:

"4.02.080: Specific Plan Minor Adjustments and Alterations

A. Purpose. The purpose of this Section is to establish a procedure by which minor departures from the strict application of the development standards and/or design guidelines established by a Specific Plan may be approved, provided the requested departure is in the interest of furthering the goals and policies of the affected Specific Plan and The Ontario Plan.

B. Applicability.

1. Pursuant to Table 2.02-1 (Review Matrix) of this Development Code, the Approving Authority is hereby empowered to approve, approve in modified form, or deny a Specific Plan Minor Adjustments and Alterations application, and to impose reasonable conditions upon the approval of the application.

2. The following constitute minor adjustments and/or alterations, not requiring a Specific Plan Amendment and/or update of the affected specific plan:

a. A net change of not more than 15 percent to the number of units within an individual residential area, provided the total number of units for the entire specific plan area does not exceed that established in the affected specific plan;

b. Adjustment of a residential planning area boundary, provided the total acreage of the affected area does not increase or decrease the total acreage stated in the affected specific plan by more than 15 percent;

c. Minor adjustments and/or alterations to landscape materials, wall materials, wall alignment, entry design, and streetscape design, which are consistent with the conceptual design set forth in the affected specific plan's development standards and design guidelines;

d. Minor adjustments and/or alterations to design guidelines, which are intended to be conceptual in nature, and are clearly intended to be flexible in implementation;

e. Other adjustments and/or alterations of a similar nature to those listed above, which are deemed minor by the Planning Director to be in keeping with the purpose and intent of the affected specific plan and are in conformance with The Ontario Plan; and

f. Adjustments in street alignments and dimensions that as deemed appropriate by the City Engineer, which are in keeping with the purpose and intent of the specific plan and are consistent with the purpose, principles, goals, and policies, of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan, provided the changes do not impact the sizing of master planned infrastructure,

C. Application Filing, Processing and Hearing. A Specific Plan Minor Amendment application shall be filed, processed, and acted upon pursuant to Division 2.02 (Application Filing and Processing) of this Development Code and the provisions of this Section. A noticed hearing pursuant to Division 2.03 (Public Hearings) of this Development Code shall not be required.

D. Findings and Decision. A Specific Plan Minor Adjustment and/or Alteration shall be acted upon by the Approving Authority based upon the information provided in the submitted application, evidence presented in the Planning Department's written report, and testimony provided during the public hearing, only after considering and clearly establishing all of the below-listed findings, and giving supporting reasons for each finding. The application shall be denied if one or more of the below-listed findings cannot be clearly established.

1. The proposed Specific Plan Minor Adjustment and/or Alteration 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, and the specific plan;

2. The proposed Specific Plan Minor Adjustment and/or Alteration is reasonable and beneficial, and in the interest of good planning practice; and

3. The proposed Specific Plan Minor Adjustment and/or Alteration will not adversely affect the harmonious relationship with adjacent properties and land uses."

PART V: Subsection C (Administrative Exceptions) of Development Code Section 4.02.020 (Administrative Exceptions, Minor Variances and Variances) shall be rescinded and all subsequent existing provisions of Development Code Section 4.02.020 shall be renumbered in correct alphanumeric order. Development Code Section 4.03.050 (Administrative Exceptions) shall be added to read as follows:

"4.03.050: Administrative Exceptions

A. Purpose. The Administrative Exception is hereby established for the purpose of granting minor departures from the strict application of certain numerical development standards established by this Development Code, when the departure would result in superior site, landscape, or architectural design features that could not otherwise be incorporated into a development project under the strict application of the development standards contained in this Development Code.

B. Applicability.

a. Pursuant to Table 2.02-1 (Review Matrix) of this Development Code, the Approving Authority is hereby empowered to approve, approve in modified form, or deny an Administrative Exception application, and to impose reasonable conditions upon the approval of the application.

b. Administrative Exceptions may be approved for reductions of up to 10 percent from:

(1) Minimum setback and separation requirements, excepting nonresidential setback requirements from property lines that are common with any residentially zoned property; and

(2) Off-street parking required for nonresidential land uses pursuant to Table 6.03-1 (Off-Street Parking Requirements).

c. An Administrative Exception shall not be approved for reductions from minimum lot size, lot dimensions, landscape coverage, or residential parking requirements, or for an increase in maximum density, floor area ratio, or the height of a structure.

C. Application Filing, Processing and Hearing.

1. An Administrative Exception shall be filed and processed pursuant to Division 2.02 (Application Filing and Processing) of this Development Code and the provisions of this Section.

2. A hearing shall not be required; however, the owners of all properties having a property line common with the affected property shall be notified of the proposed Administrative Exception pursuant to Section 2.03.010 (Public Hearing Notification) of this Development Code and shall be invited to comment on the application.

D. Findings and Decision. An Administrative Exception shall be acted upon by the Approving Authority based upon the information provided in the submitted application, evidence presented in the Planning Department's written report, and any comments received from property owners notified pursuant to Subparagraph C.3.b of this Section, only after considering and clearly establishing all of the below-listed findings, and giving supporting reasons for each finding. The application shall be denied if one or more of the below-listed findings cannot be clearly established.

1. The approval of the Administrative Exception is necessary to the production of a comprehensive development, incorporating an enhanced environment and architectural excellence (e.g., appropriate variety of structure placement and orientation opportunities, high quality architectural design, increased amounts of landscaping and open space, improved solutions to the design and placement of parking facilities, etc.) than would normally be possible under the strict application of the applicable development standards;

2. The approval of the Administrative Exception will allow for the inclusion of site, architectural, or landscape features that could not otherwise be incorporated into the design of the project under the strict application of the provisions of the applicable development standards; and

3. The approval of the Administrative Exception will not adversely affect the overall quality of development on the project site and will not adversely affect neighboring properties.

4. The proposed Administrative Exception 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, and the purposes of any applicable Specific Plan or Planned Unit Development, and the purposes of this Development Code.

E. Conditions of Approval.

1. In approving an Administrative Exception, the Approving Authority may require certain safeguards and impose certain conditions established to ensure that the purposes of this Development Code are maintained; ensure that the project will not endanger the public health, safety or general welfare; ensure that the project will not result in any significant environmental impacts; ensure that the project will be in harmony with

the area in which it is located; and ensure that the project will be in conformity with The Ontario Plan and any applicable specific and/or area plan(s).

2. All conditions of approval or requirements authorized by this Section are enforceable in the same manner and to the same extent as any other applicable requirement of this Development Code."

PART VI: Development Code Section 4.02.035 (Fair Housing and Reasonable Accommodations) shall be rescinded and Development Code Section 4.03.055 (Fair Housing and Reasonable Accommodations) shall be added to read as follows:

"4.03.055: Fair Housing and Reasonable Accommodations

A. Purpose. Pursuant to Federal and State fair housing laws, the purpose of this Section is to provide a procedure whereby exceptions from specific applications of this Development Code may be considered and properly evaluated in order to assure that no person is discriminated against on the basis of race, color, religion, sex, sexual orientation, family status, marital status, disability, national origin, source of income, or ancestry, by being denied an equal opportunity to use and enjoy a dwelling.

B. Applicability.

1. Pursuant to Table 2.02-1 (Review Matrix) of this Development Code, the Approving Authority is hereby empowered to approve, approve in modified form, or deny a Fair Housing and Reasonable Accommodation application and to impose reasonable conditions upon the approval of the application.

2. The Approving Authority may approve reasonable exceptions from the provisions of this Development Code, except that a Fair Housing and Reasonable Accommodation request shall not be approved that would allow the establishment of a land use that would not otherwise be allowed in the zoning district in which the affected property is located, or for increases in residential density.

C. Application Filing, Processing and Hearing. A Fair Housing and Reasonable Accommodation application shall be filed, processed, and heard pursuant to Division 2.02 (Application Filing and Processing) of this Development Code and the provisions of this Section.

D. Findings and Decision. A Fair Housing and Reasonable Accommodation request shall be acted upon by the Approving Authority based upon the information provided in the submitted application, evidence presented in the Planning Department's written report, and testimony provided during the public hearing, only after considering and clearly establishing all of the below-listed findings, and giving supporting reasons for each finding. The application shall be denied if one or more of the below-listed findings cannot be clearly established.

1. The persons who will use the subject property are protected under federal and state fair housing laws;

2. The requested exception is necessary to make specific housing available to a person who will occupy the subject property and who is protected under federal and state fair housing laws;

3. The requested exception will not impose an undo financial or administrative burden upon the City; and

4. The requested exception will comply with all applicable Building and Fire Codes and will not result in a fundamental alteration of the planning, zoning and development laws and procedures of the City.

E. Conditions of Approval.

1. In approving a Fair Housing and Reasonable Accommodation application, the Approving Authority may require certain safeguards and impose certain conditions established to ensure that the purposes of this Development Code are maintained; ensure that the project will not endanger the public health, safety or general welfare; ensure that the project will not result in any significant environmental impacts; ensure that the project will be in harmony with the area in which it is located; and ensure that the project will be in conformity with The Ontario Plan and any applicable specific and/or area plan(s).

2. All conditions of approval or requirements authorized by this Section are enforceable in the same manner and to the same extent as any other applicable requirement of this Development Code."

PART VII: Paragraphs C.11 (Qualified Buyer) and C.12 (Qualified Nonprofit Corporation) of Development Code Section 5.03.010 (Accessory Dwelling Units) shall be added to read as stated below. All subsequent existing provisions contained in Subsection C (Definitions) shall be renumbered in correct alphanumeric order.

"**11**. Qualified Buyer. Persons and families of low or moderate income, as that term is defined in Health and Safety Code Section 50093.

12. Qualified Nonprofit Corporation. A nonprofit corporation organized pursuant to Internal Revenue Code Section 501(c)(3), which has received a welfare exemption under Revenue and Taxation Code Section 214.15, for properties intended to be sold to low-income families who participate in a special no-interest loan program."

PART VIII: Paragraph E.4 (No Separate Conveyance) of Section 5.03.010 (Accessory Dwelling Units) shall be amended to read as follows:

"**4.** No Separate Sale or Conveyance. An ADU or JADU may be rented; however, no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all other dwellings (in the case of a multiple-family lot), except as provided by Subsection H (Sale or Conveyance of ADUs Separate from the Primary Residence)of this Section."

PART VIX: Subsection H (Sale or Conveyance of ADUs Separate from the Primary Residence) of Section 5.03.010 (Accessory Dwelling Units) shall be added to read as follows:

"**H. Sale or Conveyance of ADUs Separate from the Primary Residence.** Notwithstanding Paragraph E.4 (No Separate Sale or Conveyance) of this Section, an ADU can be sold or conveyed separately from the primary residence to a qualified buyer; provided, all of the following conditions are met:

1. The ADU or the primary dwelling was built or developed by a qualified nonprofit corporation.

2. There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in Revenue and Taxation Code Section 402.1(10(a).

3. The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:

a. The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling that each qualified buyer occupies.

b. A repurchase option that requires the qualified buyer to first offer the purchase of the ADU or primary dwelling to the qualified nonprofit corporation should the buyer desire to later sell or convey the property.

c. A requirement that the qualified buyer occupy the ADU or primary dwelling as the buyer's principal residence.

d. Affordability restrictions on the sale and conveyance of the accessory dwelling unit or primary dwelling that ensures the ADU and primary dwelling will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.

e. Delineation of all areas of the property that are for the exclusive use of a cotenant. Each cotenant shall agree not to claim a right of occupancy to an area

delineated for the exclusive use of another cotenant, provided that the latter cotenant's obligations to each of the other cotenants have been satisfied.

f. Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, improvements, and any other costs, obligations, or liabilities associated with the property. This delineation shall only be binding on the parties to the agreement, and shall not supersede or obviate the liability, whether joint and several or otherwise, of the parties for any cost, obligation, or liability associated with the property where such liability is otherwise established by law or by agreement with a third party.

g. Procedures for dispute resolution among the parties before resorting to legal action.

4. A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Revenue and Taxation Code Section 480.3.

5. Notwithstanding the requirements of Paragraph G.2 (Utility Fees) of this Section, if requested by a utility providing service to the primary residence, the ADU shall be provided separate water, sewer, or electrical connection to that utility."

PART X: Paragraph D.14 of Development Code Section 5.03.011 (Accessory Dwelling Units) shall be amended to read as follows:

"**14.** A lot developed with an Accessory Residential Structure shall maintain a useable rear yard as follows:

a. A traditional single-family dwelling shall maintain a useable rear yard area having minimum dimension of 20 FT in any horizontal direction; and

b. A small lot single-family dwelling shall maintain a useable rear yard having a minimum dimension of 10 FT in any horizontal direction."

PART XI: Section 5.03.067 (Banquet Facilities - Historic Properties) shall be amended to read as follows:

"**A.** A banquet facility shall be allowed in all zoning districts within a commercial structure or on property designated as a local historic landmark, or a contributing structure within a designated historic district, established pursuant to Section 4.02.040 (Historic Preservation—Local Historic Landmark and Local District Designations, Historic Resource Tiering, and Architectural Conservations Areas) of this Development Code, and

shall be subject to the regulations therein during the life of the permit, except that no banquet facility shall be allowed in the MU-1 (Downtown Mixed Use) zoning district.

B. The minimum number of parking spaces required shall be provided pursuant to Division 6.03 (Off-Street Parking and Loading) of this Development Code. A parking demand study may be prepared by a qualified traffic consultant or engineer to support a reduction in the required number of parking spaces. The intent is to provide lower, flexible parking standards wherever possible and appropriate. Consideration shall be given to shared parking systems, on and off-street parking resources, compatibility with historic patterns of development, and the availability of mass transit resources.

C. Live entertainment shall be prohibited. Request for live entertainment shall require conditional use permit approval by the Zoning Administrator. Karaoke, DJs, live musical acts, and other similar forms of entertainment are considered live entertainment. Amplified prerecorded music may be permitted; however, the sound emitted from the premises shall not be audible beyond the property lines of the business establishment.

D. Alcohol beverage sales shall be allowed subject to the approval of a Conditional Use Permit issued pursuant to the requirements of Section 4.02.015 (Conditional Use Permits) and Section 5.03.025 (Alcoholic Beverage Sales) of this Development Code.

E. The applicant shall comply with all applicable building code regulations related to the change of use of the structure to a banquet facility."

PART XII: Subparagraph G.1 (Retail Sales Events) of Development Code Section 5.03.395 (Temporary and Interim Land Uses, Buildings, and Structures) shall be amended to read as follows:

"**1.** Retail Sales Events and Other Similar Business Events. Retail sales events and other similar business events, including but not limited to special outdoor sales, sidewalk sales, and parking lot sales, are subject to the following:

a. A retail sales event or other similar business event shall only be allowed in conjunction with a legally established business that has been operated for a period of at least 180 days prior to the retail sales event or other similar business event.

b. Retail sales events and other similar business events shall be limited to eight, one-week periods per calendar year, per business location. The one-week periods may be used consecutively, not to exceed a total of 56 days per calendar year.

c. The outdoor display of merchandise shall be restricted to an area directly adjacent to the business' exterior storefront; however, in the case of shopping centers, when it is not practical for the outdoor display area to be located directly adjacent to the business front, the sale area shall be located in an area as close as practically possible, to the business' exterior storefront.

d. The display of merchandise shall not impede pedestrian or vehicular circulation.

e. All merchandise, materials, signs, and debris shall be removed from the outdoor area by 9:00AM following the last day of the retail sales event."

PART XIII: Paragraph F.8 of Development Code Section 6.01.010 (Residential Zoning Districts) shall be amended to read as follows:

"**8.** Conversion of Garages. No garage shall be converted to another use unless a replacement garage is constructed on-site, which meets the minimum requirements of Division 6.03 (Off-Street Parking and Loading) of this Chapter, excepting a garage conversion to accommodate an Accessory Dwelling Units conforming to Section 5.03.010 (Accessory Dwelling Units) of this Development Code."

PART XIV: Subsection G (Definition of Words Beginning with the Letter "G") of Development Code Section 9.01.010 (Terms and Phrases) shall be amended, revising the definition of "garage" as follows:

"Garage. An accessory structure or portion of a main structure that is fully enclosed and designed for the shelter or storage of motor vehicles."

PART XV: Rescind Ordinance No. 3200, an urgency ordinance establishing standards for the development of Single-Family Two-Unit Projects and Urban Lot Splits, and Development Code Section 5.03.403 (Single-Family Two-Unit Projects) and Section 6.08.060 (Urban Lot Splits) shall be added to read as follows:

"Section 5.03.403: Single-Family Two-Unit Projects

A. Purpose. The purpose of this Section is to allow and appropriately regulate Single-Family Two-Unit Projects pursuant to GC Section 65852.21.

B. Definition. A "Two-Unit Project" means the development of two primary dwelling units or, if there is already a primary dwelling unit on the lot, the development of a second primary dwelling unit on a legally subdivided lot pursuant to the requirements of this Section.

C. Application.

1. Only individual property owners may apply for a Two-Unit Project. "Individual property owner" means a natural person holding fee title individually or jointly in the person's own name or a beneficiary of a trust that holds fee title. "Individual property owner" does not include any

corporation or corporate person of any kind (partnership, LP, LLC, C corporation, S corporation, etc.) except for a community land trust (as defined by Revenue and Taxation Code Section 402.1(a)(11)(C)(ii)) or a qualified nonprofit corporation (as defined by Section 214.15).

2. An application for a Two-Unit Project shall be submitted on a City application form.

3. The applicant shall obtain a certificate of compliance with the Subdivision Map Act for the lot and provide the certificate with the application.

4. Only a complete application will be considered. The City will inform the applicant in writing of any incompleteness within 30 days following application submittal.

5. The City may establish a fee to recover its costs for adopting, implementing, and enforcing this Section of the Development Code, pursuant to applicable law. The City council may establish and change the fee by resolution. The fee shall be paid with the application.

D. Approval.

1. An application for a Two-Unit Project is approved or denied ministerially, by the Planning Director, without discretionary review.

2. The ministerial approval of a Two-Unit Project does not take effect until the City has confirmed that all required documents have been recorded, such as the deed restriction and easements.

3. The approval shall require the owner and applicant to hold the City harmless from all claims and damages related to the approval and its subject matter.

4. The approval shall require the owner and applicant to reimburse the City for all costs of enforcement, including attorneys' fees and costs associated with enforcing the requirements of this Development Code.

E. Requirements. A Two-Unit Project shall satisfy all of the following requirements:

1. Subdivision Map Act (SMA) Compliance. The lot shall have been legally subdivided.

2. Zoning District. The lot is in a single-family residential zoning district. For the purpose of this Section, the term "single-family residential zoning district" shall mean the LRD-5 (Low Density Residential – 2.1 to 5.0 DU/Acre) zoning district.

3. Lot Location. Pursuant to the GC Section 65913.4(a)(6)(B) through (K), the lot to be split shall not be located on a site that is any of the following:

a. Prime farmland, farmland of statewide importance, or land that is zoned or designated for agricultural protection or preservation by the voters.

b. A wetland.

c. Within a very high fire hazard severity zone, unless the site complies with all fire-hazard mitigation measures required by existing building standards.

d. A hazardous waste site that has not been cleared for residential use.

e. Within a delineated earthquake fault zone, unless all development on the site complies with applicable seismic protection building code standards.

f. Within a 100-year flood hazard area, unless the site has either:

(1) Been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction; or

(2) Meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program.

g. Within a regulatory floodway, unless all development on the site has received a no-rise certification.

h. Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.

i. Habitat for protected species.

j. Land under conservation easement.

4. Not Historic. The lot shall not be a historic property or within a historic district that is included on the State Historic Resources Inventory. Nor may the lot be or be within a site that is designated by ordinance as a city or county landmark, or as a historic property or district.

5. No Impact on Protected Housing. The Two-Unit Project shall not require or include the demolition or alteration of any of the following types of housing:

a. Housing that is income-restricted for households of moderate, low, or very low income.

b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its policy power.

c. Housing, or a lot that used to have housing, that has been withdrawn from rental or lease under the Ellis Act (GC Sections 7060–7060.7) at any time in the 15 years prior to submission of the Urban Lot Split application.

d. Housing that has been occupied by a tenant in the last 3 years. The applicant and the owner of a property for which an Urban Lot Split is sought shall provide a sworn statement as to this fact with the application for the tentative parcel map. The City may conduct its own inquiries and investigation to ascertain the veracity of the sworn statement, including but not limited to, surveying owners of nearby properties; and the City may require additional evidence of the applicant and owner as necessary to determine compliance with this requirement.

6. Unit Standards.

a. *Quantity*.

(1) No more than two dwelling units of any kind may be built on a lot that results from an Urban Lot Split. For purposes of this paragraph, "unit" means any dwelling unit, including, but not limited to, a primary dwelling unit, a unit created pursuant to Section 5.03.403 (Two-Unit Projects) of this Development Code, or an ADU or JADU created pursuant to State law and Section 5.03.010 (Accessory Dwelling Unit) of this Development Code.

(2) A lot that is not created by an Urban Lot Split may have a Two-Unit Project as provided by this Section, plus any ADU or JADU that shall be allowed pursuant to State law and Section 5.03.010 (Accessory Dwelling Unit) of this Development Code.

b. *Unit Size*.

(1) The total floor area of each primary dwelling that is developed under this Section shall be a minimum of 500 SF in area and a maximum of 800 SF in area.

(2) A primary dwelling that was legally established on the lot prior to the Two-Unit Project and is larger than 800 SF is limited to

the lawful floor area at the time of the Two-Unit Project. The unit may not be expanded.

(3) A primary dwelling that was legally established prior to the Two-Unit Project and is smaller than 800 SF may be expanded to 800 SF after or as part of the Two-Unit Project.

c. *Height Restrictions*.

(1) On a lot that is larger than 2,000 SF, no new primary dwelling unit may exceed one-story or 16 FT in height, measured from grade to peak of the structure.

(2) On a lot that is smaller than 2,000 SF, no new primary dwelling unit may exceed two-stories or 22 FT in height, measured from grade to peak of the structure. Any portion of a new primary dwelling that exceeds one story in height shall be stepped back by an additional 5 FT from the ground floor; no balcony deck or other portion of the second story may project into the stepback.

(3) No rooftop deck is permitted on any new or remodeled dwelling or structure on a lot with a Two-Unit Project.

d. *Demo Cap*. The Two-Unit Project shall not involve the demolition of more than 25 percent of the existing exterior walls of an existing dwelling unless the site has not been occupied by a tenant in the last 3 years.

e. *Lot Coverage*. [Include a lot coverage standard here if desired.] This lot coverage standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at 800 SF each.

f. *Setback Requirements*.

(1) **Generally**. All setbacks shall conform to the minimum requirements of the underlying zoning district.

(2) **Exceptions**. Notwithstanding subpart E.6.f above:

(a) Existing Structures. No setback is required for an existing legally established structure or for a new structure that is constructed in the same location and to the same dimensions as an existing legally established structure.

(b) Cannot Preclude Construction of Two 800-SF Units and 4-FT Side/Rear Setbacks. The setbacks imposed

by the underlying zoning district shall yield to the degree necessary to avoid physically precluding the construction of up to two units on the lot or either of the two units from being at least 800 SF in floor area; but in no event may any structure be less than 4 FT from a side or rear property line.

(3) **Front Setback Area**. Notwithstanding any other part of this code, dwellings that are constructed under this Section shall conform to the front setback requirement of the underlying zoning district. The front setback area shall:

(a) Be kept free from all structures greater than 3 FT high; and

(b) Allow for vehicular and fire-safety access to the front structure.

g. *Parking*. Each new primary dwelling unit shall have at least one off-street parking space per unit within a fully enclosed garage having a minimum interior clear area measuring 10 FT in width and 20 FT in length, unless one of the following applies:

(1) The lot is located within one-half mile walking distance of either

(a) A corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours or

(b) A site that contains:

(i) An existing rail or bus rapid transit station,

(ii) A ferry terminal served by either a bus or rail transit service, or

(iii) The intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

(2) The site is located within one block of a permanently established car-share vehicle pickup/drop-off location.

h. *Architecture*.

(1) If there is a legal primary dwelling on the lot that was established before the Two-Unit Project, any new primary dwelling unit shall match the existing primary dwelling unit with respect to exterior materials, finishes, color, and dominant roof pitch. The dominant roof pitch means the slope shared by the largest portion of the roof.

(2) If there is no legal primary dwelling on the lot before the Two-Unit Project, and if two primary dwellings are developed on the lot, the dwellings shall match each other with respect to exterior materials, finishes, color, and dominant roof pitch. The dominant roof pitch means the slope shared by the largest portion of the roof.

(3) All exterior lighting shall be limited to down-lights.

(4) No window or door of a dwelling that is constructed on the lot may have a direct line of sight to an adjoining residential property. Decorative masonry block walls, dense landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.

(5) If any portion of a dwelling is less than 30 FT from a property line that is not a public street right-of-way line, then all windows and doors in that portion shall either be (for windows) clerestory with the bottom of the glass at least 6 FT above the finished floor, or (for windows and doors) utilize frosted or obscure glass.

i. *Walls, Fences, and Obstructions*.

(1) A lot comprising a Two-Unit Project shall be provided with 6-FT high decorative masonry block walls (reduced to 3 FT in height within front setback areas) at the following locations:

(a) Interior side and rear lot lines of each lot; and

(b) Street side property lines and along the rear property line of through lots, setback a minimum of 5 FT behind the sidewalk.

(2) The construction and maintenance of walls, fences, and other obstructions shall comply with the requirements of Chapter 6.0 (Development and Subdivision Regulations), (Division 6.02 (Walls, Fences, and Obstructions) of this Development Code.

j. *Landscaping*. A lot comprising a Two-Unit Project shall be fully landscaped and provided with a permanent automatic irrigation system pursuant to the requirements Chapter 6.0 (Development and Subdivision Regulations), Division 6.05 (Landscaping) of this Development Code.

k. *Nonconforming Conditions*. A Two-Unit Project shall be approved only if all nonconforming zoning conditions are corrected.

l. *Utilities*.

(1) Each primary dwelling unit on the resulting lots shall have its own direct utility connection to the utility service provider.

(2) Each primary dwelling unit on the resulting lots that is or that is proposed to be connected to an onsite wastewater treatment system shall first have a percolation test completed within the last 5 years or, if the percolation test has been recertified, within the last 10 years.

m. *Building & Safety*. All structures built on a lot comprising a Two-Unit Project shall comply with all current local building standards. A project under this Section is a change of use and subjects the whole of the lot, and all structures, to the City's current code.

7. Fire-Hazard Mitigation Measures. A lot in a very high fire hazard severity zone shall comply with each of the following fire-hazard mitigation measures:

a. It shall have direct access to a public street right-of-way with a paved street with a width of at least 40 FT. The public street right-of-way shall have at least two independent points of access for fire and life safety to access and for residents to evacuate.

b. All dwellings on the site shall comply with current fire code requirements for dwellings in a very high fire hazard severity zone.

c. All enclosed structures on the site shall have fire sprinklers.

d. All sides of all dwellings on the site shall be within a 150-FT hose-pull distance from either the public street right-of-way or of an onsite fire hydrant or standpipe.

e. If the lot does not have a swimming pool, the lot shall have a water reservoir of at least 5,000 gallons per dwelling, with fire-authority approved hookups compatible with fire-authority standard pump and hose equipment.

8. Separate Conveyance.

a. Primary dwelling units on the lot may not be owned or conveyed separately from each other.

b. Condominium airspace divisions and common interest developments are prohibited.

c. All fee interest in a lot and all dwellings on the lot shall be held equally and undivided by all individual property owners.

9. Regulation of Uses.

a. *Residential-Only*. No non-residential use is permitted on the lot.

b. *No Short Term Rentals*. No dwelling unit on a lot comprising a Two-Unit Project shall be rented for a period of less than 30 days.

c. *Owner Occupancy*. Unless the lot comprising a Two-Unit Project was formed by an Urban Lot Split, the individual property owners of a lot with a Two-Unit Project shall occupy one of the dwellings on the lot as the owners' principal residence and legal domicile.

10. Notice of Construction.

a. At least 30 business days before starting any construction of a Two-Unit Project, the property owner shall give written notice to all the owners of record of each of the adjacent residential parcels, which notice shall include the following information:

(1) Notice that construction has been authorized,

(2) The anticipated start and end dates for construction,

(3) The hours of construction,

(4) Contact information for the project manager (for construction-related complaints), and

(5) Contact information for the Building & Safety Department.

b. This notice requirement does not confer a right on the noticed persons or on anyone else to comment on the project before permits are issued. Approval is ministerial. Under state law, the City has no discretion in approving or denying a particular project under this Section. This notice requirement is purely to promote neighborhood awareness and expectation.

11. Deed Restriction. The owner shall record a deed restriction, acceptable to the City, that does each of the following:

a. Expressly prohibits any rental of any dwelling on the property for a period of less than 30 days.

b. Expressly prohibits any non-residential use of the lot.

c. Expressly prohibits any separate conveyance of a primary dwelling on the property, any separate fee interest, and any common interest development within the lot.

d. If the lot is not created by an Urban Lot Split: Expressly requires the individual property owners to live in one of the dwelling units on the lot as the owners' primary residence and legal domicile.

e. States that the property is formed by an Urban Lot Split and is therefore subject to the City's Urban Lot Split regulations, including all applicable limits on dwelling size and development.

F. Specific Adverse Impacts.

1. Notwithstanding anything else in this Section, the City may deny an application for a Two-Unit Project if the building official makes a written finding, based on a preponderance of the evidence, that the project would have a "specific, adverse impact" on either public health and safety or on the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

2. The term "specific adverse impact" has the same meaning as in GC Section 65589.5(d)(2): "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete" and does not include (1) inconsistency with the zoning ordinance or general plan land use designation or (2) the eligibility to claim a welfare exemption under Revenue and Taxation Code Section 214(g).

3. The building official may consult with and be assisted by planning staff and others as necessary in making a finding of specific, adverse impact.

G. Remedies. If a Two-Unit Project violates any part of this Development Code or any other legal requirement:

1. The buyer, grantee, or lessee of any part of the property has an action for damages or to void the deed, sale, or contract.

2. The City may:

a. Bring an action to enjoin any attempt to sell, lease, or finance the property.

b. Bring an action for other legal, equitable, or summary remedy, such as declaratory and injunctive relief.

c. Pursue criminal prosecution, punishable by imprisonment in county jail or state prison for up to one year, by a fine of up to $10,000, or both; or a misdemeanor.

d. Record a notice of violation.

e. Withhold any or all future permits and approvals.

f. Pursue all other administrative, legal, or equitable remedies that are allowed by law, this Development Code, or the City's Municipal Code."

"**Section 6.08.060: Urban Lot Splits**

A. **Purpose.** The purpose of this Section is to allow and appropriately regulate Urban Lot Splits pursuant to GC Section 66411.7.

B. **Definition**. An "Urban Lot Split" means the subdivision of an existing, legally subdivided lot into two lots pursuant to the requirements of this Section.

C. **Application**.

1. Only individual property owners may apply for an Urban Lot Split. "Individual property owner" means a natural person holding fee title individually or jointly in the person's own name or a beneficiary of a trust that holds fee title. "Individual property owner" does not include any corporation or corporate person of any kind (partnership, LP, LLC, C corporation, S corporation, etc.) except for a community land trust (as defined by Revenue and Taxation Code Section 402.1(a)(11)(C)(ii)) or a qualified nonprofit corporation (as defined by Section 214.15).

2. An application for an Urban Lot Split shall be submitted on a City application form. Only a complete application will be considered. The City will inform the applicant in writing of any incompleteness within 30 days following application submittal.

3. The City may establish a fee to recover its costs for adopting, implementing, and enforcing this Section of the Development Code, pursuant to applicable law. The City council may establish and change the fee by resolution. The fee shall be paid with the application.

D. Approval.

1. An application for a parcel map for an Urban Lot Split is approved or denied ministerially, by the City Engineer, without discretionary review.

2. A tentative parcel map for an Urban Lot Split shall be approved ministerially if it complies with all the requirements of this Section. The tentative parcel map may not be recorded. A final parcel map shall be approved ministerially as well, but not until the owner demonstrates that all required documents have been recorded, such as the deed restriction and easements. The tentative parcel map shall expire 3 months following approval.

3. The approval shall require the owner and applicant to hold the City of Ontario harmless from all claims and damages related to the approval and its subject matter.

4. The approval shall require the owner and applicant to reimburse the City for all costs of enforcement, including attorneys' fees and costs associated with enforcing the requirements of this Development Code.

E. Requirements. An Urban Lot Split shall satisfy each of the following requirements:

1. Subdivision Map Act Compliance.

a. The Urban Lot Split shall conform to all applicable objective requirements of the Subdivision Map Act (GC Section 66410 et seq., "SMA"), including implementing requirements in this Development Code, except as otherwise expressly provided in this Section.

b. If an Urban Lot Split violates any part of the SMA, the City's subdivision regulations, including this Section, or any other legal requirement:

(1) The buyer or grantee of a lot that is created by the Urban Lot Split has all the remedies available under the SMA, including but not limited to an action for damages or to void the deed, sale, or contract.

(2) The City has all the remedies available to it under the SMA, including but not limited to the following:

(a) An action to enjoin any attempt to sell, lease, or finance the property.

(b) An action for other legal, equitable, or summary remedy, such as declaratory and injunctive relief.

(c) Criminal prosecution, punishable by imprisonment in county jail or state prison for up to one year, by a fine of up to $10,000, or both; or a misdemeanor.

(d) Record a notice of violation.

(e) Withhold any or all future permits and approvals.

c. Notwithstanding Section 66411.1 of the SMA, no dedication of rights-of-way or construction of offsite improvements is required for an Urban Lot Split.

2. Zoning District. The lot to be split is in a single-family residential zoning district. For purposes of this Section, the term "single-family residential zoning district" shall mean the LDR-5 (Low Density Residential – 2.1 to 5.0 DU/Acre) zoning district.

3. Lot Location. Pursuant to the GC Section 65913.4(a)(6)(B) through (K), the lot to be split shall not be located on a site that is any of the following:

a. Prime farmland, farmland of statewide importance, or land that is zoned or designated for agricultural protection or preservation by the voters.

b. A wetland.

c. Within a very high fire hazard severity zone, unless the site complies with all fire-hazard mitigation measures required by existing building standards.

d. A hazardous waste site that has not been cleared for residential use.

e. Within a delineated earthquake fault zone, unless all development on the site complies with applicable seismic protection building code standards.

f. Within a 100-year flood hazard area, unless the site has either:

(1) Been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction; or

(2) Meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program.

g. Within a regulatory floodway, unless all development on the site has received a no-rise certification.

h. Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.

i. Habitat for protected species.

j. Land under conservation easement.

4. Not Historic. The lot to be split shall not be a historic property or within a historic district that is included on the State Historic Resources Inventory. Nor may the lot be or be within a site that is designated by ordinance as a city or county landmark or as a historic property or district.

5. No Prior Urban Lot Split.

a. The lot to be split was not established through a prior Urban Lot Split.

b. The lot to be split is not adjacent to any lot that was established through a prior Urban Lot Split by the owner of the lot to be split or by any person acting in concert with the owner. For the purposes of this Section, the term “any person acting in concert with the owner” shall include any third-party that coordinates or assists the owners of two adjacent lots with their respective Urban Lot Splits.

6. No Impact on Protected Housing. The Urban Lot Split shall not require or include the demolition or alteration of any of the following types of housing:

a. Housing that is income-restricted for households of moderate, low, or very low income.

b. Housing that is subject to any form of rent or price control through a public entity’s valid exercise of its policy power.

c. Housing, or a lot that used to have housing, that has been withdrawn from rental or lease under the Ellis Act (GC Sections 7060–7060.7) at any time in the 15 years prior to submission of the Urban Lot Split application.

d. Housing that has been occupied by a tenant in the last 3 years. The applicant and the owner of a property for which an Urban Lot Split is sought shall provide a sworn statement as to this fact with the application for the tentative parcel map. The City may conduct its own inquiries and investigation to ascertain the veracity of the sworn statement, including but not limited to, surveying owners of nearby properties; and the City may require additional evidence of the

applicant and owner as necessary to determine compliance with this requirement.

7. Lot Size.

a. The lot to be split shall be at least 2,400 SF.

b. Each lot created by an Urban Lot Split shall be at least 1,200 SF.

c. Each lot created by an Urban Lot Split shall be between 60 percent and 40 percent of the original lot area.

8. Easements.

a. The owner shall enter into an easement agreement with each public-service provider to establish easements that are sufficient for the provision of public services and facilities to each of the resulting lots.

b. Each easement shall be shown on the parcel map.

c. Copies of the unrecorded easement agreements shall be submitted with the application. The easement agreements shall be recorded against the property before the final parcel map may be approved pursuant to subpart D.2 above.

9. Lot Access.

a. Each lot created by an Urban Lot Split shall adjoin a public street right-of-way.

b. Each lot created by an Urban Lot Split shall have frontage on the public street right-of-way of at least 20 FT.

10. Unit Standards.

a. *Quantity*. No more than two dwelling units of any kind may be built on a lot that results from an Urban Lot Split. For purposes of this paragraph, “unit” means any dwelling unit, including, but not limited to, a primary dwelling unit, a unit created pursuant to State law and Section 5.03.403 (Two-Unit Projects) of this Development Code, or an ADU or JADU created pursuant to Section 5.03.010 (Accessory Dwelling Unit) of this Development Code.

b. *Unit Size*.

(1) The total floor area of each primary dwelling that is developed on a lot resulting from an Urban Lot Split shall be a minimum of 500 SF in area and a maximum of 800 SF in area.

(2) A primary dwelling that was legally established prior to the Urban Lot Split and that is larger than 800 SF is limited to the lawful floor area at the time of the Urban Lot Split and shall not be expanded

(3) A primary dwelling that was legally established prior to the Urban Lot Split and is smaller than 800 SF may be expanded to a maximum of 800 SF after the Urban Lot Split.

c. *Height Restrictions*.

(1) On a resulting lot that is 2,000 SF or larger, no new primary dwelling unit may exceed one-story or 16 FT in height, measured from grade to peak of the structure.

(2) On a resulting lot that is smaller than 2,000 SF, no new primary dwelling unit may exceed two-stories or 22 FT in height, measured from grade to peak of the structure. Any portion of a new primary dwelling that exceeds one story in height shall be stepped back by an additional 5 FT from the ground floor; no balcony deck or other portion of the second story may project into the stepback.

(3) No rooftop deck is permitted on any new or remodeled dwelling or structure on a lot resulting from an Urban Lot Split.

d. *Lot Coverage*. Maximum lot coverage shall conform to the requirement of the underlying zoning district. This lot coverage standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at 800 SF each.

e. *Setback Requirements*.

(1) **Generally**. All setbacks shall conform to the minimum requirements of the underlying zoning district.

(2) **Exceptions**. Notwithstanding subpart E.10.e above:

(a) Existing Structures. No setback is required for an existing legally established structure or for a new structure that is constructed in the same location and to the same dimensions as an existing legally established structure.

(b) Cannot Preclude Construction of Two 800-SF Units and 4-FT Side/Rear Setbacks. The setbacks imposed by the underlying zoning district shall yield to the degree necessary to avoid physically precluding the

construction of up to two units on the lot or either of the two units from being at least 800 SF in floor area; but in no event may any structure be less than 4 FT from a side or rear property line.

(3) **Front Setback Area**. Notwithstanding any other part of this Development Code, dwellings that are constructed after an Urban Lot Split shall conform to the front setback requirement of the underlying zoning district. The front setback area shall:

(a) Be kept free from all structures greater than 3 FT high; and

(b) Allow for vehicular and fire-safety access to the front structure.

f. *Parking*. Each new primary dwelling unit shall have at least one off-street parking space per unit within a fully enclosed garage having a minimum interior clear area measuring 10 FT in width and 20 FT in length, unless one of the following applies:

(1) The lot is located within one-half mile walking distance of either

(a) A corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours or

(b) A site that contains:

(i) An existing rail or bus rapid transit station,

(ii) A ferry terminal served by either a bus or rail transit service, or

(iii) The intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

(2) The site is located within one block of a permanently established car-share vehicle pickup/drop-off location.

g. *Architecture*.

(1) If there is a legal primary dwelling on the lot that was established before the Urban Lot Split, any new primary dwelling unit shall match the existing primary dwelling unit with

respect to exterior materials, finishes, color, and dominant roof pitch. The dominant roof pitch means the slope shared by the largest portion of the roof.

(2) If there is no legal primary dwelling on the lot before the Urban Lot Split, and if two primary dwellings are developed on the lot, the dwellings shall match each other with respect to exterior materials, finishes, color, and dominant roof pitch. The dominant roof pitch means the slope shared by the largest portion of the roof.

(3) All exterior lighting shall be limited to down-lights.

(4) No window or door of a dwelling that is constructed on the lot may have a direct line of sight to an adjoining residential property. Decorative masonry block walls, dense landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.

(5) If a dwelling is constructed on a lot after an Urban Lot Split and any portion of the dwelling is less than 30 FT from a property line that is not a public street right-of-way line, then all windows and doors in that portion shall either be (for windows) clerestory with the bottom of the glass at least 6 FT above the finished floor, or (for windows and for doors) utilize frosted or obscure glass.

h. *Walls, Fences, and Obstructions*.

(1) Lots created as a result of an Urban Lot Split shall be provided with 6-FT high decorative masonry block walls (reduced to 3 FT in height within front setback areas) at the following locations:

(a) Interior side and rear lot lines of each lot; and

(b) Street side property lines and along the rear property line of through lots, setback a minimum of 5 FT behind the sidewalk.

(2) The construction and maintenance of walls, fences, and other obstructions shall comply with the requirements of Division 6.02 (Walls, Fences, and Obstructions) of this Chapter.

i. *Landscaping***.** Lots created as a result of an Urban Lot Split shall be fully landscaped and provided with a permanent automatic irrigation system pursuant to the requirements Division 6.05 (Landscaping) of this Chapter.

j. *Nonconforming Conditions*. An Urban Lot Split may be approved without requiring a legal nonconforming zoning condition to be corrected.

k. *Utilities*.

(1) Each primary dwelling unit on the resulting lots shall have its own direct utility connection to the utility service provider.

(2) Each primary dwelling unit on the resulting lots that is or that is proposed to be connected to an onsite wastewater treatment system shall first have a percolation test completed within the last 5 years or, if the percolation test has been recertified, within the last 10 years.

l. *Building & Safety*. All structures built on a lot resulting from an Urban Lot Split shall comply with all current local building standards. An Urban Lot Split is a change of use.

11. Fire-Hazard Mitigation Measures.

a. A lot in a very high fire hazard severity zone shall comply with each of the following fire-hazard mitigation measures:

(1) It shall have direct access to a public street right-of-way with a paved street with a width of at least 40 FT. The public street right-of-way shall have at least two independent points of access for fire and life safety to access and for residents to evacuate.

(2) All dwellings on the site shall comply with current Fire Code requirements for dwellings in a very high fire hazard severity zone.

(3) All enclosed structures on the site shall have fire sprinklers.

(4) All sides of all dwellings on the site shall be within a 150-FT hose-pull distance from either the public street right-of-way or of an onsite fire hydrant or standpipe.

(5) If the lot does not have a swimming pool, the lot shall have a water reservoir of at least 5,000 gallons per dwelling, with fire-authority approved hookups compatible with fire-authority standard pump and hose equipment.

b. Prior to submitting an application for an Urban Lot Split, the applicant shall obtain a certificate of compliance with all applicable fire-hazard mitigation measures pursuant to this subpart E.11. The City or its

authorized agent shall inspect the site, including all structures on the site, and certify as to its compliance. The certificate shall be included with the application. The applicant shall pay the City's costs for inspection. Failure to pay is grounds for denying the application.

12. Separate Conveyance.

a. On a lot created by an Urban Lot Split:

(1) Primary dwelling units cannot be owned or conveyed separately from each other.

(2) Condominium airspace divisions and common interest developments are prohibited.

(3) All fee interest in a lot and all dwellings on the lot shall be held equally and undivided by all individual property owners.

b. Separate conveyance of lots created by an Urban Lot Split is permitted. If dwellings or other structures (such as garages) on different lots are adjacent or attached to each other, the Urban Lot Split boundary may separate them for conveyance purposes if the structures meet Building Code safety standards and are sufficient to allow separate conveyance. If any attached structures span or will span the new lot line, the owner shall record appropriate CC&Rs, easements, or other documentation that is necessary to allocate rights and responsibility between the owners of the two lots.

13. Regulation of Uses**.**

a. *Residential-Only*. Nonresidential land uses shall be prohibited on any lot created by Urban Lot Split.

b. *No Short Term Rentals*. No dwelling unit on a lot that is created by an Urban Lot Split may be rented for a period of less than 30 days.

c. *Owner Occupancy*. The applicant for an Urban Lot Split shall sign an affidavit stating that the applicant intends to occupy one of the dwelling units on one of the resulting lots as the applicant's principal residence for a minimum of 3 years after the Urban Lot Split is approved.

14. Notice of Construction.

a. At least 30 business days prior to the starting any construction of a structure on a lot created by an Urban Lot Split, the property owner shall give written notice to all the owners of record of each of the

adjacent residential parcels, which notice shall include the following information:

(1) Notice that construction has been authorized,

(2) The anticipated start and end dates for construction,

(3) The hours of construction,

(4) Contact information for the project manager (for construction-related complaints), and

(5) Contact information for the Building & Safety Department.

b. This notice requirement does not confer a right on the noticed persons or on anyone else to comment on the project before permits are issued. The approval of an Urban Lot Split is ministerial and under state law, the City has no discretion in approving or denying a particular project under this Section. This notice requirement is purely to promote neighborhood awareness and expectation.

15. Deed Restriction. The owner shall record a deed restriction, acceptable to the City, that does each of the following:

a. Expressly prohibits any rental of any dwelling on the property for a period of less than 30 days.

b. Expressly prohibits any nonresidential land use of the lots created by the Urban Lot Split.

c. Expressly prohibits any separate conveyance of a primary dwelling on the property, any separate fee interest, and any common interest development within the lot.

d. States that the property is formed by an Urban Lot Split and is, therefore, subject to the City's Urban Lot Split regulations, including all applicable limits on dwelling size and development.

F. Specific Adverse Impacts.

1. Notwithstanding anything else in this Section, the City may deny an application for an Urban Lot Split if the building official makes a written finding, based on a preponderance of the evidence, that the project would have a "specific, adverse impact" on either public health and safety or on the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

2. The term “specific adverse impact” has the same meaning as in GC Section 65589.5(d)(2): “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete” and does not include (1) inconsistency with the zoning ordinance or general plan land use designation or (2) the eligibility to claim a welfare exemption under Revenue and Taxation Code Section 214(g).

3. The building official may consult with and be assisted by planning staff and others as necessary in making a finding of specific, adverse impact.”

PART XVI: Development Code Table 2.02-1 (Review Matrix) shall be amended to read as follows:

R = Advisory (Recommending) Authority
X = Approving Authority
A = Appeal Authority

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	*Reviewing Authorities* [4]									
	Planning Director	*City Engineer*	*Building Official*	*Zoning Administrator* [2]	*Development Advisory Board*	*Historic Preservation Subcommittee* [2] [11]	*Historic Preservation Commission* [11]	*Planning Commission* [11]	*City Council* [11]	*Ontario International Airport Authority*
A. LEGISLATIVE ACTIONS										
1. Airport Land Use Compatibility Plan and Amendments **[1]** (Ref: ODC Section 4.01.010)								**R**	**X**	
2. Development Agreements **[1]** (Ref: ODC Section 4.01.015)								**R**	**X**	
3. Development Code Amendments **[1]** (Ref: ODC Section 4.01.020)								**R**	**X**	
4. Amendment to the Policy Plan (General Plan) Component of The Ontario Plan **[1]** (Ref: ODC Section 4.01.025)								**R**	**X**	
5. Planned Unit Developments and Amendments **[1]** (Ref: ODC Section 4.01.030)								**R**	**X**	
6. Specific Plans and Amendments **[1]** (Ref: ODC Section 4.01.035)								**R**	**X**	
7. Williamson Act Contract Cancellations **[1]** (Ref: GC Section 51200 et seq.)								**R**	**X**	
8. Zone Changes **[1]** (Ref: ODC Section 4.01.040)								**R**	**X**	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]									
	Planning Director	City Engineer	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
B. DISCRETIONARY PERMITS AND ACTIONS										
1. Billboard Relocation Agreements **[1]** (Ref: ODC Section 4.02.010)								R	X	
2. Conditional Use Permits (Ref: ODC Section 4.02.015)										
a. Hotels, Motels and Residence Inns **[1]**								R	X	
b. Use established in conjunction with a Development Plan **[1]**					R			X	A	
c. Use established within an existing structure **[1]**				X				A	A	
d. Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**								X	A	
e. Revocation due to abandonment of use per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**				X				A	A	
3. Density Bonus and Other Incentives per ODC Section 6.01.010.G (Density Bonus and Other Incentives) **[1]**								R	X	
4. Development Plans (Ref: ODC Section 4.02.025)										
a. Residential developments totaling 5 or more dwelling units or the development of 3 or more dwelling units on a single lot or parcel					R			X	A	
b. Commercial developments, and developments in the CIV, OS-R, OS-C and UC zoning districts, greater than 500 SF in area					X			A	A	
c. Industrial developments equal to or less than 0.45 FAR					X			A	A	
d. Industrial developments exceeding 0.45 FAR					R			X	A	
e. Wireless telecommunications facilities pursuant to Section 5.03.415 (Wireless Telecommunications Facilities) of this Development Code										
(1) Tier 2 facilities					X			A	A	
(2) Tier 3 facilities **[1]**					R			X	A	
f. All others					X			A	A	
5. Extensions of Legal Nonconforming Status **[1]** (Ref: ODC Section 4.02.030)				X				A	A	
6. Historic Preservation										
a. Certificates of Appropriateness (Ref: ODC Section 4.02.050)										

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]									
	Planning Director	City Engineer	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
(1) Designated Historic Landmarks and Contributors, and Architectural Conservation Areas; and Demolition of an Historic Resource **[1]**						R	X		A	
(2) Deferral of Replacement Structure **[1]**						R	X		A	
(3) Eligible Historic Resources **[1]**						X	A		A	
(4) Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**						R	X		A	
(5) Waivers for Minor Improvements	X					A[6]	A[6]			
b. Certificates of Economic Hardship **[1]** (Ref: ODC Section 4.02.055) **[1]**						R	X		A	
c. Certificates of Economic Hardship—Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**						R	X		A	
d. Conservation Plans (Ref: ODC Section 4.02.060)						X	A		A	
e. Historic Resource Tiering (Ref: ODC Section 4.02.040), including Rescinding or Amending Status (Ref: ODC Section 4.02.045)						X	A		A	
f. Local Historic Landmark and Local District Designations, and Architectural Conservation Areas (Ref: ODC Section 4.02.040), including Rescinding or Amending Status (Ref: ODC Section 4.02.045)						R	R		X	
g. Mills Act Contracts (Ref: ODC Section 4.02.065)						R	R		X	
h. Mills Act Cancellations **[1]** (Ref: ODC Section 4.02.065)						R	R		X	
i. Addition/Removal of Resources to/from the Ontario Register (Ref: ODC Section 4.02.045)										
(1) At the request of the property owner, or upon City initiation if the most recently prepared Historic Resource Survey evaluating the resource is more than 5 years old.						X	A		A	
(2) Loss of all historic and/or cultural significance due to a catastrophe causing a loss of integrity, or due to extensive legally performed alterations performed after the property was initially surveyed.	X						A		A	
7. Interpretations and Land Use Determinations (Ref: ODC Section 1.02.010)				X				A	A	
8. Master Plans and Amendments **[1]** (Ref: ODC Section 4.02.070)								R	X	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]									
	Planning Director	City Engineer	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
9. Minor Adjustments and Alterations (Ref: ODC Section 4.02.020.D)				X				A	A	
10. Nonconforming Structure Reconstruction **[1]** (Ref: ODC Section 3.01.020)								X	A	
11. Parking Reduction (Ref: ODC Section 6.03.025)								X	A	
12. Sign Programs (Ref: ODC Section 4.02.075)	X							A	A	
13. Specific Plan Minor Adjustments and Alterations (Ref: ODC Section 4.02.080)	X							A	A	
14. Stays of Permit Approval Time Limit (Ref: ODC Section 2.02.025.A.8)				X[5]	X[5]	X[5]	X[5]	X[5]	X[5]	
15. Subdivisions										
a. Lot Merger (Merger of Contiguous Parcels) **[1]** (Ref: ODC Section 4.02.085)					R			X	A	
b. Reversions to Acreage **[1]** (Ref: ODC Section 4.02.090)					R			X	A	
c. Tentative Tract and Parcel Maps, and Vesting Maps **[1]** (Ref: ODC Section 4.02.095)					R			X	A	
d. Tentative Tract and Parcel Map Time Extensions (Ref: ODC Section 2.02.025.A.3 & 4)					R			X	A	
16. Time Extensions, excepting tentative subdivision maps (Ref: ODC Section 2.02.025)	X							A	A	
17. Variances (Ref: ODC Section 4.02.020.E)										
a. Homeowner **[1]**				X				A	A	
b. Other **[1]**					R			X	A	
C. MINISTERIAL (ADMINISTRATIVE) PERMITS AND DECISIONS										
1. Administrative Exceptions (Ref: ODC Section 4.02.020.C)	X							A	A	
2. Administrative Use Permits (Ref: ODC Section 4.03.015)	X									
3. Airport Land Use Compatibility Plan (ALUCP) Interagency Reviews **[7]** (Ref: ALUCP)	X								A[8]	
4. Business License - Zoning/Land Use Compliance (Ref: OMC 3-1.129 (Zoning Compliance)	X							A	A	
5. Development Applications within the ONT zoning district	X									
6. Landscape and Irrigation Plans (Ref. ODC Section 6.05.005)	X							A	A	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]									
	Planning Director	City Engineer	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
7. Off-Site (Public) Improvement Plans (Ref: ODC Section 6.08.040)		X						A	A	
8. Other Plan Checks required by this Development Code	X							A	A	
9. Shopping Cart Retention Plans (Ref: ODC Section 6.11.020)	X							A	A	
10. Sign Plans (Ref: ODC Section 4.03.020)	X							A	A	
11. Single-Family Two-Unit Developments (Ref: ODC Section 5.03.403)	X							A	A	
12. Subdivisions										
a. Certificates of Compliance (Ref: ODC Section 4.03.025)		X						A	A	
b. Final Tract and Parcel Maps, and Vesting Maps (Ref: ODC Section 4.03.030)									X	
c. Lot Line Adjustments (Ref: ODC Section 4.03.035)		X						A	A	
d. Map Corrections and Amendments (Ref: ODC Section 4.03.040)		X						A	A	
e. Street Address Numbering (Ref. ODC Section 6.06.010)			X					A	A	
f. Street Name Assignment (Ref. ODC Section 6.06.010)	X							A	A	
g. Subdivision Improvement Agreement (Ref: ODC Section 6.08.040.G)		X						A	A	
h. Urban Lot Split (Ref: ODC Section 6.08.060)		X						A	A	
13. Tier 1 wireless telecommunications facility pursuant to ODC Section 5.03.420 (Wireless Telecommunications Facilities)				X				A	A	
14. Wall, Fence, and Obstructions Plans (Ref. ODC Section 6.02.005)	X							A	A	
15. Fair Housing and Reasonable Accommodation (Ref: ODC Section 4.02.035)	X							A	A	
D. ENVIRONMENTAL DETERMINATIONS AND ACTIONS										
1. Environmental Impact Reports (EIRs) (Ref: CCR Section 15080 et seq.)								X[3]	X[3]	
2. Exempt Projects (Ref: CCR Section 15300 et seq.)	X[3]			X[3]	X[3]	X[3]	X[3]	A	A	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]									
	Planning Director	City Engineer	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
3. Ministerial Projects (Ref: CCR Section 15268)	**Ministerial projects are exempt from the requirements of CEQA [10]**									
4. Negative Declarations (NDs) and Mitigated Negative Declarations (MNDs) (Ref: CCR Section 15070 et seq.)				**X[3]**	**X[3]**	**X[3]**	**X[3]**	**X[3]**	**X[3]**	
5. Addendums to previously certified EIRs and previously adopted NDs and MNDs (Ref: CCR Section 15164)				**X[3]**	**X[3]**	**X[3]**	**X[3]**	**X[3]**	**X[3]**	
6. Environmental review for projects located within the ONT zoning district **[9]**										**X**

Notes:

[1] A public hearing is required pursuant to the procedures set forth in Division 2.03 (Public Hearings) of this Development Code; however, public notification shall not be required for Development Advisory Board or Historic Preservation Subcommittee hearings when acting in the capacity of an Advisory Authority.

[2] The Approving Authority may refer any application subject to their review to the next higher authority (Appeal Authority).

[3] The Approving Authority for environmental determinations/actions shall be the same as the related legislative or discretionary actions. NDs and MNDs, and Addendums to previously certified EIRs, and previously adopted NDs or MNDs, which are not associated with, or are independent of, legislative or discretionary actions, shall be subject to Development Advisory Board review and adoption. EIRs that are not associated with, or are independent of, legislative or discretionary actions shall be subject to Planning Commission review and certification.

[4] An application submitted for concurrent review and action with another application, action or decision requiring review and action by a higher Reviewing Authority may be subject to concurrent review and action by that higher Reviewing Authority upon their request.

[5] The Approving Authority responsible for issuing a "Stay of Permit Approval Time Limit" pursuant to Section 2.02.025 (Projects Involving Pending Litigation) of the Development Code, shall be the same as for the related application, action or decision.

[6] An appeal of an Historic Preservation—Certificate of Appropriateness—Waiver shall be considered by the Historic Preservation Subcommittee, except that an Historic Preservation—Waiver for an Historic Landmark shall be considered by the Historic Preservation Commission

[7] Refer to the ALUCP for procedures for application processing and administration, and appeals processing.

[8] Appeal shall be subject to review by the Mediation Board established pursuant to ALUCP Section 4.

[9] Pursuant to the Joint Powers Authority agreement between the City of Ontario and the County of San Bernardino, the Ontario International Airport Authority shall be the lead agency.

[10] Ministerial projects are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15268 of the CEQA Guidelines. The following projects or actions shall be deemed ministerial:

- *Administrative Exceptions;*
- *Administrative Use Permit issuance;*
- *ALUCP inter agency reviews;*
- *Building permit issuance;*
- *Business license issuance;*
- *Encroachment permit issuance;*
- *Final subdivision map approval;*
- *Individual utility service connection and disconnection approval;*
- *Landscape and irrigation plan approval;*
- *Lot Line Adjustment approval;*
- *Public improvement plan approval;*

- *Shopping cart retention plan approval;*
- *Sign Plan approval;*
- *Single-Family Two-Unit Developments;*
- *Street address number issuance;*
- *Subdivision Improvement Agreement approval;*
- *Subdivision map corrections and amendments approval;*
- *Temporary Use Permit issuance;*
- *Tier 1 wireless telecommunications facility approval;*
- *Urban Lot Splits; and*
- *Wall and/or fence plan approval.*

[11] Applications that do not require a public Hearing pursuant to Note 1, above, may be reviewed and acted upon under the "Consent Calendar" portion of the Approving Authority meeting agenda.

PART XVII: Development Code Table 2.03-1 (Notification Matrix) shall be amended to read as follows:

Table 2.03-1: Notification Matrix

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	Not Required	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
A. LEGISLATIVE ACTIONS				
1. Airport Land Use Compatibility Plan and Amendments **[1]** (Ref: ODC Section 4.01.010)		X	X	X
2. Development Agreements **[1]** (Ref: ODC Section 4.01.015)		X	X	X
3. Development Code Amendments **[1]** (Ref: ODC Section 4.01.020)				X
4. Amendment to the Policy Plan (General Plan) Component of The Ontario Plan **[1]** (Ref: ODC Section 4.01.025)		X	X	X
5. Planned Unit Developments and Amendments **[1]** (Ref: ODC Section 4.01.030)		X	X	X
6. Specific Plans and Amendments **[1]** (Ref: ODC Section 4.01.035)		X	X	X
7. Williamson Act Contract Cancellations **[1]** (Ref: GC Section 51200 et.seq.)		X	X	X
8. Zone Changes **[1]** (Ref: ODC Section 4.01.040)		X	X	X
B. DISCRETIONARY PERMITS AND ACTIONS				
1. Billboard Relocation Agreements **[1]** (Ref: ODC Section 4.02.010)	X			
2. Conditional Use Permits (Ref: ODC Section 4.02.015)				

Table 2.03-1: Notification Matrix

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	Not Required	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
a. Hotels, Motels and Residence Inns **[1]**		X	X	
b. Use established in conjunction with a Development Plan **[1]**		X	X	
c. Use established within an existing structure **[1]**		X	X	
d. Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**		X	X	
e. Revocation due to abandonment of use per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**		X	X	
3. Density Bonus and Other Incentives per ODC Section 6.01.010.G (Density Bonus and Other Incentives) **[1]**		X	X	
4. Development Plans (Ref: ODC Section 4.02.025)				
a. Residential developments totaling 5 or more dwelling units or the development of 3 or more dwelling units on a single lot or parcel		X		
b. Commercial developments, and developments in the CIV, OS-R, OS-C and UC zoning districts, greater than 500 SF in area		X		
c. Industrial developments equal to or less than 0.45 FAR		X		
d. Industrial developments exceeding 0.45 FAR		X		
e. Wireless telecommunications facilities pursuant to Section 5.03.415 (Wireless Telecommunications Facilities) of this Development Code				
(1) Tier 2 facilities		X		
(2) Tier 3 facilities **[1]**		X	X	
f. All others		X		
5. Extensions of Legal Nonconforming Status **[1]** (Ref: ODC Section 4.02.030)		X	X	
6. Historic Preservation				
a. Certificates of Appropriateness (Ref: ODC Section 4.02.050)				

Table 2.03-1: Notification Matrix

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	Not Required	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
(1) Designated Historic Landmarks and Contributors, and Architectural Conservation Areas; and Demolition of an Historic Resource **[1]**		X	X	
(2) Deferral of Replacement Structure **[1]**		X	X	
(3) Eligible Historic Resources **[1]**		X	X	
(4) Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**		X	X	
(5) Waivers and Minor Improvements	X			
b. Certificates of Economic Hardship **[1]** (Ref: ODC Section 4.02.055)		X	X	
c. Certificates of Economic Hardship—Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**		X	X	
d. Conservation Plans (Ref: ODC Section 4.02.060)		X		
e. Historic Resource Tiering (Ref: ODC Section 4.02.040), including Rescinding or Amending Status (Ref: ODC Section 4.02.045)	X			
f. Local Historic Landmark and Local District Designations, and Architectural Conservation Areas [Ref: ODC Section 4.02.040), including Rescinding or Amending Status (Ref: ODC Section 4.02.045)		X		
g. Mills Act Contracts (Ref: ODC Section 4.02.065)		X		
h. Mills Act Cancellations **[1]**		X	X	
i. Addition/Removal of Resources to/from the Ontario Register (Ref: ODC Section 4.02.045)				
(1) At the request of the property owner, or upon City initiation if the most recently prepared Historic Resource Survey evaluating the resource is more than 5 years old.	X			
(2) Loss of all historic and/or cultural significance due to a catastrophe causing a loss of integrity, or due to extensive legally performed alterations performed after the property was initially surveyed.	X			
7. Interpretations and Land Use Determinations (Ref: ODC Section 1.02.010)	X			

Table 2.03-1: Notification Matrix

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	Not Required	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
8. Master Plans and Amendments **[1]** (Ref: ODC Section 4.02.070)		X	X	X
9. Minor Adjustments and Alterations **[5]** (Ref: ODC Section 4.02.020.D)		X	X	
10. Nonconforming Structure Reconstruction **[1]** (Ref: ODC Section 3.01.020)		X	X	
11. Parking Reduction (Ref: ODC Section 6.03.025)	X			
12. Sign Programs (Ref: ODC Section 4.02.075)	X			
13. Specific Plan Minor Adjustments and Alterations (Ref: ODC Section 4.02.080)	X			
14. Stays of Permit Approval Time Limit (Ref: ODC Section 2.02.025.A.8)	X			
15. Subdivisions				
a. Lot Merger (Merger of Contiguous Parcels) **[1]** (Ref: ODC Section 4.02.085)		X	X	
b. Reversions to Acreage **[1]** (Ref: ODC Section 4.02.090)		X	X	
c. Tentative Tract and Parcel Maps, and Vesting Maps **[1]** (Ref: ODC Section 4.02.095)		X	X	
d. Tentative Tract and Parcel Map Time Extensions (Ref: ODC Section 2.02.025.A.3 & 4)		X		
16. Time Extensions, excepting tentative subdivision maps (Ref: ODC Section 2.02.025)	X			
17. Variances (Ref: ODC Section 4.02.020.E)				
a. Homeowner **[1]**		X	X	
b. Other **[1]**		X	X	
C. MINISTERIAL (ADMINISTRATIVE) PERMITS AND DECISIONS				
1. Administrative Exceptions (Ref: ODC Section 4.02.020.C)	X			
2. Administrative Use Permit (Ref: ODC Section 4.02.015)	X			
3. Airport Land Use Compatibility Plan (ALUCP) Interagency Reviews **[4]** (Ref: ALUCP)	X			
4. Fair Housing and Reasonable Accommodation Ref: ODC Section 4.02.035)	X			

Table 2.03-1: Notification Matrix

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	Not Required	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
5. Landscape and Irrigation Documentation Plans (Ref. ODC Section 6.05.015)	X			
6. Off-Site (Public) Improvement Plans (Ref: ODC Section 6.08.040)	X			
7. Sign Plans (Ref: ODC Section 4.03.020)	X			
8. Single-Family Two-Unit Developments (Ref: ODC Section 5.03.403)	X			
9. Subdivisions				
a. Certificates of Compliance (Ref: ODC Section 4.03.025)	X			
b. Final Tract and Parcel Maps, and Vesting Maps (Ref: ODC Section 4.03.030)	X			
c. Lot Line Adjustments (Ref: ODC Section 4.03.035)	X			
d. Map Corrections and Amendments (Ref: ODC Section 4.03.040)	X			
e. Street Address Numbering (Ref. ODC Section 6.06.010)	X			
f. Street Name Assignment (Ref. ODC Section 6.06.010)	X			
g. Subdivision Improvement Agreement (Ref: ODC Section 6.08.040.G)	X			
h. Urban Lot Split (Ref: ODC Section 6.08.060)	X			
10. Tier 1 wireless telecommunications facility pursuant to ODC Section 5.03.415 (Wireless Telecommunications Facilities)	X			
D. ENVIRONMENTAL DETERMINATIONS AND ACTIONS				
1. Environmental Impact Reports (EIRs) (Ref: CCR Section 15080 et seq.)		X	X	X
2. Exempt Projects (Ref: CCR Section 15300 et seq.)	X			
3. Ministerial Projects (Ref: CCR Section 15268)	X			
4. Negative Declarations (NDs) and Mitigated Negative Declarations (MNDs) (Ref: CCR Section 15070 et seq.)		X		

Table 2.03-1: Notification Matrix

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	Not Required	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
5. Addendums to previously certified EIRs and previously adopted NDs and MNDs (Ref: CCR Section 15164)	**X**			

Notes:

[1] Public hearing notification is required pursuant to Section 2.03.010 (Public Hearing Notification) of this Division.

[2] Public notification shall not be required for Development Advisory Board or Historic Preservation Subcommittee hearings when acting in the capacity of an Advisory Authority.

[3] A Large Family Day Care facility shall require notification pursuant to Subparagraph 2.03.010.C.1.b(1) of this Division.

[4] Refer to the LA/Ontario International Airport Land Use Compatibility Plan for procedures for application processing and administration, and appeals processing.

[5] A Minor Adjustments and Alterations *shall require notification pursuant to Paragraph 4.02.020.D.3 (Application Filing, Processing and Hearing) of this Development Code.*

PART XVIII: Development Code Table 8.01-1 (Sign Regulation Matrix) shall be amended, revising the Special Regulations for Retail Sales Events in Commercial zoning districts (Subparagraph C.1.c[2]) and Industrial zoning districts (Subparagraph E.1.c[2]), to read as follows:

"[2] Retail Sales Events and Other Similar Business Events. A retail sales event or other similar business event permitted pursuant to Subparagraph 5.03.395.G.1 of this Development Code, may be allowed temporary signage for maximum of eight, one-week periods per calendar year, not to exceed a total of 56 days per calendar year.

PART XIX: Development Code Table 5.02-1 (Land Use Matrix) shall be amended as shown in Exhibit A: Portion of Table 5.02-1 (Land Use Matrix), of this attachment.

Exhibit A: Portion of Table 5.02-1 (Land Use Matrix)

		Residential Zoning Districts				Commercial Zoning Districts							Mixed Use Zoning Districts							Industrial Zoning Districts					Specialized Use and Overlay Zoning Districts								
													MU-1																			
2012 2022 NAICS Code	Land Uses, Activities, and Facilities Note: In addition to the requirements of this Table, properties located within the Airport Influence Area (AIA) established by the LA/Ontario International Airport Land Use Compatibility Plan (ALUCP) shall be subject to the land use requirements and standards of the ALUCP.	AR-2 & RE-2	RE-4 & LDR-5	MDR-11, 18 & 25	HDR-45	CS	CN	CC	CR	CCS	OL	OH	LUA-1	LUA-2N	LUA-2S	LUA-3	LUA-4	MU-2	MU-11	BP	IP	IL	IG	IH	AG	CIV	MHP	ONT	OS-C	OS-R	RC	UC	Additional Regulations
61	EDUCATION SERVICES																															
611	Educational Services																															
6115	Technical, ~~and~~ Trade, and Vocational Schools	---	---	---	---	---	---	C	C	---	---	C	---	---	---	---	C	C	C	C	C	C	C	---	---	C	---	---	---	---	---	---	
62	HEALTH CARE AND SOCIAL ASSISTANCE																															
623	Nursing and Residential Care Facilities																															
6239	Other Residential Care Facilities for 6 or fewer persons (includes facilities providing adult residential care services, which do not require a State-issued license to operate, such as but not limited to group homes for the hearing or visually impaired, ~~child group foster homes,~~ halfway group homes for ex-offenders, group homes for unwed mothers, group homes for the disabled without nursing care, ~~orphanages, etc~~ and sober living facilities.)	*P	*P	*P	*P	---	---	---	---	---	---	---	*P	*P	*P	*P	---	*P	*P	---	---	---	---	---	*P	---	---	---	---	---	---	---	* Allowed only in conjunction with an existing single-family residence. See Section 5.03.345 (Residential Care Facilities, Other—6 or Fewer Persons)
	~~• 6 or fewer persons~~	~~*P~~	~~*P~~	~~*P~~	~~*P~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~*P~~	~~*P~~	~~*P~~	~~*P~~	~~---~~	~~*P~~	~~*P~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~*P~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~* Allowed only in conjunction with an existing single-family residence.~~ ~~See Section 5.03.345 (Residential Care Facilities, Other—6 or Fewer Persons)~~
	~~• More than 6 persons~~	~~---~~	~~---~~	~~---~~	~~C~~	~~---~~	~~---~~	~~C~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~C~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	~~C~~	~~---~~	~~---~~	~~---~~	~~---~~	~~---~~	

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDCA22-003, A DEVELOPMENT CODE AMENDMENT REVISING AND CLARIFYING CERTAIN PROVISIONS ADDRESSING [1] TIME EXTENSIONS FOR DISCRETIONARY PROJECTS (SECTION 2.02.025.B.2.C); [2] PUBLIC NOTIFICATION REQUIREMENTS FOR MINOR VARIANCES (SECTION 2.03.010); [3] ADMINISTRATIVE EXCEPTIONS (SECTIONS 4.02.020 AND 4.03.050, AND TABLES 2.02-1 AND 2.03-1); [4] SPECIFIC PLAN MINOR AMENDMENTS (SECTION 4.02.080); [5] HOUSING AND REASONABLE ACCOMMODATIONS (SECTIONS 4.02.035 AND 4.03.055, AND TABLES 2.02-1 AND 2.03-1); [6] ACCESSORY DWELLING UNITS (SECTION 5.03.010); [7] MINIMUM USEABLE REAR YARD AREA FOR SINGLE-FAMILY DWELLINGS (SECTION 5.03.011); [8] BANQUET FACILITIES ON HISTORIC PROPERTIES (SECTION 5.03.067); [9] RETAIL SALES EVENTS (SECTION 5.03.395 AND TABLE 8.01-1); [10] CONVERSION OF GARAGES TO ACCOMMODATE ACCESSORY DWELLING UNITS (SECTION 6.01.010); [11] DEFINITION FOR “GARAGE” (SECTION 9.01.010.G); [12] SINGLE-FAMILY TWO-UNIT PROJECTS AND URBAN LOT SPLITS, RESCINDING URGENCY ORDINANCE NO. 3200 AND ADOPTING STANDARDS (SECTIONS 5.03.403 AND 6.08.060, AND TABLES 2.02-1 AND 2.03-1); AND [13] CERTAIN ALLOWED LAND USES (TABLE 5.02-1), AND MAKING FINDINGS IN SUPPORT THEREOF.

WHEREAS, The City of Ontario ("Applicant") has initiated a Development Code Amendment, File No. PDCA22-003, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the City of Ontario Development Code (Ontario Municipal Code Title 9) provides the legislative framework for the implementation of The Ontario Plan, which establishes long term principals, goals, and policies for guiding the growth and development of the City in a manner that achieves Ontario's vision, and promotes and protects the public health, safety, comfort, convenience, prosperity, and welfare of its citizens; and

WHEREAS, the Development Code Amendment is of citywide impact, affecting approximately 50 square miles (31,789 acres) of land, which is generally bordered by Benson Avenue and Euclid Avenue on the west; Interstate 10 Freeway, Eighth Street, and Fourth Street on the north; Etiwanda Avenue and Hamner Avenue on the east; and Merrill Avenue and the San Bernardino County/Riverside County boundary on the south; and

WHEREAS, certain clarifications and revisions to the City of Ontario Development Code are proposed, as follows:

(1) Provisions addressing time extension limits for discretionary projects (Development Code Section 2.02.025.B.2.c) will be revised to clarify that a total of three one-year time extensions may be granted for discretionary actions, such as Development Plans, Conditional Use Permits, and Variances. Time extensions for Tentative Tract and Parcel Maps will continue to be subject to the requirements of the State's Subdivision Map Act.

(2) Public notification requirements for Minor Variances will be added to clarify that the notification of the owners of any property that abuts a property with a proposed Minor Variance will be required to be notified of the proposed application. Additionally, Minor Variances will be retitled as "Minor Adjustments and Alterations" (Development Code Sections 2.03.010 and 4.02.020).

(3) Development Code provisions governing Specific Plan Minor Amendments will be retitled as "Specific Plan Minor Adjustments and Alterations" to help clarify the limited scope of the application (Development Code Section 4.02.080).

(4) The current Development Code provisions governing Administrative Exceptions are incorrectly classified as requiring a discretionary action and will, therefore, be rescinded. New provisions are proposed that correctly establish Administrative Exceptions as a ministerial action (Development Code Sections 4.02.020 and 4.03.050, and Tables 2.02-1 and 2.03-1).

(5) The current Development Code provisions governing Housing and Reasonable Accommodations are incorrectly classified as requiring a discretionary action and will, therefore, be rescinded. New provisions are proposed that correctly establish Housing and Reasonable Accommodations as a ministerial action (Development Code Sections 4.02.035 and 4.03.055, and Tables 2.02-1 and 2.03-1).

(6) Development Code provisions governing Accessory Dwelling Units (ADUs) will be modified, adding the requirements of Assembly Bill 345, which allows for the separate conveyance of an ADU separate from the primary residence if the ADU or primary dwelling was built or developed by a qualified nonprofit corporation and certain conditions are met (Development Code Section 5.03.010).

(7) The current Development Code provisions stipulating the minimum useable rear yard area for single-family dwellings will be simplified, requiring that a traditional single-family dwelling maintain a useable rear yard area having minimum dimension of 20 FT in any horizontal direction and small lot single-family dwelling maintain a useable rear yard having a minimum dimension of 10 FT in any horizontal direction (Development Code Section 5.03.011). This revision has been proposed eliminate a conflict with current ADU provisions.

(8) Current Development Code provisions governing banquet facilities established in conjunction with commercial structures on historic properties will be amended to clarify that no banquet facilities shall be allowed in the MU-1 (Downtown Mixed Use) zoning district (Development Code Section 5.03.067). This revision will eliminate an existing conflict with Development Code Table 5.02-1 (Land Use Matrix).

(9) Current Development Code provisions governing Retail Sales Events will be modified to clarify that the provisions also cover “other similar business events.” Additionally, the current provisions that limit such events to the holiday sale periods of President’s Day, Memorial Day, Independence Day, Labor Day, and four additional periods per year will be amended, eliminating the four stated holidays, and allowing a maximum of eight, one-week periods per calendar year (Development Code Section 5.03.395 and Table 8.01-1).

(10) Current Development Code provisions stipulating that no garage can be converted to another use unless a replacement garage is constructed on-site will be clarified to provide that a garage conversion that accommodates an ADU is excepted from the replacement garage requirement (Development Code section 6.01.010). This revision will eliminate a conflict with the Development Code’s current ADU provisions, as well as a conflict with State law.

(11) The current Development Code definition for “garage” will be amended to clarify that a garage must be enclosed on all four sides (Development Code Section 9.01.010.G).

(12) Urgency Ordinance No. 3200 was adopted by the City Council on December 21, 2021, establishing standards for single-family two-unit projects and urban lot splits in accordance with State law (Senate Bill 9). This Development Code Amendment will rescind the urgency ordinance and adopt permanent standards to be included in the Development Code (Development Code Sections 5.03.403 and 6.08.060, and Tables 2.02-1 and 2.03-1).

(13) Amend provisions for certain allowed land uses, as follows (Development Code Table 5.02-1):

(a) Technical, Trade and Vocational Schools — Conditionally permit technical, trade and vocational schools in the IG (General Industrial) zoning district. This revision would allow for the location of technical, trade and vocational schools that specialize in education and training for industrial-related industries, such as motor vehicle fabrication, repair, maintenance, and customization; truck driving; forklift driving and operation; and other industrial activities

(b) Other Residential Care Facilities — Prohibit adult residential care facilities for more than 6 persons, which do not require a State-issued license to operate, such as but not limited to group homes for the hearing or visually impaired, halfway group homes for ex-offenders, group homes for unwed mothers, group homes for the disabled without nursing care, and group sober living facilities.

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"); and

WHEREAS, the Project is exempt from CEQA pursuant to a categorical exemption (listed in CEQA Guidelines Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

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

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, 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, which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on April 26, 2022, as the first action on the Application, the Planning Commission of the City of Ontario conducted a public hearing to consider the Project and concluded said hearing on that date, voting to issue Resolution No. PC22-019 recommending the City Council approve the proposed Development Code Amendment; and

WHEREAS, on June 7, 2022, the City Council of the City of Ontario conducted a public hearing to consider the introduction of this Ordinance, and concluded said hearing on that date; and

WHEREAS, on June 21, 2022, as the final action on the Application, the City Council of the City of Ontario conducted a hearing to consider the adoption of this Ordinance and concluded said hearing on that date.

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

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

SECTION 1. *Environmental Determination and Findings.* As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) The Project is exempt from the requirements of the California Environmental Quality Act (CEQA) and the guidelines promulgated thereunder, pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the activity is covered by the "common sense exemption" (also known as the "general rule exemption") that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where

it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA; and

(3) The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2. *Housing Element Compliance.* The Project will be consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project furthers the purposes, principals, goals, and policies of the Housing Element, in that it will provide for urban lot splits and the construction of two-unit single-family development projects, and, under certain circumstances, provides for the conveyance of accessory dwelling units separate from the main dwelling, thereby further promoting alternate forms of home rental and fee-simple homeownership.

SECTION 3. *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 is consistent with the policies and criteria set forth within the ALUCP.

SECTION 4. *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 3, above, the City Council hereby concludes as follows:

(1) The proposed Development Code Amendment 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 Development Code Amendment will: (a) promote public participation and foster greater transparency in decision making as encouraged by The Ontario Plan; (b) serve to encourage pedestrian friendly, functional, and vibrant commercial development with a range of businesses, places to gather, and connectivity to the neighborhoods they serve, as promoted by Community Design Element CD2-3, Commercial Centers; and (c) provide for a variety of land uses and building types in our land use planning efforts that result in a complete community where

residents at all stages of life, have a wide spectrum of choices of where they can live and recreate, as promoted by Land Use Element Policy LU1-6, Complete Community.

(2) The proposed Development Code Amendment would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City. The Development Code Amendment incorporates safeguards intended to ensure that the purposes of the Development Code are preserved; the project will not be contrary to or damage the public health, safety, convenience, or general welfare; the project will not result in any significant environmental impacts; and the project will be in full conformity with the Vision, City Council Priorities, and Policy Plan components of The Ontario Plan.

SECTION 5. *City Council Action.* Based upon the findings and conclusions set forth in Sections 1 through 4, above, the City Council hereby APPROVES the herein described Development Code Amendment, File No. PDCA22-003, amending the City of Ontario Development Code as stipulated in "Attachment A", incorporated herein by this reference.

SECTION 6. *Custodian of Records.* The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 7. *Severability.* If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause, or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 8. *Effective Date.* This Ordinance shall become effective 30 days following its adoption.

SECTION 9: *Publication and Posting.* The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within 15 days following the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this ____ day of June 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) ss.
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held June 7, 2022, and adopted at the regular meeting held _____, 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. _____ duly passed and adopted by the Ontario City Council at their regular meeting held June ___, 2022, and that Summaries of the Ordinance were published on _____, 2022, and _____, 2022, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:
Development Code Amendment
File No. PDCA22-003;

PART I: Subparagraph B.2.c of Development Code Section 2.02.025 (Time Limits and Extensions) shall be amended to read as follows:

"**c.** A discretionary permit or action may be granted Time Extensions in one-year increments, not to exceed a total of three, one-year time extensions, excepting tentative subdivision maps, which shall be subject to the provisions of GC Section 66452.6."

PART II: Subparagraph C.1.b(1) of Development Code Section 2.03.010 (Public Hearing Notification) shall be amended to read as follows:

"**(1)** For Minor Variances, the area of notification shall include all properties having a property line common with the affected property; and"

PART III: Subsection D (Minor Variances) of Development Code Section 4.02.020 (Departures from Development Standards) shall be amended to read as follows:

C. Minor Adjustments and Alterations.

1. Purpose. Minor Adjustments and Alterations, like Variances, are intended to allow for departures from the strict application of the numerical development standards established by this Development Code, when their strict application would result in practical difficulties, unnecessary hardships, or results inconsistent with the general purpose of the development regulations. Minor Adjustments and Alterations, however, are determined to have a lesser (minor) measure of impact than Variances, due to the limited measure of adjustment allowed; therefore, requiring a modified review process.

2. Applicability.

a. Pursuant to Table 2.02-1 (Review Matrix) of this Development Code, the Approving Authority is hereby empowered to approve, approve in modified form, or deny a Minor Adjustments and Alterations, and to impose reasonable conditions upon the approval of the application.

b. Minor Adjustments and Alterations may be approved for:

(1) A reduction of up to 25 percent from minimum setback and separation requirements, excepting nonresidential setback requirements from property lines that are common with any residentially zoned property; or

(2) A 10 percent increase in the maximum height of structures.

c. A Minor Adjustments and Alterations shall not be approved for reductions in minimum lot size, lot coverage, lot dimension, landscape coverage, parking requirements, or for an increase in maximum density or floor area ratio.

3. Application Filing, Processing and Hearing.

a. A Minor Adjustments and Alterations shall be filed and processed pursuant to Division 2.02 (Application Filing and Processing) of this Development Code and the provisions of this Section.

b. The applicant and the owners of all properties having a property line common with the affected property shall be notified of the proposed Minor Adjustments and Alterations pursuant to Section 2.03.010 (Public Hearing Notification) of this Development Code. Furthermore, the notice shall state that a public hearing shall not be required unless requested by the applicant or an affected person.

c. A public hearing, if requested, shall be conducted pursuant to Division 2.03 (Public Hearings) of this Development Code.

d. If no public hearing is requested, the Zoning Administrator shall approve, approve in modified form, or deny a Minor Adjustments and Alterations no less than 10 days following distribution of the notice required by Subparagraph C.3.b, above.

4. Findings and Decision. A Minor Adjustments and Alterations shall be acted upon by the Approving Authority based upon the information provided in the submitted application, evidence presented in the Planning Department's written report, and testimony provided during the public hearing, only after considering and clearly establishing all of the below-listed findings, and giving supporting reasons for each finding. The application shall be denied if one or more of the below-listed findings cannot be clearly established.

a. The strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of the development regulations contained in this Development Code;

b. There are exceptional or extraordinary circumstances or conditions applicable to the property involved, or to the intended use of the property, that do not apply generally to other properties in the vicinity and in the same zoning district;

c. The strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties in the same zoning district;

d. The granting of the Minor Adjustments and Alterations will not be detrimental to the public health, safety, or welfare, or be materially injurious to properties or improvements in the vicinity.

e. The proposed Minor Adjustments and Alterations 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, and the purposes of any applicable specific plan or planned unit development, and the purposes of this Development Code.

5. Conditions of Approval.

a. In approving a Minor Variance, the Approving Authority may require certain safeguards and impose certain conditions established to ensure that the purposes of this Development Code are maintained; ensure that the project will not endanger the public health, safety or general welfare; ensure that the project will not result in any significant environmental impacts; ensure that the project will be in harmony with the area in which it is located; and ensure that the project will be in conformity with The Ontario Plan and any applicable specific and/or area plan(s).

b. All conditions or requirements authorized by this section are enforceable in the same manner and to the same extent as any other applicable requirement of this Development Code.

PART IV: Development Code Section 4.02.080 (Minor Specific Plan Amendments) shall be amended to read as follows:

"4.02.080: Specific Plan Minor Adjustments and Alterations

A. Purpose. The purpose of this Section is to establish a procedure by which minor departures from the strict application of the development standards and/or design guidelines established by a Specific Plan may be approved, provided the requested departure is in the interest of furthering the goals and policies of the affected Specific Plan and The Ontario Plan.

B. Applicability.

1. Pursuant to Table 2.02-1 (Review Matrix) of this Development Code, the Approving Authority is hereby empowered to approve, approve in modified form, or deny a Specific Plan Minor Adjustments and Alterations application, and to impose reasonable conditions upon the approval of the application.

2. The following constitute minor adjustments and/or alterations, not requiring a Specific Plan Amendment and/or update of the affected specific plan:

a. A net change of not more than 15 percent to the number of units within an individual residential area, provided the total number of units for the entire specific plan area does not exceed that established in the affected specific plan;

b. Adjustment of a residential planning area boundary, provided the total acreage of the affected area does not increase or decrease the total acreage stated in the affected specific plan by more than 15 percent;

c. Minor adjustments and/or alterations to landscape materials, wall materials, wall alignment, entry design, and streetscape design, which are consistent with the conceptual design set forth in the affected specific plan's development standards and design guidelines;

d. Minor adjustments and/or alterations to design guidelines, which are intended to be conceptual in nature, and are clearly intended to be flexible in implementation;

e. Other adjustments and/or alterations of a similar nature to those listed above, which are deemed minor by the Planning Director to be in keeping with the purpose and intent of the affected specific plan and are in conformance with The Ontario Plan; and

f. Adjustments in street alignments and dimensions that as deemed appropriate by the City Engineer, which are in keeping with the purpose and intent of the specific plan and are consistent with the purpose, principles, goals, and policies, of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan, provided the changes do not impact the sizing of master planned infrastructure,

C. Application Filing, Processing and Hearing. A Specific Plan Minor Amendment application shall be filed, processed, and acted upon pursuant to Division 2.02 (Application Filing and Processing) of this Development Code and the provisions of this Section. A noticed hearing pursuant to Division 2.03 (Public Hearings) of this Development Code shall not be required.

D. Findings and Decision. A Specific Plan Minor Adjustment and/or Alteration shall be acted upon by the Approving Authority based upon the information provided in the submitted application, evidence presented in the Planning Department's written report, and testimony provided during the public hearing, only after considering and clearly establishing all of the below-listed findings, and giving supporting reasons for each finding. The application shall be denied if one or more of the below-listed findings cannot be clearly established.

1. The proposed Specific Plan Minor Adjustment and/or Alteration 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, and the specific plan;

2. The proposed Specific Plan Minor Adjustment and/or Alteration is reasonable and beneficial, and in the interest of good planning practice; and

3. The proposed Specific Plan Minor Adjustment and/or Alteration will not adversely affect the harmonious relationship with adjacent properties and land uses."

PART V: Subsection C (Administrative Exceptions) of Development Code Section 4.02.020 (Administrative Exceptions, Minor Variances and Variances) shall be rescinded and all subsequent existing provisions of Development Code Section 4.02.020 shall be renumbered in correct alphanumeric order. Development Code Section 4.03.050 (Administrative Exceptions) shall be added to read as follows:

"4.03.050: Administrative Exceptions

A. Purpose. The Administrative Exception is hereby established for the purpose of granting minor departures from the strict application of certain numerical development standards established by this Development Code, when the departure would result in

superior site, landscape, or architectural design features that could not otherwise be incorporated into a development project under the strict application of the development standards contained in this Development Code.

B. Applicability.

a. Pursuant to Table 2.02-1 (Review Matrix) of this Development Code, the Approving Authority is hereby empowered to approve, approve in modified form, or deny an Administrative Exception application, and to impose reasonable conditions upon the approval of the application.

b. Administrative Exceptions may be approved for reductions of up to 10 percent from:

(1) Minimum setback and separation requirements, excepting nonresidential setback requirements from property lines that are common with any residentially zoned property; and

(2) Off-street parking required for nonresidential land uses pursuant to Table 6.03-1 (Off-Street Parking Requirements).

c. An Administrative Exception shall not be approved for reductions from minimum lot size, lot dimensions, landscape coverage, or residential parking requirements, or for an increase in maximum density, floor area ratio, or the height of a structure.

C. Application Filing, Processing and Hearing.

1. An Administrative Exception shall be filed and processed pursuant to Division 2.02 (Application Filing and Processing) of this Development Code and the provisions of this Section.

2. A hearing shall not be required; however, the owners of all properties having a property line common with the affected property shall be notified of the proposed Administrative Exception pursuant to Section 2.03.010 (Public Hearing Notification) of this Development Code and shall be invited to comment on the application.

D. Findings and Decision. An Administrative Exception shall be acted upon by the Approving Authority based upon the information provided in the submitted application, evidence presented in the Planning Department's written report, and any comments received from property owners notified pursuant to Subparagraph C.3.b of this Section, only after considering and clearly establishing all of the below-listed findings, and giving supporting reasons for each finding. The application shall be denied if one or more of the below-listed findings cannot be clearly established.

1. The approval of the Administrative Exception is necessary to the production of a comprehensive development, incorporating an enhanced environment and architectural excellence (e.g., appropriate variety of structure placement and orientation opportunities, high quality architectural design, increased amounts of landscaping and open space, improved solutions to the design and placement of parking facilities, etc.) than would normally be possible under the strict application of the applicable development standards;

2. The approval of the Administrative Exception will allow for the inclusion of site, architectural, or landscape features that could not otherwise be incorporated into the design of the project under the strict application of the provisions of the applicable development standards; and

3. The approval of the Administrative Exception will not adversely affect the overall quality of development on the project site and will not adversely affect neighboring properties.

4. The proposed Administrative Exception 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, and the purposes of any applicable Specific Plan or Planned Unit Development, and the purposes of this Development Code.

E. Conditions of Approval.

1. In approving an Administrative Exception, the Approving Authority may require certain safeguards and impose certain conditions established to ensure that the purposes of this Development Code are maintained; ensure that the project will not endanger the public health, safety or general welfare; ensure that the project will not result in any significant environmental impacts; ensure that the project will be in harmony with the area in which it is located; and ensure that the project will be in conformity with The Ontario Plan and any applicable specific and/or area plan(s).

2. All conditions of approval or requirements authorized by this Section are enforceable in the same manner and to the same extent as any other applicable requirement of this Development Code."

PART VI: Development Code Section 4.02.035 (Fair Housing and Reasonable Accommodations) shall be rescinded and Development Code Section 4.03.055 (Fair Housing and Reasonable Accommodations) shall be added to read as follows:

"4.03.055: Fair Housing and Reasonable Accommodations

A. Purpose. Pursuant to Federal and State fair housing laws, the purpose of this Section is to provide a procedure whereby exceptions from specific applications of this Development Code may be considered and properly evaluated in order to assure that no person is discriminated against on the basis of race, color, religion, sex, sexual orientation, family status, marital status, disability, national origin, source of income, or ancestry, by being denied an equal opportunity to use and enjoy a dwelling.

B. Applicability.

1. Pursuant to Table 2.02-1 (Review Matrix) of this Development Code, the Approving Authority is hereby empowered to approve, approve in modified form, or deny a Fair Housing and Reasonable Accommodation application and to impose reasonable conditions upon the approval of the application.

2. The Approving Authority may approve reasonable exceptions from the provisions of this Development Code, except that a Fair Housing and Reasonable Accommodation request shall not be approved that would allow the establishment of a land use that would not otherwise be allowed in the zoning district in which the affected property is located, or for increases in residential density.

C. Application Filing, Processing and Hearing. A Fair Housing and Reasonable Accommodation application shall be filed, processed, and heard pursuant to Division 2.02 (Application Filing and Processing) of this Development Code and the provisions of this Section.

D. Findings and Decision. A Fair Housing and Reasonable Accommodation request shall be acted upon by the Approving Authority based upon the information provided in the submitted application, evidence presented in the Planning Department's written report, and testimony provided during the public hearing, only after considering and clearly establishing all of the below-listed findings, and giving supporting reasons for each finding. The application shall be denied if one or more of the below-listed findings cannot be clearly established.

1. The persons who will use the subject property are protected under federal and state fair housing laws;

2. The requested exception is necessary to make specific housing available to a person who will occupy the subject property and who is protected under federal and state fair housing laws;

3. The requested exception will not impose an undo financial or administrative burden upon the City; and

4. The requested exception will comply with all applicable Building and Fire Codes and will not result in a fundamental alteration of the planning, zoning and development laws and procedures of the City.

E. Conditions of Approval.

1. In approving a Fair Housing and Reasonable Accommodation application, the Approving Authority may require certain safeguards and impose certain conditions established to ensure that the purposes of this Development Code are maintained; ensure that the project will not endanger the public health, safety or general welfare; ensure that the project will not result in any significant environmental impacts; ensure that the project will be in harmony with the area in which it is located; and ensure that the project will be in conformity with The Ontario Plan and any applicable specific and/or area plan(s).

2. All conditions of approval or requirements authorized by this Section are enforceable in the same manner and to the same extent as any other applicable requirement of this Development Code."

PART VII: Paragraphs C.11 (Qualified Buyer) and C.12 (Qualified Nonprofit Corporation) of Development Code Section 5.03.010 (Accessory Dwelling Units) shall be added to read as stated below. All subsequent existing provisions contained in Subsection C (Definitions) shall be renumbered in correct alphanumeric order.

"**11**. Qualified Buyer. Persons and families of low or moderate income, as that term is defined in Health and Safety Code Section 50093.

12. Qualified Nonprofit Corporation. A nonprofit corporation organized pursuant to Internal Revenue Code Section 501(c)(3), which has received a welfare exemption under Revenue and Taxation Code Section 214.15, for properties intended to be sold to low-income families who participate in a special no-interest loan program."

PART VIII: Paragraph E.4 (No Separate Conveyance) of Section 5.03.010 (Accessory Dwelling Units) shall be amended to read as follows:

"**4.** No Separate Sale or Conveyance. An ADU or JADU may be rented; however, no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all other dwellings (in the case of a multiple-family lot), except as provided by Subsection H (Sale or Conveyance of ADUs Separate from the Primary Residence)of this Section."

PART VIX: Subsection H (Sale or Conveyance of ADUs Separate from the Primary Residence) of Section 5.03.010 (Accessory Dwelling Units) shall be added to read as follows:

"**H. Sale or Conveyance of ADUs Separate from the Primary Residence.** Notwithstanding Paragraph E.4 (No Separate Sale or Conveyance) of this Section, an ADU can be sold or conveyed separately from the primary residence to a qualified buyer; provided, all of the following conditions are met:

1. The ADU or the primary dwelling was built or developed by a qualified nonprofit corporation.

2. There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in Revenue and Taxation Code Section 402.1(10(a).

3. The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:

a. The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling that each qualified buyer occupies.

b. A repurchase option that requires the qualified buyer to first offer the purchase of the ADU or primary dwelling to the qualified nonprofit corporation should the buyer desire to later sell or convey the property.

c. A requirement that the qualified buyer occupy the ADU or primary dwelling as the buyer's principal residence.

d. Affordability restrictions on the sale and conveyance of the accessory dwelling unit or primary dwelling that ensures the ADU and primary dwelling will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.

e. Delineation of all areas of the property that are for the exclusive use of a cotenant. Each cotenant shall agree not to claim a right of occupancy to an area delineated for the exclusive use of another cotenant, provided that the latter cotenant's obligations to each of the other cotenants have been satisfied.

f. Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, improvements, and any other costs, obligations, or liabilities associated with the property. This delineation shall only be binding on the parties to the agreement, and shall not supersede or obviate the liability, whether joint and several or otherwise, of the parties for any cost, obligation, or liability associated with the property where such liability is otherwise established by law or by agreement with a third party.

g. Procedures for dispute resolution among the parties before resorting to legal action.

4. A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Revenue and Taxation Code Section 480.3.

5. Notwithstanding the requirements of Paragraph G.2 (Utility Fees) of this Section, if requested by a utility providing service to the primary residence, the ADU shall be provided separate water, sewer, or electrical connection to that utility."

PART X: Paragraph D.14 of Development Code Section 5.03.011 (Accessory Dwelling Units) shall be amended to read as follows:

"**14.** A lot developed with an Accessory Residential Structure shall maintain a useable rear yard as follows:

a. A traditional single-family dwelling shall maintain a useable rear yard area having minimum dimension of 20 FT in any horizontal direction; and

b. A small lot single-family dwelling shall maintain a useable rear yard having a minimum dimension of 10 FT in any horizontal direction."

PART XI: Section 5.03.067 (Banquet Facilities - Historic Properties) shall be amended to read as follows:

"**A.** A banquet facility shall be allowed in all zoning districts within a commercial structure or on property designated as a local historic landmark, or a contributing structure within a designated historic district, established pursuant to Section 4.02.040 (Historic Preservation—Local Historic Landmark and Local District Designations, Historic Resource Tiering, and Architectural Conservations Areas) of this Development Code, and shall be subject to the regulations therein during the life of the permit, except that no banquet facility shall be allowed in the MU-1 (Downtown Mixed Use) zoning district.

B. The minimum number of parking spaces required shall be provided pursuant to Division 6.03 (Off-Street Parking and Loading) of this Development Code. A parking demand study may be prepared by a qualified traffic consultant or engineer to support a reduction in the required number of parking spaces. The intent is to provide lower, flexible parking standards wherever possible and appropriate. Consideration shall be given to shared parking systems, on and off-street parking resources, compatibility with historic patterns of development, and the availability of mass transit resources.

C. Live entertainment shall be prohibited. Request for live entertainment shall require conditional use permit approval by the Zoning Administrator. Karaoke, DJs, live musical acts, and other similar forms of entertainment are considered live entertainment. Amplified prerecorded music may be permitted; however, the sound emitted from the premises shall not be audible beyond the property lines of the business establishment.

D. Alcohol beverage sales shall be allowed subject to the approval of a Conditional Use Permit issued pursuant to the requirements of Section 4.02.015 (Conditional Use Permits) and Section 5.03.025 (Alcoholic Beverage Sales) of this Development Code.

E. The applicant shall comply with all applicable building code regulations related to the change of use of the structure to a banquet facility."

PART XII: Subparagraph G.1 (Retail Sales Events) of Development Code Section 5.03.395 (Temporary and Interim Land Uses, Buildings, and Structures) shall be amended to read as follows:

"**1.** Retail Sales Events and Other Similar Business Events. Retail sales events and other similar business events, including but not limited to special outdoor sales, sidewalk sales, and parking lot sales, are subject to the following:

a. A retail sales event or other similar business event shall only be allowed in conjunction with a legally established business that has been operated for a period of at least 180 days prior to the retail sales event or other similar business event.

b. Retail sales events and other similar business events shall be limited to eight, one-week periods per calendar year, per business location. The one-week periods may be used consecutively, not to exceed a total of 56 days per calendar year.

c. The outdoor display of merchandise shall be restricted to an area directly adjacent to the business' exterior storefront; however, in the case of shopping centers, when it is not practical for the outdoor display area to be located directly adjacent to the business front, the sale area shall be located in an area as close as practically possible, to the business' exterior storefront.

d. The display of merchandise shall not impede pedestrian or vehicular circulation.

e. All merchandise, materials, signs, and debris shall be removed from the outdoor area by 9:00AM following the last day of the retail sales event."

PART XIII: Paragraph F.8 of Development Code Section 6.01.010 (Residential Zoning Districts) shall be amended to read as follows:

"**8.** Conversion of Garages. No garage shall be converted to another use unless a replacement garage is constructed on-site, which meets the minimum requirements of Division 6.03 (Off-Street Parking and Loading) of this Chapter, excepting a garage conversion to accommodate an Accessory Dwelling Units conforming to Section 5.03.010 (Accessory Dwelling Units) of this Development Code."

PART XIV: Subsection G (Definition of Words Beginning with the Letter "G") of Development Code Section 9.01.010 (Terms and Phrases) shall be amended, revising the definition of "garage" as follows:

"Garage. An accessory structure or portion of a main structure that is fully enclosed and designed for the shelter or storage of motor vehicles."

PART XV: Rescind Ordinance No. 3200, an urgency ordinance establishing standards for the development of Single-Family Two-Unit Projects and Urban Lot Splits, and Development Code Section 5.03.403 (Single-Family Two-Unit Projects) and Section 6.08.060 (Urban Lot Splits) shall be added to read as follows:

"Section 5.03.403: Single-Family Two-Unit Projects

A. Purpose. The purpose of this Section is to allow and appropriately regulate Single-Family Two-Unit Projects pursuant to GC Section 65852.21.

B. Definition. A "Two-Unit Project" means the development of two primary dwelling units or, if there is already a primary dwelling unit on the lot, the development of a second primary dwelling unit on a legally subdivided lot pursuant to the requirements of this Section.

C. Application.

1. Only individual property owners may apply for a Two-Unit Project. "Individual property owner" means a natural person holding fee title individually or jointly in the person's own name or a beneficiary of a trust that holds fee title. "Individual property owner" does not include any corporation or corporate person of any kind (partnership, LP, LLC, C

corporation, S corporation, etc.) except for a community land trust (as defined by Revenue and Taxation Code Section 402.1(a)(11)(C)(ii)) or a qualified nonprofit corporation (as defined by Section 214.15).

2. An application for a Two-Unit Project shall be submitted on a City application form.

3. The applicant shall obtain a certificate of compliance with the Subdivision Map Act for the lot and provide the certificate with the application.

4. Only a complete application will be considered. The City will inform the applicant in writing of any incompleteness within 30 days following application submittal.

5. The City may establish a fee to recover its costs for adopting, implementing, and enforcing this Section of the Development Code, pursuant to applicable law. The City council may establish and change the fee by resolution. The fee shall be paid with the application.

D. Approval.

1. An application for a Two-Unit Project is approved or denied ministerially, by the Planning Director, without discretionary review.

2. The ministerial approval of a Two-Unit Project does not take effect until the City has confirmed that all required documents have been recorded, such as the deed restriction and easements.

3. The approval shall require the owner and applicant to hold the City harmless from all claims and damages related to the approval and its subject matter.

4. The approval shall require the owner and applicant to reimburse the City for all costs of enforcement, including attorneys' fees and costs associated with enforcing the requirements of this Development Code.

E. Requirements. A Two-Unit Project shall satisfy all of the following requirements:

1. Subdivision Map Act (SMA) Compliance. The lot shall have been legally subdivided.

2. Zoning District. The lot is in a single-family residential zoning district. For the purpose of this Section, the term "single-family residential zoning district" shall mean the LRD-5 (Low Density Residential – 2.1 to 5.0 DU/Acre) zoning district.

3. Lot Location. Pursuant to the GC Section 65913.4(a)(6)(B) through (K), the lot to be split shall not be located on a site that is any of the following:

a. Prime farmland, farmland of statewide importance, or land that is zoned or designated for agricultural protection or preservation by the voters.

b. A wetland.

c. Within a very high fire hazard severity zone, unless the site complies with all fire-hazard mitigation measures required by existing building standards.

d. A hazardous waste site that has not been cleared for residential use.

e. Within a delineated earthquake fault zone, unless all development on the site complies with applicable seismic protection building code standards.

f. Within a 100-year flood hazard area, unless the site has either:

(1) Been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction; or

(2) Meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program.

g. Within a regulatory floodway, unless all development on the site has received a no-rise certification.

h. Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.

i. Habitat for protected species.

j. Land under conservation easement.

4. Not Historic. The lot shall not be a historic property or within a historic district that is included on the State Historic Resources Inventory. Nor may the lot be or be within a site that is designated by ordinance as a city or county landmark, or as a historic property or district.

5. No Impact on Protected Housing. The Two-Unit Project shall not require or include the demolition or alteration of any of the following types of housing:

a. Housing that is income-restricted for households of moderate, low, or very low income.

b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its policy power.

c. Housing, or a lot that used to have housing, that has been withdrawn from rental or lease under the Ellis Act (GC Sections 7060–7060.7) at any time in the 15 years prior to submission of the Urban Lot Split application.

d. Housing that has been occupied by a tenant in the last 3 years. The applicant and the owner of a property for which an Urban Lot Split is sought shall provide a sworn statement as to this fact with the application for the tentative parcel map. The City may conduct its own inquiries and investigation to ascertain the veracity of the sworn statement, including but not limited to, surveying owners of nearby properties; and the City may require additional evidence of the applicant and owner as necessary to determine compliance with this requirement.

6. Unit Standards.

a. *Quantity*.

(1) No more than two dwelling units of any kind may be built on a lot that results from an Urban Lot Split. For purposes of this paragraph, "unit" means any dwelling unit, including, but not limited to, a primary dwelling unit, a unit created pursuant to Section 5.03.403 (Two-Unit Projects) of this Development Code, or an ADU or JADU created pursuant to State law and Section 5.03.010 (Accessory Dwelling Unit) of this Development Code.

(2) A lot that is not created by an Urban Lot Split may have a Two-Unit Project as provided by this Section, plus any ADU or JADU that shall be allowed pursuant to State law and Section 5.03.010 (Accessory Dwelling Unit) of this Development Code.

b. *Unit Size*.

(1) The total floor area of each primary dwelling that is developed under this Section shall be a minimum of 500 SF in area and a maximum of 800 SF in area.

(2) A primary dwelling that was legally established on the lot prior to the Two-Unit Project and is larger than 800 SF is limited to the lawful floor area at the time of the Two-Unit Project. The unit may not be expanded.

(3) A primary dwelling that was legally established prior to the Two-Unit Project and is smaller than 800 SF may be expanded to 800 SF after or as part of the Two-Unit Project.

c. *Height Restrictions*.

(1) On a lot that is larger than 2,000 SF, no new primary dwelling unit may exceed one-story or 16 FT in height, measured from grade to peak of the structure.

(2) On a lot that is smaller than 2,000 SF, no new primary dwelling unit may exceed two-stories or 22 FT in height, measured from grade to peak of the structure. Any portion of a new primary dwelling that exceeds one story in height shall be stepped back by an additional 5 FT from the ground floor; no balcony deck or other portion of the second story may project into the stepback.

(3) No rooftop deck is permitted on any new or remodeled dwelling or structure on a lot with a Two-Unit Project.

d. *Demo Cap*. The Two-Unit Project shall not involve the demolition of more than 25 percent of the existing exterior walls of an existing dwelling unless the site has not been occupied by a tenant in the last 3 years.

e. *Lot Coverage*. [Include a lot coverage standard here if desired.] This lot coverage standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at 800 SF each.

f. *Setback Requirements*.

(1) **Generally**. All setbacks shall conform to the minimum requirements of the underlying zoning district.

(2) **Exceptions**. Notwithstanding subpart E.6.f above:

(a) Existing Structures. No setback is required for an existing legally established structure or for a new structure that is constructed in the same location and to the same dimensions as an existing legally established structure.

(b) Cannot Preclude Construction of Two 800-SF Units and 4-FT Side/Rear Setbacks. The setbacks imposed by the underlying zoning district shall yield to the degree necessary to avoid physically precluding the construction of up to two units on the lot or either of the two units from being at least 800 SF in floor area; but in no event may any structure be less than 4 FT from a side or rear property line.

(3) **Front Setback Area**. Notwithstanding any other part of this code, dwellings that are constructed under this Section shall conform to the front setback requirement of the underlying zoning district. The front setback area shall:

(a) Be kept free from all structures greater than 3 FT high; and

(b) Allow for vehicular and fire-safety access to the front structure.

g. *Parking*. Each new primary dwelling unit shall have at least one off-street parking space per unit within a fully enclosed garage having a minimum interior clear area measuring 10 FT in width and 20 FT in length, unless one of the following applies:

(1) The lot is located within one-half mile walking distance of either

(a) A corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours or

(b) A site that contains:

(i) An existing rail or bus rapid transit station,

(ii) A ferry terminal served by either a bus or rail transit service, or

(iii) The intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

(2) The site is located within one block of a permanently established car-share vehicle pickup/drop-off location.

h. *Architecture*.

(1) If there is a legal primary dwelling on the lot that was established before the Two-Unit Project, any new primary dwelling unit shall match the existing primary dwelling unit with respect to exterior materials, finishes, color, and dominant roof pitch. The dominant roof pitch means the slope shared by the largest portion of the roof.

(2) If there is no legal primary dwelling on the lot before the Two-Unit Project, and if two primary dwellings are developed on the lot, the dwellings shall match each other with respect to exterior materials, finishes, color, and dominant roof pitch. The dominant roof pitch means the slope shared by the largest portion of the roof.

(3) All exterior lighting shall be limited to down-lights.

(4) No window or door of a dwelling that is constructed on the lot may have a direct line of sight to an adjoining residential property. Decorative masonry block walls, dense landscaping,

or privacy glass may be used to provide screening and prevent a direct line of sight.

(5) If any portion of a dwelling is less than 30 FT from a property line that is not a public street right-of-way line, then all windows and doors in that portion shall either be (for windows) clerestory with the bottom of the glass at least 6 FT above the finished floor, or (for windows and doors) utilize frosted or obscure glass.

i. *Walls, Fences, and Obstructions*.

(1) A lot comprising a Two-Unit Project shall be provided with 6-FT high decorative masonry block walls (reduced to 3 FT in height within front setback areas) at the following locations:

(a) Interior side and rear lot lines of each lot; and

(b) Street side property lines and along the rear property line of through lots, setback a minimum of 5 FT behind the sidewalk.

(2) The construction and maintenance of walls, fences, and other obstructions shall comply with the requirements of Chapter 6.0 (Development and Subdivision Regulations), (Division 6.02 (Walls, Fences, and Obstructions) of this Development Code.

j. *Landscaping*. A lot comprising a Two-Unit Project shall be fully landscaped and provided with a permanent automatic irrigation system pursuant to the requirements Chapter 6.0 (Development and Subdivision Regulations), Division 6.05 (Landscaping) of this Development Code.

k. *Nonconforming Conditions*. A Two-Unit Project shall be approved only if all nonconforming zoning conditions are corrected.

l. *Utilities*.

(1) Each primary dwelling unit on the resulting lots shall have its own direct utility connection to the utility service provider.

(2) Each primary dwelling unit on the resulting lots that is or that is proposed to be connected to an onsite wastewater treatment system shall first have a percolation test completed within the last 5 years or, if the percolation test has been recertified, within the last 10 years.

m. *Building & Safety*. All structures built on a lot comprising a Two-Unit Project shall comply with all current local building standards. A

project under this Section is a change of use and subjects the whole of the lot, and all structures, to the City's current code.

7. Fire-Hazard Mitigation Measures. A lot in a very high fire hazard severity zone shall comply with each of the following fire-hazard mitigation measures:

a. It shall have direct access to a public street right-of-way with a paved street with a width of at least 40 FT. The public street right-of-way shall have at least two independent points of access for fire and life safety to access and for residents to evacuate.

b. All dwellings on the site shall comply with current fire code requirements for dwellings in a very high fire hazard severity zone.

c. All enclosed structures on the site shall have fire sprinklers.

d. All sides of all dwellings on the site shall be within a 150-FT hose-pull distance from either the public street right-of-way or of an onsite fire hydrant or standpipe.

e. If the lot does not have a swimming pool, the lot shall have a water reservoir of at least 5,000 gallons per dwelling, with fire-authority approved hookups compatible with fire-authority standard pump and hose equipment.

8. Separate Conveyance.

a. Primary dwelling units on the lot may not be owned or conveyed separately from each other.

b. Condominium airspace divisions and common interest developments are prohibited.

c. All fee interest in a lot and all dwellings on the lot shall be held equally and undivided by all individual property owners.

9. Regulation of Uses.

a. *Residential-Only*. No non-residential use is permitted on the lot.

b. *No Short Term Rentals*. No dwelling unit on a lot comprising a Two-Unit Project shall be rented for a period of less than 30 days.

c. *Owner Occupancy*. Unless the lot comprising a Two-Unit Project was formed by an Urban Lot Split, the individual property owners of a lot with a Two-Unit Project shall occupy one of the dwellings on the lot as the owners' principal residence and legal domicile.

10. Notice of Construction.

a. At least 30 business days before starting any construction of a Two-Unit Project, the property owner shall give written notice to all the owners of record of each of the adjacent residential parcels, which notice shall include the following information:

(1) Notice that construction has been authorized,

(2) The anticipated start and end dates for construction,

(3) The hours of construction,

(4) Contact information for the project manager (for construction-related complaints), and

(5) Contact information for the Building & Safety Department.

b. This notice requirement does not confer a right on the noticed persons or on anyone else to comment on the project before permits are issued. Approval is ministerial. Under state law, the City has no discretion in approving or denying a particular project under this Section. This notice requirement is purely to promote neighborhood awareness and expectation.

11. Deed Restriction. The owner shall record a deed restriction, acceptable to the City, that does each of the following:

a. Expressly prohibits any rental of any dwelling on the property for a period of less than 30 days.

b. Expressly prohibits any non-residential use of the lot.

c. Expressly prohibits any separate conveyance of a primary dwelling on the property, any separate fee interest, and any common interest development within the lot.

d. If the lot is not created by an Urban Lot Split: Expressly requires the individual property owners to live in one of the dwelling units on the lot as the owners' primary residence and legal domicile.

e. States that the property is formed by an Urban Lot Split and is therefore subject to the City's Urban Lot Split regulations, including all applicable limits on dwelling size and development.

F. Specific Adverse Impacts.

1. Notwithstanding anything else in this Section, the City may deny an application for a Two-Unit Project if the building official makes a written finding, based on a preponderance of the evidence, that the project would have a "specific, adverse impact" on either public health and safety or on the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

2. The term “specific adverse impact” has the same meaning as in GC Section 65589.5(d)(2): “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete” and does not include (1) inconsistency with the zoning ordinance or general plan land use designation or (2) the eligibility to claim a welfare exemption under Revenue and Taxation Code Section 214(g).

3. The building official may consult with and be assisted by planning staff and others as necessary in making a finding of specific, adverse impact.

G. Remedies. If a Two-Unit Project violates any part of this Development Code or any other legal requirement:

1. The buyer, grantee, or lessee of any part of the property has an action for damages or to void the deed, sale, or contract.

2. The City may:

a. Bring an action to enjoin any attempt to sell, lease, or finance the property.

b. Bring an action for other legal, equitable, or summary remedy, such as declaratory and injunctive relief.

c. Pursue criminal prosecution, punishable by imprisonment in county jail or state prison for up to one year, by a fine of up to $10,000, or both; or a misdemeanor.

d. Record a notice of violation.

e. Withhold any or all future permits and approvals.

f. Pursue all other administrative, legal, or equitable remedies that are allowed by law, this Development Code, or the City’s Municipal Code.”

“**Section 6.08.060: Urban Lot Splits**

A. Purpose. The purpose of this Section is to allow and appropriately regulate Urban Lot Splits pursuant to GC Section 66411.7.

B. Definition. An “Urban Lot Split” means the subdivision of an existing, legally subdivided lot into two lots pursuant to the requirements of this Section.

C. Application.

1. Only individual property owners may apply for an Urban Lot Split. “Individual property owner” means a natural person holding fee title individually or jointly in the person’s own name or a beneficiary of a trust that holds fee title. “Individual property owner” does not include any corporation or

corporate person of any kind (partnership, LP, LLC, C corporation, S corporation, etc.) except for a community land trust (as defined by Revenue and Taxation Code Section 402.1(a)(11)(C)(ii)) or a qualified nonprofit corporation (as defined by Section 214.15).

2. An application for an Urban Lot Split shall be submitted on a City application form. Only a complete application will be considered. The City will inform the applicant in writing of any incompleteness within 30 days following application submittal.

3. The City may establish a fee to recover its costs for adopting, implementing, and enforcing this Section of the Development Code, pursuant to applicable law. The City council may establish and change the fee by resolution. The fee shall be paid with the application.

D. Approval.

1. An application for a parcel map for an Urban Lot Split is approved or denied ministerially, by the City Engineer, without discretionary review.

2. A tentative parcel map for an Urban Lot Split shall be approved ministerially if it complies with all the requirements of this Section. The tentative parcel map may not be recorded. A final parcel map shall be approved ministerially as well, but not until the owner demonstrates that all required documents have been recorded, such as the deed restriction and easements. The tentative parcel map shall expire 3 months following approval.

3. The approval shall require the owner and applicant to hold the City of Ontario harmless from all claims and damages related to the approval and its subject matter.

4. The approval shall require the owner and applicant to reimburse the City for all costs of enforcement, including attorneys' fees and costs associated with enforcing the requirements of this Development Code.

E. Requirements. An Urban Lot Split shall satisfy each of the following requirements:

1. Subdivision Map Act Compliance.

a. The Urban Lot Split shall conform to all applicable objective requirements of the Subdivision Map Act (GC Section 66410 et seq., "SMA"), including implementing requirements in this Development Code, except as otherwise expressly provided in this Section.

b. If an Urban Lot Split violates any part of the SMA, the City's subdivision regulations, including this Section, or any other legal requirement:

(1) The buyer or grantee of a lot that is created by the Urban Lot Split has all the remedies available under the SMA, including

but not limited to an action for damages or to void the deed, sale, or contract.

(2) The City has all the remedies available to it under the SMA, including but not limited to the following:

(a) An action to enjoin any attempt to sell, lease, or finance the property.

(b) An action for other legal, equitable, or summary remedy, such as declaratory and injunctive relief.

(c) Criminal prosecution, punishable by imprisonment in county jail or state prison for up to one year, by a fine of up to $10,000, or both; or a misdemeanor.

(d) Record a notice of violation.

(e) Withhold any or all future permits and approvals.

c. Notwithstanding Section 66411.1 of the SMA, no dedication of rights-of-way or construction of offsite improvements is required for an Urban Lot Split.

2. Zoning District. The lot to be split is in a single-family residential zoning district. For purposes of this Section, the term "single-family residential zoning district" shall mean the LDR-5 (Low Density Residential – 2.1 to 5.0 DU/Acre) zoning district.

3. Lot Location. Pursuant to the GC Section 65913.4(a)(6)(B) through (K), the lot to be split shall not be located on a site that is any of the following:

a. Prime farmland, farmland of statewide importance, or land that is zoned or designated for agricultural protection or preservation by the voters.

b. A wetland.

c. Within a very high fire hazard severity zone, unless the site complies with all fire-hazard mitigation measures required by existing building standards.

d. A hazardous waste site that has not been cleared for residential use.

e. Within a delineated earthquake fault zone, unless all development on the site complies with applicable seismic protection building code standards.

f. Within a 100-year flood hazard area, unless the site has either:

(1) Been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction; or

(2) Meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program.

g. Within a regulatory floodway, unless all development on the site has received a no-rise certification.

h. Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.

i. Habitat for protected species.

j. Land under conservation easement.

4. Not Historic. The lot to be split shall not be a historic property or within a historic district that is included on the State Historic Resources Inventory. Nor may the lot be or be within a site that is designated by ordinance as a city or county landmark or as a historic property or district.

5. No Prior Urban Lot Split.

a. The lot to be split was not established through a prior Urban Lot Split.

b. The lot to be split is not adjacent to any lot that was established through a prior Urban Lot Split by the owner of the lot to be split or by any person acting in concert with the owner. For the purposes of this Section, the term “any person acting in concert with the owner” shall include any third-party that coordinates or assists the owners of two adjacent lots with their respective Urban Lot Splits.

6. No Impact on Protected Housing. The Urban Lot Split shall not require or include the demolition or alteration of any of the following types of housing:

a. Housing that is income-restricted for households of moderate, low, or very low income.

b. Housing that is subject to any form of rent or price control through a public entity’s valid exercise of its policy power.

c. Housing, or a lot that used to have housing, that has been withdrawn from rental or lease under the Ellis Act (GC Sections 7060–7060.7) at any time in the 15 years prior to submission of the Urban Lot Split application.

d. Housing that has been occupied by a tenant in the last 3 years. The applicant and the owner of a property for which an Urban Lot Split is

sought shall provide a sworn statement as to this fact with the application for the tentative parcel map. The City may conduct its own inquiries and investigation to ascertain the veracity of the sworn statement, including but not limited to, surveying owners of nearby properties; and the City may require additional evidence of the applicant and owner as necessary to determine compliance with this requirement.

7. Lot Size.

a. The lot to be split shall be at least 2,400 SF.

b. Each lot created by an Urban Lot Split shall be at least 1,200 SF.

c. Each lot created by an Urban Lot Split shall be between 60 percent and 40 percent of the original lot area.

8. Easements.

a. The owner shall enter into an easement agreement with each public-service provider to establish easements that are sufficient for the provision of public services and facilities to each of the resulting lots.

b. Each easement shall be shown on the parcel map.

c. Copies of the unrecorded easement agreements shall be submitted with the application. The easement agreements shall be recorded against the property before the final parcel map may be approved pursuant to subpart D.2 above.

9. Lot Access.

a. Each lot created by an Urban Lot Split shall adjoin a public street right-of-way.

b. Each lot created by an Urban Lot Split shall have frontage on the public street right-of-way of at least 20 FT.

10. Unit Standards.

a. *Quantity*. No more than two dwelling units of any kind may be built on a lot that results from an Urban Lot Split. For purposes of this paragraph, “unit” means any dwelling unit, including, but not limited to, a primary dwelling unit, a unit created pursuant to State law and Section 5.03.403 (Two-Unit Projects) of this Development Code, or an ADU or JADU created pursuant to Section 5.03.010 (Accessory Dwelling Unit) of this Development Code.

b. *Unit Size*.

(1) The total floor area of each primary dwelling that is developed on a lot resulting from an Urban Lot Split shall be a minimum of 500 SF in area and a maximum of 800 SF in area.

(2) A primary dwelling that was legally established prior to the Urban Lot Split and that is larger than 800 SF is limited to the lawful floor area at the time of the Urban Lot Split and shall not be expanded

(3) A primary dwelling that was legally established prior to the Urban Lot Split and is smaller than 800 SF may be expanded to a maximum of 800 SF after the Urban Lot Split.

c. *Height Restrictions*.

(1) On a resulting lot that is 2,000 SF or larger, no new primary dwelling unit may exceed one-story or 16 FT in height, measured from grade to peak of the structure.

(2) On a resulting lot that is smaller than 2,000 SF, no new primary dwelling unit may exceed two-stories or 22 FT in height, measured from grade to peak of the structure. Any portion of a new primary dwelling that exceeds one story in height shall be stepped back by an additional 5 FT from the ground floor; no balcony deck or other portion of the second story may project into the stepback.

(3) No rooftop deck is permitted on any new or remodeled dwelling or structure on a lot resulting from an Urban Lot Split.

d. *Lot Coverage*. Maximum lot coverage shall conform to the requirement of the underlying zoning district. This lot coverage standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at 800 SF each.

e. *Setback Requirements*.

(1) **Generally**. All setbacks shall conform to the minimum requirements of the underlying zoning district.

(2) **Exceptions**. Notwithstanding subpart E.10.e above:

(a) Existing Structures. No setback is required for an existing legally established structure or for a new structure that is constructed in the same location and to the same dimensions as an existing legally established structure.

(b) Cannot Preclude Construction of Two 800-SF Units and 4-FT Side/Rear Setbacks. The setbacks imposed by the underlying zoning district shall yield to the

degree necessary to avoid physically precluding the construction of up to two units on the lot or either of the two units from being at least 800 SF in floor area; but in no event may any structure be less than 4 FT from a side or rear property line.

(3) **Front Setback Area**. Notwithstanding any other part of this Development Code, dwellings that are constructed after an Urban Lot Split shall conform to the front setback requirement of the underlying zoning district. The front setback area shall:

(a) Be kept free from all structures greater than 3 FT high; and

(b) Allow for vehicular and fire-safety access to the front structure.

f. *Parking*. Each new primary dwelling unit shall have at least one off-street parking space per unit within a fully enclosed garage having a minimum interior clear area measuring 10 FT in width and 20 FT in length, unless one of the following applies:

(1) The lot is located within one-half mile walking distance of either

(a) A corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours or

(b) A site that contains:

(i) An existing rail or bus rapid transit station,

(ii) A ferry terminal served by either a bus or rail transit service, or

(iii) The intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

(2) The site is located within one block of a permanently established car-share vehicle pickup/drop-off location.

g. *Architecture*.

(1) If there is a legal primary dwelling on the lot that was established before the Urban Lot Split, any new primary dwelling unit shall match the existing primary dwelling unit with respect to exterior materials, finishes, color, and dominant

roof pitch. The dominant roof pitch means the slope shared by the largest portion of the roof.

(2) If there is no legal primary dwelling on the lot before the Urban Lot Split, and if two primary dwellings are developed on the lot, the dwellings shall match each other with respect to exterior materials, finishes, color, and dominant roof pitch. The dominant roof pitch means the slope shared by the largest portion of the roof.

(3) All exterior lighting shall be limited to down-lights.

(4) No window or door of a dwelling that is constructed on the lot may have a direct line of sight to an adjoining residential property. Decorative masonry block walls, dense landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.

(5) If a dwelling is constructed on a lot after an Urban Lot Split and any portion of the dwelling is less than 30 FT from a property line that is not a public street right-of-way line, then all windows and doors in that portion shall either be (for windows) clerestory with the bottom of the glass at least 6 FT above the finished floor, or (for windows and for doors) utilize frosted or obscure glass.

h. *Walls, Fences, and Obstructions*.

(1) Lots created as a result of an Urban Lot Split shall be provided with 6-FT high decorative masonry block walls (reduced to 3 FT in height within front setback areas) at the following locations:

(a) Interior side and rear lot lines of each lot; and

(b) Street side property lines and along the rear property line of through lots, setback a minimum of 5 FT behind the sidewalk.

(2) The construction and maintenance of walls, fences, and other obstructions shall comply with the requirements of Division 6.02 (Walls, Fences, and Obstructions) of this Chapter.

i. *Landscaping***.** Lots created as a result of an Urban Lot Split shall be fully landscaped and provided with a permanent automatic irrigation system pursuant to the requirements Division 6.05 (Landscaping) of this Chapter.

j. *Nonconforming Conditions*. An Urban Lot Split may be approved without requiring a legal nonconforming zoning condition to be corrected.

k. *Utilities*.

(1) Each primary dwelling unit on the resulting lots shall have its own direct utility connection to the utility service provider.

(2) Each primary dwelling unit on the resulting lots that is or that is proposed to be connected to an onsite wastewater treatment system shall first have a percolation test completed within the last 5 years or, if the percolation test has been recertified, within the last 10 years.

l. *Building & Safety*. All structures built on a lot resulting from an Urban Lot Split shall comply with all current local building standards. An Urban Lot Split is a change of use.

11. Fire-Hazard Mitigation Measures.

a. A lot in a very high fire hazard severity zone shall comply with each of the following fire-hazard mitigation measures:

(1) It shall have direct access to a public street right-of-way with a paved street with a width of at least 40 FT. The public street right-of-way shall have at least two independent points of access for fire and life safety to access and for residents to evacuate.

(2) All dwellings on the site shall comply with current Fire Code requirements for dwellings in a very high fire hazard severity zone.

(3) All enclosed structures on the site shall have fire sprinklers.

(4) All sides of all dwellings on the site shall be within a 150-FT hose-pull distance from either the public street right-of-way or of an onsite fire hydrant or standpipe.

(5) If the lot does not have a swimming pool, the lot shall have a water reservoir of at least 5,000 gallons per dwelling, with fire-authority approved hookups compatible with fire-authority standard pump and hose equipment.

b. Prior to submitting an application for an Urban Lot Split, the applicant shall obtain a certificate of compliance with all applicable fire-hazard mitigation measures pursuant to this subpart E.11. The City or its authorized agent shall inspect the site, including all structures on the site, and certify as to its compliance. The certificate shall be included with the application. The applicant shall pay the City's costs for inspection. Failure to pay is grounds for denying the application.

12. Separate Conveyance.

a. On a lot created by an Urban Lot Split:

(1) Primary dwelling units cannot be owned or conveyed separately from each other.

(2) Condominium airspace divisions and common interest developments are prohibited.

(3) All fee interest in a lot and all dwellings on the lot shall be held equally and undivided by all individual property owners.

b. Separate conveyance of lots created by an Urban Lot Split is permitted. If dwellings or other structures (such as garages) on different lots are adjacent or attached to each other, the Urban Lot Split boundary may separate them for conveyance purposes if the structures meet Building Code safety standards and are sufficient to allow separate conveyance. If any attached structures span or will span the new lot line, the owner shall record appropriate CC&Rs, easements, or other documentation that is necessary to allocate rights and responsibility between the owners of the two lots.

13. Regulation of Uses**.**

a. *Residential-Only*. Nonresidential land uses shall be prohibited on any lot created by Urban Lot Split.

b. *No Short Term Rentals*. No dwelling unit on a lot that is created by an Urban Lot Split may be rented for a period of less than 30 days.

c. *Owner Occupancy*. The applicant for an Urban Lot Split shall sign an affidavit stating that the applicant intends to occupy one of the dwelling units on one of the resulting lots as the applicant's principal residence for a minimum of 3 years after the Urban Lot Split is approved.

14. Notice of Construction.

a. At least 30 business days prior to the starting any construction of a structure on a lot created by an Urban Lot Split, the property owner shall give written notice to all the owners of record of each of the adjacent residential parcels, which notice shall include the following information:

(1) Notice that construction has been authorized,

(2) The anticipated start and end dates for construction,

(3) The hours of construction,

(4) Contact information for the project manager (for construction-related complaints), and

(5) Contact information for the Building & Safety Department.

b. This notice requirement does not confer a right on the noticed persons or on anyone else to comment on the project before permits are issued. The approval of an Urban Lot Split is ministerial and under state law, the City has no discretion in approving or denying a particular project under this Section. This notice requirement is purely to promote neighborhood awareness and expectation.

15. Deed Restriction. The owner shall record a deed restriction, acceptable to the City, that does each of the following:

a. Expressly prohibits any rental of any dwelling on the property for a period of less than 30 days.

b. Expressly prohibits any nonresidential land use of the lots created by the Urban Lot Split.

c. Expressly prohibits any separate conveyance of a primary dwelling on the property, any separate fee interest, and any common interest development within the lot.

d. States that the property is formed by an Urban Lot Split and is, therefore, subject to the City's Urban Lot Split regulations, including all applicable limits on dwelling size and development.

F. Specific Adverse Impacts.

1. Notwithstanding anything else in this Section, the City may deny an application for an Urban Lot Split if the building official makes a written finding, based on a preponderance of the evidence, that the project would have a "specific, adverse impact" on either public health and safety or on the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

2. The term "specific adverse impact" has the same meaning as in GC Section 65589.5(d)(2): "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete" and does not include (1) inconsistency with the zoning ordinance or general plan land use designation or (2) the eligibility to claim a welfare exemption under Revenue and Taxation Code Section 214(g).

3. The building official may consult with and be assisted by planning staff and others as necessary in making a finding of specific, adverse impact."

PART XVI: Development Code Table 2.02-1 (Review Matrix) shall be amended to read as follows:

R = Advisory (Recommending) Authority
X = Approving Authority
A = Appeal Authority

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]									
	Planning Director	City Engineer	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
A. LEGISLATIVE ACTIONS										
1. Airport Land Use Compatibility Plan and Amendments **[1]** (Ref: ODC Section 4.01.010)								R	X	
2. Development Agreements **[1]** (Ref: ODC Section 4.01.015)								R	X	
3. Development Code Amendments **[1]** (Ref: ODC Section 4.01.020)								R	X	
4. Amendment to the Policy Plan (General Plan) Component of The Ontario Plan **[1]** (Ref: ODC Section 4.01.025)								R	X	
5. Planned Unit Developments and Amendments **[1]** (Ref: ODC Section 4.01.030)								R	X	
6. Specific Plans and Amendments **[1]** (Ref: ODC Section 4.01.035)								R	X	
7. Williamson Act Contract Cancellations **[1]** (Ref: GC Section 51200 et seq.)								R	X	
8. Zone Changes **[1]** (Ref: ODC Section 4.01.040)								R	X	
B. DISCRETIONARY PERMITS AND ACTIONS										
1. Billboard Relocation Agreements **[1]** (Ref: ODC Section 4.02.010)								R	X	
2. Conditional Use Permits (Ref: ODC Section 4.02.015)										
a. Hotels, Motels and Residence Inns **[1]**								R	X	
b. Use established in conjunction with a Development Plan **[1]**					R			X	A	
c. Use established within an existing structure **[1]**				X				A	A	
d. Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**								X	A	
e. Revocation due to abandonment of use per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**				X				A	A	
3. Density Bonus and Other Incentives per ODC Section 6.01.010.G (Density Bonus and Other Incentives) **[1]**								R	X	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]									
	Planning Director	City Engineer	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
4. Development Plans (Ref: ODC Section 4.02.025)										
a. Residential developments totaling 5 or more dwelling units or the development of 3 or more dwelling units on a single lot or parcel					R			X	A	
b. Commercial developments, and developments in the CIV, OS-R, OS-C and UC zoning districts, greater than 500 SF in area					X			A	A	
c. Industrial developments equal to or less than 0.45 FAR					X			A	A	
d. Industrial developments exceeding 0.45 FAR					R			X	A	
e. Wireless telecommunications facilities pursuant to Section 5.03.415 (Wireless Telecommunications Facilities) of this Development Code										
(1) Tier 2 facilities					X			A	A	
(2) Tier 3 facilities **[1]**					R			X	A	
f. All others					X			A	A	
5. Extensions of Legal Nonconforming Status **[1]** (Ref: ODC Section 4.02.030)				X				A	A	
6. Historic Preservation										
a. Certificates of Appropriateness (Ref: ODC Section 4.02.050)										
(1) Designated Historic Landmarks and Contributors, and Architectural Conservation Areas; and Demolition of an Historic Resource **[1]**						R	X		A	
(2) Deferral of Replacement Structure **[1]**						R	X		A	
(3) Eligible Historic Resources **[1]**						X	A		A	
(4) Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**						R	X		A	
(5) Waivers for Minor Improvements	X					A[6]	A[6]			
b. Certificates of Economic Hardship **[1]** (Ref: ODC Section 4.02.055) **[1]**						R	X		A	
c. Certificates of Economic Hardship—Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**						R	X		A	
d. Conservation Plans (Ref: ODC Section 4.02.060)						X	A		A	
e. Historic Resource Tiering (Ref: ODC Section 4.02.040), including Rescinding or Amending Status (Ref: ODC Section 4.02.045)						X	A		A	
f. Local Historic Landmark and Local District Designations, and Architectural Conservation Areas (Ref: ODC Section 4.02.040), including Rescinding or Amending Status (Ref: ODC Section 4.02.045)						R	R		X	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]									
	Planning Director	City Engineer	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
g. Mills Act Contracts (Ref: ODC Section 4.02.065)						R	R		X	
h. Mills Act Cancellations **[1]** (Ref: ODC Section 4.02.065)						R	R		X	
i. Addition/Removal of Resources to/from the Ontario Register (Ref: ODC Section 4.02.045)										
(1) At the request of the property owner, or upon City initiation if the most recently prepared Historic Resource Survey evaluating the resource is more than 5 years old.						X	A		A	
(2) Loss of all historic and/or cultural significance due to a catastrophe causing a loss of integrity, or due to extensive legally performed alterations performed after the property was initially surveyed.	X						A		A	
7. Interpretations and Land Use Determinations (Ref: ODC Section 1.02.010)				X				A	A	
8. Master Plans and Amendments **[1]** (Ref: ODC Section 4.02.070)								R	X	
9. Minor Adjustments and Alterations (Ref: ODC Section 4.02.020.D)				X				A	A	
10. Nonconforming Structure Reconstruction **[1]** (Ref: ODC Section 3.01.020)								X	A	
11. Parking Reduction (Ref: ODC Section 6.03.025)								X	A	
12. Sign Programs (Ref: ODC Section 4.02.075)	X							A	A	
13. Specific Plan Minor Adjustments and Alterations (Ref: ODC Section 4.02.080)	X							A	A	
14. Stays of Permit Approval Time Limit (Ref: ODC Section 2.02.025.A.8)				X[5]	X[5]	X[5]	X[5]	X[5]	X[5]	
15. Subdivisions										
a. Lot Merger (Merger of Contiguous Parcels) **[1]** (Ref: ODC Section 4.02.085)					R			X	A	
b. Reversions to Acreage **[1]** (Ref: ODC Section 4.02.090)					R			X	A	
c. Tentative Tract and Parcel Maps, and Vesting Maps **[1]** (Ref: ODC Section 4.02.095)					R			X	A	
d. Tentative Tract and Parcel Map Time Extensions (Ref: ODC Section 2.02.025.A.3 & 4)					R			X	A	
16. Time Extensions, excepting tentative subdivision maps (Ref: ODC Section 2.02.025)	X							A	A	
17. Variances (Ref: ODC Section 4.02.020.E)										
a. Homeowner **[1]**				X				A	A	
b. Other **[1]**					R			X	A	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]									
	Planning Director	City Engineer	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
C. MINISTERIAL (ADMINISTRATIVE) PERMITS AND DECISIONS										
1. Administrative Exceptions (Ref: ODC Section 4.02.020.C)	X							A	A	
2. Administrative Use Permits (Ref: ODC Section 4.03.015)	X									
3. Airport Land Use Compatibility Plan (ALUCP) Interagency Reviews **[7]** (Ref: ALUCP)	X								A[8]	
4. Business License - Zoning/Land Use Compliance (Ref: OMC 3-1.129 (Zoning Compliance)	X							A	A	
5. Development Applications within the ONT zoning district	X									
6. Landscape and Irrigation Plans (Ref. ODC Section 6.05.005)	X							A	A	
7. Off-Site (Public) Improvement Plans (Ref: ODC Section 6.08.040)		X						A	A	
8. Other Plan Checks required by this Development Code	X							A	A	
9. Shopping Cart Retention Plans (Ref: ODC Section 6.11.020)	X							A	A	
10. Sign Plans (Ref: ODC Section 4.03.020)	X							A	A	
11. Single-Family Two-Unit Developments (Ref: ODC Section 5.03.403)	X							A	A	
12. Subdivisions										
a. Certificates of Compliance (Ref: ODC Section 4.03.025)		X						A	A	
b. Final Tract and Parcel Maps, and Vesting Maps (Ref: ODC Section 4.03.030)									X	
c. Lot Line Adjustments (Ref: ODC Section 4.03.035)		X						A	A	
d. Map Corrections and Amendments (Ref: ODC Section 4.03.040)		X						A	A	
e. Street Address Numbering (Ref. ODC Section 6.06.010)			X					A	A	
f. Street Name Assignment (Ref. ODC Section 6.06.010)	X							A	A	
g. Subdivision Improvement Agreement (Ref: ODC Section 6.08.040.G)		X						A	A	
h. Urban Lot Split (Ref: ODC Section 6.08.060)		X						A	A	
13. Tier 1 wireless telecommunications facility pursuant to ODC Section 5.03.420 (Wireless Telecommunications Facilities)				X				A	A	

Table 2.02-1: Review Matrix

Applications, Actions, Decisions and Processes	Reviewing Authorities [4]									
	Planning Director	City Engineer	Building Official	Zoning Administrator [2]	Development Advisory Board	Historic Preservation Subcommittee [2] [11]	Historic Preservation Commission [11]	Planning Commission [11]	City Council [11]	Ontario International Airport Authority
14. Wall, Fence, and Obstructions Plans (Ref. ODC Section 6.02.005)	**X**							**A**	**A**	
15. Fair Housing and Reasonable Accommodation (Ref: ODC Section 4.02.035)	**X**							**A**	**A**	
D. ENVIRONMENTAL DETERMINATIONS AND ACTIONS										
1. Environmental Impact Reports (EIRs) (Ref: CCR Section 15080 et seq.)								**X[3]**	**X[3]**	
2. Exempt Projects (Ref: CCR Section 15300 et seq.)	**X[3]**			**X[3]**	**X[3]**	**X[3]**	**X[3]**	**A**	**A**	
3. Ministerial Projects (Ref: CCR Section 15268)	**Ministerial projects are exempt from the requirements of CEQA [10]**									
4. Negative Declarations (NDs) and Mitigated Negative Declarations (MNDs) (Ref: CCR Section 15070 et seq.)				**X[3]**	**X[3]**	**X[3]**	**X[3]**	**X[3]**	**X[3]**	
5. Addendums to previously certified EIRs and previously adopted NDs and MNDs (Ref: CCR Section 15164)				**X[3]**	**X[3]**	**X[3]**	**X[3]**	**X[3]**	**X[3]**	
6. Environmental review for projects located within the ONT zoning district **[9]**										**X**

Notes:

[1] A public hearing is required pursuant to the procedures set forth in Division 2.03 (Public Hearings) of this Development Code; however, public notification shall not be required for Development Advisory Board or Historic Preservation Subcommittee hearings when acting in the capacity of an Advisory Authority.

[2] The Approving Authority may refer any application subject to their review to the next higher authority (Appeal Authority).

[3] The Approving Authority for environmental determinations/actions shall be the same as the related legislative or discretionary actions. NDs and MNDs, and Addendums to previously certified EIRs, and previously adopted NDs or MNDs, which are not associated with, or are independent of, legislative or discretionary actions, shall be subject to Development Advisory Board review and adoption. EIRs that are not associated with, or are independent of, legislative or discretionary actions shall be subject to Planning Commission review and certification.

[4] An application submitted for concurrent review and action with another application, action or decision requiring review and action by a higher Reviewing Authority may be subject to concurrent review and action by that higher Reviewing Authority upon their request.

[5] The Approving Authority responsible for issuing a "Stay of Permit Approval Time Limit" pursuant to Section 2.02.025 (Projects Involving Pending Litigation) of the Development Code, shall be the same as for the related application, action or decision.

[6] An appeal of an Historic Preservation—Certificate of Appropriateness—Waiver shall be considered by the Historic Preservation Subcommittee, except that an Historic Preservation—Waiver for an Historic Landmark shall be considered by the Historic Preservation Commission

[7] Refer to the ALUCP for procedures for application processing and administration, and appeals processing.

[8] Appeal shall be subject to review by the Mediation Board established pursuant to ALUCP Section 4.

[9] Pursuant to the Joint Powers Authority agreement between the City of Ontario and the County of San Bernardino, the Ontario International Airport Authority shall be the lead agency.

[10] Ministerial projects are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15268 of the CEQA Guidelines. The following projects or actions shall be deemed ministerial:

- *Administrative Exceptions;*
- *Administrative Use Permit issuance;*
- *ALUCP inter agency reviews;*

- *Building permit issuance;*
- *Business license issuance;*
- *Encroachment permit issuance;*
- *Final subdivision map approval;*
- *Individual utility service connection and disconnection approval;*
- *Landscape and irrigation plan approval;*
- *Lot Line Adjustment approval;*
- *Public improvement plan approval;*
- *Shopping cart retention plan approval;*
- *Sign Plan approval;*
- *Single-Family Two-Unit Developments;*
- *Street address number issuance;*
- *Subdivision Improvement Agreement approval;*
- *Subdivision map corrections and amendments approval;*
- *Temporary Use Permit issuance;*
- *Tier 1 wireless telecommunications facility approval;*
- *Urban Lot Splits; and*
- *Wall and/or fence plan approval.*

[11] Applications that do not require a public Hearing pursuant to Note 1, above, may be reviewed and acted upon under the "Consent Calendar" portion of the Approving Authority meeting agenda.

PART XVII: Development Code Table 2.03-1 (Notification Matrix) shall be amended to read as follows:

Table 2.03-1: Notification Matrix

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	Not Required	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
A. LEGISLATIVE ACTIONS				
1. Airport Land Use Compatibility Plan and Amendments **[1]** (Ref: ODC Section 4.01.010)		**X**	**X**	**X**
2. Development Agreements **[1]** (Ref: ODC Section 4.01.015)		**X**	**X**	**X**
3. Development Code Amendments **[1]** (Ref: ODC Section 4.01.020)				**X**
4. Amendment to the Policy Plan (General Plan) Component of The Ontario Plan **[1]** (Ref: ODC Section 4.01.025)		**X**	**X**	**X**
5. Planned Unit Developments and Amendments **[1]** (Ref: ODC Section 4.01.030)		**X**	**X**	**X**
6. Specific Plans and Amendments **[1]** (Ref: ODC Section 4.01.035)		**X**	**X**	**X**
7. Williamson Act Contract Cancellations **[1]** (Ref: GC Section 51200 et.seq.)		**X**	**X**	**X**
8. Zone Changes **[1]** (Ref: ODC Section 4.01.040)		**X**	**X**	**X**
B. DISCRETIONARY PERMITS AND ACTIONS				

Table 2.03-1: Notification Matrix

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	Not Required	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
1. Billboard Relocation Agreements **[1]** (Ref: ODC Section 4.02.010)	X			
2. Conditional Use Permits (Ref: ODC Section 4.02.015)				
a. Hotels, Motels and Residence Inns **[1]**		X	X	
b. Use established in conjunction with a Development Plan **[1]**		X	X	
c. Use established within an existing structure **[1]**		X	X	
d. Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**		X	X	
e. Revocation due to abandonment of use per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**		X	X	
3. Density Bonus and Other Incentives per ODC Section 6.01.010.G (Density Bonus and Other Incentives) **[1]**		X	X	
4. Development Plans (Ref: ODC Section 4.02.025)				
a. Residential developments totaling 5 or more dwelling units or the development of 3 or more dwelling units on a single lot or parcel		X		
b. Commercial developments, and developments in the CIV, OS-R, OS-C and UC zoning districts, greater than 500 SF in area		X		
c. Industrial developments equal to or less than 0.45 FAR		X		
d. Industrial developments exceeding 0.45 FAR		X		
e. Wireless telecommunications facilities pursuant to Section 5.03.415 (Wireless Telecommunications Facilities) of this Development Code				
(1) Tier 2 facilities		X		
(2) Tier 3 facilities **[1]**		X	X	
f. All others		X		
5. Extensions of Legal Nonconforming Status **[1]** (Ref: ODC Section 4.02.030)		X	X	
6. Historic Preservation				
a. Certificates of Appropriateness (Ref: ODC Section 4.02.050)				

Table 2.03-1: Notification Matrix

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	Not Required	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
(1) Designated Historic Landmarks and Contributors, and Architectural Conservation Areas; and Demolition of an Historic Resource **[1]**		X	X	
(2) Deferral of Replacement Structure **[1]**		X	X	
(3) Eligible Historic Resources **[1]**		X	X	
(4) Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**		X	X	
(5) Waivers and Minor Improvements	X			
b. Certificates of Economic Hardship **[1]** (Ref: ODC Section 4.02.055)		X	X	
c. Certificates of Economic Hardship—Modification or revocation per ODC Division 2.05 (City Initiated Modification or Revocation) **[1]**		X	X	
d. Conservation Plans (Ref: ODC Section 4.02.060)		X		
e. Historic Resource Tiering (Ref: ODC Section 4.02.040), including Rescinding or Amending Status (Ref: ODC Section 4.02.045)	X			
f. Local Historic Landmark and Local District Designations, and Architectural Conservation Areas [Ref: ODC Section 4.02.040), including Rescinding or Amending Status (Ref: ODC Section 4.02.045)		X		
g. Mills Act Contracts (Ref: ODC Section 4.02.065)		X		
h. Mills Act Cancellations **[1]**		X	X	
i. Addition/Removal of Resources to/from the Ontario Register (Ref: ODC Section 4.02.045)				
(1) At the request of the property owner, or upon City initiation if the most recently prepared Historic Resource Survey evaluating the resource is more than 5 years old.	X			
(2) Loss of all historic and/or cultural significance due to a catastrophe causing a loss of integrity, or due to extensive legally performed alterations performed after the property was initially surveyed.	X			
7. Interpretations and Land Use Determinations (Ref: ODC Section 1.02.010)	X			
8. Master Plans and Amendments **[1]** (Ref: ODC Section 4.02.070)		X	X	X
9. Minor Adjustments and Alterations **[5]** (Ref: ODC Section 4.02.020.D)		X	X	

Table 2.03-1: Notification Matrix

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	Not Required	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
10. Nonconforming Structure Reconstruction **[1]** (Ref: ODC Section 3.01.020)		X	X	
11. Parking Reduction (Ref: ODC Section 6.03.025)	X			
12. Sign Programs (Ref: ODC Section 4.02.075)	X			
13. Specific Plan Minor Adjustments and Alterations (Ref: ODC Section 4.02.080)	X			
14. Stays of Permit Approval Time Limit (Ref: ODC Section 2.02.025.A.8)	X			
15. Subdivisions				
a. Lot Merger (Merger of Contiguous Parcels) **[1]** (Ref: ODC Section 4.02.085)		X	X	
b. Reversions to Acreage **[1]** (Ref: ODC Section 4.02.090)		X	X	
c. Tentative Tract and Parcel Maps, and Vesting Maps **[1]** (Ref: ODC Section 4.02.095)		X	X	
d. Tentative Tract and Parcel Map Time Extensions (Ref: ODC Section 2.02.025.A.3 & 4)		X		
16. Time Extensions, excepting tentative subdivision maps (Ref: ODC Section 2.02.025)	X			
17. Variances (Ref: ODC Section 4.02.020.E)				
a. Homeowner **[1]**		X	X	
b. Other **[1]**		X	X	
C. MINISTERIAL (ADMINISTRATIVE) PERMITS AND DECISIONS				
1. Administrative Exceptions (Ref: ODC Section 4.02.020.C)	X			
2. Administrative Use Permit (Ref: ODC Section 4.02.015)	X			
3. Airport Land Use Compatibility Plan (ALUCP) Interagency Reviews **[4]** (Ref: ALUCP)	X			
4. Fair Housing and Reasonable Accommodation Ref: ODC Section 4.02.035)	X			
5. Landscape and Irrigation Documentation Plans (Ref. ODC Section 6.05.015)	X			
6. Off-Site (Public) Improvement Plans (Ref: ODC Section 6.08.040)	X			
7. Sign Plans (Ref: ODC Section 4.03.020)	X			
8. Single-Family Two-Unit Developments (Ref: ODC Section 5.03.403)	X			
9. Subdivisions				

Table 2.03-1: Notification Matrix

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	Not Required	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
a. Certificates of Compliance (Ref: ODC Section 4.03.025)	X			
b. Final Tract and Parcel Maps, and Vesting Maps (Ref: ODC Section 4.03.030)	X			
c. Lot Line Adjustments (Ref: ODC Section 4.03.035)	X			
d. Map Corrections and Amendments (Ref: ODC Section 4.03.040)	X			
e. Street Address Numbering (Ref. ODC Section 6.06.010)	X			
f. Street Name Assignment (Ref. ODC Section 6.06.010)	X			
g. Subdivision Improvement Agreement (Ref: ODC Section 6.08.040.G)	X			
h. Urban Lot Split (Ref: ODC Section 6.08.060)	X			
10. Tier 1 wireless telecommunications facility pursuant to ODC Section 5.03.415 (Wireless Telecommunications Facilities)	X			
D. ENVIRONMENTAL DETERMINATIONS AND ACTIONS				
1. Environmental Impact Reports (EIRs) (Ref: CCR Section 15080 et seq.)		X	X	X
2. Exempt Projects (Ref: CCR Section 15300 et seq.)	X			
3. Ministerial Projects (Ref: CCR Section 15268)	X			
4. Negative Declarations (NDs) and Mitigated Negative Declarations (MNDs) (Ref: CCR Section 15070 et seq.)		X		
5. Addendums to previously certified EIRs and previously adopted NDs and MNDs (Ref: CCR Section 15164)	X			

Notes:

[1] Public hearing notification is required pursuant to Section 2.03.010 (Public Hearing Notification) of this Division.

[2] Public notification shall not be required for Development Advisory Board or Historic Preservation Subcommittee hearings when acting in the capacity of an Advisory Authority.

[3] A Large Family Day Care facility shall require notification pursuant to Subparagraph 2.03.010.C.1.b(1) of this Division.

[4] Refer to the LA/Ontario International Airport Land Use Compatibility Plan for procedures for application processing and administration, and appeals processing.

[5] A Minor Adjustments and Alterations *shall require notification pursuant to Paragraph 4.02.020.D.3 (Application Filing, Processing and Hearing) of this Development Code.*

PART XVIII: Development Code Table 8.01-1 (Sign Regulation Matrix) shall be amended, revising the Special Regulations for Retail Sales Events in Commercial zoning districts (Subparagraph C.1.c[2]) and Industrial zoning districts (Subparagraph E.1.c[2]), to read as follows:

"[2] Retail Sales Events and Other Similar Business Events. A retail sales event or other similar business event permitted pursuant to Subparagraph 5.03.395.G.1 of this Development Code, may be allowed temporary signage for maximum of eight, one-week periods per calendar year, not to exceed a total of 56 days per calendar year.

PART XIX: Development Code Table 5.02-1 (Land Use Matrix) shall be amended as shown in Exhibit A: Portion of Table 5.02-1 (Land Use Matrix), of this attachment.

Exhibit A: Portion of Table 5.02-1 (Land Use Matrix)

Table 5.02-1: Land Use Matrix

2022 NAICS Code	Land Uses, Activities, and Facilities *Note: In addition to the requirements of this Table, properties located within the Airport Influence Area (AIA) established by the LA/Ontario International Airport Land Use Compatibility Plan (ALUCP) shall be subject to the land use requirements and standards of the ALUCP.*	Residential Zoning Districts				Commercial Zoning Districts							Mixed Use Zoning Districts							Industrial Zoning Districts					Specialized Use and Overlay Zoning Districts								Additional Regulations
													MU-1																			
		AR-2 & RE-2	RE-4 & LDR-5	MDR-11, 18 & 25	HDR-45	CS	CN	CC	CR	CCS	OL	OH	LUA-1	LUA-2N	LUA-2S	LUA-3	LUA-4	MU-2	MU-11	BP	IP	IL	IG	IH	AG	CIV	MHP	ONT	OS-C	OS-R	RC	UC	
61	**EDUCATION SERVICES**																															
611	**Educational Services**																															
6115	**Technical, Trade, and Vocational Schools**	---	---	---	---	---	---	C	C	---	---	C	---	---	---	---	C	C	C	C	C	C	C	---	---	C	---	---	---	---	---	---	
62	**HEALTH CARE AND SOCIAL ASSISTANCE**																															
623	**Nursing and Residential Care Facilities**																															
6239	**Other Residential Care Facilities for 6 or fewer persons** (includes facilities providing adult residential care services, which do not require a State-issued license to operate, such as but not limited to group homes for the hearing or visually impaired, halfway group homes for ex-offenders, group homes for unwed mothers, group homes for the disabled without nursing care, and sober living facilities.)	*P	*P	*P	*P	---	---	---	---	---	---	---	*P	*P	*P	*P	---	*P	*P	---	---	---	---	---	*P	---	---	---	---	---	---	---	* Allowed only in conjunction with an existing single-family residence. See Section 5.03.345 (Residential Care Facilities, Other—6 or Fewer Persons)

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **PUBLIC HEARINGS**
Department: Integrated Waste Prepared By: Blaine M Ishii 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: 35

SUBJECT: **INTRODUCTION OF ORDINANCE AMENDING CHAPTER 3 OF TITLE 6 OF VOLUME I OF THE ONTARIO MUNICIPAL CODE REGARDING INTEGRATED SOLID WASTE MANAGEMENT COLLECTION FREQUENCY**

RECOMMENDATION: That the City Council introduce and waive further reading of the ordinance amending Chapter 3 of Title 6 of Volume I of the Ontario Municipal Code Regarding Integrated Solid Waste Management Collection Frequency and Finding the Action Exempt from CEQA.

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: There is no direct fiscal impact associated with the recommended action.

BACKGROUND & ANALYSIS: The City of Ontario (the "City") provides for the removal of solid waste from commercial facilities. Integrated Waste, a department of the City's Public Works Agency, carries out solid waste removal duties within the City and provides service to various commercial facilities within the City's jurisdiction. Recently, the Integrated Waste Department has experienced multiple "dead runs," whereby its collection services have observed empty or nearly-empty containers at various commercial facilities where service is currently provided multiple times per week.

The Ontario Municipal Code currently requires the Integrated Waste Department to engage in collection services from these locations at a frequency that results in dead runs, which has impacted the Integrated Waste Department's ability to schedule service for other customers.

Reducing the frequency of collections at these commercial locations where such service is unnecessary will allow the Public Works Agency to better allocate its resources to meet demand in areas where its services are required.

The proposed Ordinance would amend Section 6.3.201, subdivision (b), of Title 6 of the Ontario Municipal Code to allow the City Administrator to adjust collection frequency based upon a finding

that lower collection frequency and/or fewer containers are sufficient to maintain the premises in a clean and sanitary condition, and provided that such changes would not result in the accumulation of putrescible materials on the premises for more than one week. The proposed Ordinance requires two written notifications to the customer listed on the City's billing records, notifying the customer of the Administrator's determination and giving the customer the opportunity to appeal the adjustment in service levels.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CHAPTER 3 OF TITLE 6 OF VOLUME I OF THE ONTARIO MUNICIPAL CODE REGARDING INTEGRATED SOLID WASTE MANAGEMENT COLLECTION FREQUENCY AND FINDING THE ACTION EXEMPT FROM CEQA.

WHEREAS, the City of Ontario ("City") currently provides for the removal of solid waste from commercial facilities in keeping with its goal to maintain a safe, clean, and sanitary community; and

WHEREAS, the Public Works Agency has experienced multiple "dead runs" in its collection at various commercial facilities in which service is provided for empty or nearly empty containers; and

WHEREAS, the Public Works Agency has been impacted in its ability to schedule service for customers because it has been required to make collections to commercial facilities, even when such collections were unnecessary; and

WHEREAS, reducing collection service when such service is unnecessary allows the Public Works Agency to devote its resources to areas with higher demand for waste collection; and

WHEREAS, the City Council recognizes the need to balance the operational efficiency of its Public Works Agency with its requirements regarding the frequency of waste collection.

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

SECTION 1. The recitals above are true and correct and are hereby incorporated herein by this reference.

SECTION 2. Subdivision (b) of Section 6.3.201, "Accumulations," of Title 6 of the Ontario Municipal Code is hereby amended to read in full as follows:

Sec. 6-3.201. Accumulations.

(b) The Administrator may require a greater number of collections per week or may require placement of additional containers upon finding that an unhealthful, unsightly, or public nuisance exists under the current service level. The Administrator may also reduce the number of collections per week or permit fewer containers upon a finding that the lower collection frequency and/or fewer containers are sufficient to maintain the premises in a clean and sanitary condition and will not result in putrescible materials accumulating for greater than one week. In either event, the customer will be charged for collections and/or containers at the current fee schedule. Prior to imposing such service

and rate adjustments, the City shall provide at least two (2) written notifications, at least seven (7) days apart, to the customer as listed on the City billing. The customer may appeal such a determination in writing to the City Manager within seven (7) days of the second notice. The City shall not impose the service adjustments until the seven (7) day appeal period has passed, or if appealed, until the City Manager determines the outcome of the appeal.

SECTION 3. Section 6-3.312, "Commercial collection frequency," of Title 6 of the Ontario Municipal Code is hereby amended to read in full as follows:

Sec. 6-3.312. Commercial collection frequency.

All non-organic waste, recycling, green waste and other organics generated at commercial establishments shall generally be collected a minimum of one (1) time per week. Roll-off service shall generally be provided a minimum of one (1) time every fourteen (14) days if the collection material is free from putrescible material, or the container may be removed. However, in all cases, the Administrator may increase or decrease the minimum level of required collection service pursuant to the procedures in § 6-3.201.

SECTION 4. Severability. If any section, subsection, subdivision, sentence, clause, or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have adopted each section irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, or phrases be declared unconstitutional, invalid or ineffective.

SECTION 5. CEQA. The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15358 (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Moreover, the City Council finds that this Ordinance is also exempt under CEQA pursuant to Guidelines Section 15061(b)(3) (there exists no possibility that the activity will have a significant adverse effect on the environment).

SECTION 6. This Ordinance shall become effective thirty (30) days after its adoption by the City Council.

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

PASSED, APPROVED, AND ADOPTED this __ day of _____, 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 June 7, 2022 and adopted at the regular meeting held _____, 2022 by the following roll call vote, to wit:

AYES: MAYOR/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 _____, 2022 and that Summaries of the Ordinance were published on _____, 2022 and _____, 2022, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **June 7, 2022**	**SECTION:** **ADMINISTRATIVE REPORTS/DISCUSSION/ACTION**
Department: Investments & Revenue Resources Prepared By: Nicole Phillips Staff Member Presenting: Armen Harkalyan, Executive Director of Finance Reviewed By: Cecilia House, Armen Harkalyan Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 36

SUBJECT: **A RESOLUTION AUTHORIZING THE ISSUANCE OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 42 (WEST HAVEN) SPECIAL TAX BONDS, SERIES 2022, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $8 MILLION AND RELATED MATTERS**

RECOMMENDATION: That the City Council consider and adopt a Resolution authorizing the issuance of City of Ontario Community Facilities District No. 42 (West Haven) Special Tax Bonds, Series 2022.

A. Authorize the issuance of special tax bonds for public improvements required to facilitate the development of the West Haven project and the Ontario Ranch development;
B. Approve the forms of the Indenture, the Bond Purchase Agreement, the Continuing Disclosure Agreement, and the Preliminary Official Statement;
C. Authorize a negotiated sale of the special tax bonds to Stifel, Nicolaus & Company, Incorporated (the "Underwriter") in accordance with the terms of the Bond Purchase Agreement; and
D. Authorize the execution of the Indenture, the Bond Purchase Agreement, the Continuing Disclosure Agreement, a deemed final certification in connection with the Preliminary Official Statement, a final Official Statement and other documents in connection with the issuance of the bonds by the City Manager or the other specified authorized officers.

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

FISCAL IMPACT: The use of Mello-Roos financing for public facilities in the residential development of the West Haven project in the Ontario Ranch development is estimated to generate approximately $8 million, based on current market interest rates, which will be used to help fund a portion of the public infrastructure improvements that will serve the project. The Resolution

authorizing the issuance of City of Ontario Community Facilities District No. 42 (West Haven) Special Tax Bonds, Series 2022, and related matters, limits the principal amount of the bonds to $8 million. The City currently expects the bonds to be sold no later than June, 2022; however, such schedule could change based on market volatility and market conditions. Since Mello-Roos bonds are not a direct obligation of the City and are paid from special taxes levied on each taxable parcels in the applicable community facilities district, there is no impact to the General Fund from the issuance of Mello-Roos bonds. Annual approval by the City Council will be required to process the special tax levies necessary to fund the ongoing debt service obligations of Ontario Community Facilities District No. 42 (West Haven).

BACKGROUND & ANALYSIS: The Mello-Roos Community Facilities Act of 1982 provides local government, with the requisite consent and approval from the property owners, the authority to establish community facilities districts for the purpose of levying special taxes to fund governmental services and to finance various kinds of public infrastructure facilities. Under the Mello-Roos Act, the initial steps in the formation of a community facilities district to finance public improvements are adopting a resolution declaring the City's intention to establish a community facilities district and levy special taxes, and a resolution to issue bonds. On July 17, 2018 the City Council, in accordance with the Mello-Roos Act, took the initial steps in the formation of the District with the adoption of Resolution No. 2018-100, declaring the City's intention to establish the District and to authorize the levy of special taxes, and Resolution No. 2018-101 deeming it necessary for the District to incur bonded indebtedness. On August 21, 2018, the City Council adopted Resolution No. 2018-116 forming the District. Based on a successful property owner election held on August 21, 2018, the City Council adopted Ordinance No. 3113 on September 4, 2018 authorizing the levy of special taxes within the District to finance public improvements related to the West Haven project. The public improvements to be financed by the District are as follows:

- Water and Recycled Water System Facilities
- Sewer System Facilities
- Streets and Traffic Circulation System Facilities
- Fiber Optic System Facilities

The West Haven project addresses the residential development of approximately 46.80 gross acres located generally east of Turner Avenue, west of Haven Avenue, south of Riverside Drive, and north of Schafer Avenue. At build out, the development is projected to include 196 detached units.

The proposed Resolution references several bond documents and other matters related to the proposed issuance of bonds by City of Ontario Community Facilities District No. 42 (West Haven). The documents are listed below and are on file with the Records Management Department:

- Indenture;
- Bond Purchase Agreement;
- Continuing Disclosure Agreement; and
- Preliminary Official Statement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE ISSUANCE OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 42 (WEST HAVEN) SPECIAL TAX BONDS, SERIES 2022, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED $8,000,000, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A BOND PURCHASE AGREEMENT AND A CONTINUING DISCLOSURE AGREEMENT, AUTHORIZING THE DISTRIBUTION OF AN OFFICIAL STATEMENT IN CONNECTION THEREWITH AND AUTHORIZING THE EXECUTION OF NECESSARY DOCUMENTS AND CERTIFICATES AND RELATED ACTIONS.

WHEREAS, the City Council (the "City Council") of the City of Ontario (the "City") has formed City of Ontario Community Facilities District No. 42 (West Haven) (the "Community Facilities District") under the provisions of the Mello-Roos Community Facilities Act of 1982 (the "Act"); and

WHEREAS, the Community Facilities District is authorized under the Act to levy special taxes (the "Special Taxes") to pay for the costs of certain public facilities (the "Facilities") and to issue bonds payable from the Special Taxes; and

WHEREAS, in order to provide funds to finance certain of the Facilities, the Community Facilities District proposes to issue its City of Ontario Community Facilities District No. 42 (West Haven) Special Tax Bonds, Series 2022 (the "Series 2022 Bonds"), in the aggregate principal amount of not to exceed $8,000,000; and

WHEREAS, in order to provide for the authentication and delivery of the Series 2022 Bonds, to establish and declare the terms and conditions upon which the Series 2022 Bonds are to be issued and secured and to secure the payment of the principal thereof, premium, if any, and interest thereon, the Community Facilities District proposes to enter into an Indenture with Zions Bancorporation, National Association, as trustee (the "Trustee") (such Indenture, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Indenture"); and

WHEREAS, Stifel, Nicolaus & Company, Incorporated (the "Underwriter"), has presented the Community Facilities District with a proposal, in the form of a Bond Purchase Agreement, to purchase the Series 2022 Bonds from the Community Facilities District (such Bond Purchase Agreement, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Purchase Agreement"); and

WHEREAS, Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 ("Rule 15c2-12") requires that, in order to be able to purchase or sell the Series 2022 Bonds, the underwriter thereof must have reasonably determined that the Community Facilities District has, or one or more appropriate obligated persons have, undertaken in

a written agreement or contract for the benefit of the holders of the Series 2022 Bonds to provide disclosure of certain financial information and certain listed events on an ongoing basis; and

WHEREAS, in order to cause such requirement to be satisfied, the Community Facilities District desires to enter into a Continuing Disclosure Agreement with the Trustee (such Continuing Disclosure Agreement, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Continuing Disclosure Agreement"); and

WHEREAS, a form of the Preliminary Official Statement to be distributed in connection with the public offering of the Series 2022 Bonds has been prepared (such Preliminary Official Statement, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Preliminary Official Statement"); and

WHEREAS, there have been prepared and submitted to this meeting forms of:

(a) the Indenture;
(b) the Purchase Agreement;
(c) the Continuing Disclosure Agreement; and
(d) the Preliminary Official Statement;

WHEREAS, Kitty Siino & Associates, Inc. has prepared and provided to the Community Facilities District an appraisal report, dated May 9, 2022 (the "Appraisal"), providing an opinion of value of the property in the Community Facilities District, which has been submitted to this meeting; and

WHEREAS, Section 5852.1 of the California Government Code requires that the City Council obtain from an underwriter, financial advisor or private lender and disclose, in a meeting open to the public, prior to authorization of the issuance of the Series 2022 Bonds, good faith estimates of (a) the true interest cost of the Series 2022 Bonds, (b) the sum of all fees and charges paid to third parties with respect to the Series 2022 Bonds, (c) the amount of proceeds of the Series 2022 Bonds expected to be received net of the fees and charges paid to third parties and any reserves or capitalized interest paid or funded with proceeds of the Series 2022 Bonds, and (d) the sum total of all debt service payments on the Series 2022 Bonds calculated to the final maturity of the Series 2022 Bonds plus the fees and charges paid to third parties not paid with the proceeds of the Series 2022 Bonds; and

WHEREAS, in compliance with Section 5852.1 of the California Government Code, the City Council has obtained from CSG Advisors Incorporated, as the Community Facilities District's Municipal Advisor, the required good faith estimates, which the Municipal Advisor has prepared in consultation with the Underwriter, and such estimates are disclosed and set forth in Exhibit A attached hereto; and

WHEREAS, the Community Facilities District desires to proceed to issue and sell the Series 2022 Bonds and to authorize the execution of such documents and the performance of such acts as may be necessary or desirable to effect the offering, sale and issuance of the Series 2022 Bonds; and

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

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

SECTION 1. The foregoing recitals are true and correct.

SECTION 2. Subject to the provisions of Section 3 hereof, the issuance of the Series 2022 Bonds, in an aggregate principal amount of not to exceed $8,000,000, on the terms and conditions set forth in, and subject to the limitations specified in, the Indenture, be and the same is hereby authorized and approved. The Series 2022 Bonds shall be dated, shall bear interest at the rates, shall mature on the dates, shall be subject to call and redemption, shall be issued in the form and shall be as otherwise provided in the Indenture, as the same shall be completed as provided in this Resolution.

SECTION 3. The Indenture, in substantially the form submitted to this meeting and made a part hereof as though set forth herein, be and the same is hereby approved. Each of the Mayor of the City, and such other member of the City Council as the Mayor may designate, the City Manager of the City, the Assistant City Manager of the City, the Executive Director of Finance of the City, the Deputy City Treasurer of the City, and such other officer or employee of the City as the City Manager may designate (the "Authorized Officers") is hereby authorized, and any one of the Authorized Officers is hereby directed, for and in the name of the Community Facilities District, to execute and deliver the Indenture in the form submitted to this meeting, with such changes, insertions and omissions as the Authorized Officer executing the same may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Indenture by such Authorized Officer; provided, however, that such changes, insertions and omissions shall not authorize an aggregate principal amount of Series 2022 Bonds in excess of $8,000,000, shall not result in a final maturity date of the Series 2022 Bonds later than September 1, 2053, and shall not result in a true interest cost for the Series 2022 Bonds in excess of 6.50%.

SECTION 4. The Purchase Agreement, in substantially the form submitted to this meeting and made a part hereof as though set forth in full herein, be and the same is hereby approved. Each of the Authorized Officers is hereby authorized, and any one of the Authorized Officers is hereby directed, for and in the name of the Community Facilities District, to execute and deliver the Purchase Agreement in the form presented to this meeting, with such changes, insertions and omissions as the Authorized Officer executing the same may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Purchase Agreement by such Authorized Officer; provided, however, that such changes, insertions and omissions shall not result in an aggregate underwriter's discount (not including any original issue discount) from the principal amount of the Series 2022 Bonds in excess of 1.50% of the aggregate principal

amount of the Series 2022 Bonds. The City Council hereby finds and determines that the sale of the Series 2022 Bonds at negotiated sale as contemplated by the Purchase Agreement will result in a lower overall cost.

SECTION 5. The Continuing Disclosure Agreement, in substantially the form submitted to this meeting and made a part hereof as though set forth in full herein, be and the same is hereby approved. Each of the Authorized Officers is hereby authorized, and any one of the Authorized Officers is hereby directed, for and in the name of the Community Facilities District, to execute and deliver the Continuing Disclosure Agreement in the form presented to this meeting, with such changes, insertions and omissions as the Authorized Officer executing the same may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Continuing Disclosure Agreement by such Authorized Officer.

SECTION 6. The Preliminary Official Statement, in substantially the form presented to this meeting and made a part hereof as though set forth in full herein, with such changes, insertions and omissions therein as may be approved by an Authorized Officer, be and the same is hereby approved, and the use of the Preliminary Official Statement in connection with the offering and sale of the Series 2022 Bonds is hereby authorized and approved. Each of the Authorized Officers is hereby authorized, and any one of the Authorized Officers is hereby directed, to certify on behalf of the Community Facilities District that the Preliminary Official Statement is deemed final as of its date, within the meaning of Rule 15c2-12 (except for the omission of certain final pricing, rating and related information as permitted by Rule 15c2-12).

SECTION 7. The preparation and delivery of a final Official Statement (the "Official Statement"), and its use in connection with the offering and sale of the Series 2022 Bonds, be and the same is hereby authorized and approved. The Official Statement shall be in substantially the form of the Preliminary Official Statement, with such changes, insertions and omissions as may be approved by an Authorized Officer, such approval to be conclusively evidenced by the execution and delivery thereof. Each of the Authorized Officers is hereby authorized, and any one of the Authorized Officers is hereby directed, for and in the name of the Community Facilities District, to execute the final Official Statement and any amendment or supplement thereto.

SECTION 8. Based upon the property values within the Community Facilities District reported in the Appraisal and the value-to-lien information set forth in the Preliminary Official Statement, the City Council, for purposes of Section 53345.8 of the Act, hereby finds and determines that the value of the real property that would be subject to the Special Tax to pay debt service on the Series 2022 Bonds will be at least three times the principal amount of the Series 2022 Bonds to be sold and the principal amount of all other bonds outstanding that are secured by a special tax levied pursuant to the Act on property within the Community Facilities District or a special assessment levied on property within the Community Facilities District.

SECTION 9. If and to the extent that any feature or aspect of the Series 2022 Bond structure, the rate and method of apportionment of the Special Taxes, the method of financing the Facilities, the appraisal, the absorption study or other components of the Series 2022 Bond issue approved and authorized hereby is inconsistent or in conflict with

any requirement, standard, measure or procedure set forth in the City's Mello-Roos Community Facilities Act of 1982 Local Goals and Policies, such requirement, standard, measure or procedure is, to the extent necessary to eliminate such inconsistency or conflict, hereby waived, and the City Council hereby finds and determines that benefit inures to the ultimate property owners, the Community Facilities District and the City as a result of such waiver.

SECTION 10. The City Council hereby approves the execution and delivery of all agreements, documents, certificates and instruments referred to herein with electronic signatures as may be permitted under the California Uniform Electronic Transactions Act and digital signatures as may be permitted under Section 16.5 of the California Government Code using DocuSign.

SECTION 11. All actions heretofore taken by the officers, employees and agents of the City with respect to the issuance and sale of the Series 2022 Bonds, or in connection with or related to any of the agreements or documents referred to herein, are hereby approved, confirmed and ratified.

SECTION 12. 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.

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

PASSED, APPROVED, AND ADOPTED this 7th day of June 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 June 7, 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 June 7, 2022.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

GOOD FAITH ESTIMATES

The good faith estimates set forth herein are provided with respect to the Series 2022 Bonds in accordance with Section 5852.1 of the California Government Code. Such good faith estimates have been provided to the Community Facilities District by CSG Advisors Incorporated, the Community Facilities District's municipal advisor (the "Municipal Advisor"), which the Municipal Advisor has prepared in consultation with Stifel, Nicolaus & Company, Incorporated, the Underwriter.

Principal Amount. The Municipal Advisor has informed the Community Facilities District that, based on the Community Facilities District's financing plan and current market conditions, its good faith estimate of the aggregate principal amount of the Series 2022 Bonds to be issued and sold is $7,220,000 (the "Estimated Principal Amount"), less approximately $56,000 of net original issue discount estimated to be generated based on current market conditions. Net original issue discount is generated when, on a net aggregate basis for a single issuance of bonds, the price paid for such bonds is lower than the face value of such bonds. Such Estimated Principal Amount less such estimated net original issue discount would produce approximately $7,164,000 of gross proceeds.

True Interest Cost of the Series 2022 Bonds. The Municipal Advisor has informed the Community Facilities District that, assuming that the Estimated Principal Amount of the Series 2022 Bonds is issued and sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the true interest cost of the Series 2022 Bonds, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the Series 2022 Bonds, is 4.88%.

Finance Charge of the Series 2022 Bonds. The Municipal Advisor has informed the Community Facilities District that, assuming that the Estimated Principal Amount of the Series 2022 Bonds is issued and sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the finance charge for the Series 2022 Bonds, which means the sum of all fees and charges paid to third parties (or costs associated with the Series 2022 Bonds), is $341,000.

Amount of Proceeds to be Received. The Municipal Advisor has informed the Community Facilities District that, assuming that the Estimated Principal Amount of the Series 2022 Bonds is issued and sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the amount of proceeds expected to be received by the Community Facilities District for sale of the Series 2022 Bonds, less the finance charge of the Series 2022 Bonds, as estimated above, and any reserves or capitalized interest paid or funded with proceeds of the Series 2022 Bonds, is $6,366,000.

Total Payment Amount. The Municipal Advisor has informed the Community Facilities District that, assuming that the Estimated Principal Amount of the Series 2022 Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the total payment amount, which means the sum

total of all payments the Community Facilities District will make to pay debt service on the Series 2022 Bonds, plus the finance charge for the Series 2022 Bonds, as described above, not paid with the proceeds of the Series 2022 Bonds, calculated to the final maturity of the Series 2022 Bonds, is $13,686,000, which excludes any reserves or capitalized interest funded or paid with proceeds of the Series 2022 Bonds (which may offset such total payment amount).

The foregoing estimates constitute good faith estimates only and are based on market conditions prevailing at the time of preparation of such estimates. The actual principal amount of the Series 2022 Bonds issued and sold, the true interest cost thereof, the finance charges thereof, the amount of proceeds received therefrom and total payment amount with respect thereto may differ from such good faith estimates due to (a) the actual date of the sale of the Series 2022 Bonds being different than the date assumed for purposes of such estimates, (b) the actual principal amount of Series 2022 Bonds issued and sold being different from the Estimated Principal Amount, (c) the actual amortization of the Series 2022 Bonds being different than the amortization assumed for purposes of such estimates, (d) the actual market interest rates at the time of sale of the Series 2022 Bonds being different than those estimated for purposes of such estimates, (e) other market conditions, or (f) alterations in the Community Facilities District's financing plan, or a combination of such factors. The actual date of sale of the Series 2022 Bonds and the actual principal amount of Series 2022 Bonds issued and sold will be determined by the Community Facilities District based on the timing of the need for proceeds of the Series 2022 Bonds and other factors. The actual interest rates borne by the Series 2022 Bonds will depend on market interest rates at the time of sale thereof. The actual amortization of the Series 2022 Bonds will also depend, in part, on market interest rates at the time of sale thereof. Market interest rates are affected by economic and other factors beyond the control of the Community Facilities District.