CITY OF ONTARIO

Regular City Council/Housing Authority Meeting
NOVEMBER 15, 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.

ACCOMODATIONS

If you need special assistance or accommodations to participate in this meeting, please contact

the City Clerk's office at 909-395-2009. Notification of 48 hours prior to the meeting will help the City make reasonable arrangements. Equipment for the hearing impaired is available in the Records Management Office.

ORDER OF BUSINESS

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

INVOCATION

Heather Freeman, Church of Jesus Christ of Latter-Day Saints

PUBLIC COMMENTS 6:30 P.M.

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

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

AGENDA REVIEW/ANNOUNCEMENTS

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

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

CONSENT CALENDAR

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

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

1. APPROVAL OF MINUTES

Minutes for the regular meetings of the City Council and Housing Authority of October 18, 2022, and approving same as on file in the Records Management Department.

ATTACHMENT: 20221018 Minutes - (Not Official Until Approved)

2. BILLS & PAYROLL

Bills October 14, 2022 through October 27, 2022, and Payroll October 9, 2022 through October 22, 2022 when audited by the Finance Committee.

3. A PROFESSIONAL SERVICE AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT FOR THE EUCLID MIXED USE SPECIFIC PLAN (FILE NO. PSP22-001)

That the City Council approve and authorize the City Manager to execute an Agreement (on file with the Records Management Department) with Kimley-Horn and Associates, Inc., of Riverside, California, to prepare an Environmental Impact Report (EIR) for the Euclid Mixed Use Specific Plan, in the amount of $396,805, plus a 5% contingency of $19,840, for a total authorized expenditure of $416,645; and authorize the City Manager to approve any future budget adjustments necessary to complete the EIR.

4. NAME THE CHILDREN'S ROOM AT OVITT FAMILY COMMUNITY LIBRARY TO THE BEVERLY CLEARY YOUNG READERS ROOM

That the City Council approve naming the children's room at Ovitt Family Community Library, the Beverly Cleary Young Readers Room.

5. A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL PARCEL MAP NO. 20016, LOCATED AT THE NORTHEAST CORNER OF EUCLID AVENUE AND MERRILL AVENUE

That the City Council adopt a Resolution approving an Improvement Agreement, Improvement Security and Final Parcel Map No. 20016, located at the northeast corner of Euclid Avenue and Merrill Avenue within the Ontario Ranch Business Park Specific Plan area.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL PARCEL MAP NO. 20016 LOCATED AT THE NORTHEAST CORNER OF EUCLID AVENUE AND MERRILL AVENUE.

ATTACHMENT: 20221115 Parcel Map 20016^01 EXH A
ATTACHMENT: 20221115 Parcel Map 20016^02 RESO^RM

6. REJECT ALL BIDS AND AUTHORIZE RE-BIDDING OF THE ONTARIO POLICE DEPARTMENT LOCKER ROOM AND GYM EXPANSION PROJECT

That the City Council reject all bids received for Bid No. 1558, D&C 20-019 for the Ontario Police Department Locker Room and Gym Expansion project and authorize the City Manager or his designee to solicit new bids for this project.

7. FISCAL YEAR 2022-23 FIRST QUARTER BUDGET UPDATE REPORT

That the City Council approve the budget adjustments and recommendations as presented in the Fiscal Year 2022-23 First Quarter Budget Update Report.

ATTACHMENT: FY 2022-23 First Quarter Budget Update Report_EXHIBIT A.pdf

8. A DEVELOPMENT IMPACT FEE CREDIT AGREEMENT (FILE NO. PDIF21-006) BETWEEN THE CITY OF ONTARIO AND DPIF3 CA 36 ONTARIO RANCH LLC., FOR FACILITY CONSTRUCTION ASSOCIATED WITH A DEVELOPMENT PLAN (FILE NO. PDEV22-001), LOCATED AT THE NORTHWEST CORNER OF HAMNER AVENUE AND ONTARIO RANCH ROAD, WITHIN PLANNING AREA 7A (LIGHT INDUSTRIAL) LAND USE DISTRICT OF THE RICH HAVEN SPECIFIC PLAN

That the City Council approve the Development Impact Fee Credit Agreement (File No. PDIF21-006) between the City of Ontario and DPIF3 CA 36 Ontario Ranch LLC., for facility construction associated with a Development Plan (File No. PDEV22-001), located at the northwest corner of Hamner Avenue and Ontario Ranch Road, within Planning Area 7A (Light Industrial) land use district of the Rich Haven Specific Plan, and authorize the City Manager to execute the Agreement.

9. A PROFESSIONAL SERVICES AGREEMENT WITH DANKEN, INC. FOR ON-CALL STRUCTURAL INSPECTION AND CONSTRUCTION MANAGEMENT SERVICES

That the City Council approve and authorize the City Manager or designee to execute a five-year Professional Services Agreement (on file in the Records Management Department) with Danken, of Ladera Ranch, California, to provide On-Call Structural Inspection and Construction Management Services for a not-to-exceed amount of $1,600,000.

10. A GOODS AND SERVICES AGREEMENT FOR FURNITURE DESIGN FOR THE BUILT ON WATER EXHIBIT

That the City Council authorize the City Manager or designee to execute a Goods and Services Agreement with K2 Design and Fabrication of Norco, California for furniture for the Built on Water exhibit at the Ontario Museum of History and Art, for a total not to exceed amount of $269,563.

11. TWO AMENDMENTS FOR THE EQUIPPING OF WELL NO. 43 PROJECT

That the City Council take the following actions:

A. Approve and authorize the City Manager, or designee to execute Amendment No. 3 to the Professional Services Agreement (on file in the Records Management Department) with AKM Consulting Engineers Inc. of Irvine, California, for a total not-to-exceed amount of $39,908 for construction management and inspection services and a term from November 15, 2022 to September 30, 2023.
B. Approve and authorize the City Manager, or designee to execute Amendment No. 4 to the Maintenance Service Agreement (on file in the Records Management Department) with Bay Alarm Company of Ontario, California, for a total not-to-exceed amount of $25,271 for security system installation and a term from November 15, 2022 to June 30, 2025.

12. A PROFESSIONAL SERVICES AGREEMENT WITH 4LEAF, INC. FOR ON-CALL STRUCTURAL PLAN CHECKING SERVICES

That the City Council approve and authorize the City Manager or designee to execute a five-year Professional Services Agreement (on file in the Records Management Department) with 4Leaf, of Newport Beach, California, to provide On-Call Structural Plan Checking Services for a not-to-exceed amount of $300,000.

13. DEMOLITION OF THE BUILDINGS AND DEBRIS LOCATED ON THE PROPERTY FOR THE GRAND PARK PHASE 1

That the City Council take the following actions:

A. Reject Interior Demolition Earthwise Demo JV's bid for D&C21-005 – Grand Park Demolition as nonresponsive. Interior Demolition failed to submit a hard copy of the bid bond by the submittal date;
B. Authorize the City Manager or his designee to complete and execute Construction Contract No. D&C21-005 - Grand Park Phase 1 Demolition with Resource Environmental, Inc. of Cerritos, California for the demolition and debris removal in the Grand Park in the amount of $4,703,540;
C. Authorize a 15% contingency of $705,531 to address any unforeseen issues that may arise during the demolition; 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, easements, reduction of retention accounts, and filing a notice of completion at the conclusion of all construction related activities.

14. A CONSTRUCTION CONTRACT, A PROFESSIONAL SERVICES AGREEMENT AND TWO AMENDMENTS FOR THE ONTARIO RANCH PHASE 2 WATER MAIN IMPROVEMENTS PROJECT

That the City Council take the following actions:

A. Approve the plans and specifications and award Contract No. UT 1050 (on file in the Records Management Department) to Norstar Plumbing and Engineering, Inc. of Alta Loma, California, for the construction of the Ontario Ranch Phase 2 Water Main Improvements, in the amount of $9,906,053 plus a 10% contingency of $990,605, for a total not-to-exceed amount of $10,896,658, a term of 260 calendar days after issuance of notice to proceed, and authorize the City Manager, or his designee, to execute said contract and file a notice of completion at the conclusion of all construction activities related to the project.
B. Approve and authorize the City Manager, or his designee, to execute a Professional Services Agreement (on file in the Records Management Department) with GeoTek, Inc. of Las Vegas, Nevada, for a total not-to-exceed amount of $160,918 and a term of 260 calendar days after issuance of notice to proceed for geotechnical and material testing services.
C. Approve and authorize the City Manager, or his designee, to execute Amendment No. 13 to the Professional Services Agreement (on file in the Records Management Department) with Infrastructure Engineering Corporation (IEC), of Irvine, California, for a total not-to-exceed amount of $93,401 for construction engineering services and a term of 260 calendar days after issuance of notice to proceed for geotechnical and material testing services.
D. Approve and authorize the City Manager, or his designee, to execute Amendment No. 8 to the Professional Services Agreement (on file in the Records Management Department) with Wallace and Associates Consulting, Inc. of Murrieta, California, for a total not-to-exceed amount of $235,013 for construction management services and a term of 260 calendar days.

ATTACHMENT: Exhibit A Water Main Improvement Project.pdf

15. AN AMENDMENT TO ON-CALL DESIGN SERVICES AGREEMENT FOR LAUREL AVENUE, SULTANA AVENUE, AND NOCTA STREET SEWER MAIN IMPROVEMENTS

That the City Council approve and authorize the City Manager to execute Amendment No. 14 to the On-Call Design Services Agreement (on file in the Records Management Department) with Infrastructure Engineering Corporation of Irvine, California, for Laurel Avenue Sewer Main Improvements, UT 1069 Sultana Avenue Sewer Main Improvements, and Nocta Street Sewer Main Improvements, in the amount not-to-exceed $372,026.

ATTACHMENT: Exhibit A - Laurel Avenue Sewer Main Improvements
ATTACHMENT: Exhibit B - Sultana Avenue Sewer Main Improvements
ATTACHMENT: Exhibit C - Nocta Street Sewer Main Improvements

16. **AN ORDINANCE ADOPTING A MAP FOR THE DISTRICT-BASED ELECTIONS UNDER THE CALIFORNIA VOTING RIGHTS ACT**

That the City Council adopt an Ordinance adding a new article 3 to title 2 of volume 1 of the Ontario Municipal Code to change the city's electoral system from at-large to by-district elections.

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

ATTACHMENT: Ordinance Changing to By-District Election^01^RM.doc

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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17. **A PUBLIC HEARING TO CONSIDER A MILLS ACT CONTRACT (PRESERVATION AGREEMENT), FILE NO. PHP22-011, FOR A DESIGNATED HISTORIC PROPERTY**

That the City Council consider and adopt a resolution approving and authorizing the City Manager or designee to enter into a Mills Act contract (Preservation Agreement), for the designated historic property located at 119 East Princeton Street (APN: 1047-531-31), Rafael Marquez and Jacqueline Gonzalez.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PHP22-011, AND AUTHORIZING THE CITY OF ONTARIO TO ENTER INTO A HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT) WITH RAFAEL MARQUEZ AND JACQUELINE GONZALEZ, FOR THE PROPERTY LOCATED AT 119 EAST PRINCETON STREET (APN: 1047-531-31).

ATTACHMENT: 20221115 File No. PHP22-011^02 PC Back-up.pdf
ATTACHMENT: 20221115 File No. PHP22-011^03 RESO^RM
ATTACHMENT: 20221115 File No. PHP22-011^04 Contract.docx

18. **A PUBLIC HEARING TO CONSIDER A RESOLUTION APPROVING THE DESIGNATION OF THE MAURICE JOHNSON HOUSE, LOCATED AT 409 NORTH SAN ANTONIO AVENUE, AS A LOCAL HISTORIC LANDMARK**

That the City Council adopt a resolution approving File No. PHP21-016, designating 409 North San Antonio (APN: 1048-314-11) as Local Historic Landmark No. 100.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PHP21-016, THE DESIGNATION OF THE MAURICE JOHNSON HOUSE, LOCATED AT 409 NORTH SAN ANTONIO AVENUE, AS A LOCAL HISTORIC LANDMARK AND MAKING FINDINGS IN SUPPORT THEREOF — APN: 1048-314-11.

ATTACHMENT: 20221115 File No. PHP21-016^01 PC Backup.pdf
ATTACHMENT: 20221115 File No. PHP21-016^02 RESO^RM

19. A PUBLIC HEARING TO CONSIDER A DEVELOPMENT AGREEMENT (FILE NO. PDA22-001) BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC., TO ESTABLISH THE TERMS AND CONDITIONS ASSOCIATED WITH TENTATIVE TRACT MAP 20529 (FILE NO. PMTT22-010), AN 11.11-ACRE PROPERTY GENERALLY LOCATED ON THE EAST SIDE OF TWINKLE AVENUE, APPROXIMATELY 350 FEET SOUTH OF FUTURE CHINO AVENUE, WITHIN PLANNING AREAS 4A, 4B, AND 4C (RESIDENTIAL - SFD/ATTACHED) LAND USE DISTRICTS OF THE RICH HAVEN SPECIFIC PLAN (APN: 0218-161-14).

That the City Council introduce and waive further reading of an Ordinance approving a Development Agreement (File No. PDA22-001) between the City of Ontario and BrookCal Ontario LLC., to establish the terms and conditions associated with Tentative Tract Map 20529 (File No. PMTT22-010), an 11.11-acre property generally located on the east side of Twinkle Avenue, approximately 350 feet south of future Chino Avenue, within Planning Areas 4A, 4B, and 4C (Residential - SFD/Attached) land use district of the Rich Haven Specific Plan.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA22-001, 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 NO. 20529 (FILE NO. PMTT22-010), AN 11.11 ACRE PROPERTY GENERALLY LOCATED ON THE EAST SIDE OF TWINKLE AVENUE APPROXIMATELY 350 FEET SOUTH OF FUTURE CHINO AVENUE, WITHIN PLANNING AREAS 4A, 4B, AND 4C (RESIDENTIAL – SFD/ATTACHED) LAND USE DISTRICTS OF THE RICH HAVEN SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0218-161-14.

ATTACHMENT: 20221115 File No. PDA22-001 BrookCal Ontario LLC^01 EXH A & B
ATTACHMENT: 20221115 File No. PDA22-001 BrookCal Ontario LLC^02 PC Backup.pdf
ATTACHMENT: 20221115 File No. PDA22-001 BrookCal Ontario LLC^03 ORD^RM
ATTACHMENT: 20221115 File No. PDA22-001 BrookCal Ontario LLC^04 AGMT

20. A PUBLIC HEARING TO CONSIDER ADOPTION OF AN ORDINANCE APPROVING THE 2021 INTERNATIONAL FIRE CODE AND THE 2022 CALIFORNIA BUILDING AND FIRE CODES ADOPTED BY THE CALIFORNIA BUILDING STANDARDS COMMISSION IN THE CALIFORNIA CODE OF REGULATIONS

That the City Council introduce and waive further reading of:

A. An Ordinance amending Chapter 4, Title 4 of the Ontario Municipal Code entitled "Fire Code" adopting by reference, with certain amendments, additions, deletions, and exceptions, the 2021 International Fire Code and the 2022 California Fire Code (California Code of Regulations, Title 24, Part 9); and

B. An Ordinance amending Chapters 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, and 14 of Title 8 of the Ontario Municipal Code to adopt the California Building Standards Code by reference, with certain amendments, additions, and deletions.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CHAPTER 4 OF TITLE 4 OF THE ONTARIO MUNICIPAL CODE; ADOPTING BY REFERENCE WITH CERTAIN AMENDMENTS, ADDITIONS, DELETIONS, AND CHANGES THERETO, THE 2022 CALIFORNIA FIRE CODE AND THE 2021 INTERNATIONAL FIRE CODE, PROVIDING FOR THE RECOVERY OF COSTS AND COLLECTION OF FEES; AND REPEALING ORDINANCE NO. 3062 OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CHAPTERS 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, AND 14 OF TITLE 8 OF THE ONTARIO MUNICIPAL CODE, ADOPTING BY REFERENCE THE 2022 EDITION OF THE CALIFORNIA BUILDING STANDARDS CODE, INCORPORATING THE 2022 CALIFORNIA ADMINISTRATIVE CODE, THE 2022 CALIFORNIA BUILDING CODE, THE 2022 CALIFORNIA MECHANICAL CODE, THE 1997 CALIFORNIA HOUSING CODE, THE 2022 CALIFORNIA ELECTRICAL CODE, THE 2022 CALIFORNIA RESIDENTIAL CODE, THE 2022 CALIFORNIA PLUMBING CODE, THE 2022 CALIFORNIA ENERGY CODE, THE 2021 INTERNATIONAL PROPERTY MAINTENANCE CODE, THE 2022 CALIFORNIA GREEN BUILDING STANDARDS CODE, THE 2022 HISTORIC BUILDING CODE, 2022 CALIFORNIA EXISTING BUILDING CODE, AND THE 2022 CALIFORNIA REFERENCED STANDARDS, TOGETHER WITH CERTAIN AMENDMENTS THERETO.

ATTACHMENT: 20221115 FIRE CODE ADOPTION^01-ORD^RM
ATTACHMENT: 20221115-BUILDING CODE ADOPTION^02-ORD^RM.

21. RESOLUTIONS OF NECESSITY FOR THE ACQUISITION BY EMINENT DOMAIN OF FEE INTERESTS IN CERTAIN REAL PROPERTIES LOCATED ON EAST HOLT BOULEVARD, MORE PARTICULARLY DESCRIBED AS ASSESSOR PARCEL NOS. 1048-481-27; 1048-481-07; 1048-481-28; AND 1048-481-29

That the City Council conduct a public hearing and adopt Resolutions of Necessity declaring that the acquisition of fee interests in certain real properties located on East Holt Boulevard, more particularly described as Assessor Parcel Nos. 1048-481-27; 1048-481-07; 1048-481-28; and 1048-481-29, is necessary for the construction of affordable housing.

A RESOLUTION OF NECESSITY OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR THE ACQUISITION BY EMINENT DOMAIN OF FEE INTERESTS IN CERTAIN REAL PROPERTY LOCATED ON EAST HOLT BOULEVARD, MORE PARTICULARLY DEFINED AS ASSESSOR PARCEL NO. 1048-481-27.

A RESOLUTION OF NECESSITY OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR THE ACQUISITION BY EMINENT DOMAIN OF FEE INTERESTS IN CERTAIN REAL PROPERTY LOCATED ON EAST HOLT BOULEVARD, MORE PARTICULARLY DEFINED AS ASSESSOR PARCEL NO. 1048-481-07.

A RESOLUTION OF NECESSITY OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR THE ACQUISITION BY EMINENT DOMAIN OF FEE INTERESTS IN CERTAIN REAL PROPERTY LOCATED ON EAST HOLT BOULEVARD, MORE PARTICULARLY DEFINED AS ASSESSOR PARCEL NO. 1048-481-28.

A RESOLUTION OF NECESSITY OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR THE ACQUISITION BY EMINENT DOMAIN OF FEE INTERESTS IN CERTAIN REAL PROPERTY LOCATED ON EAST HOLT BOULEVARD, MORE PARTICULARLY DEFINED AS ASSESSOR PARCEL NO. 1048-481-29.

ATTACHMENT: Staff Report Ex 1^01.pdf
ATTACHMENT: Resolution Patel ^02 RESO^RM.docx
ATTACHMENT: Resolution Patel Ex A^03.pdf
ATTACHMENT: Resolution Jimenez ^04 RESO^RM.docx
ATTACHMENT: Resolution Jimenez Ex A^05.pdf
ATTACHMENT: Resolution Harb ^06 RESO^RM.docx
ATTACHMENT: Resolution Harb Ex A^07.pdf
ATTACHMENT: Resolution Dali III^08 RESO^RM.docx
ATTACHMENT: Resolution Dali III Ex A^09.pdf

ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

22. A RESOLUTION AUTHORIZING THE ISSUANCE OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 55 (PARKLANE) SPECIAL TAX BONDS, SERIES 2022, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $11 MILLION AND RELATED MATTERS

That the City Council consider and adopt a Resolution authorizing the issuance of City of Ontario Community Facilities District No. 55 (Parklane) Special Tax Bonds, Series 2022.

A. Authorize the issuance of special tax bonds for public improvements required to facilitate the development of the Parklane 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 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. 55 (PARKLANE) SPECIAL TAX BONDS, SERIES 2022, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED $11,000,000.00, 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: CFD No. 55 Parklane^01 Authorizing Issuance of Bonds RESO^RM

23. AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA22-001) BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC., TO ESTABLISH THE TERMS AND CONDITIONS ASSOCIATED WITH TENTATIVE TRACT MAP 20529 (FILE NO. PMTT22-010), AN 11.11-ACRE PROPERTY GENERALLY LOCATED ON THE EAST SIDE OF TWINKLE AVENUE, APPROXIMATELY 350 FEET SOUTH OF FUTURE CHINO AVENUE, WITHIN PLANNING AREAS 4A, 4B, AND 4C (RESIDENTIAL - SFD/ATTACHED) LAND USE DISTRICTS OF THE RICH HAVEN SPECIFIC PLAN (APN: 0218-161-14).

That the City Council consider and adopt an Ordinance approving a Development Agreement (File No. PDA22-001) between the City of Ontario and BrookCal Ontario LLC., to establish the terms and conditions associated with Tentative Tract Map 20529 (File No. PMTT22-010), an 11.11-acre property generally located on the east side of Twinkle Avenue, approximately 350 feet south of future Chino Avenue, within Planning Areas 4A, 4B, and 4C (Residential - SFD/Attached) land use district of the Rich Haven Specific Plan.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA22-001, 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 NO. 20529 (FILE NO. PMTT22-010), AN 11.11 ACRE PROPERTY GENERALLY LOCATED ON THE EAST SIDE OF TWINKLE AVENUE APPROXIMATELY 350 FEET SOUTH OF FUTURE CHINO AVENUE, WITHIN PLANNING AREAS 4A, 4B, AND 4C (RESIDENTIAL – SFD/ATTACHED) LAND USE DISTRICTS OF THE RICH HAVEN SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0218-161-14.

ATTACHMENT: 20221115 File No. PDA22-001 BrookCal Ontario LLC^01 EXH A & B
ATTACHMENT: 20221115 File No. PDA22-001 BrookCal Ontario LLC^03 ORD^RM
ATTACHMENT: 20221115 File No. PDA22-001 BrookCal Ontario LLC^04 AGMT

STAFF MATTERS

City Manager Ochoa

COUNCIL MATTERS

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

ADJOURNMENT

ONTARIO CITY COUNCIL/
ONTARIO HOUSING AUTHORITY
MINUTES
OCTOBER 18, 2022
(Not Official Until Approved)

JOINT MEETINGS

The regular meetings of the Ontario City Council and Housing Authority were held on Tuesday, October 18, 2022 at Ontario City Hall, 303 E. B Street Ontario, California.

CALL TO ORDER

Mayor Leon called the joint meetings to order at 6:00 p.m.

ROLL CALL

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

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

CLOSED SESSION PUBLIC COMMENT

Mayor Leon inquired whether persons were present who wished to speak to the Closed Sessions items. Hearing no one, City Attorney Duran announced the matters for discussion as listed on the agenda, and the City Council recessed to Closed Session at 6:03 p.m. for discussion of the following:

- GC 54956.9 (d)(4), CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION: One Case

CALL TO ORDER – OPEN SESSION

Mayor Leon called the meetings to order at 6:31 p.m.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Bowman.

INVOCATION

The invocation was led by Dr. Sylvia Lee Mann, Bethel Congregational Church.

PUBLIC COMMENTS

There were 29 emailed comments:

Elizabeth Garcia, regarding safe routes to schools.
Nancy Suarez, regarding public nuisance.
Lauren Columbi, regarding public nuisance.
Nakita Porter, regarding new location for Pop Warner practice.
Sergio Velasquez, regarding new location for Pop Warner practice.
Stanley Musheerah, regarding new location for Pop Warner practice.
Denise Romero, regarding new location for Pop Warner practice.
Jessica Franco, regarding new location for Pop Warner practice.
Halim Alvarez, regarding new location for Pop Warner practice.
Daniel Romero, regarding new location for Pop Warner practice.
Veronica Campos, regarding new location for Pop Warner practice.
Raul Franco., regarding new location for Pop Warner practice.
Stephanie Reina, regarding new location for Pop Warner practice.
Aracely Licona, regarding new location for Pop Warner practice.
Ann Kellie, regarding new location for Pop Warner practice.
Jesus Christ Loves You, regarding new location for Pop Warner practice.
Cori Mendoza, regarding new location for Pop Warner practice.
Letty Carlos, regarding new location for Pop Warner practice.
Alexandra Vicente, regarding new location for Pop Warner practice.
Wendy Alcala, regarding new location for Pop Warner practice.
Jess Monique, regarding new location for Pop Warner practice.
Jacqueline Martinez, regarding new location for Pop Warner practice.
Adriana Quezada, regarding new location for Pop Warner practice.
Jesse Villanueva, regarding new location for Pop Warner practice.
Steven Garcia, regarding new location for Pop Warner practice.
Amanda Banuelos, regarding new location for Pop Warner practice.
Veronica Mireles, regarding Pop Warner.
Vanissa Eltiste, regarding new location for Pop Warner practice.
Silvia Ochoa, regarding new location for Pop Warner practice.

Mayor Leon called on the first speaker:

Danny Delfin, spoke on policing and safety issues.

Margarita Georgieva, spoke on traffic lights at Bon View Elementary School and semi-truck traffic.

Clara Cortez, spoke on traffic lights at Bon View Elementary School (Bon View and Philadelphia and Bon View and Spruce) and semi-truck traffic.

Levi Macedo, spoke on safety concerns at City parks.

Cassandra Sanchez, spoke on the Jesus Sanchez homicide case.

Maria Romualdo, spoke on the Jesus Sanchez homicide case.

Randy Bekendam, spoke in opposition of warehouse construction.

Nayda Bahena, on behalf of Assemblymember Freddy Rodriguez, announced the 6th annual Women's Health Fair.

Nancy Suarez, spoke on misuse of City resources.

Lauren, spoke on misuse of City recourses.

Alicia Hedrick, spoke on misuse of City resources.

Richard Hedrick, spoke on misuse of City resources.

Mayor Leon stated he wanted a full report on the issue.

Chris Robles, spoke on the districting process.

Mayor Leon recessed the meeting at 7:19 p.m. and reconvened at 7:30 p.m.

REPORT ON CLOSED SESSION

City Attorney Duran stated there was no reportable action.

AGENDA REVIEW/ANNOUNCEMENTS

City Manager Ochoa announced an update of the exhibit to the Resolution for placement of special assessments on the San Bernardino County tax rolls, indicating a sum of $14,341.50 was collected since the agenda was posted for a new total of $53,497.49.

CONSENT CALENDAR

ITEMS PULLED FROM CONSENT: Council Member Dorst-Porada pulled Item No. 11 for a separate vote.

MOTION: Moved by Council Member Bowman, seconded by Council Member Dorst-Porada and carried by vote 4-0, with Mayor pro Tem Wapner absent, to approve the Consent Calendar with exception of item no. 11.

1. APPROVAL OF MINUTES

Minutes for the regular meetings of the City Council and Housing Authority of September 6, 2022 and September 20, 2022, and approving same as on file in the Records Management Department.

2. BILLS & PAYROLL

Bills from September 3, 2022 through September 29, 2022 in the amount of $31,621,375.82 and Payroll from August 28, 2022 through September 24, 2022 in the amount of $8,439,924.15 when audited by the Finance Committee.

3. A RESOLUTION FOR PLACEMENT OF SPECIAL ASSESSMENTS ON THE SAN BERNARDINO COUNTY TAX ROLLS

The City Council adopted a Resolution for recovery of fees and costs incurred in abating property and dangerous building violations, as well as administrative citations and civil penalties associated with property maintenance violations, and placing assessments on the San Bernardino County Tax Rolls.

RESOLUTION NO. 2022-142 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING A REPORT REQUESTING THE PLACEMENT OF SPECIAL ASSESSMENTS ON PROPERTY TAX BILLS FOR CIVIL PENALTIES OR RECOVERY OF COSTS INCURRED FOR ABATEMENT OF VIOLATIONS OF CITY CODES AND ORDINANCES.

4. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT FOR VIDEO PRODUCTION SERVICES

The City Council authorized the City Manager to execute Amendment No. 1 to the Professional Services Agreement with Windsong Productions, LLC. increasing the not-to-exceed amount by $518,312 to $753,312 for the three-year contract term.

5. A PROFESSIONAL SERVICES AGREEMENT WITH RDC-S11, INC. FOR LANDSCAPE, ARCHITECTURE, AND URBAN DESIGN CONSULTING SERVICES

The City Council authorized the City Manager to execute a Professional Services Agreement with RDC-S111, Inc. (a.k.a Studio 111), of Long Beach, California, in the amount of $241,762, for the Planned Unit Development and Mitigated Negative Declaration of West Euclid Avenue in Downtown Ontario.

6. DOWNTOWN ONTARIO RETAIL POP-UP PROGRAM

The City Council ("City") considered and:

A. Approved the adoption of the Downtown Ontario Retail Pop-Up Program;
B. Authorized the City Manager to make any necessary adjustments and execute all necessary documents to implement the Program.

RESOLUTION NO. 2022-126 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND D

STREET TOWNHOME APARTMENTS, LLC, WITH RESPECT TO APPROXIMATELY 0.737 ACRES OF LAND LOCATED AT 120 WEST D STREET AND 420 NORTH LAUREL AVENUE (APNS: 1048-354-12 AND 1048-354-13).

7. A CONSTRUCTION CONTRACT FOR THE TRAFFIC SIGNAL SYSTEMS AT CAMPUS AVENUE AT FRANCIS STREET AND CAMPUS AVENUE AT WALNUT STREET

The City Council awarded a construction contract with KDC Inc. of Los Alamitos, California, for the construction of traffic signal systems at Campus Avenue at Francis Street and Campus Avenue at Walnut Street (Project) in the amount of $1,367,397 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 construction activities.

8. AN AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT WITH M JACK BROOKS, JD FOR FINANCIAL CONSULTING SERVICES

The City Council authorized the City Manager to execute Amendment No. 6 adding $120,000 to the Professional Services Agreement with M Jack Brooks, JD, of Costa Mesa, California, for the provision of financial consulting services, for a revised contract authority of a not-to-exceed amount of $945,000 and term extension to June 30, 2023.

9. ESTABLISHING A BANK ACCOUNT FOR THE ONTARIO HOUSING AUTHORITY

The City Council ("City") and the Board of the Ontario Housing Authority ("Authority") authorized the establishment of a bank account with the City's current operating bank. The bank account will be in the name of the Ontario Housing Authority.

10. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH COLLABORATIVE SOLUTIONS, LLC.

The City Council authorized the City Manager to execute an Amendment to the Professional Services Agreement with Collaborative Solutions, LLC., of Reston, Virginia, to include additional consulting services to incorporate Workday Financials On-Demand Services Support in the amount of $118,800 plus a 10% contingency of $11,880, for a revised not-to-exceed the amount of $3,978,587.

12. AUTHORIZE THE PURCHASE OF MOBILE HOME STRUCTURE FOR INTERIM FIRE STATION 11

The City Council authorized the sole source purchase and delivery of one mobile home structure for the Fire Department in the amount of $208,042 from Wholesale Manufactured Homes, California. This structure will be used as sleeping quarters for Interim Fire Station 11.

13. A CONSTRUCTION CONTRACT AND A GOODS & SERVICES AGREEMENT FOR OMUC, PARKS AND MAINTENANCE, AND INTEGRATED WASTE OFFICE IMPROVEMENTS

The City Council took the following actions:

A. Authorized the City Manager or his designee to execute Construction Contract No. D&C20-028 with M. Brey Electric, Inc. of Beaumont, California, for the Ontario Municipal Utilities Company (OMUC), Parks and Maintenance, and Integrated Waste Office Improvements Project in the amount of $420,000;
B. Authorized a 10% contingency of $42,000 to address any unforeseen issues that arise during construction;
C. Authorized the City Manager or his designee to execute a Goods and Services Agreement with Kirksey & Co. of Irvine, California, for OMUC, Parks and Maintenance, and Integrated Waste Office Improvements Project for the Furniture, Fixtures, and Equipment (FF&E), consistent with the terms and conditions of the cooperative purchasing contract with Omnia #R191804 in the amount of $369,583; and
D. Authorized the City Manager or his designee to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, easements, reduction of retention accounts, and filing a notice of completion at the conclusion of all construction related activities.

14. A CONSTRUCTION CONTRACT AND TWO AMENDMENTS FOR THE PRESSURE REDUCING STATION REHABILITATION PROJECT

The City Council took the following actions:

A. Approved the plans and specifications and awarded Contract No. UT 1041 to Innovative Construction Solutions Inc. of Costa Mesa, California, for the Pressure Reducing Station Project in the amount of $1,708,000 plus a 10% contingency of $170,800, for a total not-to-exceed amount of $1,878,800, a term of 180 calendar days after issuance of notice to proceed and authorized the City Manager, or his designee to execute said contract and file a notice of completion at the conclusion of all construction activities related to the project.
B. Approved and authorized the City Manager, or designee to execute Amendment No. 2 to the Professional Services Agreement (on file in the Records Management Department) with AKM Consulting Engineers Inc. of Irvine, California, for a total not-to-exceed amount of $129,088 for construction engineering services and a term from October 4, 2022 to September 30, 2023.
C. Approved and authorized the City Manager, or designee to execute Amendment No. 8 to the Professional Services Agreement (on file in the Records Management Department) with Kleinfelder Inc. of Ontario, California,

for a total not-to-exceed amount of $106,640 for construction management services and a term from October 4, 2022 to May 6, 2023.

15. APPLICATION FOR THE US DEPARTMENT OF JUSTICE FISCAL YEAR 2022 COMMUNITY ORIENTED POLICING SERVICES HIRING PROGRAM GRANT

The City Council authorized the City Manager or his designee to execute all documents necessary to apply for and accept a grant award in the amount of $1,250,000 from the US Department of Justice Office of Community Oriented Policing Services (COPS) to participate in the Fiscal Year (FY) 2022 Office Hiring Program (CHP) Grant.

16. FIFTH AMENDMENT TO THE CONSOLIDATED PLAN ANNUAL ACTION PLAN FOR THE 2019-20 PROGRAM YEAR

The City Council approved the Fifth Amendment to the Consolidated Plan Annual Action Plan for the Program Year 2019-20 ("Substantial Amendment") and authorized the City Manager to take all actions necessary to implement the Substantial Amendment.

ITEM PULLED

11. AN ORDINANCE APPROVING FILE NO. PZC 19-001, A ZONE CHANGE AT 1063 EAST ELMA STREET

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

ORDINANCE NO. 3223 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PZC19-001, A ZONE CHANGE AMENDING THE ZONING DESIGNATION ON 0.07-ACRE OF LAND FROM MDR-11 (LOW-MEDIUM DENSITY RESIDENTIAL – 5.1 TO 11.0 DU/AC) TO MDR-18 (MEDIUM DENSITY RESIDENTIAL – 11.1 TO 18.0 DU/AC) TO ENABLE THE RESIDENTIAL DEVELOPMENT OF A 0.28-ACRE PROJECT SITE, AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 1048-491-23.

Council Member Dorst-Porada expressed her opposition.

MOTION: Moved by Council Member Bowman, seconded by Mayor Leon, motion failed by vote of 2-2, with Mayor pro Tem Wapner absent and Council Member Dorst-Porada and Council Member Valencia opposed.

City Council directed staff to bring the item back for reconsideration.

PUBLIC HEARINGS

17. A PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE ONTARIO RANCH BUSINESS PARK SPECIFIC PLAN (FILE NO. PSPA21-002) AND THE RELATED SUBSEQUENT FINAL ENVIRONMENTAL IMPACT REPORT (STATE CLEARINGHOUSE NO. 2019050018)

The City Council considered and adopted:

A. A Resolution certifying the Subsequent Environmental Impact Report (State Clearinghouse No. 2019050018) prepared for the Ontario Ranch Business Park Specific Plan Amendment, File No. PSPA21-002, which includes the adoption of a Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program; and
B. A Resolution adopting an Amendment to the Ontario Ranch Business Park Specific Plan (File No. PSPA21-002)

RESOLUTION NO. 2022-143 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND CERTIFYING THE ONTARIO RANCH BUSINESS PARK SPECIFIC PLAN AMENDMENT FINAL SUBSEQUENT ENVIRONMENTAL IMPACT REPORT (STATE CLEARINGHOUSE NO. 2019050018), AND ADOPTING FINDINGS OF OVERRIDING CONSIDERATIONS AND A MITIGATION MONITORING AND REPORTING PROGRAM, LOCATED WITHIN ONTARIO RANCH AND GENERALLY BORDERED BY EUCALYPTUS AVENUE TO THE NORTH, CAMPUS AVENUE TO THE EAST, MERRILL AVENUE TO THE SOUTH, AND SULTANA AVENUE TO THE WEST, AND MAKING FINDINGS IN SUPPORT THEREOF – APNS: 1054-041-01, 1054-041-02; 1054-031-01, 1054-031-02; 1054-261-01, 1054-261-02; 1054-291-01 AND 1054-291-02.

RESOLUTION NO. 2022-144 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PSPA21-002, AN AMENDMENT TO THE ONTARIO RANCH BUSINESS PARK SPECIFIC PLAN, INCORPORATING PROPERTY ADJACENT TO THE EXISTING SPECIFIC PLAN AREA AND ESTABLISHING THE LAND USE DESIGNATIONS, DEVELOPMENT STANDARDS, AND GUIDELINES WHICH WILL GOVERN THE DEVELOPMENT OF 71.69 ACRES OF LAND GENERALLY BORDERED BY CAMPUS, SULTANA, MERRILL, AND EUCALYPTUS AVENUES, AND MAKING FINDINGS IN SUPPORT THEREOF—APNS: 1054-041-01, 1054-041-02, 1054-031-01, 1054-031-02, 1054-261-01, 1054-261-02, 1054-291-01, AND 1054-291-02.

Notice of public hearing was duly given and affidavits of compliance are on file in the Records Management Department. There were two written communications from Susan Phillips in opposition and Mitchell M. Tsai in support.

Mayor Leon opened the public hearing.

Public Comments:
Claudia Prats, spoke in opposition.
Irvin Santos, spoke in support.
Randy Bekendam, spoke in opposition.
Andres Bujanda, Jr. spoke in support.
Mike Madrid, spoke in support.
Angel Esparza, spoke in support.
Louie Lopez, spoke in support.
Frankie Jimenez, spoke in support.
Wyatt Stiles, spoke in support.
Jorge Soria, spoke in support.

City Attorney Duran provided background on the written communication in opposition. Mayor Leon asked if there were additional requests to speak.

Margarita Georgieva Hernandez, spoke in opposition.

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

After discussion, Council agreed to move the item forward.

MOTION: Moved by Council Member Dorst-Porada, seconded by Council Member Bowman and carried by vote 3-1, with Mayor pro Tem Wapner absent, to adopt Resolution Nos. 2022-143 and 2022-144, with Council Member Valenica opposed.

STAFF MATTERS

City Manager Ochao made no announcements.

COUNCIL MATTERS

Council Member Dorst-Porada thanked residents for their comments. Asked for Council concurrence to adjourn in memory of former Library Commissioner George Albert Newberry.

Council Member Bowman thanked residents for their comments.

Council Member Valencia thanked residents for expressing concerns and spoke on school traffic concerns.

Mayor Leon spoke on community events in the City of Ontario and encouraged additional social media postings to bring added awareness to the Jesus Sanchez homicide case.

ADJOURNMENT

Mayor Leon adjourned the meetings of the Joint Agencies at 8:27 p.m. in memory of George Albert Newberry and announced the next regular meeting to be held on Tuesday, November 1, 2022.

Respectfully submitted,

_____
SHEILA MAUTZ, CITY CLERK/SECRETARY

APPROVED:

_____
PAUL S. LEON, MAYOR/CHAIRMAN

CITY OF ONTARIO *Agenda Report* **November 15, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Planning Prepared By: Rudy Zeledon Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 3

SUBJECT: **A PROFESSIONAL SERVICE AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT FOR THE EUCLID MIXED USE SPECIFIC PLAN (FILE NO. PSP22-001)**

RECOMMENDATION: That the City Council approve and authorize the City Manager to execute an Agreement (on file with the Records Management Department) with Kimley-Horn and Associates, Inc., of Riverside, California, to prepare an Environmental Impact Report (EIR) for the Euclid Mixed Use Specific Plan, in the amount of $396,805, plus a 5% contingency of $19,840, for a total authorized expenditure of $416,645; and authorize the City Manager to approve any future budget adjustments necessary to complete the EIR.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Operate in a Businesslike Manner
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch

FISCAL IMPACT: The EIR contract is a "pass-thru" to be paid by the project Applicant. A budget adjustment for the $416,645 in development revenue and corresponding expenditure appropriations will be included in the next quarterly budget update report to the City Council.

BACKGROUND & ANALYSIS: On January 27, 2010, the City adopted The Ontario Plan (TOP) and certified the accompanying EIR. Subsequently, on August 16, 2022, the City Council adopted an update to TOP and certification of a Supplemental Environmental Impact Report (SEIR). TOP Policy Plan serves as the City's General Plan. The project site is zoned SP/AG (Specific Plan/Agriculture Preserve). The zoning of "SP" requires the project area to be developed with a specific plan to carry out the goals and policies of TOP.

RCCD INC., (Applicant), is proposing the Euclid Mixed Use Specific Plan to govern the development of approximately 81.4 acres of land for residential, commercial and business park development. In addition, the Specific Plan will establish the land use designations, development standards, design guidelines and infrastructure improvements that will govern the development the Specific Plan

area. The Specific Plan site is generally located east of Euclid Avenue, south of Schaefer Avenue, west of Sultana Avenue and north of Edison Avenue.

In order to thoroughly address the environmental impacts associated with the proposed specific plan, a project Environmental Impact Report (EIR) is required. The City of Ontario Planning Department is responsible for selecting the consultant to prepare the EIR. A Request for Proposal (RFP) to prepare an EIR for the Euclid Mixed Use Specific Plan was posted on City's bidding site (PlanetBids). The City received 5 proposals from qualified firms. The selection committee unanimously recommended Kimley-Horn and Associates, Inc., to prepare the EIR for the Euclid Mixed Use Specific Plan, based on their experience, qualifications and proposal that best addressed and fully responded to the work scope.

The total estimated cost for completing the EIR is $416,645, which includes a five percent (5%) contingency required by the City, to be paid by the Applicant. The Applicant has agreed to the total amount and Staff will oversee the project from start to finish.

CITY OF ONTARIO *Agenda Report* **November 15, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Library Prepared By: Shawn Thrasher Staff Member Presenting: Helen McAlary, Executive Director Community Life and Culture Approved By: 	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 4

SUBJECT: NAME THE CHILDREN'S ROOM AT OVITT FAMILY COMMUNITY LIBRARY TO THE BEVERLY CLEARY YOUNG READERS ROOM

RECOMMENDATION: That the City Council approve naming the children's room at Ovitt Family Community Library, the Beverly Cleary Young Readers Room.

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

FISCAL IMPACT: There is no direct fiscal impact associated with this action.

BACKGROUND & ANALYSIS: In July 2022, a local resident submitted a Dedication/Naming Request Form to the Library Director. In the Request Form, the resident requested that the children's room at the Ovitt Family Community Library be named in honor of celebrated children's author and one-time Ontario resident, Beverly Cleary. The request also included three letters of support, articles and documents supporting the request, and a petition signed by 103 persons in support of the request. In accordance with the adopted policy which details the process for "Naming of Ontario City Library Facilities, Rooms or Collections", the Library Director presented information about the request to the Library Board of Trustees on September 13, 2022. A member of the public also spoke in favor of the recommendation. The Library Board of Trustees voted unanimously to recommend to City Council that the children's room at Ovitt Family Community Library be formally named the Beverly Cleary Young Readers Room.

Background on Beverly Cleary
Beverly Atlee Bunn was born on April 12, 1916 in McMinnville, Oregon. Beverly came of age during the Great Depression and her family did not have money to send her away to college. At that time, Beverly's mother's cousin, Verna Clapp, lived in Ontario and was employed as the librarian for Chaffey Memorial Library at Chaffey High School and Chaffey Jr. College. Beverly's mother was able to arrange for Beverly to stay with Verna, her husband, and children so that Beverly could attend Chaffey Jr. College. Beverly had aspirations of becoming a children's librarian. Beverly describes her first glimpse of Ontario in her biography, My Own Two Feet, and was captivated: "We drove up

Euclid Avenue, Ontario's main street, which appeared to end in mountains. This was the California I imagined." Beverly stayed with her relatives during her first year at Chaffey, but due to the Great Depression, the family could not host her stay for her second year. Beverly was not discouraged, and after the summer break she came back to Ontario and roomed with a classmate for her sophomore year.

Verna recommended Beverly to Alberta Schaeffer, the head librarian at the Ontario Public Library, who was searching for a substitute librarian. Ms. Schaeffer offered Beverly a job, and Beverly worked at Ontario Public Library for a year as a substitute librarian. After graduating from Chaffey in 1936, Beverly went on to obtain her bachelor's degree from the University of California, Berkeley, where she met and married her husband, Clarence Cleary. In 1939 she graduated from the School of Librarianship at the University of Washington with a second bachelor's degree in library science and soon after accepted a position as a children's librarian. After a few years of making recommendations and performing live storytelling in her role as librarian, she decided to start writing children's books about characters in which young readers could relate.

Beverly Cleary's first book was Henry Huggins in 1950. She published over forty books in her lifetime. The last book she wrote was Ramona's World in 1999, when she was 83. She died in Carmel, California in 2021 at the age of 104. Beverly Cleary is one of the most successful children's authors in history. Nearly one hundred million copies of her books have been sold. She won the 1981 National Book Award for Ramona and Her Mother and the 1984 Newbery Medal for Dear Mr. Henshaw. For her lifetime contributions to American literature, she received the National Medal of Arts, recognition as a Library of Congress Living Legend, and the Laura Ingalls Wilder Medal from the Association for Library Service to Children. Beverly Cleary was a resident of Ontario; she is a significant author in the field of children's literature; and she is considered a national hero by many children's librarians and readers of children's literature, including the millions of children who have read her books over the years.

It is the Library Board of Trustees and Staff's recommendation to name the children's room at Ovitt Family Community Library to the Beverly Cleary Young Readers Room.

Subsequent to the approval of this proposed Agenda item, Library Staff will research appropriate signage for the room. Staff will plan a ribbon cutting gathering during National Library Week, April 23-29, 2023, which will nearly coincide with Beverly Cleary's birthday on April 12. Library Staff will also plan a birthday party for Beverly Cleary on that date as a precursor to the larger gathering during National Library Week.

CITY OF ONTARIO *Agenda Report* **November 15, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Michael Bhatanawin Staff Member Presenting: Scott Murphy, Executive Director Community Development Reviewed By: Raymond Lee, Khoi Do Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 5

SUBJECT: **A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL PARCEL MAP NO. 20016, LOCATED AT THE NORTHEAST CORNER OF EUCLID AVENUE AND MERRILL AVENUE**

RECOMMENDATION: That the City Council adopt a Resolution approving an Improvement Agreement, Improvement Security and Final Parcel Map No. 20016, located at the northeast corner of Euclid Avenue and Merrill Avenue within the Ontario Ranch Business Park Specific Plan area.

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

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

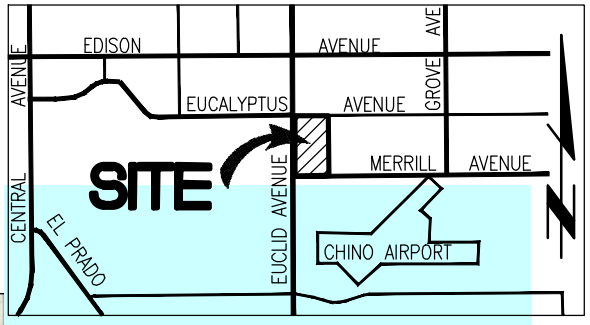
BACKGROUND & ANALYSIS: Final Parcel Map No. 20016, consisting of seven numbered lots and one lettered lot on approximately 80.7 acres of land, as shown on Exhibit A, has been submitted by the Developer, Euclid Land Venture, LLC, a Delaware Limited Liability Company. Tentative Parcel Map No. 20016 was approved by the Planning Commission on October 27, 2020.

Improvements will include streets, storm drain, domestic water main, recycled water, sewer main, fiber optic conduits, streetlights, raised landscape median, and parkway landscaping with irrigation. All landscape improvements will be consistent with current City approved drought measures.

The Developer has entered into an Improvement Agreement with the City for Final Parcel Map No. 20016 and has posted adequate security to ensure construction of the required improvements.

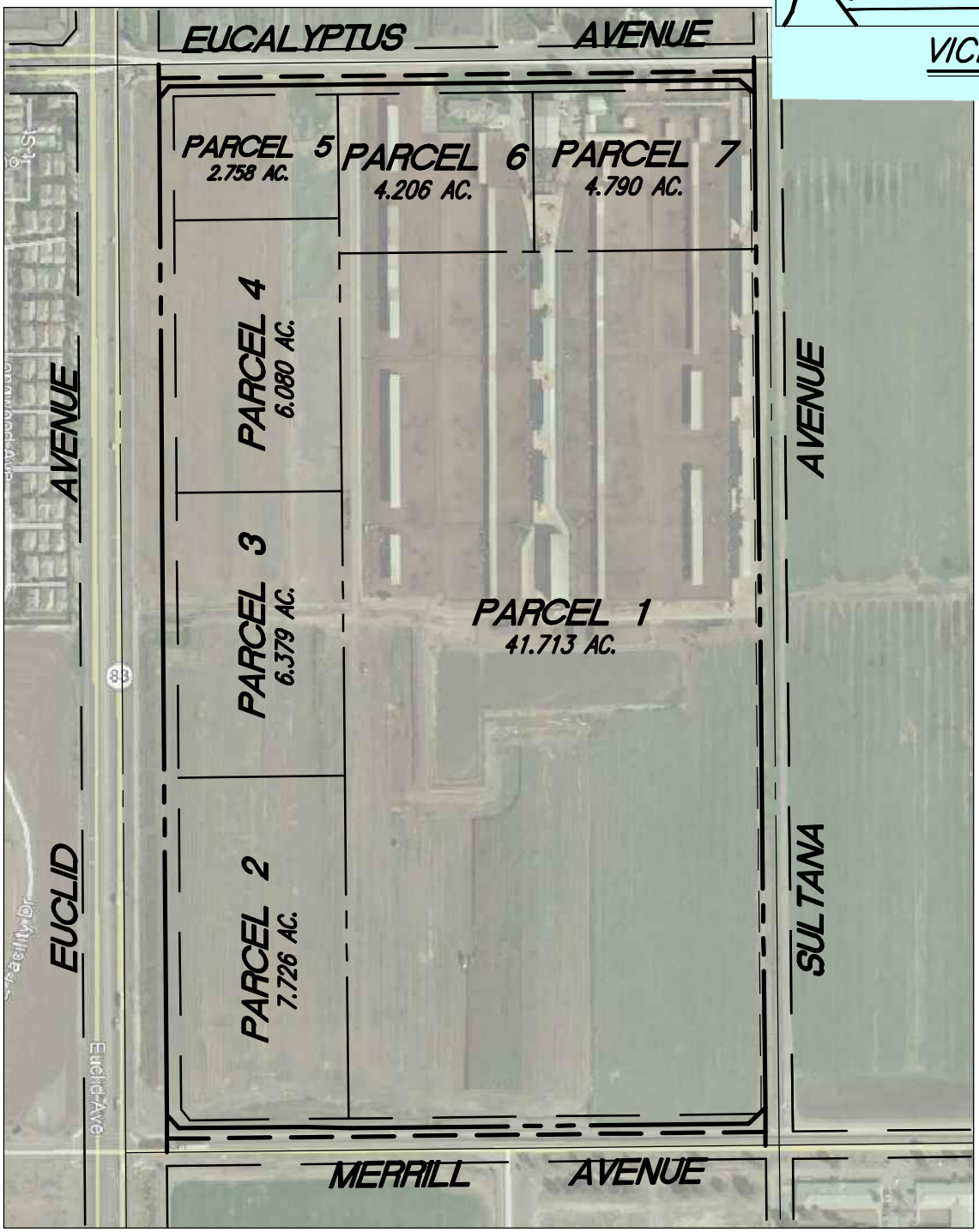
This map meets all conditions of the Subdivision Map Act and the Ontario Municipal Code and has been reviewed and approved by the City Engineer.

EXHIBIT A
PM 20016



VICINITY MAP

N.T.S.



PREPARED BY:

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

CITY OF ONTARIO
ENGINEERING DEPARTMENT

FILE NO. PM - 20016

APPLICANT: EUCLID LAND VENTURE, LLC., A DELAWARE LIMITED LIABILITY COMPANY

PROJECT: PARCEL MAP NO. 20016

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL PARCEL MAP NO. 20016 LOCATED AT THE NORTHEAST CORNER OF EUCLID AVENUE AND MERRILL AVENUE.

WHERAS, Tentative Parcel Map No. 20016 submitted for approval by Euclid Land Venture, LLC, a Delaware Limited Liability Company, was approved by the Planning Commission of the City of Ontario on October 27, 2020; and

WHEREAS, Tentative Parcel Map No. 20016 being a subdivision of Lots 1, 2, 3, 16, 17, 18, 19, 20, 21, 34, 35 and 36 in Section 19, Township 2 South, Range 7 West, San Bernardino Base and Meridian, according to Map of subdivision of part of the Rancho Santa Ana Del Chino, recorded in Book 6 of Maps, Page 15, records of said County; and

WHEREAS, to meet the requirements established as prerequisite to final approval of Parcel Map No. 20016, Euclid Land Venture, LLC, a Delaware Limited Liability Company, has offered the Improvement Agreement together with good and sufficient improvement security, in conformance with the City Attorney's approved format, for approval and execution by the City; and

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

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

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

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

SECTION 3. That Final Parcel Map No. 20016 be approved and that the City Clerk be authorized to execute the statement thereon on behalf of said City.

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

PASSED, APPROVED, AND ADOPTED this 15th day of November 2022.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

_____
BEST, BEST & KREIGER, LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2022- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 15, 2022 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2022- duly passed and adopted by the Ontario City Council at their regular meeting held November 15, 2022.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **November 15, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Municipal Services Prepared By: Adrian Escamilla Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Bonnie Tam Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 6

SUBJECT: **REJECT ALL BIDS AND AUTHORIZE RE-BIDDING OF THE ONTARIO POLICE DEPARTMENT LOCKER ROOM AND GYM EXPANSION PROJECT**

RECOMMENDATION: That the City Council reject all bids received for Bid No. 1558, D&C 20-019 for the Ontario Police Department Locker Room and Gym Expansion project and authorize the City Manager or his designee to solicit new bids for this project.

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

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

BACKGROUND & ANALYSIS: The Fiscal Year 2022-23 Adopted Budget includes appropriations in the Capital Projects Fund for the Ontario Police Department Locker Room and Gym Expansion project. This project will address accessibility deficiencies identified by an accessibility compliance report.

On July 22, 2022, Staff solicited bids for the Ontario Police Department Locker and Gym Expansion Project. On September 25, 2022, Staff received fifteen construction bids ranging from $1,318,000 to $1,957,000. Subsequent to that, the City identified that additional asphalt work for the entrance of the public parking and Staff entrance is needed, however, it was not defined in the original scope of work. Staff determined that it is in the best interest of the City to reject all bids in accordance with Ontario Municipal Code Section 2-6.20(a), re-define the scope of work and rebid the project. The new bid will include a base bid and Additive Item 1: Asphalt Construction of approximately 13,000 square feet.

CITY OF ONTARIO *Agenda Report* **November 15, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Financial Services Prepared By: Doreen Nunes Staff Member Presenting: Armen Harkalyan, Executive Director of Finance Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 7

SUBJECT: FISCAL YEAR 2022-23 FIRST QUARTER BUDGET UPDATE REPORT

RECOMMENDATION: That the City Council approve the budget adjustments and recommendations as presented in the Fiscal Year 2022-23 First Quarter Budget Update Report.

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

FISCAL IMPACT: The recommended actions will affect several fund budgets as outlined in the Fiscal Year 2022-23 First Quarter Budget Update Report.

BACKGROUND & ANALYSIS: The First Quarter Budget Update Report for Fiscal Year 2022-23 reflects the Financial Services Agency's continued efforts to provide timely, accurate, and understandable financial information to assist the City Council with decision making and achievement of core goals. All Funds have been reviewed in preparing this report. The emphasis of this report is on the General Fund, which funds the majority of government services including public safety, recreation, library, museum, parks, building and planning.

The primary purposes of this report are to:

- Discuss Fiscal Year 2021-22 Year-End Results and Fiscal Year 2022-23 First Quarter Budget Update and provide a reconciliation of budgeted-to-actual financial data;
- Address annual carryforward appropriations across all funds;
- Recognize budgetary carryforward amounts for prior year's approved Capital Improvement Projects and Grant appropriations, which are ongoing;
- Revise the City's budget to reflect the City Council's actions taken since the beginning of the current fiscal year;
- Recommend personnel and organizational changes to enhance program operations and efficiencies;
- Recommend budget adjustments that are consistent with City Council goals and objectives; and
- Comment on significant budget and economic trends which may impact fiscal year's budget development.

Fiscal Year 2021-22 General Fund Year-End Results (unaudited)

The General Fund activity for FY 2021-22 resulted in a positive year-end balance of approximately $25.8 million. This result is primarily due to higher sales tax revenue than projected as a result of increased consumer goods due to inflation and stimulus payments, as well as rising fuel costs, increased charges for services revenues (development related revenue) as Ontario Ranch and commercial/industrial development in the City continues to move forward at a strong pace, and personnel savings due to vacancies citywide. In addition, the City was able to realize approximately $14.1 million of American Rescue Plan Act (ARPA) funding for the negative economic impacts the City incurred during the COVID-19 pandemic period.

Fiscal Year 2022-23 First Quarter Budget Update Recommendations

First Quarter Budget Update recommendations are routine in nature and comprised predominately by: City Council actions taken since the beginning of the fiscal year, encumbrance carryforward items to rollover purchase order that have not yet been expended, and Capital Improvement Program (CIP) and Grant carryforward appropriations on projects and grants that have not been completed or fully expended. In addition, First Quarter includes proposed new expenditure budget requests, as well as revised revenue estimates for FY 2022-23. For the General Fund, the net result of these actions will bring the General Fund estimated available and unencumbered ending fund balance to $56.91 million or 18% of total appropriations. This amount achieves the goal set by City Council as a reserve for specific and defined emergency events (such as an earthquake or pandemic) and to address immediate needs in resources without impacting City services. This goal was temporarily decreased to 15% and then 16% during the COVID pandemic but has since been brought back up to the previous set goal of 18%, effective July 1, 2021, with the goal of increasing the reserves up to 25% in future fiscal years.

General Fund Highlights

- $14.0 million transfer-out from General Fund to fund Economic Development Activities
- $12.0 million transfer-out to General Fund Capital Projects fund to finance various City infrastructure projects including: new park attractions and improvements; support for homelessness and mental health illnesses; and public safety enhancements (funding to be provided from the anticipated additional sales tax revenue)
- $9.2 million carryforward encumbrances from FY 2021-22
- $1.2 million recommended personnel changes
- $700 thousand additional appropriations for Property Services, and Architectural and Design Services agreements (City Council approved 4/19/2022)
- $600 thousand additional appropriations for concrete repairs Maintenance Services Agreement for the replacement of A-curbs citywide (City Council approved 5/3/2022)
- $500 thousand additional funding for the Convention Center ballroom renovation (total funding to date $1M)

Other Funds (non-General Fund) Highlights

- $307.3 million carryforward encumbrances from FY 2021-22
- $9.0 million contribution from Affordability In-Lieu Fund to the Ontario Housing Authority for Vista Verde Phase II, a low/moderate income multi-family housing development (funded from use of fund balance)
- $6.7 million additional appropriations for San Antonio Transmission Water Main Phase 2

capital improvement project, funding provided from a developer reimbursement agreement (City Council approved 9/20/2022)
- $6.3 million purchase of a new police helicopter, funded through the Public Safety Equipment Reserve and the anticipated sale of the replacement helicopter of approximately $2.2M (City Council approved 9/6/2022)
- $5.3 million additional appropriations for the Ontario Ranch Phase 2 Water Main Improvement project
- $2.0 million additional appropriations for Fire Station No. 11 in the Ontario Ranch for equipment and construction related costs (offset by Development Impact Fee revenues)

Interim budget updates also present recommendations for personnel and organizational changes necessary to enhance program operations and efficiencies. Current recommendations for this First Quarter report include reclassification changes, adds/deletes, and other modifications to the authorized full-time positions resulting in a net increase of 14 positions citywide (12.6 positions are funded from General Fund and 1.4 positions are funded from Other Funds). In addition, a recommended City agency name change to incorporate the agency's sphere of responsibilities for the Human Resources Agency to Human Resources/Risk Management Agency. More detail is presented in the attached Exhibit A under Recommended Personnel Changes section, pages 16 through 18, of the FY 2022-23 First Quarter Budget Update Report.

Gainshare Program

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

Through dedication, hard work and overall contributions, Ontario employees achieved program requirements for FY 2021-22 and have unlocked a Gainshare incentive of 1% of base compensation for all employees. Included in the First Quarter Budget Update Report is appropriations of $1,048,097 for this Gainshare, with the General fund's share at $803,499 and Other Funds' share at $244,598.

Economic Outlook

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

- Gross Domestic Product (GDP): The broadest measure of economic output, increased at an annual rate of 2.6% in the third quarter of 2022 (advance estimate), following a decrease of 0.6% in the second quarter. The increase in real GDP in the third quarter was led by increases in exports and consumer spending, of which were partly offset by a decrease in housing spending.

- Unemployment Rate: The national unemployment rate for October 2022 was at 3.7% as compared to 4.6% in October 2021 and 6.9% in October of 2020. California's unemployment rate for September 2022 was at 3.9% as compared to 6.4% in September 2021 and 10.6% in September 2020. Locally, unemployment rate in September 2022 was at 3.8% as compared to 6.6% in September 2021 and 10.6% in September 2020. Employment continues to grow as the economy recovers from the COVID-19 pandemic.
- Consumer Confidence Index (CCI): For October 2022, the CCI was at 102.5. This is a decrease from the previous number of 107.8 for September 2022 and 103.2 for August 2022. The CCI has retreated in October, after advancing in August and September due to concerns about inflation, with both food and gas prices serving as the main drivers.
- Purchasing Manager's Index (PMI): For October 2022, PMI was at 50.2% as compared to 60.8% in October 2021 and 58.8% in October of 2020. The current declining PMI rate is a reflection of heightened concerns regarding rising inflation, higher commodity prices, and continued supply chain issues.
- Housing market: In California, 305,680 existing home sales have been recorded year to date. This represents a decrease of 30.2% year-to-year and a 16.5% decrease year to date. In the Inland Empire, the median sale price of existing single-family homes decreased by 0.6% from August 2022 to September 2022 and recorded an 8.1% increase year-to-year from September 2021 to September 2022. Supply constraints and increases in interest rates will continue to bring California home sales down in 2023.

Conclusion

As the City recovers from the last two years of economic disruption from the COVID pandemic, other challenges still exist: the continued war in Ukraine; rising consumer goods prices, fuel costs, and interest rates; the impending recession due to accelerated inflation levels not seen since the early 1980's; and concerns regarding the current "tripledemic" of flu, RSV, and COVID. Even with the anticipated additional resources, the City will need to continue to practice fiscal discipline and establish proactive measures to safely navigate the current and upcoming fiscal challenges, as well as deliver an unparalleled level of service and commitment to our community.

The Adopted Operating Budget for Fiscal Year 2022-23, as modified through this First Quarter Budget Update, reflects the City Council's continued commitment to support high quality public safety and municipal services, provides for the maintenance and expansion needs of the City's infrastructure and facilities, profiles an aggressive economic development strategy, and assures the investment and reinvestment of City resources into the community - all in the name of affording Ontario residents and businesses an exceptional quality of life. With the City Council's leadership and their prudent fiscal policies, the City's long-term financial health will further solidify its standing as the economic leader in the Inland Empire, and a formidable player in California and the nation.


Fiscal Year 2022-23
First Quarter Budget Update
CITY HALL
November 15, 2022

City of Ontario
Fiscal Year 2022-23
First Quarter Budget Update Report

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FY 2021-22
General Fund Year-End Results
(unaudited)

City of Ontario
General Fund Year-End Results - Revenues by Category
Fiscal Year 2021-22

	FY 2021-22 Current Budget[1]	FY 2021-22 Actuals[2]	FY 2021-22 Budget Variance	% Received
Sales Tax	$ 111,700,000	$ 129,332,341	$ 17,632,341	**115.8%**
Property Tax	80,045,955	79,028,282[5]	(1,017,673)	**98.7%**
Transient Occupancy Tax	16,237,675	16,400,754	163,079	**101.0%**
Business License Tax	8,662,980	8,856,928	193,948	**102.2%**
Franchise Tax	3,400,000	3,561,004	161,004	**104.7%**
Parking Tax	3,000,000	3,368,202	368,202	**112.3%**
Other Taxes	2,000,000	2,629,315	629,315	**131.5%**
License & Permits	9,737,125	10,772,502	1,035,377	**110.6%**
Fines & Forfeitures	966,789	1,060,576	93,787	**109.7%**
Use of Money & Property	1,462,798	(2,711,468)[6]	(4,174,266)	**-185.4%**
Intergovernmental	386,534	884,941	498,407	**228.9%**
Intergovernmental - ARPA[3]	3,422,371	14,095,153	10,672,782	**411.9%**
Charges for Services	27,206,987	28,283,146	1,076,159	**104.0%**
Charges for Services - OIAA[4]	21,819,106	19,371,918	(2,447,188)	**88.8%**
Miscellaneous Revenue	8,824,097	9,851,864	1,027,767	**111.6%**
Sub-Total	**$ 298,872,417**	**$ 324,785,458**	**$ 25,913,041**	**108.7%**
Transfers-In	-	2,508,769[7]	2,508,769	**0.0%**
Total Resources	**$ 298,872,417**	**$ 327,294,227**	**$ 28,421,810**	**109.5%**

[1]Reflects adjustments made at Post Adoption, First Quarter, and Year-End
[2]FY 2021-22 Actuals are unaudited
[3] ARPA: American Rescue Plan Act
[4] OIAA: Ontario International Airport Authority
[5] Current Secured & RDA Residual Property Tax actuals were under expected values.
[6] Change in Fair Value had a loss of $5.5M
[7]Correction to prior year transfer related to the Underground Utilities Deposit

City of Ontario
General Fund Year-End Results - Expenditures by Agency
Fiscal Year 2021-22

	FY 2021-22 Current Budget[1]	FY 2021-22 Actuals[2]	FY 2021-22 Budget Variance	% Expended
Community Development	$ 29,509,208	$ 24,113,544	$ 5,395,664	**81.7%**
Community Life & Culture	19,608,616	16,693,192	2,915,424	**85.1%**
Elected Officials	674,829	583,302	91,527	**86.4%**
Financial Services	12,494,248	10,756,299	1,737,949	**86.1%**
Human Resources	5,321,505	4,072,386	1,249,119	**76.5%**
Management Services	24,811,231	22,896,727	1,914,504	**92.3%**
Ontario Fire Department	75,632,019	80,162,383	(4,530,364)[3]	**106.0%**
Ontario Police Department	112,532,310	109,391,643	3,140,667	**97.2%**
Public Works	15,903,796	13,757,154	2,146,642	**86.5%**
Sub-Total	**$ 296,487,762**	**$ 282,426,630**	**$ 14,061,132**	**95.3%**
Transfers-Out	55,716,457	58,025,730	(2,309,273)	**104.1%**
Total Expenditures & Transfers-Out	**$ 352,204,219**	**$ 340,452,360**	**$ 11,751,859**	**96.7%**

[1] Reflects adjustments made at Post Adoption, First Quarter, and Year End
[2] FY 2021-22 Actuals are unaudited.
[3] Fire Department had a higher expended amount due to needed overtime for the alternate transport vehicle program.

City of Ontario
General Fund Year-End Results - Expenditures by Category
Fiscal Year 2021-22

	FY 2021-22 Current Budget[1]	FY 2021-22 Actuals[2]	FY 2021-22 Budget Variance	% Expended
Personnel Costs	$ 198,992,248	$ 195,813,575	$ 3,178,673	**98.4%**
Operating Expenditures	28,677,787	$ 23,735,209	4,942,578	**82.8%**
Contractual Services	20,653,297	$ 15,780,219	4,873,078	**76.4%**
Internal Service Allocations	36,087,699	$ 36,371,111	(283,412)	**100.8%**
Reimbursement Agreements	9,641,852	$ 8,891,193	750,659	**92.2%**
Capital Outlay	2,434,879	$ 1,835,322	599,557	**75.4%**
Sub-Total	**$ 296,487,762**	**$ 282,426,630**	**$ 14,061,132**	**95.3%**
Transfers-Out	55,716,457	$ 58,025,730	(2,309,273)	**104.1%**
Total Expenditures & Transfers-Out	**$ 352,204,219**	**$ 340,452,360**	**$ 11,751,859**	**96.7%**

[1] Reflects adjustments made at Post Adoption, First Quarter, and Year End
[2] FY 2021-22 Actuals are unaudited.

City of Ontario
General Fund Year-End Reconciliation (unaudited)
Fiscal Year 2021-22

Fiscal Year 2021-22 Revised Budget:		
Beginning Fund Balance 7/01/2021	**$**	**95,508,232**
Resources & Transfers-In[1]	$	327,294,227
Appropriations & Transfers-Out	$	(301,452,360)
Net Results for FY 2021-22	*$*	*25,841,867*
FY 2021-22 Funding for CalPERS UAL/RSIP, Economic Development Activities, and IT funding (From FY 2020-21 Surplus)	$	(39,000,000)
Year-End Adjustments to Retained Earnings	$	(8,429,263)
Estimated Ending Fund Balance - 6/30/2022	**$**	**73,920,836**
Fiscal Year 2021-22 Carryforward Encumbrances	$	(9,184,046)
Recommended Funding for Economic Development Activities	$	(14,000,000)
Recommended Allocation to Economic Uncertainty Reserve	$	(500,000)
Revised Estimated Fund Balance	**$**	**50,236,790**
Estimated General Fund Reserve %[2]		**19.8%**

[1] Includes $14M in American Rescue Plan Act (ARPA) funding.

[2] Council adopted the FY 2021-22 budget Reserve at 18% with direction to strive back at 20% reserve level.

City of Ontario
General Fund
Strategic Use of Funds

(1)	Pension Obligation Bonds/Safety PERS Unfunded Liability - FY 2021-22 Ending Balance	$ 228,855,000
(2)	Internal Borrowing for Miscellaneous PERS Unfunded Liability - FY 2021-22 Ending Balance	$ 94,805,640
(3)	Real Property Investment for Airport Drive under Economic Fund	$ 28,000,000
(4)	Funding for Future CalPERS Unfunded Liability (RSIP) FY 2021-22	$ 29,008,273
	Funding for Future CalPERS Unfunded Liability (RSIP) FY 2022-23	$ 15,720,332
	To be used for Part 150 parcels	$ 44,728,605
(5)	Funding for Economic Development Activities (First Quarter FY 2022-23)	$ 14,000,000
(6)	Economic Uncertainty Reserve Balance FY 2021-22	$ 19,500,000
	Recommended Allocation to Economic Uncertainty Reserve FY 2022-23	$ 500,000
	Recommended Economic Uncertainty Reserve Balance FY 2022-23	$ 20,000,000

FY 2022-23
First Quarter
Budget Update

City of Ontario
General Fund Revenue by Category
Fiscal Year 2022-23
First Quarter Budget Update

	FY 2022-23 [1] Adopted Budget	First Quarter Budget Update	FY 2022-23 Revised Budget	Actuals as of 09/30/2022	% Received
Sales Tax	$ 109,900,000	$ -	$ 109,900,000	$ 9,273,560	8.4%
Measure Q/Sales Tax	-	20,000,000	20,000,000	-	0.0%
Property Tax	82,967,000	-	82,967,000	-	0.0%
Transient Occupancy Tax	16,500,000	-	16,500,000	1,601,787	9.7%
Business License Tax	8,763,000	-	8,763,000	1,603,639	18.3%
Franchise Tax	3,000,000	-	3,000,000	53,358	1.8%
Parking Tax	3,000,000	-	3,000,000	664,446	22.1%
Other Taxes[2]	1,700,000	-	1,700,000	277,822	16.3%
Licenses and Permits	6,192,000	2,678,000[6]	8,870,000	1,519,616	17.1%
Intergovernmental[3]	9,171,077	-	9,171,077	3,482,313	38.0%
Intergovernmental - ARPA[4]	9,449,310	-	9,449,310	872,685	9.2%
Charges for Services	23,793,354	680,900	24,474,254	4,378,866	17.9%
Charges for Services - OIAA[5]	20,902,300	-	20,902,300	4,098,670	19.6%
Use of Money & Property	1,341,992	-	1,341,992	103,814	7.7%
Fines and Forfeitures	753,000	18,000	771,000	217,677	28.2%
Miscellaneous	1,720,000	3,890,031[7]	5,610,031	1,029,618	18.4%
Total General Fund Revenues	**$ 299,153,033**	**$ 27,266,931**	**$ 326,419,964**	**$ 29,177,871**	**8.9%**
Transfers-In	-	-	-	-	0.0%
TOTAL RESOURCES	**$ 299,153,033**	**$ 27,266,931**	**$ 326,419,964**	**$ 29,177,871**	**8.9%**

[1] Adopted Revenue Items were re-classed to be consistent with the new Workday Chart of Accounts
[2] Other Taxes includes Property Transfer Tax ($1.5M) and Motor Vehicle In Lieu ($200K)
[3] Intergovernmental includes Cost Allocation Plan Revenue, Disability, Worker's Compensation, & Unemployment Internal Service Allocation Revenue
[4] American Rescue Plan Act
[5] Ontario International Airport Authority
[6] Licenses and Permits: Building Dept request for increases in construction, emd of code cycle, new code cycle.
[7] Includes Toyota Arena revenue from FY 2021-22 per agreement

City of Ontario
General Fund Expenditures by Category
Fiscal Year 2022-23
First Quarter Budget Update

	FY 2022-23 Adopted Budget	CIP/Grants/POs Carryforward	First Quarter Budget Update	FY 2022-23 Revised Budget	Actuals as of 9/30/2022[1]	% Expended
Personnel Costs	$ 196,234,997	$ -	$ 1,901,682[2]	$ 198,136,679	$ 44,250,459	22.3%
Operating Expenditures	27,179,820	1,490,547	1,378,010[3]	30,048,377	6,993,135	23.3%
Contractual Services	16,976,742	6,475,733	1,958,000[4]	25,410,475	11,318,866	44.5%
Internal Service Allocations	42,715,839	-	43,953[5]	42,759,792	10,513,801	24.6%
Reimbursement Agreements/Other Financing Uses	8,965,212	740,535	-	9,705,747	(1,245,266)	-12.8%
Capital Outlay	367,000	477,231	583,600[6]	1,427,831	658,596	46.1%
Transfers-Out	9,438,410[7]	-	26,000,000[8]	35,438,410	2,359,602	6.7%
Total General Fund Appropriations	**$ 301,878,020**	**$ 9,184,046**	**$ 31,865,245**	**$ 342,927,311**	**$ 74,849,193**	**21.8%**
FTE General Fund	854.88	-	12.60	867.48		
FTE Other Funds	419.12	-	1.40	420.52		
Total FTE All Funds	1,274.00	-	14.00	1,288.00		

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

[2] Personnel costs includes $1.1M in personnel requests and $780K for gainshare program.

[3] Operating expenditures includes $500K for Convention Center Ballroom renovation; $200k in additional equipment funding for station #11; $100k in purchase of streetlight poles for Public Works,; $129k in equipment and training for new hires for OPD

[4] Contractual services includes $600k in Management Services agreement for A-curbs replacement; $250k in construction increases for Building; $700K for property/land acquisition,appraisal, and project/ property management; $150k in legal services for prorperty acquisition $143K in parking services for C street parking garage; $50K consulting services to rebuild Friends of the Library.

[5] Internal service allocations includes personnel related costs for workers' compensation and unemployment.

[6] Capital Outlay includes $270K for purchase of five vehicles in OPD; $314K for purchase of ambulance for OFD.

[7] Transfers include $2.1M in Sales Tax Contribution to CIP, $3M for Helicopter, $3.9M Retiree Medical contribution.

[8] Transfers include $12M for Measure Q Capital, and $14M for Economic Development.

City of Ontario
General Fund Expenditures by Agency
Fiscal Year 2022-23
First Quarter Budget Update

	FY 2022-23 Adopted Budget	CIP/Grants/POs Carryforward	First Quarter Budget Update	FY 2022-23 Revised Budget	Actuals as of 9/30/2022[1]	% Expended
Community Development	$ 28,162,047	$ 5,333,461	$ 446,044[2]	$ 33,941,552	$ 11,126,843	32.8%
Community Life & Culture	20,157,624	953,608	364,173[3]	21,475,405	4,813,253	22.4%
Financial Services	17,815,770	3,126	59,108[4]	17,878,004	2,089,703	11.7%
Human Resources/Risk Management	4,883,899	544,896	29,753[5]	5,458,548	1,796,590	32.9%
Management Services	23,691,566	1,547,942	1,487,956[6]	26,727,464	2,677,784	10.0%
Ontario Fire Department	75,869,598	377,783	955,261[7]	77,202,642	18,653,945	24.2%
Ontario Police Department	113,392,979	363,194	1,796,492[8]	115,552,665	26,416,070	22.9%
Public Works	8,466,127	60,036	726,458[9]	9,252,621	4,915,403	53.1%
Transfers-Out	9,438,410[10]	-	26,000,000[11]	35,438,410	2,359,602	6.7%
Total Appropriations & Transfers-Out	**$ 301,878,020**	**$ 9,184,046**	**$ 31,865,245**	**$ 342,927,311**	**$ 74,849,193**	**21.8%**
FTE General Fund	854.88	-	12.60	867.48		
FTE Other Funds	419.12	-	1.40	420.52		
Total FTE All Funds	1,274.00	-	14.00	1,288.00		

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

[2] Community Development includes $256K for increases in construction & new code cycle for Building, $89k for gainshare program and $136K for personnel requests.

[3] Community Life & Culture includes $257K for personnel requests, $57k for gainshare program; $50K for Consulting Servcies to rebuild Friends of the Library.

[4] Financial Services includes $33K for personnel requests and $26K for gainshare program.

[5] Human Resources/Risk Management includes $69K decrease for personnel requests and $20k for gainshare program.

[6] Management Services includes $150K in legal services for property acquisition; $700k Amendment for appraisal, project/Property management, land acquisition, and Architect and design services; $500K funding for Convention Center Ballroom renovation; $29K for gainshare program; $21K for personnel requests.

[7] Ontario Fire Department includes $200k in equipment for Truck and engine for Station #11; $300K for purchase of ambulance; $198K for gainshare program.; $144K for personnel requests; $60K Upgrade of Plymovents; $37K for new billing module for Fire PRevention Fees.

[8] Ontario Police Department includes $644K for personnel requests; $370K for gainshare program; $400k for purchase of vehicle, equipment, & training for new positions; $140K Contract for parking services for C street Parking garage.

[9] Public Works includes $600k increase to Maintenance Services Agreement for replacement of A curbs citywide; $110K for purchase of streetlight poles and hardware; $16K for gainshare program.

[10] Transfers include $2.1M contribution from Sales Tax Revenue to CIP's, $370K Parkway Maintenance contribution, $3M for the Public Safety Helicopter, $12k for Streetlight Maintenance contribution, and

[11] Transfers include $12M for Measure Q Capital, and $14M for Economic Development.

City of Ontario General Fund Budget Summary Fiscal Year 2022-23 First Quarter Budget Update With Measure Q	
Fiscal Year 2022-23 Revised Budget:	
Estimated Beginning Fund Balance	**$ 73,920,837**
Fiscal Year 2022-23 Adopted Budget:	
Resources & Transfers-In	299,153,033
Appropriations & Transfers-Out	(301,878,020)
First Quarter Budget Recommendations	
Resources	7,266,931
Measure Q	20,000,000
Measure Q Capital	(12,000,000)
Appropriations	(5,865,245)
Fiscal Year 2021-22 Carryforward Encumbrances	(9,184,046)
Recommended Funding for Economic Development Activities	(14,000,000)
Recommended Allocation to Economic Uncertainty Reserve	(500,000)
Estimated Ending Fund Balance	**$ 56,913,490**
Estimated General Fund Reserve % [1]	**18%**

[1] (A) Total GF Reserves is adjusted for a one time transfer exclusion of $14M for Economic Development Activities, and $500k allocation to Economic Uncertainty Reserve.
(B) For FY 2022-23, recommending a reserve level of 18% with the goal of increasing the reserves up to 25% in future fiscal years.

City of Ontario
Citywide Expenditures by Category
Fiscal Year 2022-23
First Quarter Budget Update

	FY 2022-23 Adopted Budget	CIP/Grants/POs Carryforward	First Quarter Budget Update	FY 2022-23 Revised Budget	Actuals as of 09/30/2022[1]	% Expended
Personnel Costs	$ 262,771,754	$ -	$ 3,434,805[2]	$ 266,206,559	$ 58,156,287	21.8%
Operating Expenditures	173,666,937	52,371,933	3,592,406[3]	229,631,276	44,618,522	19.4%
Contractual Services	69,513,931	232,299,420	18,895,816[4]	320,709,167	62,247,772	19.4%
Internal Service Allocations	69,935,874	19,542	47,374[5]	70,002,790	17,197,898	24.6%
Reimbursement Agreements/Other Financing Uses	44,734,968	16,841,809	9,000,000[6]	70,576,777	4,717,234	6.7%
Capital Outlay	9,645,000	14,948,333	7,190,941[7]	31,784,274	17,969,042	56.5%
Transfers-Out	31,346,668	-	26,000,000[8]	57,346,668	7,836,667	13.7%
Total Citywide Appropriations	**$ 661,615,132**	**$ 316,481,037**	**$ 68,161,342**	**$ 1,046,257,511**	**$ 212,743,422**	**20.3%**
FTE General Fund	854.88	-	12.60	867.48		
FTE Other Funds	419.12	-	1.40	420.52		
Total FTE All Funds	1,274.00	-	14.00	1,288.00		

[1] Includes expenses and encumbrances/PO's.
[2] Includes $1M Gainshare and Personnel Requests of $1.4M: Comm Dev $61k, CLC $257k, FS $33k, OFD $144k, HR&RM 13k, IT $20K, Mgmt Svcs $21k, OPD $644k, and PW $215k.
[3] Operating Expenditures include $176k Financial System Licensing fee increase; $675K Property Acquisition on N Euclid; $450K additional fund ing for Station #11; $110K purchase of streetlight poles and hardware; $217K Telecomm charges added to IT budget from adoption; $500K Convention Center Ballroom renovation funding; $130K for equipment and training for new Fire positions added.
[4] Contractual Services includes $5.4M Ontario Ranch Phase 2 Water Main Improvements; $6.8M for WA1401 San Antonio Transmission Water Main Phase 2; $1.5M amendments to sewer disposal, water supply, & water rights; $1.65M for Equipment and construction costs for Fire Station#11; $887K construction of WA1902 Pressure Reduction Station Rehab; $450K Museum accreditation related facility upgrades (repurpose of previously approved CIP PF1907-Museum Basement Waterproofing).
[5] Internal Service Allocations includes $48K in Recommended Personnel Changes.
[6] Reimbursement Agreements includes $6.8M Contribution from DIF fund to Water Capital (offset by DIF Revenue); $9M contribution from Affodability In-Lieu to Ontario Housing Authority (Revenue Offset).
[7] Capital Outlay includes $6.3M for Helicopter Purchase (Offset by sale of existing helicopter for $2.2M);$270K for Purchase of five vehicles for newly added OPD positions; $314K for purchase of ambulance; $110K for Utilities Customer Services Automated Mail Extraction; $100k additional funding for Fire Station#11 PF2208 equipment construction.
[8] Transfers include $12M for Measure Q Capital, and $14M for Economic Development.

City of Ontario
Citywide Expenditures by Fund Type
Fiscal Year 2022-23
First Quarter Budget Update

	FY 2022-23 Adopted Budget	CIP/Grants/POs Carryforward	First Quarter Budget Update	FY 2022-23 Revised Budget	Actuals as of 09/30/2022[1]	% Expended
General Fund	$ 301,878,020	$ 9,184,046	$ 31,865,245	$ 342,927,311[2]	$ 74,849,193	21.8%
Special Revenue Fund	43,081,236	74,698,692	3,168,018	120,947,946[3]	20,158,584	16.7%
Capital Projects Fund	19,876,031	125,131,010	5,573,837	150,580,878[4]	21,224,227	14.1%
Enterprise Funds	183,841,718	64,136,107	10,105,670	258,083,495[5]	56,393,112	21.9%
Internal Service Funds	110,978,709	31,274,094	8,489,635	150,742,438[6]	39,918,236	26.5%
Total City Funds	**$ 659,655,714**	**$ 304,423,949**	**$ 59,202,405**	**$ 1,023,282,068**	**$ 212,543,352**	**20.8%**
Agency Funds (OHA)	1,959,418	12,057,088	8,958,937	22,975,443	200,070	0.9%
Total All Funds	**$ 661,615,132**	**$ 316,481,037**	**$ 68,161,342**	**$ 1,046,257,511**	**$ 212,743,422**	**20.3%**
FTE General Fund	854.88	-	12.60	867.48		
FTE Other Funds	419.12	-	1.40	420.52		
Total FTE All Funds	1,274.00	-	14.00	1,288.00		

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

[2] General Fund includes $1.1M for personnel requests; $780K for gainshare program; $150K in legal services for property acquisition; $700k Amendment for appraisal, project/Property management, land acquisition, and Architect and design services; $500K funding for Convention Center Ballroom renovation; $600k increase to Maintenance Services Agreement for replacement of A curbs citywide; $110K for purchase of streetlight poles and hardware; $250k in construction increases for Building; $400k for purchase of vehicle, equipment, & training for new positions; $143K Contract for parking services for C street Parking garage; $200k in equipment for Truck and engine for Station #11; $300K for purchase of ambulance

[3] Special Revenue includes $355K funding for Traffic Signal system at Campus and Francis; $215K construction of Campus ave at Walnut; $160K for construction of ST2306 Campus (Francis to Belmont); $145k construction contract for ST2309 Etiwanda ave; $140k construction of ST2305 Campus at Philadelphia st; $125k funding for slurry projects and geotech texting svcs; $110K for construction contract for ST2307 Concours st.

[4] Capital Projects includes $6.8M contribution from DIF fund to Water Capital (Offset by Dif Revenues); $5.4M additional funding for Ontario Ranch Phase 2 Water Main Improvements (Offset by $2M funding reduction to Regional Water); $2M for Fire Station #11 PF2208 equioment and construction costs.

[5] Enterprise includes $140K for personnel requests; $155K for gainshare program; $6.8M additional funding to WA1401 San Antonio Transmission Water Main Phase 2; $1.5M in Amendments related to sewer disposal, water supply and rights; $900k funding for WA1902 Pressure Reduction Station Rehab.

[6] Internal Service includes $6.3M purchase of new helicopter (offset by sale of existing helicopter $2.2M); $675K property acquisition N Euclid ave; $400K in professional design services for park improvement projects; $450k for Museum accreditation related facility upgrades; $180K for personnel requests; $70k for gainshare program.

City of Ontario
Authorized Full-Time Positions
Fiscal Year 2022-23
First Quarter Budget Update

Agency	FY 2022-23 Adopted Budget	Recommended First Quarter Budget Update	Total Authorized Full-Time Positions
Community Development	112.00	-	112.00
Community Life & Culture	58.00	5.00	63.00
Financial Services	42.00	-	42.00
Human Resources	23.00	-	23.00
Information Technology	33.00	-	33.00
Management Services	44.00	1.00	45.00
Ontario Fire Department[1]	228.00	1.00	229.00
Ontario Municipal Utilities Company	124.00	-	124.00
Ontario Police Department[2]	379.00	6.00	385.00
Public Works	231.00	1.00	232.00
Total Authorized Full-Time Positions[3]	**1,274.00**	**14.00**	**1,288.00**
General Fund	854.88	12.60	867.48
Other Funds	419.12	1.40	420.52
Total FTE All Funds	**1,274.00**	**14.00**	**1,288.00**
[1] OFD positions includes the following sworn positions	185.00	1.00	186.00
[2] OPD positions includes the following sworn positions	282.00	5.00	287.00

[3] FY 2021-22 Adopted Full-Time Positions: 1,219

City of Ontario
Recommended Personnel Changes
Fiscal Year 2022-23
First Quarter Budget Update

Agency	Department	Proposed Change General Fund	Other Fund	Total	Position	Action	Salary Range
Community Development							
	Community Development Administration	(0.85)		(0.85)	Administrative Officer	Deletion	$ 9,095 - $ 11,057
	HUD Grant Administration		(0.10)	(0.10)	Administrative Officer	Deletion	$ 9,095 - $ 11,057
	HOME Program		(0.05)	(0.05)	Administrative Officer	Deletion	$ 9,095 - $ 11,057
	Community Development Administration	0.85		0.85	Departmental Administrator	Addition	$ 10,903 - $ 13,248
	HUD Grant Administration		0.10	0.10	Departmental Administrator	Addition	$ 10,903 - $ 13,248
	HOME Program		0.05	0.05	Departmental Administrator	Addition	$ 10,903 - $ 13,248
	Economic Development	(0.60)		(0.60)	Senior Project Coordinator	Deletion	$ 6,746 - $ 8,200
	Transformative Climate Comm Deposits, Grants and Projects		(0.40)	(0.40)	Senior Project Coordinator	Deletion	$ 6,746 - $ 8,200
	HUD Grant Administration		0.30	0.30	Management Analyst	Addition	$ 6,041 - $ 7,344
	HOME Program		0.25	0.25	Management Analyst	Addition	$ 6,041 - $ 7,344
	Transformative Climate Comm Deposits, Grants and Projects		0.20	0.20	Management Analyst	Addition	$ 6,041 - $ 7,344
	Ontario Housing Authority Administration		0.25	0.25	Management Analyst	Addition	$ 6,041 - $ 7,344
	Housing		(0.30)	(0.30)	Executive Director Housing & Neighborhood Preservation	Deletion	$ 13,575 - $ 18,186
	TCC Grant		(0.15)	(0.15)	Executive Director Housing & Neighborhood Preservation	Deletion	$ 13,575 - $ 18,186
	HUD Grant		(0.55)	(0.55)	Executive Director Housing & Neighborhood Preservation	Deletion	$ 13,575 - $ 18,186
	Community Development Administration	1.00		1.00	Community Development Asisstant Director	Addition	$ 14,674 - $ 18,018
		0.40	(0.40)	-			
Community Life & Culture							
	Library	(1.00)		(1.00)	Senior Library Assistant	Deletion	$ 4,203 - $ 5,205
	Library	1.00		1.00	Librarian	Addition	$ 5,132 - $ 6,295
	Homeless Continuum of Care	**1.00**		**1.00**	**Management Analyst**	**Addition**	**$ 6,041 - $ 7,344**
	Homeless Continuum of Care	**2.00**		**2.00**	**Continuum of Care Social Worker**	**Addition**	**$ 6,228 - $ 7,569**
	Senior Services	**2.00**		**2.00**	**Transportation Driver *****	**Addition**	**$ 3,293 - $ 3,987**
		5.00	-	5.00			
Financial Services							
	Payroll	(1.00)		(1.00)	Payroll Manager	Deletion	$ 7,490 - $ 9,100
	Payroll	1.00		1.00	Administrative Officer	Addition	$ 9,095 - $ 11,057
	Payroll	(1.00)		(1.00)	Payroll Technician	Deletion	$ 5,309 - $ 6,453
	Payroll	1.00		1.00	Payroll Corrdinator	Addition	$ 6,164 - $ 7,488
	Budget	(1.00)		(1.00)	Financial Analyst	Deletion	$ 7,564 - $ 9,190
	Budget	1.00		1.00	Senior Financial Analyst	Addition	$ 8,381 - $ 10,187
	Accounts Receivable	(1.00)		(1.00)	Accounting Technician	Deletion	$ 4,808 - $ 5,843
	Accounts Receivable	1.00		1.00	Management Analyst	Addition	$ 6,041 - $ 7,344
		-	-	-			
Human Resources/Risk Management							
	HR Administration	(0.80)		(0.80)	Human Resources Analyst	Deletion	$ 6,661 - $ 8,093
	Worker's Compensation		(0.10)	(0.10)	Human Resources Analyst	Deletion	$ 6,661 - $ 8,093
	General Liability		(0.10)	(0.10)	Human Resources Analyst	Deletion	$ 6,661 - $ 8,093
	Worker's Compensation		0.40	0.40	Senior Management Analyst	Addition	$ 7,490 - $ 9,100
	General Liability		0.60	0.60	Senior Management Analyst	Addition	$ 7,490 - $ 9,100
	HR Administration	(0.70)		(0.70)	Human Resources Technician	Deletion	$ 5,309 - $ 6,453
	Worker's Compensation		(0.15)	(0.15)	Human Resources Technician	Deletion	$ 5,309 - $ 6,453
	General Liability		(0.15)	(0.15)	Human Resources Technician	Deletion	$ 5,309 - $ 6,453
	HR Administration	0.70		0.70	Human Resources Coordinator	Addition	$ 5,855 - $ 7,115
	Worker's Compensation		0.15	0.15	Human Resources Coordinator	Addition	$ 5,855 - $ 7,115
	General Liability		0.15	0.15	Human Resources Coordinator	Addition	$ 5,855 - $ 7,115
	HR Administration	(1.96)		(1.96)	Senior Human Resources Analyst	Reclassification	$ 9,095 - $ 11,057
	Rideshare		(0.04)	(0.04)	Senior Human Resources Analyst	Reclassification	$ 9,095 - $ 11,057
	HR Administration	1.96		1.96	Principal Human Resources Agency Partner	Reclassification	$ 9,095 - $ 11,057
	Rideshare		0.04	0.04	Principal Human Resources Agency Partner	Reclassification	$ 9,095 - $ 11,057
	HR Administration	(0.80)		(0.80)	Senior Human Resources Analyst	Reclassification	$ 9,095 - $ 11,057
	Workers' Compensation		(0.10)	(0.10)	Senior Human Resources Analyst	Reclassification	$ 9,095 - $ 11,057
	General Liability/Safety		(0.10)	(0.10)	Senior Human Resources Analyst	Reclassification	$ 9,095 - $ 11,057
	HR Administration	0.80		0.80	Principal Risk Management/ Benefits Agency Partner	Reclassification	$ 9,095 - $ 11,057
	Workers' Compensation		0.10	0.10	Principal Risk Management/ Benefits Agency Partner	Reclassification	$ 9,095 - $ 11,057
	General Liability/Safety		0.10	0.10	Principal Risk Management/ Benefits Agency Partner	Reclassification	$ 9,095 - $ 11,057
		(0.80)	0.80	-			

City of Ontario
Recommended Personnel Changes
Fiscal Year 2022-23
First Quarter Budget Update

Agency	Department	Proposed Change General Fund	Other Fund	Total	Position	Action	Salary Range
Information Technology							
	IT Administration	-	(1.00)	(1.00)	Management Analyst	Deletion	$ 6,041 - $ 7,344
	IT Operations	-	1.00	1.00	Senior Systems Analyst	Addition	$ 8,277 - $ 10,060
		-	-	-			
Management Services							
	Innovation, Performance & Audit	(1.00)		(1.00)	Performance & Optimization Manager	Deletion	$ 9,322 - $ 11,333
	Innovation, Performance & Audit	1.00		1.00	Project Manager	Addition	$ 8,448 - $ 10,264
	Communications & Communication Relations	(1.00)		(1.00)	Legislative Analyst	Deletion	$ 6,041 - $ 7,344
	Communications & Communication Relations	1.00		1.00	Senior Legislative Analyst	Addition	$ 7,490 - $ 9,100
	Communications & Community Relations	**1.00**		**1.00**	**Communications Analyst**	**Addition**	**$ 6,041 - $ 7,344**
	Office of the City Manager	(1.00)		(1.00)	Senior Management Analyst	Deletion	$ 7,490 - $ 9,100
	Office of the City Manager	1.00		1.00	Administrative Officer	Addition	$ 9,095 - $ 11,057
	Office of the City Manager	(1.00)		(1.00)	Director of Economic Development	Deletion	$ 13,558 - $ 16,479
	Office of the City Manager	1.00		1.00	Executive Director of Economic Development	Addition	$ 13,575 - $ 18,186
		1.00	-	1.00			
Ontario Fire Department							
	Emergency Services	**1.00**	-	**1.00**	**Chief Deputy Fire Chief**	**Addition**	**$ 16,338 - $ 19,859**
		1.00	-	1.00			
Ontario Municipal Utilities							
	Environmental Engineering / Water		(1.00)	(1.00)	Senior Cross-Connection Control Specialist	Deletion	$ 6,286 - $ 7,640
	Environmental Engineering / Water		1.00	1.00	Cross-Connection Control Supervisior	Addition	$ 6,756 - $ 8,208
		-	-	-			
Ontario Police Department							
	Airport Operations Bureau	(3.00)		(3.00)	Parking Enforcement Officers	Deletion	$ 3,515 - $ 4,274
	Airport Operations Bureau	3.00		3.00	Community Service Officers	Addition	$ 4,117 - $ 5,002
	Detective Division	**1.00**		**1.00**	**Digital Forensic Specialist***	**Addition**	**$ 7,564 - $ 9,190**
	Personnel Recruit &Training	**1.00**		**1.00**	**Police Lieutenant***	**Addition**	**$ 12,142 - $ 14,751**
	Personnel Recruit &Training	**2.00**		**2.00**	**Police Officer***	**Addition**	**$ 6,933 - $ 8,429**
	Personnel Recruit &Training	**1.00**		**1.00**	**Police Sergeant***	**Addition**	**$ 10,429 - $ 12,676**
	Career Criminal Division/Multi Enforcement Tea	**1.00**		**1.00**	**Police Captain***	**Addition**	**$ 13,981 - $ 16,995**
		6.00	-	6.00			
Public Works							
	Commercial Bin Collection	-	(1.00)	(1.00)	Integrated Waste Collector	Deletion	$ 3,687 - $ 4,482
	Commercial Bin Collection	-	1.00	1.00	Integrated Waste Maintenance Worker	Addition	$ 3,545 - $ 4,304
	Integrated Waste Administration	-	(1.00)	(1.00)	Office Specialist	Deletion	$ 3,782 - $ 4,597
	Integrated Waste Administration	-	1.00	1.00	Senior Management Analyst	Addition	$ 7,490 - $ 9,100
	Integrated Waste Administration	-	(1.00)	(1.00)	Office Specialist	Deletion	$ 3,782 - $ 4,597
	Integrated Waste Administration	-	1.00	1.00	Senior Management Analyst	Addition	$ 7,490 - $ 9,100
	Public Facilities Building Maintenance	**-**	**1.00**	**1.00**	**Project Manager**	**Addition**	**$ 8,242 - $ 10,013**
		-	1.00	1.00			
Total Additions/(Deletions)		**12.60**	**1.40**	**14.00**			

Net Change By Fund		Annual Cost		First Quarter Adjustments	Net FTE Change
1000 General Fund	$	2,298,692	$	1,149,346	12.60
1050 General Fund Ontario Airport Serv	$	32,856	$	16,428	-
2010 C.D.B.G.	$	(18,500)	$	(9,250)	-
2020 HOME Grants	$	42,974	$	21,487	0.25
2310 Ontario Housing Authority	$	(88,246)	$	(44,123)	(0.30)
2400 Grants Fund	$	(85,952)	$	(42,976)	(0.35)
5010 Water Operating	$	5,930	$	2,965	-
5210 Integrated Waste	$	108,738	$	54,369	-
6020 Information Technology	$	40,062	$	20,031	-
6030 Facility Maintenance	$	153,450	$	76,725	1.00
6110 Workers Compensation	$	63,008	$	31,504	0.30
6111 General Liability	$	102,408	$	51,204	0.50
	$	**2,655,420**	**$**	**1,327,710**	**14.00**

City of Ontario
Budget Adjustment Highlights
Fiscal Year 2022-23
First Quarter Budget Update

Agency	Description	Appropriation Adjustment	General Fund	Other Funds
Community Development				
	Community Development increases due to increases in construction, end of code cycle, and new code cycle	256,000	256,000	-
	Contractual increase in Department citation processing fees for third-party processor and change in fee collection process from net fee reporting to gross fee reporting	18,000	18,000	-
	FY 2021-22 Gainshare Program	95,469	89,183	6,286
	Increase in abandoned shopping cart collection fees by third-party vendor	10,000	10,000	-
	Recommended Personnel Changes	(2,001)	72,861	(74,862)
	Additional Construction Contract funding for the Slurry Projects and geotechnical texting services (CC Approved 07/19/2022)	123,449	-	123,449
	Additional funding for construction Contract of ST2307 Concours St (Wineville to Barrington) (CC Approved 07/05/2022)	109,453	-	109,453
	Additional funding for construction Contract of ST2312 Phillips St. (Benson to Cypress) (CC Approved 07/05/2022)	91,779	-	91,779
	Additional funding for construction of ST2305 Campus Ave at Philadelphia St. (CC Approved 07/05/2022)	138,060	-	138,060
	Additional funding for construction of ST2306 Campus Ave. (Francis to Belmont) (CC Approved 07/05/2022)	158,875	-	158,875
	Additional funding for construction of ST2309 Etiwanda Ave. (Jurupa to Santa Ana) pavement (CC Approved 07/05/2022)	145,591	-	145,591
	Additional funding for construction of ST2311 Grove Ave. at SR-60 pavement (CC Approved 07/05/2022)	82,348	-	82,348
	Additional funding for Construction of ST2314 Vineyard Ave. at SR-60 Sidewalk Repair (CC Approved 07/05/2022)	23,010	-	23,010
	Additional funding for construction of ST2315 Vintage Ave (Concours to Ontario Mills Pkwy) (CC Approved 07/05/2022)	21,555	-	21,555

City of Ontario
Budget Adjustment Highlights
Fiscal Year 2022-23
First Quarter Budget Update

Agency	Description	Appropriation Adjustment	General Fund	Other Funds
Community Development Cont.				
	Additional funding for ST1713 Mountain Avenue and Holt Blvd Intersection Widening Project	47,912	-	47,912
	Additional funding for the Construction of Campus Avenue at Walnut Street TR2001 (CC Approved 10/04/2022)	212,593	-	212,593
	Additional funding for the Construction of Traffic Signal Systems at Campus Avenue at Francis Street TR2001 (CC Approved 10/04/2022)	354,804	-	354,804
	Additional funding for the Professional Services Contract of the Master Plan of Drainage Update Project (CC Approved 07/19/2022)	83,758	-	83,758
	Additional Maintenance and Repairs funding for the Mill Creek Wetlands Facility (CC Approved 07/19/2022)	30,000	-	30,000
	Contribution from Affordability In-Lieu to Ontario Housing Authority for property acquisitions (Use of fund balance)	9,000,000	-	9,000,000
	Reduction to GR2303 Hotel Voucher Program (Reduction of C.D.B.G. funding)	(15,938)	-	(15,938)
	MS2301 TBRA allocation	307,854	-	307,854
		11,292,571	**446,044**	**10,846,527**
Community Life & Culture				
	Consulting Services to rebuild Friends of the Library	50,000	50,000	-
	FY 2021-22 Gainshare Program	57,591	57,374	217
	Recommended Personnel Changes	256,799	256,799	-
	Museum accreditation related facility upgrades (Repurpose of PF1907 Waterproofing of Museum Basement in Facilities and Parks Maintenance fund, reduction in carryforward)	450,000	-	450,000
	GR2312 OmniTrans Measure I Grant (CC Approved 08/16/2022)	675,582	-	675,582
		1,489,972	**364,173**	**1,125,799**

City of Ontario
Budget Adjustment Highlights
Fiscal Year 2022-23
First Quarter Budget Update

Agency	Description	Appropriation Adjustment	General Fund	Other Funds
Financial Services				
	FY 2021-22 Gainshare Program	30,419	25,959	4,460
	Recommended Personnel Changes	33,149	33,149	-
		63,568	**59,108**	**4,460**
Human Resources/Risk Management				
	FY 2021-22 Gainshare Program	23,604	20,039	3,565
	Recommended Personnel Changes	13,422	(69,286)	82,708
	Purchase of Intranet Software	79,000	79,000	-
		116,026	**29,753**	**86,273**
Information Technology				
	Financial System (PeopleSoft) incremental licensing fee increase (CC Approved 08/16/2022)	175,559	-	175,559
	FY 2021-22 Gainshare Program	29,728	-	29,728
	Recommended Personnel Changes	20,031	-	20,031
	Telecomm charges moved to IT budget for budget adoption (Funded by various departments)	217,387	-	217,387
		442,705	**-**	**442,705**

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Agency	Description	Appropriation Adjustment	General Fund	Other Funds
Management Services				
	Amendment to On-Call appraisal, Project Management, Land Acquisition, Relocation, Property Management, and Architectural and Design Services (CC Approved 04/19/2022)	700,000	700,000	-
	Convention Center additional funding for ballroom renovation	500,000	500,000	-
	FY 2021-22 Gainshare Program	32,536	29,000	3,536
	Legal services for property acquisition	150,000	150,000	-
	Pandemic Recovery Sponsorship for Greater Ontario Business Council	25,000	25,000	-
	Recommended Personnel Changes	83,956	83,956	-
	Property Acquisition for 125 North Euclid Avenue (CC Approved 08/16/2022)	675,000	-	675,000
	Reduction to MS2302 OntarioNet Broadband Expansion (Reduction of C.D.B.G. funding)	(69,066)	-	(69,066)
		2,097,426	**1,487,956**	**609,470**
OMUC				
	CIS Consulting Review based on the FY 2022-23 Utility Customer Service ASO goal	75,000	-	75,000
	Additional Funding for construction of WA1902 Pressure Reduction Station Rehab (CC Approved 10/18/2022)	887,493	-	887,493
	Additional funding for Ontario Ranch Phase 2 Water Main Improvement (CC Approved 11/15/2022)	5,351,414	-	5,351,414
	Change in funding allocation for Ontario Ranch Phase 2 Water Main Improvement Regional Water (CC Approved 11/15/2022)	(1,945,497)	-	(1,945,497)
	Additional Funding for WA1401 San Antonio Transmission Water Main Phase 2 (CC Approved 09/20/2022) (Offset by DIF contribution)	6,764,119	-	6,764,119
	Additional funding for Water, Recycled Water, and Wastewater Rate Studies	98,000	-	98,000
	Amendments to matters relating to sewer disposal, water supply, and water rights (CC Approved 09/20/2022)	1,465,000	-	1,465,000
	Associates Classification and Compensation Study (CC Approved 01/18/2022)	140,000	-	140,000
	FY 2021-22 Gainshare Program	89,514	-	89,514

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Agency	Description	Appropriation Adjustment	General Fund	Other Funds
OMUC Cont.				
	Pre-treatment Program and Civil Engineering Support Services Agreements (CC Approved 05/17/2022)	75,000	-	75,000
	Recommended Personnel Changes	2,965	-	2,965
	Utilities Customer Services Center Automated Mail Extraction (CC Approved 09/06/2022)	115,000	-	115,000
		13,118,008	**-**	**13,118,008**
Ontario Fire Department				
	Additional funding for equipment to outfit Truck and Engine for Station #11	203,000	203,000	-
	Funding for New Billing Module for fire prevention fees	37,000	37,000	-
	FY 2021-22 Gainshare Program	197,396	197,396	-
	Purchase of ambulance (CC Approved 8/16/2022)	313,600	313,600	-
	Recommended Personnel Changes	144,265	144,265	-
	Upgrade of Plymovents at all Stations except #9 and #10. Tied to FY 2022-23 ASO #6	60,000	60,000	-
	Additional funding for Fire Station #11 PF2208 Equipment and Construction costs (Offset by DIF revenues)	2,000,000	-	2,000,000
	GR2307 Listos California CERT Support Grant (Offset by Grant revenues)	15,000	-	15,000
		2,970,261	**955,261**	**2,015,000**

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Agency	Description	Appropriation Adjustment	General Fund	Other Funds
Ontario Police Department				
	Additional funding for PF2205 Women's Locker Room Expansion	36,250	-	36,250
	Contract for Parking Services on C Street Parking Garage	143,000	143,000	-
	Funding for Internet Crimes Against Children Operational Equipment and Real Time Information Center Equipment required for testing	72,549	72,549	-
	FY 2021-22 Gainshare Program	368,090	368,090	-
	Increase in False Alarm Contract (CC Approved 06/07/2022)	87,500	87,500	-
	Increases for Forensic Nurse Agreement, AFR Engine Agreement, and Hawks Analytics Subscription	31,995	31,995	-
	Peer Support Program Increase in Cost	50,000	50,000	-
	Purchase of five vehicles, equipment, and needed training for newly added positions	399,328	399,328	-
	Recommended Personnel Changes	644,030	644,030	-
	Purchase of new helicopter funding from the Public Safety equipment reserve (CC Approved 09/06/2022) (Offset by $2.2M sale of helicopter)	6,252,341	-	6,252,341
	GR2313 Ride-to-Live (CC Approved 03/01/2022) (Offset by Grant revenues)	28,000	-	28,000
	GR2304 Justice Assistance Grant (JAG) Grant (CC Approved 07/19/2022) (Offset by Grant revenues)	47,878	-	47,878
	GR2314 OTS Selective Traffic Enforcement Program (STEP) (CC Approved 03/01/2022) (Offset by Grant revenues)	700,000	-	700,000
	GR2316 Urban Area Security Initiative UASI FY 2020-21 Grant - PD (CC Approved 08/16/2022) (Offset by Grant revenues)	600,000	-	600,000
		9,460,961	**1,796,492**	**7,664,469**

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Budget Adjustment Highlights
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Agency	Description	Appropriation Adjustment	General Fund	Other Funds
Public Works				
	FY 2021-22 Gainshare Program	123,750	16,458	107,292
	Increase to concrete repairs Maintenance Services Agreement for the replacement of A-curbs throughout the City during the FY 2022-23 paving season (CC Approved 05/03/2022)	600,000	600,000	-
	Purchase of streetlight poles and corresponding hardware due to the high volume of damage incidents	110,000	110,000	-
	Funding to increase On-call Integrated Waste Consulting services for SB 1383 Organics Recycling Compliance (CC Approved 11/01/2022)	200,000	-	200,000
	Leak repairs to the Historic Fountain at the Ontario Museum of Art	30,000	-	30,000
	Professional design services for Celebration Park North Improvements Project, De Anza Park Splash Pad Improvements, Ontario Town Square - Green Room and Restroom Improvements, and De Anza Park Soccer Field Synthetic Turf Project	400,000	-	400,000
	Professional Services Agreement for Rates Study on Integrated Waste Funds	75,000	-	75,000
	Purchase of two 5-ton HVAC units for the fiber optic facility	40,000	-	40,000
	Recommended Personnel Changes	131,094	-	131,094
	Reduction to PA2301 John Galvin Park New Restroom (Reduction of C.D.B.G. funding)	(600,000)	-	(600,000)
		1,109,844	**726,458**	**383,386**
	Total Expenditures	42,161,342	5,865,245	36,296,097
	Transfers-Out	26,000,000	26,000,000	-
	Grand Total	**$ 68,161,342**	**$ 31,865,245**	**$ 36,296,097**

City of Ontario General Fund Personnel Ratios Fiscal Year 2022-23				
	FY 2020-21 Actuals	**FY 2021-22 Actuals[1]**	**FY 2022-23 Adopted**	**% Change from FY 2021-22**
Salaries & Benefits	$ 176,912,607	$ 195,813,575	**$ 196,234,997**	0.2%
Operating Costs[2]	$ 67,137,752	$ 83,505,218	**$ 86,872,401**	4.0%
Total Costs	**$ 244,050,359**	**$ 279,318,793**	**$ 283,107,398**	1.4%
Salaries & Benefits % of Total Costs[3]	72.5%	70.1%	**69.3%**	-1.1%
Total FTE Count	948	849	**855**	0.7%
Average FTE Cost	$ 186,617	$ 230,640	**$ 229,515**	-0.5%
Non-Management FTE Count	789	704	**708**	0.6%
Management FTE Count	159	145	**147**	1.4%
Non-Management Ratios	83.2%	82.9%	**82.8%**	-0.1%
Management Ratios	16.8%	17.1%	**17.2%**	0.7%

Staffing ratio (total personnel versus total GF operating budget) meets target of >80%
Management ratio (management versus non-management) meets target of <20%

[1]FY 2021-22 Actuals are unaudited
[2]Excludes Transfers-Out, Reimbursement Agreements, Debt Service and Capital Outlay
[3]Salaries & Benefits % of Total Costs target is <75%

City of Ontario Citywide Personnel Ratios Fiscal Year 2022-23				
	FY 2020-21 Actuals	**FY 2021-22 Actuals[1]**	**FY 2022-23 Adopted**	**% Change from FY 2021-22**
Salaries & Benefits	$ 219,595,324	$ 251,750,229	**$ 262,771,754**	4.4%
Operating Costs	$ 319,776,827	$ 398,060,668	**$ 313,116,742**	-21.3%
Total Operating Costs[2]	**$ 539,372,151**	**$ 649,810,897**	**$ 575,888,496**	-11.4%
Salaries & Benefits % of Total Costs	40.7%	38.7%	**45.6%**	17.8%
Total FTE Count	1,322	1,260	**1,274**	1.1%
Average FTE Cost	$ 166,108	$ 199,802	**$ 206,257**	3.2%
Non-Management FTE Count	1,112	1,057	**1,069**	1.1%
Management FTE Count	210	203	**205**	1.0%
Non-Management Ratios	84.1%	83.9%	**83.9%**	0.0%
Management Ratios	15.9%	16.1%	**16.1%**	-0.1%

Staffing ratio (total personnel versus total citywide operating budget) meets target of >80%
Management ratio (management versus non-management) meets target of <20%

[1]FY 2021-22 Actuals are unaudited

[2]Excludes Transfers-Out, Reimbursement Agreements, Debt Service and Capital Outlay

City of Ontario
Detail of Recommended Budget Adjustments by Fund
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Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfers-In	Operating Transfers-Out	Fund Balance Impact
GENERAL FUND					
Fund 1000 - General Fund					
Convention Center additional funding for ballroom renovation	500,000				(500,000)
Convention Center Capital Funding Carryforward from FY 2021-22	347,601				(347,601)
Carryforward Encumbrances from FY 2021-22	6,487,074	-	-	-	(6,487,074)
Purchase of five vehicles, equipment, and needed training for newly added positions	399,328	-	-	-	(399,328)
Manual Carryforward from FY 2021-22 Sales Tax Incentive payments	733,360				(733,360)
Contractual increase in Department citation processing fees for third-party processor and change in fee collection process from net fee reporting to gross fee reporting	18,000	18,000	-	-	-
Increase in abandoned shopping cart collection fees by third-party vendor	10,000	-			(10,000)
Manual carryforward from FY 2021-22 for Community Outreach efforts (CC Approved 02/01/2022)	250,000	-	-	-	(250,000)
Manual Carryforward from FY 2021-22 for Citywide Software Assessment for IPA	40,000	-			(40,000)
Manual Carryforward from FY 2021-22 for the Sewer Connection Fee Reimbursement Pilot Program (CC Approved 04/05/2022)	100,000	-			(100,000)
Funding for New Billing Module for fire prevention fees	37,000	-			(37,000)
Manual Carryforward from FY 2021-22 for Planning Department On-Call Plan Check Services	100,000	-			(100,000)
Upgrade of Plymovents at all Stations except #9 and #10. Tied to FY 2022-23 ASO #6	60,000	-			(60,000)
Purchase of ambulance (CC Approved 8/16/2022)	313,600	-			(313,600)
Additional funding for equipment to outfit Truck and Engine for Station #11	203,000	-			(203,000)
Increase to concrete repairs Maintenance Services Agreement for the replacement of A-curbs throughout the City during the FY 2022-23 paving season. (CC Approved 05/03/2022)	600,000	-			(600,000)
Purchase of streetlight poles and corresponding hardware due to the high volume of damage incidents	110,000	-			(110,000)
Community Development increases due to increases in construction, end of code cycle, and new code cycle	256,000	3,358,900	-	-	3,102,900
Increase in False Alarm Contract (CC Approved 06/07/2022)	87,500	-			(87,500)
Increases for Forensic Nurse Agreement, AFR Engine Agreement, and Hawks Analytics Subscription	31,995	-			(31,995)
Funding for ICAC Operational Equipment and RTIC Equipment required for testing	72,549	-			(72,549)
Peer Support Program Increase in Cost	50,000	-			(50,000)
Manual Carryforward from FY 2021-22 C-block parking structure art mural and Utility Boxes	40,000	-			(40,000)
Manual Carryforward from FY 2021-22 Virtual Reality vendor	118,000	-			(118,000)
Manual Carryforward from FY 2021-22 for Recreation project management services	100,000	-			(100,000)
Contract for Parking Services on C Street Parking Garage	143,000	-			(143,000)
Consulting Services to rebuild Friends of the Library	50,000	-			(50,000)
Manual Carryforward from FY 2021-22 for Police Department contractual obligations	318,069	-	-	-	(318,069)
Manual Carryforward from FY 2021-22 for Recreations Mobile stage for Summer Concerts and special events	115,000	-			(115,000)
Manual Carryforward from FY 2021-22 to purchase HVAC for Museum	100,000	-	-	-	(100,000)
Manual Carryforward from FY 2021-22 Fire equipment	68,682	-	-	-	(68,682)
Pandemic Recovery Sponsorship	25,000	-		-	(25,000)
Legal services for property acquisition	150,000	-	-	-	(150,000)
Amendment to On-Call appraisal, Project Management, Land Acquisition, Relocation, Property Management, and Architectural and Design Services (CC Approved 04/19/2022)	700,000	-	-	-	(700,000)
Manual Carryforward from FY 2021-22 for CLC Other Professional Agreements and Materials	266,260	-	-	-	(266,260)
Recommended Personnel Changes	1,165,774	-	-	-	(1,165,774)
FY 2021-22 Gainshare Program	803,499	-	-	-	(803,499)
Additional Toyota Arena Revenue from FY 2021-22	-	3,890,031	-	-	3,890,031
Purchase of Intranet Software	79,000	-	-	-	(79,000)
Measure Q Revenue	-	20,000,000	-	-	20,000,000
Measure Q Capital Transfer to Capital Projects Fund	-	-	-	12,000,000	(12,000,000)
Economic Development Transfer to Economic Development Fund				14,000,000	(14,000,000)
GENERAL FUND TOTAL	**15,049,291**	**27,266,931**	**-**	**26,000,000**	**(13,782,360)**

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Detail of Recommended Budget Adjustments by Fund
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Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfers-In	Operating Transfers-Out	Fund Balance Impact
SPECIAL REVENUE FUNDS					
Fund 2010 - Community Development Block Grant					
Carryforward CIP Encumbrances from FY 2021-22	10,629				(10,629)
Carryforward CIP Appropriations from FY 2021-22	646,934	-	-	-	(646,934)
Carryforward Grant Encumbrances from FY 2021-22	121,561	-	-	-	(121,561)
Carryforward Grant Appropriations from FY 2021-22	1,300,016	-	-	-	(1,300,016)
Recommended Personnel Changes	(9,250)	-	-	-	9,250
FY 2021-22 Gainshare Program	1,593	-	-	-	(1,593)
Reduction to MS2302 OntarioNet Broadband Expansion	(69,066)	(69,066)	-	-	-
Reduction to GR2303 Hotel Voucher Program	(15,938)	(15,938)	-	-	-
Reduction to PA2301 John Galvin Park New Restroom	(600,000)	(600,000)	-	-	-
	1,386,479	(685,004)	-	-	(2,071,483)
Fund 2020 - HOME Grants					
Carryforward CIP Appropriations from FY 2021-22	1,494,385	-	-	-	(1,494,385)
Recommended Personnel Changes	21,487	-	-	-	(21,487)
MS2301 TBRA allocation	307,854	307,854	-	-	-
	1,823,726	307,854	-	-	(1,515,872)
Fund 2021 - Housing Grants					
Carryforward Grant Appropriations from FY 2021-22	1,880,010				(1,880,010)
	1,880,010	-	-	-	(1,880,010)
Fund 2210 - Measure I					
Carryforward CIP Encumbrances from FY 2021-22	32,847	-	-	-	(32,847)
Carryforward CIP Appropriations from FY 2021-22	866,308	-	-	-	(866,308)
Carryforward Grant Appropriations from FY 2021-22	2,974,062				(2,974,062)
	3,873,217	-	-	-	(3,873,217)
Fund 2220 - Measure I Valley Major Project					
Carryforward CIP Encumbrances from FY 2021-22	13,401	13,401	-	-	-
Carryforward CIP Appropriations from FY 2021-22	24,488,323	24,488,323	-	-	-
	24,501,724	24,501,724	-	-	-
Fund 2400 - General Fund Grants					
Carryforward CIP Encumbrances from FY 2021-22	2,504,364	2,504,364			-
Carryforward CIP Appropriations from FY 2021-22	818,403	818,403	-	-	-
Carryforward Grant Encumbrances from FY 2021-22	160,043	160,043	-	-	-
Carryforward Grant Appropriations from FY 2021-22	16,659,496	16,659,496	-	-	-
Recommended Personnel Changes	(42,976)	-	-	-	42,976
FY 2021-22 Gainshare Program	732	-	-	-	(732)
GR2307 Listos California CERT Support Grant	15,000	15,000	-	-	-
GR2313 Ride-to-Live (CC Approved 03/01/2022)	28,000	28,000	-	-	-
GR2304 Justice Assistance Grant (JAG) Grant (CC Approved 07/19/2022)	47,878	47,878	-	-	-
GR2314 OTS Selective Traffic Enforcement Program (STEP) (CC Approved 03/01/2022)	700,000	700,000	-	-	-
GR2312 OmniTrans Measure I Grant (CC Approved 08/16/2022)	675,582	675,582	-	-	-
GR2316 Urban Area Security Intiative UASI FY 2020-21 Grant - PD (CC Approved 08/16/2022)	600,000	600,000	-	-	-
	22,166,522	22,208,766	-	-	42,244

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Detail of Recommended Budget Adjustments by Fund
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Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfers-In	Operating Transfers-Out	Fund Balance Impact
Fund 2521 - Broadband / Fiber					
Carryforward Encumbrances from FY 2021-22	101,722	-	-	-	(101,722)
Carryforward CIP Encumbrances from FY 2021-22	2,757,886	-	-	-	(2,757,886)
Carryforward CIP Appropriations from FY 2021-22	8,862,291	-	-	-	(8,862,291)
Carryforward Grant Encumbrances from FY 2021-22	10,127				(10,127)
Carryforward Grant Appropriations from FY 2021-22	79,286	-	-	-	(79,286)
FY 2021-22 Gainshare Program	3,536				(3,536)
	11,814,848	-	-	-	(11,814,848)
Fund 2530 - Gas Tax					
Carryforward Encumbrances from FY 2021-22	70,774	-	-	-	(70,774)
Carryforward CIP Encumbrances from FY 2021-22	16,183				(16,183)
Carryforward CIP Appropriations from FY 2021-22	847,189	-	-	-	(847,189)
Carryforward Grant Encumbrances from FY 2021-22	25,938				(25,938)
Carryforward Grant Appropriations from FY 2021-22	34,186	-	-	-	(34,186)
FY 2021-22 Gainshare Program	6,891	-	-	-	(6,891)
	1,001,161	-	-	-	(1,001,161)
Fund 2531 - Road Maint & Rehab Acct (SB1)					
Carryforward CIP Encumbrances from FY 2021-22	539,290	-	-	-	(539,290)
Carryforward CIP Appropriations from FY 2021-22	2,455,275	-	-	-	(2,455,275)
Carryforward Grant Appropriations from FY 2021-22	1,332,704	-	-	-	(1,332,704)
Additional Construction Contract funding for the Slurry Projects and geotechnical texting services (CC Approved 07/19/2022)	123,449	-	-	-	(123,449)
Additional funding for the Construction of Traffic Signal Systems at Campus Avenue at Francis Street TR2001 (CC Approved 10/04/2022)	354,804				(354,804)
Additional funding for the Construction of Campus Avenue at Walnut Street TR2001 (CC Approved 10/04/2022)	212,593				(212,593)
Additional funding for construction Contract of ST2312 Phillips St. (Benson to Cypress) (CC Approved 07/05/2022)	91,779				(91,779)
Additional funding for Construction of ST2314 Vineyard Ave. at SR-60 Sidewalk Repair (CC Approved 07/05/2022)	23,010				(23,010)
Additional funding for construction of ST2315 Vintage Ave (Concours to Ontario Mills Pkwy) (CC Approved 07/05/2022)	21,555				(21,555)
Additional funding for construction of ST2305 Campus Ave at Philadelphia St. (CC Approved 07/05/2022)	138,060				(138,060)
Additional funding for construction of ST2306 Campus Ave. (Francis to Belmont) (CC Approved 07/05/2022)	158,875				(158,875)
Additional funding for construction Contract of ST2307 Concours St (Wineville to Barrington) (CC Approved 07/05/2022)	109,453				(109,453)
Additional funding for construction of ST2309 Etiwanda Ave. (Jurupa to Santa Ana) pavement (CC Approved 07/05/2022)	145,591				(145,591)
Additional funding for construction of ST2311 Grove Ave. at SR-60 pavement (CC Approved 07/05/2022)	82,348				(82,348)
	5,788,786	-	-	-	(5,788,786)
Fund 2550 - Mobile Source Air					
Carryforward CIP Encumbrances from FY 2021-22	38,390				(38,390)
Carryforward CIP Appropriations from FY 2021-22	653,117	-	-	-	(653,117)
	691,507	-	-	-	(691,507)
Fund 2600 - Special Assessment Administration					
Additional Maintenance and Repairs funding for the Mill Creek Wetlands Facility (CC Approved 07/19/2022)	30,000	-			(30,000)
FY 2021-22 Gainshare Program	2,186				(2,186)
	32,186	-	-	-	(32,186)
Fund 2640 - Storm Drain Maintenance					
Carryforward Encumbrances from FY 2021-22	146,165	-	-	-	(146,165)
FY 2021-22 Gainshare Program	2,992	-	-	-	(2,992)
	149,157	-	-	-	(149,157)
Fund 2650 - Park Impact/Quimby					
Carryforward CIP Appropriations from FY 2021-22	2,757,387	-	-	-	(2,757,387)
	2,757,387	-	-	-	(2,757,387)
SPECIAL REVENUE FUNDS TOTAL	**77,866,710**	**46,333,340**	**-**	**-**	**(31,533,370)**

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Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfers-In	Operating Transfers-Out	Fund Balance Impact
CAPITAL PROJECT FUNDS					
Fund 4010 - Capital Projects					
Carryforward CIP Encumbrances from FY 2021-22	5,076,855	-	-	-	(5,076,855)
Carryforward CIP Appropriations from FY 2021-22	55,054,919	-	-	-	(55,054,919)
Additional funding for ST1713 Mountain Avenue and Holt Blvd Intersection Widening Project	47,912	-	-	-	(47,912)
Additional funding for PF2205 Women's Locker Room Expansion asphalt overlay	36,250	-	-	-	(36,250)
Measure Q Capital Transfer from General Fund	-	-	12,000,000	-	12,000,000
	60,215,936	-	12,000,000	-	(48,215,936)
Fund 4020 - Ground Access					
Carryforward CIP Appropriations from FY 2021-22	423,850	423,850	-	-	-
	423,850	423,850	-	-	-
Fund 4030 - Affordability In-Lieu					
Carryforward Grant Appropriations from FY 2021-22	9,730,190	-	-	-	(9,730,190)
	9,730,190	-	-	-	(9,730,190)
					-
Fund 4211 - General Facility Impact					-
Carryforward CIP Appropriations from FY 2021-22	1,708,152	-	-	-	(1,708,152)
	1,708,152	-	-	-	(1,708,152)
Fund 4212 - Integrated Waste Impact					
Carryforward Encumbrances from FY 2021-22	661,224	-	-	-	(661,224)
	661,224	-	-	-	(661,224)
Fund 4310 - OMC - Fire Impact					
Carryforward CIP Encumbrances from FY 2021-22	117,465				(117,465)
Carryforward CIP Appropriations from FY 2021-22	159,219	-	-	-	(159,219)
	276,684	-	-	-	(276,684)
Fund 4311 - OMC - Local Adjacent Water					
Carryforward CIP Encumbrances from FY 2021-22	142,322				(142,322)
Carryforward CIP Appropriations from FY 2021-22	3,375,737	-	-	-	(3,375,737)
	3,518,059	-	-	-	(3,518,059)
Fund 4312 - OMC - Local Adjacent Streets					
Carryforward CIP Appropriations from FY 2021-22	6,989,052	-	-	-	(6,989,052)
	6,989,052	-	-	-	(6,989,052)
Fund 4313 - OMC - Local Adjacent Storm Drain					
Carryforward CIP Encumbrances from FY 2021-22	22,955	-	-	-	(22,955)
Carryforward CIP Appropriations from FY 2021-22	3,653,589	-	-	-	(3,653,589)
Additional funding for the Professional Services Contract of the Master Plan of Drainage Update Project (CC Approved 07/19/2022)	83,758	-			(83,758)
	3,760,302	-	-	-	(3,760,302)
Fund 4314 - OMC - Local Adjacent Water					
Carryforward CIP Appropriations from FY 2021-22	1,635,721	-	-	-	(1,635,721)
	1,635,721	-	-	-	(1,635,721)
					-
Fund 4317 - OMC - Regional Streets					-
Carryforward CIP Appropriations from FY 2021-22	4,761,428	-	-	-	(4,761,428)
	4,761,428	-	-	-	(4,761,428)

City of Ontario
Detail of Recommended Budget Adjustments by Fund
Fiscal Year 2022-23
First Quarter Budget Update

Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfers-In	Operating Transfers-Out	Fund Balance Impact
Fund 4318 - OMC - Regional Water					
	-	-			-
	-	-	-	-	-
Fund 4410 - NMC - Fire Impact					
Carryforward Encumbrances from FY 2021-22	2,643,024	-	-	-	(2,643,024)
Carryforward CIP Encumbrances from FY 2021-22	934,041	-	-	-	(934,041)
Carryforward CIP Appropriations from FY 2021-22	1,786,262	-	-	-	(1,786,262)
Additional funding for Fire Station #11 PF2208 Equipment and Construction costs	2,000,000	2,000,000	-	-	-
	7,363,327	2,000,000	-	-	(5,363,327)
Fund 4411 - NMC - Local Adjacent Fiber					
Carryforward CIP Encumbrances from FY 2021-22	297,607	-	-	-	(297,607)
Carryforward CIP Appropriations from FY 2021-22	1,090,244	-	-	-	(1,090,244)
	1,387,851	-	-	-	(1,387,851)
Fund 4415 - NMC - Local Adjacent Water					
Carryforward CIP Encumbrances from FY 2021-22	56,186	-	-	-	(56,186)
Carryforward CIP Appropriations from FY 2021-22	1,442,452	-	-	-	(1,442,452)
Additional funding for Ontario Ranch Phase 2 Water Main Improvement (CC Approved 11/15/2022)	5,351,414	-	-	-	(5,351,414)
	6,850,052	-	-	-	(6,850,052)
Fund 4416 - NMC - Regional Fiber					
Carryforward CIP Encumbrances from FY 2021-22	442,672	-	-	-	(442,672)
	442,672	-	-	-	(442,672)
Fund 4419 - NMC - Regional Streets					
Carryforward CIP Appropriations from FY 2021-22	8,915,284	-	-	-	(8,915,284)
	8,915,284	-	-	-	(8,915,284)
Fund 4420 - NMC - Regional Water					
Carryforward CIP Encumbrances from FY 2021-22	2,702,430	-	-	-	(2,702,430)
Carryforward CIP Appropriations from FY 2021-22	11,308,130	-	-	-	(11,308,130)
Reduction in funding for Ontario Ranch Phase 2 Water Main Improvement Regional Water (CC Approved 11/15/2022)	(1,945,497)	-	-	-	1,945,497
	12,065,063	-	-	-	(12,065,063)
					-
CAPITAL PROJECT FUNDS TOTAL	**130,704,847**	**2,423,850**	**12,000,000**	**-**	**(116,280,997)**
ENTERPRISE FUNDS					
Fund 5010 - Water Operating					
Carryforward Encumbrances from FY 2021-22	300,598	-	-	-	(300,598)
Amendments to matters relating to sewer disposal, water supply, and water rights (CC Approved 09/20/2022)	1,465,000	-			(1,465,000)
Utilities Customer Services Center Automated Mail Extraction (CC Approved 09/06/2022)	51,750	-			(51,750)
Manual Carryforward from FY2021-22 for OMUC inventory and equipment	24,460	-			(24,460)
Additional funding for Water, Recycled Water, and Wastewater Rate Studies	58,000	-			(58,000)
Associates Classification and Compensation Study (CC Approved 01/18/2022)	70,000	-			(70,000)
Acquisition of a CIS Consulting Review based on the FY 2022-23 Utility Customer Service ASO goal	33,750	-			(33,750)
Recommended Personnel Changes	2,965	-	-	-	(2,965)
FY 2021-22 Gainshare Program	64,481	-	-	-	(64,481)
	2,071,004	-	-	-	(2,071,004)

City of Ontario
Detail of Recommended Budget Adjustments by Fund
Fiscal Year 2022-23
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Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfers-In	Operating Transfers-Out	Fund Balance Impact
Fund 5011 - Water Capital					
Carryforward Encumbrances from FY 2021-22	22,377	-	-	-	(22,377)
Carryforward CIP Encumbrances from FY 2021-22	19,556,737	-	-	-	(19,556,737)
Carryforward CIP Appropriations from FY 2021-22	28,297,667	-	-	-	(28,297,667)
Additional Funding for WA1401 San Antonio Transmission Water Main Phase 2 (CC Approved 09/20/2022)	6,764,119	6,764,119	-	-	-
Additional Funding for WA1401 San Antonio Transmission Water Main Phase 2 (CC Approved 09/20/2022)	569,338	569,338			-
Additional Funding for WA1401 San Antonio Transmission Water Main Phase 2 (CC Approved 09/20/2022)	6,194,781	6,194,781			-
Additional Funding for construction of WA1902 Pressure Reduction Station Rehab (CC Approved 10/18/2022)	887,493	-			(887,493)
FY 2021-22 Gainshare Program	10,694	-	-	-	(10,694)
	55,539,087	6,764,119	-	-	(48,774,968)
Fund 5110 - Sewer Operating					
Carryforward Encumbrances from FY 2021-22	95,717	-	-	-	(95,717)
Utilities Customer Services Center Automated Mail Extraction (CC Approved 09/06/2022)	26,450	-			(26,450)
Additional funding for Water, Recycled Water, and Wastewater Rate Studies	40,000	-			(40,000)
Pre-treatment Program and Civil Engineering Support Services Agreements (CC Approved 05/17/2022)	75,000	-			(75,000)
Associates Classification and Compensation Study (CC Approved 01/18/2022)	70,000	-			(70,000)
Acquisition of a CIS Consulting Review based on the FY 2022-23 Utility Customer Service ASO goal	17,250	-			(17,250)
FY 2021-22 Gainshare Program	11,607	-	-	-	(11,607)
	336,024	-	-	-	(336,024)
Fund 5111 - Sewer Capital					
Carryforward CIP Encumbrances from FY 2021-22	212,527	-	-	-	(212,527)
Carryforward CIP Appropriations from FY 2021-22	10,317,529	-	-	-	(10,317,529)
FY 2021-22 Gainshare Program	2,732				(2,732)
	10,532,788	-	-	-	(10,532,788)
					-
Fund 5210 - Integrated Waste					-
Carryforward Encumbrances from FY 2021-22	2,344,263	-	-	-	(2,344,263)
Carryforward CIP Encumbrances from FY 2021-22	591,951	-	-	-	(591,951)
Carryforward CIP Appropriations from FY 2021-22	824,148	-	-	-	(824,148)
Carryforward Grant Appropriations from FY 2021-22	62,866	62,866	-	-	-
Manual Carryforward from FY 2021-22 for Landfill Disposal Services	519,484	-	-	-	(519,484)
Funding to increase On-call Solid Waste Consulting services for SB 1383 Organics Recycling Compliance (CC Approved 11/01/2022)	200,000	-			(200,000)
Professional Services Agreement for Rates Study on Integrated Waste Funds	75,000	-			(75,000)
Manual Carryforward from FY 2021-22 for the Public Works Class & Compensation Study	60,000	-			(60,000)
Utilities Customer Services Center Automated Mail Extraction (CC Approved 09/06/2022)	36,800	-			(36,800)
Manual Carryforward from FY 2021-22 for Landfill Disposal	850,615	-	-	-	(850,615)
Acquisition of a CIS Consulting Review based on the FY 2022-23 Utility Customer Service ASO goal	24,000	-			(24,000)
Recommended Personnel Changes	54,369	-	-	-	(54,369)
FY 2021-22 Gainshare Program	64,210	-	-	-	(64,210)
	5,707,706	62,866	-	-	(5,644,840)
Fund 5211 - Integrated Waste Facilities					
Carryforward CIP Appropriations from FY 2021-22	55,168				(55,168)
	55,168	-	-	-	(55,168)
ENTERPRISE FUNDS TOTAL	**74,241,777**	**6,826,985**	**-**	**-**	**(67,414,792)**

City of Ontario
Detail of Recommended Budget Adjustments by Fund
Fiscal Year 2022-23
First Quarter Budget Update

Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfers-In	Operating Transfers-Out	Fund Balance Impact
INTERNAL SERVICE FUNDS					
Fund 6010 - Equipment Services					
Carryforward Encumbrances from FY 2021-22	874,657	-	-	-	(874,657)
Carryforward CIP Appropriations from FY 2021-22	149,588	-	-	-	(149,588)
Manual Carryforward from FY 2021-22 for Citywide fleet vehicle purchases and outfitting costs	4,732,490	-	-	-	(4,732,490)
Purchase of new helicopter and sale of existing helicopter (CC Approved 09/06/2022)	6,252,341	2,152,341			(4,100,000)
FY 2021-22 Gainshare Program	17,165	-	-	-	(17,165)
	12,026,241	2,152,341	-	-	(9,873,900)
Fund 6020 - Information Technology					
Telecomm charges moved to IT budget for budget adoption	217,387				(217,387)
Carryforward Encumbrances from FY 2021-22	611,984	-	-	-	(611,984)
Carryforward CIP Encumbrances from FY 2021-22	1,893,326	-	-	-	(1,893,326)
Carryforward CIP Appropriations from FY 2021-22	5,386,092	-	-	-	(5,386,092)
Reduced ISF to Return Telecomm Budget to Broadband	-	(300,000)			(300,000)
Financial System incremental licensing fee increase (CC Approved 08/16/2022)	175,559	-			(175,559)
Manual Carryforward from FY 2021-22 for IT Professional Service Agreements, Maintenance and Equipment	573,107	-	-	-	(573,107)
Recommended Personnel Changes	20,031	-	-	-	(20,031)
FY 2021-22 Gainshare Program	32,002	-	-	-	(32,002)
	8,909,488	(300,000)	-	-	(9,209,488)
Fund 6030 - Facilities & Parks Maintenance					
Carryforward Encumbrances from FY 2021-22	1,157				(1,157)
Carryforward CIP Encumbrances from FY 2021-22	275,668	-	-	-	(275,668)
Carryforward CIP Appropriations from FY 2021-22	8,120,024	-	-	-	(8,120,024)
Professional design services for Celebration Park North Improvements Project, De Anza Park Splash Pad Improvements, Ontario Town Square - Green Room and Restroom Improvements, and De Anza Park Soccer Field Synthetic Turf Project. (CC Approved 11/01/2022)	400,000	-			(400,000)
Manual Carryforward from FY 2021-22 for Office Equipment & Furniture Budget for the purchase of a portable generator (CC Approved 06/07/2022)	125,000	-			(125,000)
Purchase of two 5-ton HVAC units for the fiber optic facility	40,000	-			(40,000)
Leak repairs to the Historic Fountain at the Ontario Museum of Art	30,000	-			(30,000)
Recommended Personnel Changes	76,725	-	-	-	(76,725)
Museum accreditation related facility upgrades	450,000				(450,000)
FY 2021-22 Gainshare Program	17,986	-	-	-	(17,986)
	9,536,560	-	-	-	(9,536,560)
Fund 6110 - Workers Compensation					
Recommended Personnel Changes	31,504	-	-	-	(31,504)
	31,504	-	-	-	(31,504)
Fund 6111 - General Liability					
Recommended Personnel Changes	51,204	-	-	-	(51,204)
FY 2021-22 Gainshare Program	1,607				(1,607)
	52,811	-	-	-	(52,811)
Fund 6112 - Disability / Unemployment Insurance					
FY 2021-22 Gainshare Program	1,124				(1,124)
	1,124	-	-	-	(1,124)

City of Ontario
Detail of Recommended Budget Adjustments by Fund
Fiscal Year 2022-23
First Quarter Budget Update

Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfers-In	Operating Transfers-Out	Fund Balance Impact
Fund 6210 - Economic Development Fund					
Carryforward CIP Appropriations from FY 2021-22	8,531,001	-	-	-	(8,531,001)
Property Acquisition for 125 North Euclid Avenue (CC Approved 08/16/2022)	675,000				(675,000)
Economic Development Transfer from General Fund			14,000,000		14,000,000
	9,206,001	-	14,000,000	-	4,793,999
					-
INTERNAL SERVICE FUNDS TOTAL	**39,763,729**	**1,852,341**	**14,000,000**	**-**	**(23,911,388)**
TOTAL CITY FUNDS BUDGET ADJUSTMENTS	**337,626,354**	**84,703,447**	**26,000,000**	**26,000,000**	**(252,922,907)**
					-
Fund 2310 - Ontario Housing Authority					-
Carryforward CIP Appropriations from FY 2021-22	7,052,532	-	-	-	(7,052,532)
Carryforward Grant Appropriations from FY 2021-22	5,000,000				(5,000,000)
Recommended Personnel Changes	(44,123)	-	-	-	(20,926)
FY 2021-22 Gainshare Program	3,060				(3,060)
Contribution from Affordability In-Lieu to Ontario Housing Authority for property acquisitions	9,000,000	9,000,000			-
	21,011,469	9,000,000	-	-	(12,011,469)
					-
Fund 2320 - Housing Asset Fund					-
Carryforward CIP Encumbrances from FY 2021-22	4,556				(4,556)
	4,556	-	-	-	(4,556)
					-
AGENCY FUNDS TOTAL	**21,016,025**	**9,000,000**	**-**	**-**	**(12,016,025)**
					-
TOTAL ALL FUNDS BUDGET ADJUSTMENTS	**358,642,379**	**93,703,447**	**26,000,000**	**26,000,000**	**(264,938,932)**

CITY OF ONTARIO *Agenda Report* **November 15, 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: 8

SUBJECT: **A DEVELOPMENT IMPACT FEE CREDIT AGREEMENT (FILE NO. PDIF21-006) BETWEEN THE CITY OF ONTARIO AND DPIF3 CA 36 ONTARIO RANCH LLC., FOR FACILITY CONSTRUCTION ASSOCIATED WITH A DEVELOPMENT PLAN (FILE NO. PDEV22-001), LOCATED AT THE NORTHWEST CORNER OF HAMNER AVENUE AND ONTARIO RANCH ROAD, WITHIN PLANNING AREA 7A (LIGHT INDUSTRIAL) LAND USE DISTRICT OF THE RICH HAVEN SPECIFIC PLAN**

RECOMMENDATION: That the City Council approve the Development Impact Fee Credit Agreement (File No. PDIF21-006) between the City of Ontario and DPIF3 CA 36 Ontario Ranch LLC., for facility construction associated with a Development Plan (File No. PDEV22-001), located at the northwest corner of Hamner Avenue and Ontario Ranch Road, within Planning Area 7A (Light Industrial) land use district of the Rich Haven Specific Plan, and authorize the City Manager to execute the Agreement.

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

FISCAL IMPACT: Approval of the proposed Development Impact Fee ("DIF") Credit Agreement (File No. PDIF21-006) will result in no fiscal impact to the City's General Fund. The project's Development Agreement (File No. PDA20-002) and related Conditions of Approval (COA) for the Development Plan (File No. PDEV22-001) require DPIF3 CA 36 Ontario Ranch LLC ("Developer") to construct DIF Program infrastructure with an estimated cost of $11,283,229. The proposed DIF Credit Agreement defines the amount of DIF Credit that the Developer may be eligible to receive for construction of these improvements. The DIF Credit that the Developer will receive upon completion of the improvements may be exchanged for a refund of DIF that was paid by the Developer (up to the Developer's maximum DIF obligation) in the respective DIF category.

BACKGROUND & ANALYSIS: On June 1, 2021, the City Council adopted Ordinance No. 3184, approving a Development Agreement to establish the terms and conditions for the development of the project site. On August 15, 2022, the Development Advisory Board (DAB) adopted Decision No. DAB22-028, approving a Development Plan to construct a 1,003,918 square foot industrial building on 54.28 acres of land generally located at the northwest corner of Hamner Avenue and Ontario Ranch Road, within Planning Area 7 (Light Industrial) land use district of the Rich Haven Specific Plan.

Per the Development Agreement and COA, the Developer is required to construct DIF Program infrastructure to serve the Development Plan, which includes the construction and completion of storm drain, street improvements, traffic signals, water and recycled water, sewer, and fiber optic facilities located along Mill Creek Avenue, Ontario Ranch Road, Hamner Avenue, and Schafer Avenue, within the Rich Haven Specific Plan development area.

Pursuant to the City's adopted DIF Credit policies, construction of DIF Program facilities requires the Developer and the City to enter into a DIF Credit Agreement ("Agreement"). The terms of the proposed Agreement specify the defined portion of the infrastructure to be constructed by the Developer in the Local Adjacent or Regional DIF categories and includes an estimate of the maximum DIF Credit (not reimbursement) that may be applied in the respective Local Adjacent or Regional DIF category. This infrastructure is within Ontario Ranch Local Adjacent Storm Drain, Streets, Water, Sewer and Fiber Optic System categories. Since the maximum eligible costs in the Agreement for the required infrastructure exceeds the Developer's DIF obligation, the Developer is eligible to receive DIF Credit under the proposed Agreement.

The proposed Agreement complies with the City's DIF policies and is in conformance with the approved Development Agreement and related conditions. Under the provisions of the City's DIF Program, the City Manager is authorized to execute such agreements upon approval by the City Council.

CITY OF ONTARIO *Agenda Report* **November 15, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Bryan Lirley Staff Member Presenting: Scott Murphy, Executive Director Community Development Reviewed By: Khoi Do, Khoi Do Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 9

SUBJECT: A PROFESSIONAL SERVICES AGREEMENT WITH DANKEN, INC. FOR ON-CALL STRUCTURAL INSPECTION AND CONSTRUCTION MANAGEMENT SERVICES

RECOMMENDATION: That the City Council approve and authorize the City Manager or designee to execute a five-year Professional Services Agreement (on file in the Records Management Department) with Danken, of Ladera Ranch, California, to provide On-Call Structural Inspection and Construction Management Services for a not-to-exceed amount of $1,600,000.

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

FISCAL IMPACT: The Agreement is for a three-year term with a two-year extension. The term is $600,000 for the first year and $500,000 for the second and third years with an overall not-to-exceed amount of $1,600,000. The Fiscal Year 2022-23 Adopted Operating Budgets includes appropriations for such services. This fund is covered by revenue received from fees collected from applicants for inspection services. Any subsequent amendments will be consistent with the adopted budget for that year.

BACKGROUND & ANALYSIS: Due to the volume and timing of construction, specialized structural inspection services will be needed to supplement the City's in-house inspection Staff. This will allow the City to maintain the schedule commitments to support development-related construction activities and to ensure that construction progresses in compliance with City requirements.

The City solicited proposals from qualified firms; responses from the following were evaluated:

COMPANY	LOCATION
4LEAF, Inc.	Newport Beach, CA
EXP	San Bernardino, CA
Grace Testing & Inspection	Cypress, CA
Moote Companies, LLC	Irvine, CA
SYRUSA Engineering, Inc.	Ontario, CA
Danken	Ladera Ranch, CA

Using a quality-based selection, a panel of City Staff reviewed the proposals and Danken was determined to be the most qualified firm. They are being recommended based on their broad range of expertise, as demonstrated by their services provided to municipal agencies and capability to perform the work in a timely manner.

CITY OF ONTARIO *Agenda Report* **November 15, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Community Life & Culture Prepared By: Marissa Kucheck Staff Member Presenting: Helen McAlary, Executive Director Community Life and Culture Approved By: 	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 10

SUBJECT: A GOODS AND SERVICES AGREEMENT FOR FURNITURE DESIGN FOR THE BUILT ON WATER EXHIBIT

RECOMMENDATION: That the City Council authorize the City Manager or designee to execute a Goods and Services Agreement with K2 Design and Fabrication of Norco, California for furniture for the Built on Water exhibit at the Ontario Museum of History and Art, for a total not to exceed amount of $269,563.

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

FISCAL IMPACT: The Goods and Services Agreement has a not to exceed amount of $269,563. Appropriations of $195,595 were included in the Fiscal Year 2022-23 Adopted Budget as part of the exhibition development and design under CIP Fund PF1903 to fund this project. The remaining $73,968 will be paid out of the Museum's Fiscal Year 2022-23 adopted General Fund grants budget and will be reimbursed through a grant from the Institute of Museum and Library Services (IMLS).

BACKGROUND & ANALYSIS: In 2018, the Ontario Museum of History and Art received a federal grant from the Institute of Museum and Library Services (IMLS) for a new permanent exhibition, *Built on Water: Ontario and Inland Southern California*. The exhibition focuses on the history and future of water in Ontario and the surrounding region. This multi-year project supports the development of the exhibition, related programing, and technological components. To shape the narrative, the exhibition planning process brought together Museum Staff, water conservation districts, researchers, local archives, school districts, as well as the Ovitt Family Community Library, Ontario Municipal Utilities Company, and residents.

City Staff consulted with multiple entities throughout the planning process to bring this exhibit to fruition. The Museum is now in the final stage of design, ready to have exhibit furniture fabricated. In an earlier planning stage, K2 Design and Fabrication was recommended to the Museum by the Riverside Art Museum. K2 Design and Fabrication is the sole fabricator of museum exhibits located

in the Inland Empire. Additionally, in 2021 the Museum conducted a competitive analysis and obtained bids where K2 Design and Fabrication was the lowest bidder.

Since K2 Design and Fabrication is local, offered the lowest bid on the preliminary design, and is one of the only businesses in the nation to provide this type of furniture, the Museum has determined that K2 is a logical and efficient choice for the fabrication of the exhibit furniture. Selecting K2 Design and Fabrication would also provide the Museum with timely completion. The Built on Water exhibit is scheduled to open in March 2023. Grant funds must be fully utilized by March 30, 2023 to ensure compliance with federal grant requirements of the IMLS grant awarded for the project in 2018.

Staff requests that City Council authorize the execution of a Goods and Services Agreement with K2 Design and Fabrication for fabrication services for the Built on Water exhibit.

CITY OF ONTARIO *Agenda Report* **November 15, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Utilities Prepared By: Thomas Palmieri 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: 11

SUBJECT: TWO AMENDMENTS FOR THE EQUIPPING OF WELL NO. 43 PROJECT

RECOMMENDATION: That the City Council take the following actions:

A. Approve and authorize the City Manager, or designee to execute Amendment No. 3 to the Professional Services Agreement (on file in the Records Management Department) with AKM Consulting Engineers Inc. of Irvine, California, for a total not-to-exceed amount of $39,908 for construction management and inspection services and a term from November 15, 2022 to September 30, 2023.
B. Approve and authorize the City Manager, or designee to execute Amendment No. 4 to the Maintenance Service Agreement (on file in the Records Management Department) with Bay Alarm Company of Ontario, California, for a total not-to-exceed amount of $25,271 for security system installation and a term from November 15, 2022 to June 30, 2025.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
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 proposed Amendment No. 3 to AKM Consulting Engineers Inc. increases the existing Agreement amount by $39,908, for a total revised Agreement amount of not-to-exceed $448,187. The proposed Amendment No. 4 to Bay Alarm Company increases the existing Agreement by $25,271, for a total revised Agreement amount of not-to-exceed $876,262. The total cost for the recommended action is $65,179.

The Fiscal Year 2021-22 Adopted Capital Improvement Program includes appropriations from the Water Capital Fund and the New Model Colony (NMC) Local Adjacent Water Fund for this project, which will be included in the project carryover process in the Fiscal Year 2022-23 First Quarter Budget Update Report. There is no impact to the General Fund.

BACKGROUND & ANALYSIS: The City currently has seventeen (17) active groundwater wells. The City's Water Master Plan identified the need for additional wells to pump groundwater to meet the future water demands of Ontario Ranch and expand existing water supply capacity and reliability. Pursuant to the First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve an Easterly Portion of the NMC and per the NMC Construction Agreement, the NMC Builders are responsible for funding the drilling and equipping of three groundwater wells as a requirement for development in Ontario Ranch. Two wells have been completed with Well No. 43 being the third and final well, which is located along Airport Drive, east of Haven Avenue.

On August 17, 2021, Council authorized the award of a construction contract and approval of several construction services amendments for the Equipping of Well No. 43 Project in the amount of $5,417,835. The work proposed under these contract/amendments included the equipping of Well No. 43 with the installation of: a well pump and motor; onsite disinfection equipment; an emergency stand-by generator; electrical controls; construction of building for the well equipment; and site work including perimeter fencing and landscaping. Construction management and inspection services are also needed as part of this amendment.

During construction, there has been an increase of vagrancy, theft, and property damage at multiple well and treatment sites throughout the City that have resulted in losses of approximately $200,000. To improve security, it is recommended that Well No. 43 have a high-definition security camera system installed on-site. This increased connectivity to OMUC facilities will allow City Staff to recognize potential intruders and allow for faster response times by the Ontario Police Department.

In addition to the installation of a site security system, this project will require additional construction management and inspection time from AKM Consulting Engineers Co. as a result of some material delays from various manufacturers and additional time granted to the contractor. This will result in a revised project completion date from October 4, 2022, to early 2023.

CITY OF ONTARIO *Agenda Report* **November 15, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Bryan Lirley Staff Member Presenting: Scott Murphy, Executive Director Community Development Reviewed By: Khoi Do, Khoi Do Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 12

SUBJECT: A PROFESSIONAL SERVICES AGREEMENT WITH 4LEAF, INC. FOR ON-CALL STRUCTURAL PLAN CHECKING SERVICES

RECOMMENDATION: That the City Council approve and authorize the City Manager or designee to execute a five-year Professional Services Agreement (on file in the Records Management Department) with 4Leaf, of Newport Beach, California, to provide On-Call Structural Plan Checking Services for a not-to-exceed amount of $300,000.

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

FISCAL IMPACT: The Agreement is for a three-year term with a two-year extension. The term is $100,000 per year with an overall not-to-exceed amount of $300,000. The Fiscal Year 2022-23 Adopted Operating Budget includes appropriations for such services. This fund is covered by revenue received from fees collected from applicants for plan check services on an as needed basis. Any subsequent amendments will be consistent with the adopted budgets for those fiscal years.

BACKGROUND & ANALYSIS: Due to the volume and timing of development anticipated within the City, and the specialized nature of structural plan checking services, approval of this Professional Services Agreement is needed to supplement the City's in-house and existing consultant plan check Staff. This will allow the City to maintain the schedule commitments to support development-related construction activities and to ensure that construction progresses in compliance with City requirements.

The City solicited proposals from qualified firms; and responses from the following were evaluated:

COMPANY	LOCATION
4LEAF, Inc.	Newport Beach, CA
Bureau Veritas	Pasadena, CA
Grace Testing & Inspection	Cypress, CA
InterWest Consulting Group	Ontario, CA
Nabih Youssef Associates	Los Angeles, CA
Superb Engineer	Fontana, CA

Using a quality-based selection, a panel of City Staff reviewed the proposals and 4Leaf was determined to be the most qualified firm. They are being recommended based on their broad range of expertise, as demonstrated by their services provided to municipal agencies and capability to perform the work in a timely manner.

CITY OF ONTARIO *Agenda Report* **November 15, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Municipal Services Prepared By: Daniel P Beers Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Bonnie Tam Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 13

SUBJECT: DEMOLITION OF THE BUILDINGS AND DEBRIS LOCATED ON THE PROPERTY FOR THE GRAND PARK PHASE 1

RECOMMENDATION: That the City Council take the following actions:

A. Reject Interior Demolition Earthwise Demo JV's bid for D&C21-005 – Grand Park Demolition as nonresponsive. Interior Demolition failed to submit a hard copy of the bid bond by the submittal date;
B. Authorize the City Manager or his designee to complete and execute Construction Contract No. D&C21-005 - Grand Park Phase 1 Demolition with Resource Environmental, Inc. of Cerritos, California for the demolition and debris removal in the Grand Park in the amount of $4,703,540;
C. Authorize a 15% contingency of $705,531 to address any unforeseen issues that may arise during the demolition; 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, easements, reduction of retention accounts, and filing a notice of completion at the conclusion of all construction related activities.

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

FISCAL IMPACT: The recommended demolition and debris removal services for the construction of The Grand Park Phase 1 is $5,409,071. If approved, appropriations of $5,409,071 in the Park Impact/Quimby Fund will be included in the Fiscal Year 2022-23 Mid-Year Budget Update.

BACKGROUND & ANALYSIS: On December 21, 2021, the City Council approved the conceptual Master Plan and the Preliminary Park Design for Phase 1 of Grand Park. Phase 1 builds upon the framework established in the Conceptual Park Master Plan and is comprised of approximately 130 acres of land and occurs within the eastern portion of Ontario Ranch. This phase is bordered by

Grand Park Street to the north, Eucalyptus Avenue to the south, Haven Avenue on the east and Archibald Avenue on the west. This portion of the park incorporates a multi-use fields and a series of trail systems. The core park amenities are proposed in the center of this Phase, including a Market Alley where farmer's markets, food trucks and community events can be organized. Phase 1 of the Grand Park also includes a community barn and farm hub, kids' corral (a children's playground), and an amphitheater along the Central Plaza.

The first step towards construction of the Grand Park Phase 1 includes demolition and removal of existing debris and structures on the property. On October 25, 2022, the City solicited proposals for the demolition of the structures located on the Grand Park. Five (5) bids were received. Interior Demolition Earthwise Demo JV of Montrose, California, was the apparent low bidder at $4,248,870. Interior Demolition Earthwise Demo JV was disqualified when it was established that they did not submit a hard copy of the bid bond, which is required per the bidding documents. Resource Environmental, Inc. of Cerritos, California, was then the new apparent lowest responsive bidder at $4,703,540.

Staff then reviewed the remaining bids and found they met the bid criteria and standards necessary to perform the work.

Vendor	**Location**	**Bid Amount**
Interior Demolition Earthwise Demo JV	Montrose, California	$4,248,870
Resource Environmental, Inc.	Cerritos, California	$4,703,540
BHL Industries	Lynwood, California	$6,225,000
American Wrecking, Inc.	South El Monte, California	$6,296,700
Integrated Demolition and Remediation, Inc.	Anaheim, California	$9,357,650

Resource Environmental, Inc. located in Cerritos, California, submitted the lowest responsive bid with a base cost of $4,703,540. Based on the proposal, credentials, pricing and favorable reference checks, staff recommends awarding Construction Contract D&C21-005 – Grand Park Phase 1 Demolition to Resource Environmental, Inc and anticipates the demolition to be completed by Spring of 2023.

CITY OF ONTARIO *Agenda Report* **November 15, 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: 14

SUBJECT: **A CONSTRUCTION CONTRACT, A PROFESSIONAL SERVICES AGREEMENT AND TWO AMENDMENTS FOR THE ONTARIO RANCH PHASE 2 WATER MAIN IMPROVEMENTS PROJECT**

RECOMMENDATION: That the City Council take the following actions:

A. Approve the plans and specifications and award Contract No. UT 1050 (on file in the Records Management Department) to Norstar Plumbing and Engineering, Inc. of Alta Loma, California, for the construction of the Ontario Ranch Phase 2 Water Main Improvements, in the amount of $9,906,053 plus a 10% contingency of $990,605, for a total not-to-exceed amount of $10,896,658, a term of 260 calendar days after issuance of notice to proceed, and authorize the City Manager, or his designee, to execute said contract and file a notice of completion at the conclusion of all construction activities related to the project.
B. Approve and authorize the City Manager, or his designee, to execute a Professional Services Agreement (on file in the Records Management Department) with GeoTek, Inc. of Las Vegas, Nevada, for a total not-to-exceed amount of $160,918 and a term of 260 calendar days after issuance of notice to proceed for geotechnical and material testing services.
C. Approve and authorize the City Manager, or his designee, to execute Amendment No. 13 to the Professional Services Agreement (on file in the Records Management Department) with Infrastructure Engineering Corporation (IEC), of Irvine, California, for a total not-to-exceed amount of $93,401 for construction engineering services and a term of 260 calendar days after issuance of notice to proceed for geotechnical and material testing services.
D. Approve and authorize the City Manager, or his designee, to execute Amendment No. 8 to the Professional Services Agreement (on file in the Records Management Department) with Wallace and Associates Consulting, Inc. of Murrieta, California, for a total not-to-exceed amount of $235,013 for construction management services and a term of 260 calendar days.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
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 recommended contract award to Norstar Plumbing and Engineering, Inc. is for $9,906,053 plus a 10% contingency of $990,605, for a total amount not-to-exceed $10,896,658. The proposed Professional Services Agreement with GeoTek, Inc. is for a not-to-exceed amount of $160,918. Proposed Amendment No. 13 for IEC increases the existing agreement amount by $93,401, for a total revised agreement amount of not-to-exceed $2,393,670. Proposed Amendment No. 8 for Wallace and Associates increases the existing agreement amount by $235,013, for a total revised agreement amount of not-to-exceed $1,814,213. The total cost for the recommended action is $11,385,990.

Euclid Land Ventures, LLC. (ELV) have agreed to provide funds for these improvements in accordance with Development Agreement PDA19-001. The Fiscal Year 2022-23 Adopted Capital Improvement Program includes appropriations from New Model Colony (NMC) Regional Funds in the amount of $7,980,073. If approved, additional appropriations in the amount of $3,405,917 from the NMC Regional and Local Adjacent Development Impact Fund will also be included in the Fiscal Year 2022-23 First Quarter Budget Update Report to City Council. NMC Regional provides 53% of the funding and NMC Local Adjacent provides 47% of the funding for this project (DIF Project No. WT-010, WT-009 and Capital Improvement Project No. WA2004). There is no impact to the General fund.

BACKGROUND & ANALYSIS: The City's Water Master Plan identifies backbone water infrastructure improvements that are needed to meet the future water demands of Ontario Ranch. Pursuant to Development Agreement PDA19-001, ELV agreed to fund the design, construction, and construction services of various backbone water infrastructure improvements to support ongoing industrial developments in southwestern Ontario Ranch, including Ontario Ranch Phase 2 Water Main Improvements. This project will supply potable water to the 925' Pressure Zone from an existing 1010' Pressure Zone source on Chino Avenue west of the Cucamonga Creek Channel to a connection point at the intersection of Grove Avenue and Eucalyptus Avenue.

The work under this Contract will consist of the construction of approximately 7,920 linear feet of 30-inch diameter cement coated steel potable water transmission main on Grove Avenue between Eucalyptus Avenue and Chino Avenue, approximately 8450 linear feet of 18-inch diameter cement coated steel potable water transmission main on and Chino Avenue between Grove Avenue and the Cucamonga Creek, construction of a pressure reducing station (PRS) at the intersection of Grove and Chino Avenues, installation of appurtenances, connections to the existing potable water system, pavement repair, and striping restoration (Exhibit A).

On August 25, 2022, eight (8) bids were received for Bid No. 1555 Ontario Ranch Phase 2 Water Main Improvements, OMUC Contract No. UT1050. The bids ranged from a low bid amount of $9,906,053 to a high bid amount of $13,925,130.

The lowest four (4) bids are summarized below:

Bidder	Location	Amount
Norstar Plumbing and Engineering, Inc.	Alta Loma, CA	$9,906,053
Weka, Inc.	San Bernardino, CA	$10,33,0244
T. E. Roberts, Inc.	Irvine, CA	$12,676,684
Christensen Bros. General Engineering, Inc.	Apple Valley, CA	$12,949,644

Support services will be required during construction of the Ontario Ranch Phase 2 Water Main Improvements project. On August 8, 2022, the City received eleven (11) proposal for material testing and geotechnical Engineering Services. After review, Staff recommends that a Professional Services Agreement be awarded to GeoTek, Inc. to provide material testing and geotechnical engineering services. IEC will provide construction engineering services as they are the Engineer of Record for the Project. The City first contracted with IEC in May of 2019, after an extensive Request for Proposal selection process for On-Call Design Services. Wallace and Associates Consulting Inc. will provide construction management services. The City first contracted with Wallace and Associates Consulting Inc. in October of 2019, after an extensive Request for Proposal selection process for On-Call Support Services.

ENVIRONMENTAL REVIEW: The proposed Project is a component of the 2012 Infrastructure Master Plans that was approved by the City Council on December 4, 2012. A Mitigated Negative Declaration (MND) was prepared and approved for the 2012 Infrastructure Master Plans pursuant to the provisions of CEQA. The MND addressed the drainage, sewer, water and recycled water master plans (2012 Infrastructure Master Plans) including their alignments, pipe sizes and installation for the City. No revisions or modifications have been made in regard to the proposed Project, and the approved MND continues to constitute an accurate and complete assessment of the proposed Project. Staff has analyzed the proposed Project and has determined that there is no deviation from the description of this component of the overall 2012 Infrastructure Master Plans. Thus, no further CEQA analysis is required.

OMUC CONTRACT NO. UT1050
CITY OF ONTARIO
ONTARIO RANCH PHASE 2
WATER MAIN IMPROVEMENT PROJECT

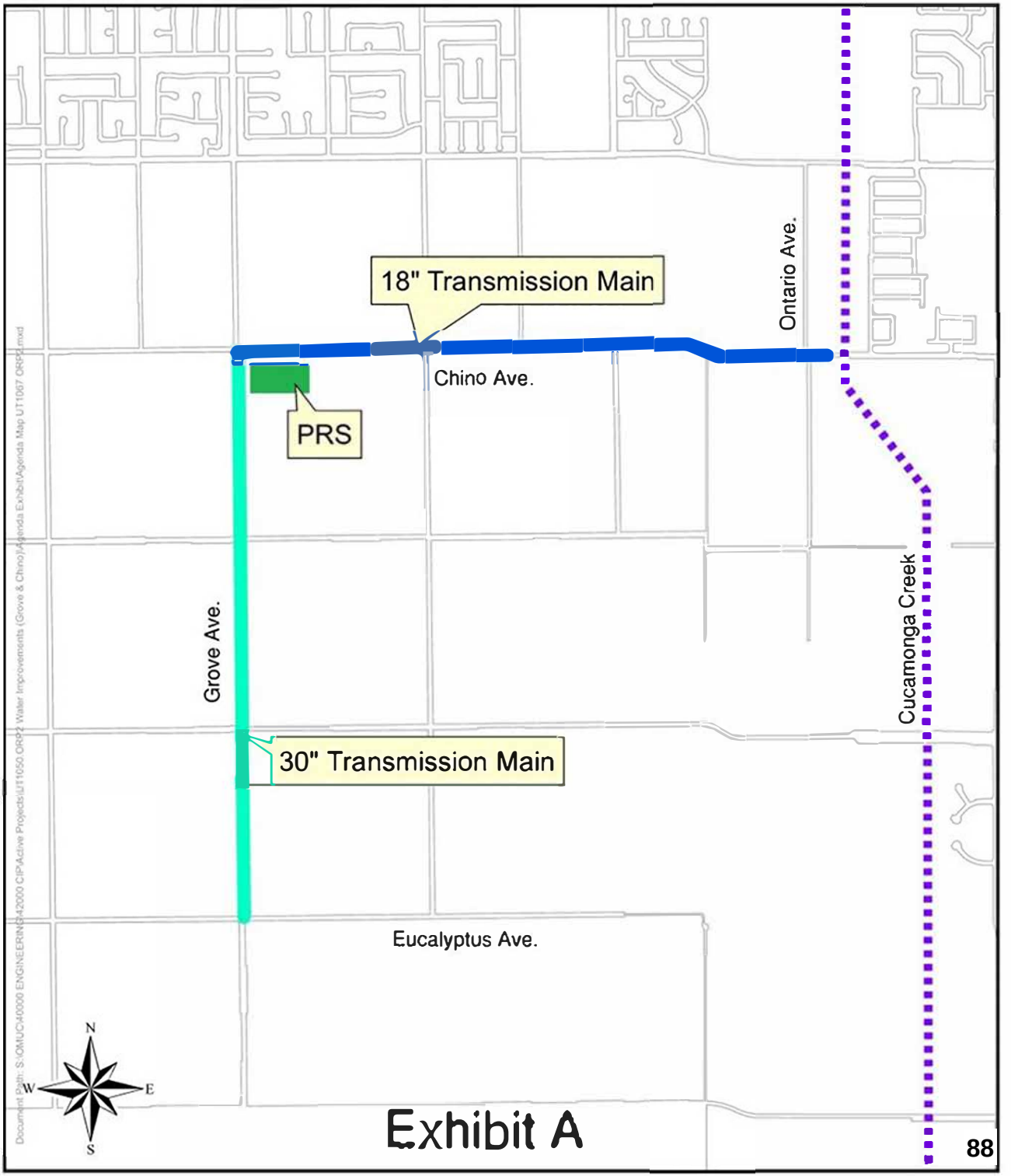


Exhibit A

CITY OF ONTARIO *Agenda Report* **November 15, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Utilities Prepared By: Jonathan Yang Staff Member Presenting: Scott Burton, Utilities General Manager Reviewed By: Dennice Raygoza, Albert G Gastelum, Michael Sigsbee Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 15

SUBJECT: AN AMENDMENT TO ON-CALL DESIGN SERVICES AGREEMENT FOR LAUREL AVENUE, SULTANA AVENUE, AND NOCTA STREET SEWER MAIN IMPROVEMENTS

RECOMMENDATION: That the City Council approve and authorize the City Manager to execute Amendment No. 14 to the On-Call Design Services Agreement (on file in the Records Management Department) with Infrastructure Engineering Corporation of Irvine, California, for Laurel Avenue Sewer Main Improvements, UT 1069 Sultana Avenue Sewer Main Improvements, and Nocta Street Sewer Main Improvements, in the amount not-to-exceed $372,026.

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

FISCAL IMPACT: The Fiscal Year 2021-22 Capital Improvement Program includes appropriations in the amount of $215,000 from the Sewer Capital Fund for this project, which will be included in the project carryover process in the Fiscal Year 2022-23 First Quarter Budget Update Report. If approved, additional appropriations in the amount of $157,026 from the Sewer Capital Fund will be included in the Fiscal Year 2022-23 Mid-Year Budget Update Report to City Council.

The proposed Amendment in the amount of $372,026 will increase the current total not-to exceed authorization for the On-Call Agreement from $2,393,700 to $2,765,726. The City and Infrastructure Engineering Corporation (IEC) have agreed to the fixed billing rates and IEC will be compensated for completion of the scope of work at the approved billing rates. There is no impact to the General Fund.

BACKGROUND & ANALYSIS: The City's sewer system includes approximately 440 miles of pipeline. The Sewer Master Plan (SMP) identifies various capital needs which are prioritized based on existing

capacity deficiencies and deterioration, improvements for future growth, and the current level of maintenance activities required to provide adequate and reliable service.

Using the Sewer Master Plan in conjunction with maintenance data, Staff has identified the need to upgrade existing sewer infrastructure within the downtown area. Specifically, existing sewer mains along an alley east of Laurel Avenue, between G Street and Holt Boulevard and within the Civic Center, west of Sultana Avenue are proposed to be diverted into larger diameter mains to alleviate excessive demand on the existing system. Diversion of these flows and construction of the new sewer mains will facilitate revitalization opportunities in the vicinity of these projects. The Sultana Avenue sewer main will only be required if the existing sewer location conflicts with the final design of the new Fire Station #1 and Civic Center Parking Structure.

Design of the Laurel Avenue sewer main will consist of 3,035 linear feet of 10" sewer main from G Street to Euclid Avenue. This will divert flows north of G Street from the existing aged sewer main constructed in 1895 from the alley to the new Laurel Avenue sewer main (see Exhibit "A"). Design of the Sultana Avenue sewer main will consist of 1,513 linear feet of 10" sewer main from Cherry Avenue to B Street. This will divert flows north of D Street from Cherry Avenue to the new Sultana Avenue sewer main (see Exhibit "B").

Staff has also identified that the Nocta Street sewer main is an area of concern and has historically required extensive maintenance and repair. The existing sewer main is not optimized because it requires regular cleaning and is very difficult to access due to the location as it runs through an apartment complex south of Nocta Street.

A sewer analysis for the sewer diversion in Nocta Street and Allyn Avenue has been completed. The intent of the study was to analyze the capacity of diverting the sewer flow in Nocta Street and Allyn Avenue downstream to the existing sewer in Holt Boulevard. Based on the results that were collected, the sewer diversion will allow for a more optimized system, alleviate the sewer flows into the aged sewer main constructed in 1949, and reduce the need of regular cleaning and potential threats to overflow. The design of the Nocta Street sewer main will consist of 1,350 linear feet of 8" sewer main from Nocta Street to Allyn Avenue (see Exhibit "C").

The scope of the design services for the project will be separated into three design and construction packages for Laurel Avenue Sewer Main Improvements, Sultana Avenue Sewer Main Improvements, and Nocta Street Sewer Main Improvements, respectively. Each project scope will include utility research, preliminary engineering, design, development of bid packages for construction, and bid support services.

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

On August 1, 2022, Staff solicited proposals from these On-Call Consultants for engineering services

for these sewer main improvement projects. On September 1, 2022, the City received the following two (2) qualified proposals in response to the Request for Proposals (RFP) for UT 1067 Laurel Avenue Sewer Main Improvements, UT 1069 Sultana Avenue Sewer Main Improvements, and UT 1070 Nocta Street Sewer Main Improvements:

FIRM	LOCATION
Infrastructure Engineering Corporation (IEC)	Irvine, CA
Stantec Consulting Services, Inc.	Irvine, CA

Staff has reviewed the proposals and recommends IEC based upon an understanding of the project scope and the City's needs, and criteria specified in the RFP. After careful evaluation, IEC was selected as best overall respondent. Staff is, therefore, recommending the proposed amendment to Infrastructure Engineering Corporation based on their understanding of the project scope and their approach in this project.

OMUC CONTRACT NO. UT1067
CITY OF ONTARIO
LAUREL AVENUE SEWER MAIN IMPROVEMENTS

ONTARIO MUNICIPAL UTILITIES COMPANY



EXHIBIT"A"

OMUC CONTRACT NO. UT1069
CITY OF ONTARIO
SULTANA AVE. SEWER MAIN IMPROVEMENTS

ONTARIO MUNICIPAL UTILITIES COMPANY



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EXHIBIT "B"

OMUC CONTRACT NO. UT1070
CITY OF ONTARIO
NOCTA STREET SEWER MAIN IMPROVEMENTS

ONTARIO MUNICIPAL UTILITIES COMPANY

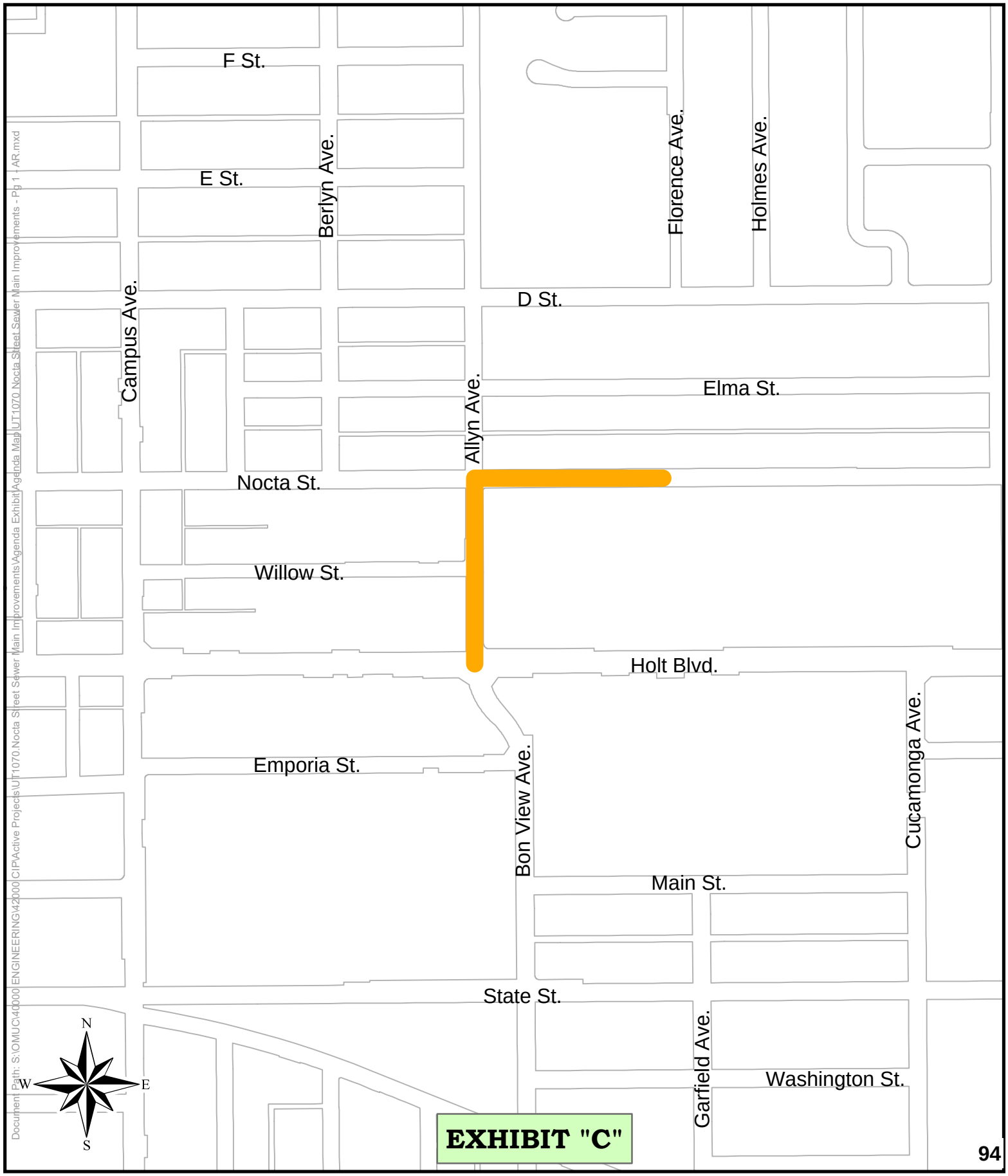


EXHIBIT "C"

CITY OF ONTARIO *Agenda Report* **November 15, 2022**	**SECTION:** **CONSENT CALENDAR**
Department: Records Management Prepared By: Claudia Y Isbell Staff Member Presenting: Ruben Duran, City Attorney Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 17

SUBJECT: AN ORDINANCE ADOPTING A MAP FOR THE DISTRICT-BASED ELECTIONS UNDER THE CALIFORNIA VOTING RIGHTS ACT

RECOMMENDATION: That the City Council adopt an Ordinance adding a new article 3 to title 2 of volume 1 of the Ontario Municipal Code to change the city's electoral system from at-large to by-district elections.

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

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

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

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

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

seven additional community engagement meetings, three virtually (including one in Spanish), two at community centers, and two in conjunction with the Route 66 Cruisin' Reunion event. During the additional community outreach, a seventeenth map was submitted by Mr. Chris Robles, plaintiff in the California Voting Rights Act demand to transition to district-based elections. Mr. Robles worked collaboratively with the Center for Community Action and Environmental Justice and the Black and Brown Alliance in creating a seventeenth map, "Map 17". The proposed election sequence for Map 17 includes District 1 and 2 in 2024 and Districts 3 and 4 in 2026.

On November 1, 2022, City Council conducted the sixth public hearing, considered the draft maps submitted, and introduced an Ordinance approving Map 17 as the final district map. Staff recommends the City Council adopt the Ordinance as presented.

ORDINANCE NO. _____

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

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

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

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

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

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

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

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

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

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

- Before drawing a draft map or maps of the proposed boundaries of the districts, the City must hold at least two public hearings over a period of no more than 30 days, at which the public is invited to provide input regarding the composition of the districts.

- After all draft maps are drawn, the City must publish and make available for release at least one draft map and the potential sequence of the elections.

- The City must hold at least two additional hearings over a period of no more than 45 days, at which the public is invited to provide input regarding the content of the draft map(s) and the proposed sequence of elections. The first version of a draft map must be published at least seven days before consideration at a hearing; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Adjustment of boundaries.

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

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

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

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

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

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

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

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

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

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

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

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

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. was duly introduced at a regular meeting of the City Council of the City of Ontario held November 1, 2022 and adopted at the regular meeting held by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

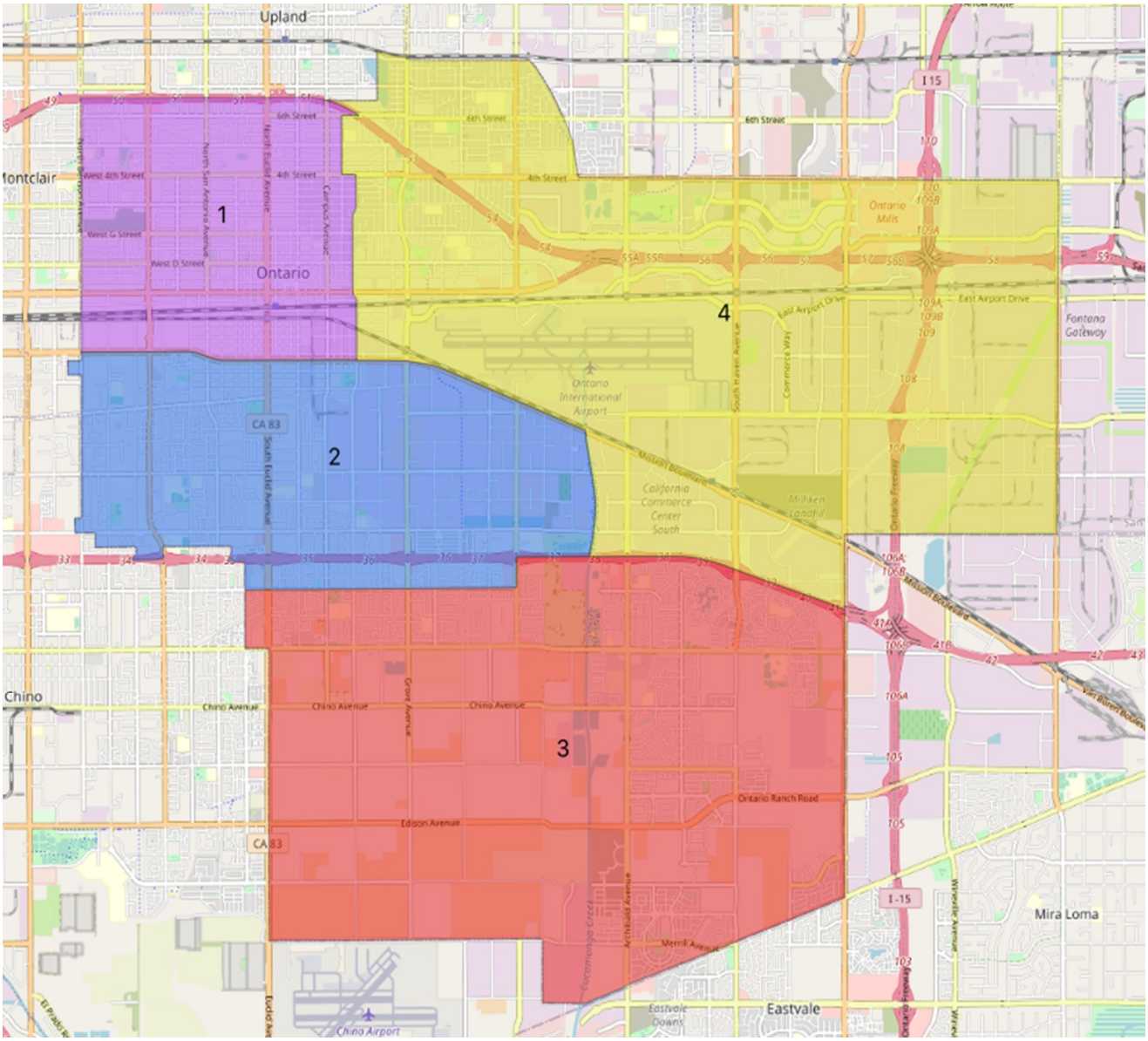
I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held _____ and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper..

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A
ELECTION DISTRICT MAP

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



CITY OF ONTARIO *Agenda Report* **November 15, 2022**	**SECTION:** **PUBLIC HEARINGS**
Department: Planning Prepared By: Elly Antuna Staff Member Presenting: Scott Murphy, AICP, Executive Community Development Director Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 18

SUBJECT: **A PUBLIC HEARING TO CONSIDER A MILLS ACT CONTRACT (PRESERVATION AGREEMENT), FILE NO. PHP22-011, FOR A DESIGNATED HISTORIC PROPERTY**

RECOMMENDATION: That the City Council consider and adopt a resolution approving and authorizing the City Manager or designee to enter into a Mills Act contract (Preservation Agreement), for the designated historic property located at 119 East Princeton Street (APN: 1047-531-31), Rafael Marquez and Jacqueline Gonzalez.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: The projected net impact of the proposed contract to the City is $1,083 in the first year and approximately $10,830 over the first ten years of the contract from a reduction in property tax revenue. This minimal reduction in property tax revenue will be accounted for in the revenue estimates as part of the annual budget process. In exchange for this property tax reduction, $154,520 in private property investments will be made over a ten-year period.

BACKGROUND & ANALYSIS: One Mills Act contract is being proposed for this year representing a total investment of $154,520 of private funds into the City's neighborhoods over the next ten years. The contract calls for improvements to exterior finishes (tree maintenance and trimming, irrigation, window restoration, new roof, repairs to front concrete steps and landing), interior finishes (repair to interior flooring, ceilings, and doors), and systems upgrades (electrical, plumbing and sewer line).

A Mills Act contract is a contract between the City and a property owner whereby the property owner agrees to certain improvements that preserve the historic integrity and character of the building and keep the property in good repair. In exchange for the investments, State law requires the San Bernardino County Assessor to reassess the property's value based on an alternative formula. The new assessed value may result in a significant reduction in the owner's property taxes. The Mills Act does not require investment in the property to be equal to the amount of the tax savings. The purpose is to provide a financial incentive to the owners of historic properties to maintain their properties consistent with its historic context.

Upon City Council approval, the City Clerk will inform the San Bernardino County Assessor that the property owners have entered into a Mills Act contract. The contract is a perpetual 10-year contract that automatically renews annually. If a property with a recorded Mills Act contract is sold, the County of San Bernardino will continue to assess the property using the alternate formula and the new owner will be required to fulfill the contractual preservation agreement. A contract can be "non-renewed" by either party upon written notice. If a contract is cancelled as a result of non-compliance with the conditions of the contract, a cancellation fee of 12.5% of the market value (as of the time of cancellation) is assessed by the County Assessor and shall be paid by the property owner to the County Auditor.

The City has 82 approved Mills Act contracts and one proposed, for a total of 83 Mills Act contracts. Of the 83 properties, six are commercial, one is multiple-family residential, and 76 are single-family residential. The contract proposed this year is an owner occupied, single-family residence. Property tax impacts are summarized below:

	Existing	*Proposed*	*Total*
Number of Contracts	82	1	83
Estimated Annual Total Tax Savings to Owners	$149,684	$6,447	$156,131
Estimated Annual Cost to City (first year)	$25,147	$1,083	$26,230
Estimated Cost to City (over ten years)	$251,470	$10,830	$262,300

The estimated cost of the 83 Mills Act contracts over a ten-year period is $262,300. In exchange for this decrease in property tax revenues, approximately $3,626,540 will be reinvested into historic buildings in Ontario neighborhoods over a ten-year period – a ratio of $13.83 in private funds spent for every dollar the City foregoes in property tax revenue.

The Mills Act contract is in compliance with the provisions of Article 12 (commencing with Section 50280), Chapter 1, Part 1, Division 1, Title 5 of the Government Code of the State of California, which establishes the Mills Act program. The property is a contributor to a locally designated historic district and therefore is a qualified property eligible for a Mills Act contract.

On October 25, 2022, the Historic Preservation Commission voted unanimously (5-0) to recommend City Council approval of the proposed Mills Act contract.

ENVIRONMENTAL REVIEW: The application was reviewed pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"). Pursuant to Section 21065 of the CEQA Guidelines, the Historic Preservation Agreement (Mills Act contract) is not considered a project. Therefore, no further environmental review is required.

Historic Ontario
The "Model Colony"

HISTORIC PRESERVATION COMMISSION STAFF REPORT

October 25, 2022

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

FILES NO.: PHP22-011

SUBJECT: A public hearing to consider a Mills Act Contract (Preservation Agreement) for a 4,379-square-foot Prairie style single-family residence, a Contributor within the College Park Historic District, located at 119 East Princeton Street, within the LDR-5 (Low Density Residential-2.1 to 5.0 du/ac) zoning district. **City Council action is required**.

PROPERTY OWNER: Rafael Marquez and Jacqueline Gonzalez

RECOMMENDED ACTION: That the Historic Preservation Commission consider and approve File No. PHP22-011 recommending approval to the City Council, pursuant to the facts and reasons contained in the staff report and attached resolution. The Historic Preservation Subcommittee reviewed this application on October 13, 2022 and is recommending approval.

BACKGROUND: Effective March 7, 1973, Chapter 1442 of the Statutes of 1972 (also known as the Mills Act) added Sections 50280 through 50289 to the Government Code to allow an owner of a qualified historical property to enter into a preservation contract with a local government. The City of Ontario established the Mills Act program in 1997 to provide an economic incentive for the preservation of designated historic landmarks and/or contributing structures within a designated historic district. Since inception of the City's program, 82 Mills Act Contracts have been approved and recorded. There is one contract proposed at this time, for a single-family residence designated as a Contributor to the College Park Historic District.

In order for the historic property to be eligible for the program, it must meet the requirements outlined in the guidelines and standards set by the State of California, Board of Equalization, and the City's Development Code (Sec. 4.02.065). The historic property must be either a local, state, or nationally designated property or a contributor within a locally designated historic district whereby the property owner agrees to certain improvements to restore, rehabilitate, or preserve a qualified historic building. In exchange, the San Bernardino County Tax Assessor reassesses the property's value based on an alternative formula that may result in a significant reduction in the owner's property taxes.

Pursuant to State law, a Mills Act Contract is recorded on the property and is a perpetual 10-year contract that automatically renews annually, unless the property owner or the City request a notice of non-renewal. The Mills Act Contract and all benefits and

Case Planner:	Elly Antuna, Associate Planner
Planning Director Approval:	
Submittal Date:	06/30/22

Hearing Body	*Date*	*Decision*	*Action*
HPSC	10/13/22	Approval	Recommend
PC	10/25/22	Approval	Recommend
CC	11/15/22		Final

responsibilities remain with the land, even after a change of ownership. If a contract is cancelled for any reason, including non-compliance with the conditions of the contract, or upon the request of the property owner or City, a cancellation fee of 12.5 percent of the market value (as of the time of cancellation) is assessed.

PROJECT ANALYSIS: Staff provides estimates of potential tax savings for the property owner, but ultimately, only the San Bernardino County Assessor can determine the actual Mills Act adjusted value. The Mills Act assessment involves many variables that are typically determined by market forces such as interest rates, capitalization rates, and fair market rental rates. The average property tax savings for the proposed Mills Act Contracts roughly range between 30 and 55 percent in the initial year, with a tax savings decrease each passing year. According to the City budget, Ontario receives 16.8 percent of the property taxes collected. Using that percentage, staff has also calculated the estimated reduction in property tax revenue, the "City cost," and has included that in the analysis.

Upon City Council approval, the City Clerk informs the San Bernardino County Assessor that the property has entered into a Mills Act Contract. The Assessor valuates the historic property with the Mills Act assessment the following tax year, which may differ from the Planning Department estimates.

A. **FILE NO.:** PHP22-011

PROPERTY OWNER: Rafael Marquez and Jacqueline Gonzalez

LOCATION: 119 East Princeton Street

HISTORIC NAME: Benton Ballou House

DESIGNATION DATE: July 18, 2000 (College Park Historic District)



[1] Work Program — The Applicant is proposing both exterior and interior work as part of the Contract that qualifies under the guidelines and standards set by the State of California. Exterior work includes tree maintenance and trimming, irrigation, window restoration, new roof, and repairs to front concrete steps and landing. Interior work includes new plumbing, electrical, repair to interior flooring, ceilings, and doors. The improvements are valued at an estimated $154,520.

[2] Property Owner Savings — The following Mills Act savings to the property owner are based on estimates calculated by the Planning Department.

Current Annual Taxes Paid:	$11,557
Mills Act Annual Taxes Estimated:	$5,110
Potential Total Annual Tax Savings:	$6,447
Estimated Savings over 10 years:	$64,470
Estimated Savings Percentage:	55.8%

[3] City Cost — According to the City budget, Ontario receives approximately 16.8 percent of the property taxes collected. The following shows the cost to the City for this contract and is based on estimates calculated by the Planning Department.

Current Annual City Tax Revenue:	$1,942
Mills Act Annual City Tax Revenue Estimated:	$859
Estimated Total Annual Cost to the City:	$1,083
Estimated Cost to the City over 10 years:	$10,830

This contract provides for $14.27 in improvements for every $1 in estimated property tax cost to the City.

(4) Cumulative Impacts – The City currently has 82 approved Mills Act Contracts and one proposed contract. The cumulative impacts are based on the initial projected assessment of each contract for the proposed year.

	Existing	*Proposed*
Number of contracts:	82	83
Average Estimated Annual Tax Saving to Property Owners:	$1,825	$1,904
Estimated Annual Cost to the City:	$25,147	$26,230
Estimated Cost to the City over 10 Years:	$251,470	$262,300
Estimated Total Value of Improvements over 10 Years:	$3,472,020	$3,626,540
Estimated Loss of Revenue to Improvement Ratio:	$1/13.81	$1/13.83

COMPLIANCE WITH THE ONTARIO PLAN: The Mills Act Contract Program 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
- Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities

[2] Policy Plan (General Plan)

Community Design Element – Historic Preservation

- Goal CD4: Historic buildings, streets, landscapes, and neighborhoods, as well as the story of Ontario's people, businesses, and social and community organizations, have been preserved and serve as a focal point for civic pride and identity.

  - CD-4.2 Collaboration with Property Owners and Developers. We educate and collaborate with property owners and developers to implement strategies and best practices that preserve the character of our historic buildings, streetscapes, and unique neighborhoods.

  - CD-4.4 Incentives. We use the Mills Act and other federal, state, regional and local programs to assist property owners with the preservation of select properties and structures.

  - CD-4.6 Promotion of Public Involvement in Preservation. We engage in programs to publicize and promote the City's and the public's involvement in preservation efforts.

Community Design Element – Protection of Investment

- Goal CD-5: A sustained level of maintenance and improvement of properties, buildings and infrastructure that protects the property values and encourages additional public and private investments.

  - CD-5.1 Maintenance of Buildings and Property. We require all public and privately owned buildings and property (including trails and easements) to be properly and consistently maintained.

  - CD-5.3 Improvements to Property & Infrastructure. We provide programs to improve property and infrastructure.

  - CD-5.4 Neighborhood Involvement. We encourage active community involvement to implement programs aimed at the beautification and improvement of neighborhoods.

ENVIRONMENTAL REVIEW: A Mills Act Contract will not result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and, therefore, is not a project subject to The California Environmental Quality Act, pursuant to Section 21065 of the California Public Resources Code.

RESOLUTION NO. PC22-056

A RESOLUTION OF THE HISTORIC PRESERVATION COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE FILE NO. PHP22-011, THE MILLS ACT CONTRACT FOR THE BENTON BALLOU HOUSE, LOCATED AT 119 EAST PRINCETON STREET (APN: 1047-531-31).

WHEREAS, RAFAEL MARQUEZ AND JACQUELINE GONZALEZ ("Applicant") has filed an Application for the approval of a Mills Act Contract, File No. PHP22-011, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the City's character and history are reflected in its cultural, historical, and architectural heritage with an emphasis on the "Model Colony" as declared by an act of the Congress of the United States and presented at the St. Louis World's Fair in 1904; and

WHEREAS, the City's historical foundations should be preserved as living parts of community life and development in order to foster an understanding of the City's past so that future generations may have a genuine opportunity to appreciate, enjoy, and understand Ontario's rich heritage; and

WHEREAS, the Community Development and the Aesthetic, Cultural, Open Space and Recreational Resources Elements of the Ontario Plan (Policy Plan) sets forth Goals and Policies to conserve Ontario's historic buildings and districts; and

WHEREAS, the Benton Ballou House, a Prairie style single-family residence constructed in 1920, located at 119 East Princeton Street (APN: 1047-531-31) is worthy of preservation and was designated by City Council on July 18, 2000, as a Contributor within the College Park Historic District; and

WHEREAS, the Application is not a project pursuant to Section 21065 of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") Guidelines. The Mills Act Contract will not result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Historic Preservation Commission the responsibility and authority to review and make recommendation to the City Council on the subject Application; 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 October 13, 2022, the Historic Preservation Subcommittee of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Decision No. HPSC22-007, recommending the Historic Preservation Commission recommend to the City Council approval of the Application; and

WHEREAS, on October 25, 2022, the Historic Preservation Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, the Historic Preservation Commission has reviewed this application and determined it to be to the mutual benefit to the City and property owner to enter into a Historic Property Preservation Agreement; and

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

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

SECTION 1. ***Environmental Determination and Findings***. As the recommending body for the Project, the Historic Preservation 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 Historic Preservation Commission, the Historic Preservation Commission finds that the Mills Act Contract will not result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and, therefore, is not a project subject to The California Environmental Quality Act, pursuant to Section 21065 of the California Public Resources Code.

SECTION 2. ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Historic Preservation Commission during the above-referenced hearing and upon the specific findings set forth in Section 1 above, the Historic Preservation Commission hereby concludes as follows:

(1) California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of a qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as a property of historical significance; and

(2) The Benton Ballou House, located at 1240 North Euclid Avenue, was

designated by City Council on July 18, 2000 as a Contributor within the College Historic District; and

(3) The Applicant has set forth a work program for this specific property to ensure the preservation of this historic resource that qualifies under the guidelines and standards set by the State of California.

SECTION 3. ***Historic Preservation Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2 above, the Historic Preservation Commission hereby RECOMMENDS THE CITY COUNCIL APPROVE THE REQUEST FOR A MILLS ACT CONTRACT.

SECTION 4. ***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 5. ***Custodian of Records***. The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 E. B Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 6. ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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The Secretary Pro Tempore for the Historic Preservation 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 Historic Preservation Commission of the City of Ontario at a regular meeting thereof held on the 25th day of October, 2022, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Jim Willoughby
Historic Preservation Commission
Chairman

ATTEST:

Rudy Zeledon
Planning Director and
Secretary to the Historic Preservation Commission

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

I, Gwen Berendsen, Secretary Pro Tempore of the Historic Preservation Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC22-056, was duly passed and adopted by the Historic Preservation Commission of the City of Ontario at their regular meeting held on October 25, 2022, by the following roll call vote, to wit:

AYES: Anderson, Dean, DeDiemar, Lampkin, Willoughby

NOES: None

ABSENT: Ricci

ABSTAIN: Gage

Gwen Berendsen
Secretary Pro Tempore

RECORDING REQUESTED BY
And When
RECORDED MAIL TO:

City Clerk, City of Ontario
303 East "B" Street
Ontario, CA 91764

Exempt Recording Fees Pursuant to Government Code Section 6103 & 27383

HISTORIC PROPERTY PRESERVATION AGREEMENT

THIS AGREEMENT is made and entered into this 15th day of November 2022, by and between the City of Ontario, a municipal corporation (hereinafter referred to as the "City") and Rafael Marquez and Jacqueline Gonzalez (hereinafter referred to as the "Owner").

WITNESSETH:

A. Recitals.

(I) California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as property of historical significance;

(ii) Owner possesses fee title in and to that certain real property, together with associated structures and improvements thereon, commonly known as the Benton Ballou House, generally located at the street address 119 East Princeton Street, Ontario, CA 91764 (hereinafter such property shall be referred to as the "Historic Property"). A legal description of the Historic Property is attached hereto, marked as Exhibit "A" and is

incorporated herein by this reference;

(iv) On July 18, 2000, the City Council of the City of Ontario designated the Historic Property as a Contributor to the College Park Historic District pursuant to the terms and provisions of Title 9, Chapter 1, Chapter 4 of the Ontario Municipal Code; and,

(v) The City and Owner, for their mutual benefit, now desire to enter into this agreement both to protect and preserve the characteristics of historical significance of the Historic Property and to qualify the Historic Property for an assessment of valuation pursuant to the Provisions of Chapter 3, of Part 2, of Division 1 of the California Revenue and Taxation Code.

B. Agreement

NOW, THEREFORE, City and Owner, in consideration of the mutual covenants and conditions set forth herein, do hereby agree as follows:

1. Effective Date and Term of Agreement. This Agreement shall be effective and commence on November 15, 2022 and shall remain in effect for a term of ten (10) years thereafter. Each year upon the anniversary of the effective date, such initial term will automatically be extended as provided in paragraph 2, below.

2. Renewal. Each year on the anniversary of the effective date of this Agreement (hereinafter referred to as the "renewal date"), a year shall automatically be added to the initial term of this Agreement unless notice of non-renewal is mailed as provided herein. If either Owner or City desires in any year not to renew the Agreement, Owner or City shall serve written notice of non-renewal of the Agreement on the other party in advance of the annual renewal date of the Agreement. Unless such notice is served by Owner to City at least ninety (90) days prior to the annual renewal date, or served by City to Owner at least sixty (60) days prior to the annual renewal date, one (1) year shall automatically be added to the term of the Agreement provided herein. Owner may make a written protest of the notice. Upon receipts by the Owner of a notice from the City of non-renewal,

the City may, at any time prior to the annual renewal date of the Agreement, withdraw its notice to Owner of non-renewal. If either City or Owner serves notice to the other of non-renewal in any year, the Agreement shall remain in effect for the balance of the term then remaining, either from its original execution or from the last renewal of the Agreement, whichever may apply.

3. Fees. Prior to recordation the Applicant shall pay the applicable fee in effect at the time recordation is requested.

4. Standards for Historical Property. During the term of this Agreement, the Historic Property shall be subject to the following conditions, requirements and restrictions:

A. Owner shall preserve and maintain the characteristics of historical significance of the Historic Property. Attached hereto, marked as Exhibits "B", and incorporated herein by this reference, is a list of those minimum standards and conditions for maintenance, use and preservation of the Historic Property, which shall apply to such property throughout the term of this Agreement.

B. Owner shall, where necessary, restore and rehabilitate the property according to the rules and regulations of the Office of Historic Preservation of the Department of Parks and Recreation, the United States Secretary of the Interior's Rehabilitation Standards, the State Historical Building Code, and the Ontario Development Code and in accordance with the attached schedule of potential improvements, drafted by the applicant and approved by the City Council, attached hereto as Exhibit "C".

C. Pursuant to Section 4.02.050 of the Ontario Development Code, Owner shall obtain a Certificate of Appropriateness for any alteration, addition, restoration, rehabilitation, repainting, resurfacing, and for each and every item listed in Exhibit "C", prior to commencement of work. Failure to obtain all necessary permits, including building permits, and approvals may result in cancellation of this Agreement as set forth on

Paragraph 6, Cancellation herein.

D. Owner shall allow reasonable periodic examinations, by prior appointment, of the interior and exterior of the Historic Property by representatives of the County Assessor, State Department of Parks and Recreation, State Board of Equalization, and the City, as may be necessary to determine Owner's compliance with the terms and provisions of this Agreement.

5. Provision of Information of Corporation. Owner hereby agrees to furnish City with any and all information requested by the City, which may be necessary or advisable to determine compliance with the terms and provision of this Agreement.

6. Cancellation. City, following a duly noticed public hearing as set forth in California Government Code Sections 50280, et seq., may cancel this Agreement if it determines that Owner breached any of the conditions of this Agreement or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historic property. City may also cancel this Agreement if it determines that the Owner has failed to restore or rehabilitate the property in the manner specified in subparagraph 4(B) of this Agreement. In the event of cancellation, Owner may be subject to payment of those cancellation fees set forth in California Government Code Sections 50280, et seq.

7. Enforcement of Agreement. In lieu of and/or in addition to any provision to cancel the Agreement as referenced herein, City may specifically enforce, or enjoin the breach of, the terms of this Agreement. In the event of a default, under the provisions of this Agreement by Owner, City shall give written notice to Owner by registered or certified mail addressed to the address stated in this Agreement, and if such a violation is not corrected to the reasonable satisfaction of the City within thirty (30) days thereafter, or if not corrected within such reasonable time as may be required to cure the breach or default if said breach or default cannot be cured within thirty (30) days (provided that acts to cure the breach of default may be commenced within thirty (30) days and must be pursued to completion by Owner), then City may, without further notice, declare a default under the terms of this Agreement and may bring any action necessary to specifically

enforce the obligations of Owner growing out of the terms of this Agreement, apply to any court, state or federal, for injunctive relief against any violation by Owner or apply for such other relief against any violation by Owner or apply for such other relief an may be appropriate.

City does not waive any claim of default by Owner if City does not enforce or cancel this Agreement. All other remedies at law or in equity which are not otherwise provided for in this Agreement or in City's regulations governing historic properties are available to the City to pursue in the event that there is a breach of this Agreement. No waiver by City of any breach or default under this agreement shall be deemed to be a waiver of any other subsequent breach thereof or default herein under.

8. Binding Effect of Agreement. The Owner hereby subjects the Historic Property described in Exhibit "A" hereto to the covenants, reservations and restriction as set forth in this Agreement. City and Owner hereby declare their specific intent that the covenants, reservations and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors and assigns in title or interest to the Historic Property. Each and every contract, deed or other instrument hereinafter executed, covering or conveying the Historic Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions expressed in this Agreement regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

City and Owner hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth herein touch and concern the land in that Owner's legal interest in the Historic Property is rendered less valuable thereby. City and Owner hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the land by enhancing and maintaining the historic characteristics and significance of the Historic Property for the benefit of the public and the Owner.

9. Notice. Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below or at any other address as may be later specified by the parties hereto.

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

Attention: Planning Director

To Owner: Rafael Marquez and Jacqueline Gonzalez
119 East Princeton Street
Ontario, CA 91764

10. General Provisions.

A. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause them to be considered joint ventures or members of any joint enterprise.

B. Owner agrees to and shall hold City and its elected officials, officers, agents, and employees harmless from liability for damage or claims for damage for personal injuries, including death, and claims for property damage which may arise from the direct or indirect use or operations of Owner or those of his contractor, subcontractor, agent, employee or other person acting on his behalf which relates to the use, operation and maintenance of the Historic Property. Owner hereby agrees to and shall defend the City and its elected officials, officers, agents, and employees with respect to any and all actions for damages caused by, or alleged to have been caused by, reason of Owner's activities in connection with the Historic Property. This hold harmless provision applies to all damages and claims for damages suffered, or alleged to have been suffered, by reason of the operations referred to in this Agreement regardless of whether or not the City prepared, supplied or approved the plans, specifications or other documents for the Historic Property.

C. All of the agreements, rights, covenants, reservations and restrictions contained in this Agreement shall be binding upon and shall inure to the benefit of the parties herein, their heirs, successors, legal representatives, assigns and all persons acquiring any part or portion of the Historic Property, whether by operation of law or in any manner whatsoever.

D. In the event legal proceedings are brought by any party or parties to enforce or restrain a violation of any of the covenants, reservations or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover all reasonable attorney's fees to be fixed by the court, in addition to court costs and other relief ordered by the court.

E. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent preemptive legislation, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

F. This Agreement shall be construed and governed in accordance with the laws of the State of California.

11. Recordation. No later than twenty (20) days after the parties execute and enter into this Agreement, the City shall cause this Agreement to be recorded in the office of the County Recorder of the County of San Bernardino.

12. Amendments. This Agreement may be amended, in whole or in part, only by a written recorded instrument executed by the parties hereto.

IN WITNESS WHEREOF, City and Owner have executed this Agreement on the day and year first written above.

CITY OF ONTARIO

Dated:_____ By: _____
City Manager

Attest

_____
City Clerk

Approved as to Form

_____
City Attorney

Dated:_____ By: _____
Rafael Marquez, Owner

Dated:_____ By: _____
Jacqueline Gonzalez, Owner

Exhibit A: Historic Property Preservation Agreement
Legal Description

Address: 119 East Princeton Street
Ontario, CA 91764

APN: 1047-531-31

File No.: PHP22-011

The property located at: 119 East Princeton Street
Ontario, CA 91764

is legally described as: LOT 1 OF F. C. BELL'S FIRST ADDITION TO THE CITY OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 21, PAGE 16 OF MAPS, IN THE OFFICE OF THE CONTY RECORDER OF SAID COUNTY.

APN: 1047-531-31-0-000

Exhibit B: Historic Property Preservation Agreement
Property Maintenance

Address: 119 East Princeton Street, Ontario, CA 91764 **APN:** 1047-531-31 **File No.:** PHP22-011

All buildings, structures, yards and other improvements shall be maintained in a manner which does not detract from the appearance of the immediate neighborhood. The following conditions are prohibited:

1. Dilapidated, deteriorating, or unrepaired structures, such as fences, roofs, doors, walls, and windows;
2. Scrap lumber, junk, trash or debris;
3. Abandoned, discarded or unused objects or equipment, such as automobiles, automobile parts, furniture, stoves, refrigerators, cans, containers, or similar items;
4. Stagnant water or excavations, including unmaintained pools or spas;
5. Any device, decoration, design, structure or vegetation which is unsightly by reason of its height, condition, or its inappropriate location.

The property owner shall also comply with the provisions of the Duty to Keep in Good Repair Section of the Historic Preservation Ordinance (Sec. 9-1.7.01.045 of the Ontario Development Code) and all other applicable provisions of the City's Property Appearance – Nuisance Ordinance (Chapter 22 of Title 5 of the Ontario Municipal Code, Commencing at Sec. 5-22.02).

Exhibit C: Historic Property Preservation Agreement
Proposed Improvements

Address: 119 East Princeton Street, Ontario, CA 91764 **APN:** 1047-531-31 **File No.:** PHP22-011

Contract Year	Description
2023:	Restore hardwood floors in 2nd floor bedrooms, closets, and landing. New plumbing in 2nd floor hallway bathroom.
2024:	Arborist to perform tree health assessment, tree trimming and removal if needed. Update electrical outlets, light switches/plates at 2nd floor, and add ground where needed. New plumbing in 1st floor bathroom that has exterior access.
2025:	New plumbing in 1st floor bathroom. Repair water damage and cracks in ceilings at 2nd floor and at main entrance. Replace flood watering/irrigation system to deep watering for orchard.
2026:	Update main sewer line that connects main line, primary dwelling and guesthouse.
2027:	New roof on main house, garage and guest house
2028:	Repair and restore closet and bathroom doors and hardware at 2nd floor. New plumbing in 2nd floor Jack-and-Jill bathroom.
2029:	Repair windows (broken glass, hardware, ropes and weight) and refinish wood as needed in 2nd floor bathrooms, closets and 1 bedroom.
2030:	Repair windows (broken glass, hardware, ropes and weight) and refinish wood as needed in 4 bedrooms on 2nd floor.
2031:	Restore and repair wood stairs, landing and banisters. Repair and restore bedroom doors and hardware at 2nd floor. Replace main sewer line in basement.
2032:	Repair concrete exterior steps at main entrance and concrete landing. Arborist to perform tree health assessment, tree trimming and removal if needed.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PHP22-011, AND AUTHORIZING THE CITY OF ONTARIO TO ENTER INTO A HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT) WITH RAFAEL MARQUEZ AND JACQUELINE GONZALEZ, FOR THE PROPERTY LOCATED AT 119 EAST PRINCETON STREET (APN: 1047-531-31).

WHEREAS, California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of a qualified historical property to provide for the use, maintenance, and restoration of such historical property so as to retain its characteristics as a property of historical significance; and

WHEREAS, Rafael Marquez and Jacqueline Gonzalez possess fee title in and to that certain real property, together with associated structures and improvements thereon, located at the street address commonly known as 119 East Princeton Street, Ontario, California (hereinafter referred to as the “Property”); and

WHEREAS, on July 18, 2000, the City Council of the City of Ontario designated the Property as a Contributor within the College Park Historic District pursuant to the terms and provisions of Chapter 4, of the Ontario Development Code; and

WHEREAS**,** the City and Rafael Marquez and Jacqueline Gonzalez, for their mutual benefit, now desire to enter into a Historic Property Preservation Agreement, a copy of which is attached hereto as Exhibit “A” and incorporated herein by reference (hereinafter referred to as the “Preservation Agreement”); 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, 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 October 13, 2022, the Historic Preservation Subcommittee conducted a hearing and issued Decision No. HPSC22-011, recommending the Historic

Preservation Commission recommend the City Council approve the Application; and

WHEREAS, on October 25, 2022, the Historic Preservation Commission conducted a hearing and issued Resolution No. PC22-056, recommending the City Council approve the Application; and

WHEREAS, on November 15, 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, BE IT RESOLVED 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 Mills Act contract is not considered a project pursuant to Section 21065 of the CEQA Guidelines. The Mills Act contract will not result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

(2) The determination of CEQA exemption reflects the independent judgement of the City Council.

SECTION 2. ***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 above, the City Council hereby concludes as follows:

(1) California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of a qualified historical property to provide for the use, maintenance, and restoration of such historical property so as to retain its characteristics as a property of historical significance; and

(2) Pursuant to California Government Code Section 50280, et seq., qualified historical properties are designated historic landmarks, contributing structures within designated historic districts, and properties listed on the National Register of Historic Places or the California Register of Historic Resources; and

(3) The Benton Ballou House, a Prairie style single-family residence located at 119 East Princeton Street, was designated as a Contributor within the College Park Historic District; and

(4) The Applicant has set forth a work program for this specific property to ensure the preservation of this historic resource that qualifies under the guidelines and standards set by the State of California.

SECTION 3. ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2 above, THE CITY COUNCIL APPROVES AND RATIFIES the historic property preservation agreement and authorizes the City Manager to execute the agreement, which is subject to the provisions of the City's Development Code (Sec. 4.02.065) and to each and every condition set forth in the Preservation Agreement, attached hereto as Exhibit "A" and incorporated herein by this reference; and

SECTION 4. ***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 5. ***Recordation of Agreement.*** That the City Clerk of the City of Ontario, California, shall cause the Historic Preservation Agreement to be recorded in the office of the County Recorder of San Bernardino County.

SECTION 6. ***Notification of Assessor***. That the City Clerk of the City of Ontario, California, shall notify the San Bernardino County Assessor in writing that the property has entered into a Preservation Agreement within 30 days of the recordation of the contract.

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

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

PASSED, APPROVED, AND ADOPTED this 15th day of November 2022.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

_____
BEST BEST AND KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2022- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 15, 2022, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2022- duly passed and adopted by the Ontario City Council at their regular meeting held November 15, 2022.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

Exhibit “A”

Preservation Agreement

RECORDING REQUESTED BY
And When
RECORDED MAIL TO:

City Clerk, City of Ontario
303 East "B" Street
Ontario, CA 91764

Exempt Recording Fees Pursuant to Government Code Section 6103 & 27383

HISTORIC PROPERTY PRESERVATION AGREEMENT

THIS AGREEMENT is made and entered into this 15th day of November 2022, by and between the City of Ontario, a municipal corporation (hereinafter referred to as the "City") and Rafael Marquez and Jacqueline Gonzalez (hereinafter referred to as the "Owner").

WITNESSETH:

A. Recitals.

(I) California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as property of historical significance;

(ii) Owner possesses fee title in and to that certain real property, together with associated structures and improvements thereon, commonly known as the Benton Ballou House, generally located at the street address 119 East Princeton Street, Ontario, CA 91764 (hereinafter such property shall be referred to as the "Historic Property"). A legal description of the Historic Property is attached hereto, marked as Exhibit "A" and is incorporated herein by this reference;

(iv) On July 18, 2000, the City Council of the City of Ontario designated the Historic Property as a Contributor to the College Park Historic District pursuant to the terms and provisions of Title 9, Chapter 1, Chapter 4 of the Ontario Municipal Code; and,

(v) The City and Owner, for their mutual benefit, now desire to enter into this agreement both to protect and preserve the characteristics of historical significance of the Historic Property and to qualify the Historic Property for an assessment of valuation pursuant to the Provisions of Chapter 3, of Part 2, of Division 1 of the California Revenue and Taxation Code.

B. Agreement

NOW, THEREFORE, City and Owner, in consideration of the mutual covenants and conditions set forth herein, do hereby agree as follows:

1. Effective Date and Term of Agreement. This Agreement shall be effective and commence on November 15, 2022 and shall remain in effect for a term of ten (10) years thereafter. Each year upon the anniversary of the effective date, such initial term will automatically be extended as provided in paragraph 2, below.

2. Renewal. Each year on the anniversary of the effective date of this Agreement (hereinafter referred to as the "renewal date"), a year shall automatically be added to the initial term of this Agreement unless notice of non-renewal is mailed as provided herein. If either Owner or City desires in any year not to renew the Agreement, Owner or City shall serve written notice of non-renewal of the Agreement on the other party in advance of the annual renewal date of the Agreement. Unless such notice is served by Owner to City at least ninety (90) days prior to the annual renewal date, or served by City to Owner at least sixty (60) days prior to the annual renewal date, one (1) year shall automatically be added to the term of the Agreement provided herein. Owner may make a written protest of the notice. Upon receipts by the Owner of a notice from the City of non-renewal, the City may, at any time prior to the annual renewal date of the Agreement, withdraw its

notice to Owner of non-renewal. If either City or Owner serves notice to the other of non-renewal in any year, the Agreement shall remain in effect for the balance of the term then remaining, either from its original execution or from the last renewal of the Agreement, whichever may apply.

3. Fees. Prior to recordation the Applicant shall pay the applicable fee in effect at the time recordation is requested.

4. Standards for Historical Property. During the term of this Agreement, the Historic Property shall be subject to the following conditions, requirements and restrictions:

A. Owner shall preserve and maintain the characteristics of historical significance of the Historic Property. Attached hereto, marked as Exhibits "B", and incorporated herein by this reference, is a list of those minimum standards and conditions for maintenance, use and preservation of the Historic Property, which shall apply to such property throughout the term of this Agreement.

B. Owner shall, where necessary, restore and rehabilitate the property according to the rules and regulations of the Office of Historic Preservation of the Department of Parks and Recreation, the United States Secretary of the Interior's Rehabilitation Standards, the State Historical Building Code, and the Ontario Development Code and in accordance with the attached schedule of potential improvements, drafted by the applicant and approved by the City Council, attached hereto as Exhibit "C".

C. Pursuant to Section 4.02.050 of the Ontario Development Code, Owner shall obtain a Certificate of Appropriateness for any alteration, addition, restoration, rehabilitation, repainting, resurfacing, and for each and every item listed in Exhibit "C", prior to commencement of work. Failure to obtain all necessary permits, including building permits, and approvals may result in cancellation of this Agreement as set forth on Paragraph 6, Cancellation herein.

D. Owner shall allow reasonable periodic examinations, by prior appointment, of the interior and exterior of the Historic Property by representatives of the County Assessor, State Department of Parks and Recreation, State Board of Equalization, and the City, as may be necessary to determine Owner's compliance with the terms and provisions of this Agreement.

5. Provision of Information of Corporation. Owner hereby agrees to furnish City with any and all information requested by the City, which may be necessary or advisable to determine compliance with the terms and provision of this Agreement.

6. Cancellation. City, following a duly noticed public hearing as set forth in California Government Code Sections 50280, et seq., may cancel this Agreement if it determines that Owner breached any of the conditions of this Agreement or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historic property. City may also cancel this Agreement if it determines that the Owner has failed to restore or rehabilitate the property in the manner specified in subparagraph 4(B) of this Agreement. In the event of cancellation, Owner may be subject to payment of those cancellation fees set forth in California Government Code Sections 50280, et seq.

7. Enforcement of Agreement. In lieu of and/or in addition to any provision to cancel the Agreement as referenced herein, City may specifically enforce, or enjoin the breach of, the terms of this Agreement. In the event of a default, under the provisions of this Agreement by Owner, City shall give written notice to Owner by registered or certified mail addressed to the address stated in this Agreement, and if such a violation is not corrected to the reasonable satisfaction of the City within thirty (30) days thereafter, or if not corrected within such reasonable time as may be required to cure the breach or default if said breach or default cannot be cured within thirty (30) days (provided that acts to cure the breach of default may be commenced within thirty (30) days and must be pursued to completion by Owner), then City may, without further notice, declare a default under the terms of this Agreement and may bring any action necessary to specifically enforce the obligations of Owner growing out of the terms of this Agreement, apply to any

court, state or federal, for injunctive relief against any violation by Owner or apply for such other relief against any violation by Owner or apply for such other relief an may be appropriate.

City does not waive any claim of default by Owner if City does not enforce or cancel this Agreement. All other remedies at law or in equity which are not otherwise provided for in this Agreement or in City's regulations governing historic properties are available to the City to pursue in the event that there is a breach of this Agreement. No waiver by City of any breach or default under this agreement shall be deemed to be a waiver of any other subsequent breach thereof or default herein under.

8. Binding Effect of Agreement. The Owner hereby subjects the Historic Property described in Exhibit "A" hereto to the covenants, reservations and restriction as set forth in this Agreement. City and Owner hereby declare their specific intent that the covenants, reservations and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors and assigns in title or interest to the Historic Property. Each and every contract, deed or other instrument hereinafter executed, covering or conveying the Historic Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions expressed in this Agreement regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

City and Owner hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth herein touch and concern the land in that Owner's legal interest in the Historic Property is rendered less valuable thereby. City and Owner hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the land by enhancing and maintaining the historic characteristics and significance of the Historic Property for the benefit of the public and the Owner.

9. Notice. Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below or at any other address as may be later specified by the parties hereto.

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

Attention: Planning Director

To Owner: Rafael Marquez and Jacqueline Gonzalez
119 East Princeton Street
Ontario, CA 91764

10. General Provisions.

A. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause them to be considered joint ventures or members of any joint enterprise.

B. Owner agrees to and shall hold City and its elected officials, officers, agents, and employees harmless from liability for damage or claims for damage for personal injuries, including death, and claims for property damage which may arise from the direct or indirect use or operations of Owner or those of his contractor, subcontractor, agent, employee or other person acting on his behalf which relates to the use, operation and maintenance of the Historic Property. Owner hereby agrees to and shall defend the City and its elected officials, officers, agents, and employees with respect to any and all actions for damages caused by, or alleged to have been caused by, reason of Owner's activities in connection with the Historic Property. This hold harmless provision applies to all damages and claims for damages suffered, or alleged to have been suffered, by reason of the operations referred to in this Agreement regardless of whether or not the City prepared, supplied or approved the plans, specifications or other documents for the Historic Property.

C. All of the agreements, rights, covenants, reservations and restrictions contained in this Agreement shall be binding upon and shall inure to the benefit of the parties herein, their heirs, successors, legal representatives, assigns and all persons acquiring any part or portion of the Historic Property, whether by operation of law or in any manner whatsoever.

D. In the event legal proceedings are brought by any party or parties to enforce or restrain a violation of any of the covenants, reservations or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover all reasonable attorney's fees to be fixed by the court, in addition to court costs and other relief ordered by the court.

E. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent preemptive legislation, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

F. This Agreement shall be construed and governed in accordance with the laws of the State of California.

11. Recordation. No later than twenty (20) days after the parties execute and enter into this Agreement, the City shall cause this Agreement to be recorded in the office of the County Recorder of the County of San Bernardino.

12. Amendments. This Agreement may be amended, in whole or in part, only by a written recorded instrument executed by the parties hereto.

IN WITNESS WHEREOF, City and Owner have executed this Agreement on the day and year first written above.

CITY OF ONTARIO

Dated:_____ By: _____
City Manager

Attest

_____
City Clerk

Approved as to Form

_____
City Attorney

Dated:_____ By: _____
Rafael Marquez, Owner

Dated:_____ By: _____
Jacqueline Gonzalez, Owner

Exhibit A: Historic Property Preservation Agreement
Legal Description

Address: 119 East Princeton Street **APN:** 1047-531-31 **File No.:** PHP22-011
Ontario, CA 91764

The property located at: 119 East Princeton Street
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is legally described as: LOT 1 OF F. C. BELL'S FIRST ADDITION TO THE CITY OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 21, PAGE 16 OF MAPS, IN THE OFFICE OF THE CONTY RECORDER OF SAID COUNTY.

APN: 1047-531-31-0-000

Exhibit B: Historic Property Preservation Agreement
Property Maintenance

Address: 119 East Princeton Street Ontario, CA 91764 **APN:** 1047-531-31 **File No.:** PHP22-011

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1. Dilapidated, deteriorating, or unrepaired structures, such as fences, roofs, doors, walls, and windows;
2. Scrap lumber, junk, trash, or debris;
3. Abandoned, discarded or unused objects or equipment, such as automobiles, automobile parts, furniture, stoves, refrigerators, cans, containers, or similar items;
4. Stagnant water or excavations, including unmaintained pools or spas;
5. Any device, decoration, design, structure or vegetation which is unsightly by reason of its height, condition, or its inappropriate location.

The property owner shall also comply with the provisions of the Duty to Keep in Good Repair Section of the Historic Preservation Ordinance (Sec. 9-1.7.01.045 of the Ontario Development Code) and all other applicable provisions of the City's Property Appearance – Nuisance Ordinance (Chapter 22 of Title 5 of the Ontario Municipal Code, Commencing at Sec. 5-22.02).

Exhibit C: Historic Property Preservation Agreement
Proposed Improvements

Address: 119 East Princeton Street Ontario, CA 91764 **APN:** 1047-531-31 **File No.:** PHP22-011

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2030:	Repair windows (broken glass, hardware, ropes and weight) and refinish wood as needed in 4 bedrooms on 2nd floor.
2031:	Restore and repair wood stairs, landing and banisters. Repair and restore bedroom doors and hardware at 2nd floor. Replace main sewer line in basement.
2032:	Repair concrete exterior steps at main entrance and concrete landing. Arborist to perform tree health assessment, tree trimming and removal if needed.

*Pursuant to Section 4.02.050 of the Ontario Development Code, Owner shall obtain a Certificate of Appropriateness for any alteration, addition, restoration, rehabilitation, repainting, resurfacing, and for each and every item listed in Exhibit “C”, prior to commencement of work. Failure to obtain all necessary permits, including building permits, and approvals may result in cancellation of this Agreement as set forth on

Paragraph 6, Cancellation herein.

CITY OF ONTARIO *Agenda Report* **November 15, 2022**	**SECTION:** **PUBLIC HEARINGS**
Department: Planning Prepared By: Elly Antuna Department: Planning Prepared By: Emilie Fernandez Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 19

SUBJECT: **A PUBLIC HEARING TO CONSIDER A RESOLUTION APPROVING THE DESIGNATION OF THE MAURICE JOHNSON HOUSE, LOCATED AT 409 NORTH SAN ANTONIO AVENUE, AS A LOCAL HISTORIC LANDMARK**

RECOMMENDATION: That the City Council adopt a resolution approving File No. PHP21-016, designating 409 North San Antonio (APN: 1048-314-11) as Local Historic Landmark No. 100.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: The approval of the Local Historic Landmark designation will not have a direct fiscal impact. However, if the designation is approved, the property owner will be eligible to apply for a Mills Act Contract which, if approved, would provide for a potential reduction in property taxes in exchange for an agreed-upon list of improvements to the property.

BACKGROUND & ANALYSIS: Mallory Jean, Robby Gibson, and Gray McMinn (property owners) requested that the Maurice Johnson House, located at 409 North San Antonio, be designated as a Local Historic Landmark. The Maurice Johnson House was constructed in the Folk Architectural style in 1946. The word Folk was first used in the 1800s. This style relies on the natural materials available and their functionality and will reflect local traditions. The Maurice Johnson House is an excellent example of the Folk architectural style, which is evident by the presence of the building's character-defining features, including the use of salvaged materials such as the stone siding and ornate doors. Other characteristics of the residence that are typical of the Folk architectural style include a simple construction method, irregular placement on the lot, and the extensive plantings surrounding the property. Other contributing historical features on the site include the detached garage/workshop, wooden shed, informal garden, and mature landscaping on the property.

HISTORIC SIGNIFICANCE: On October 25, 2022, the Historic Preservation Commission voted unanimously (6-0) to recommend that the City Council designate the Maurice Johnson House as a

Local Historic Landmark as it meets the local landmark designation criteria set forth in Section 4.02.040.B.2.d of the Ontario Development Code:

The historic resource embodies distinguishing architectural characteristics of a style, type, period, or method of construction.

The Maurice Johnson House is an excellent example of the Folk architectural style, which is evident by the presence of the building's character-defining features, including the use of salvaged materials such as the stone siding and ornate doors. Other characteristics of the residence that are typical of the Folk architectural style include a simple construction method, irregular placement on the lot, and the extensive plantings surrounding the property. The rubble construction residence is the only known example of this type in the City of Ontario and was built with many unique materials, including cement believed to have been salvaged from "A" Street (Holt Boulevard) concrete curbs, and a door from an early broadcasting station. Other contributing historical features include the detached garage/workshop, wooden shed, informal garden and mature landscaping on the property.

ENVIRONMENTAL REVIEW: The application was reviewed pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"). Per Section 21065 of the CEQA Guidelines, the local landmark designation is not considered a project.

Historic Ontario
The "Model Colony"

HISTORIC PRESERVATION COMMISSION STAFF REPORT

October 25, 2022

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

FILES NO.: PHP21-016

SUBJECT: A public hearing to consider a Local Landmark Designation of a single-family residence (Tier III Eligible Historic Resource) located at the northwest corner of San Antonio Avenue and D Street at 409 North San Antonio Avenue. **City Council action is required**.

PROPERTY OWNER: Mallory Jean and Robby Gibson, and Gray McMinn

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RECOMMENDED ACTION: That the Historic Preservation Commission consider File No. PHP21-016, and recommend approval to the City Council, pursuant to the facts and reasons contained in the staff report and attached resolution.

PROJECT ANALYSIS:

(1) Architectural Description

Historic Name: The Maurice Johnson House
Architectural Style: Folk
Date Built: 1946

The one-story residence was constructed in the Folk architectural style in 1946, by Maurice Johnson. The residence is T-shaped in plan with a flat roof, and large, exposed eaves and rafters. The residence is clad in stacked rough, irregular shaped concrete blocks on all facades except for a section at the northwest corner of the house that is clad in vertical wood panels. The residence features an off-center entrance on the primary (south) façade, with a set of multi-paned steel casement windows to the west of the main entry. A corner window in the same design and pattern is at the southeast corner of the residence. The windows on the remainder of the residence consist of steel, multi-pane fixed and casement windows and wood fixed windows. The residence also



Figure 1: Maurice Johnson House



Figure 2: Maurice Johnson House Detached Garage/Workshop

Case Planner:	Emilie Fernandez
Planning Director Approval:	
Submittal Date:	09/08/2021

Hearing Body	*Date*	*Decision*	*Action*
HPSC	09/08/2022	Approval	Recommend
PC	10/25/2022	Approval	Recommend
CC	11/15/2022		Final

features board-and batten doors, a stone chimney, and heavy exposed wood beams.

As depicted in Exhibit B: Site Plan, approximately 20 feet northeast of the residence is a detached garage and workshop constructed in the same style and materials as the residence, including irregular shaped concrete block walls and vertical wood paneling. It is believed that the main door on the western façade of the garage is from the first broadcasting station in San Bernardino County. The wooden double door features a geometric pattern and octagon shaped glass panes. The east façade of the garage features a row of clerestory wood windows, alternating between a clear glass pane and a decorative frosted glass pane. Also present on the site and 5 feet northwest of the primary residence, is a pool shed constructed of the same horizontal wood panels visible on the residence and garage. Building permits indicate that the garage and shed were constructed in 1947. An additional shed located west of the pool shed was constructed at a later date. Located along the west property line is a freeform shaped pool, according to building permit records, it was built in 1966. A small pond is located west of the garage. The property is surrounded with mature trees that contribute to the rustic character of the property, creating a "forest" like setting.

(2) History and Historic Context – The Maurice Johnson house is the only known example of Folk architecture in the Ontario area, built using recycled or salvaged materials. The builder, Maurice Johnson built the house in 1946 using materials that were available at the time. The Folk style of architecture is best known as a building being constructed outside any tradition, without professional guidance. The word Folk was first used in the 1800s, often a design would be made based on available local materials, their functionality, and reflect local traditions. The Maurice Johnson House was built in this style by Maurice Johnson who is believed to have been the son-in-law of Kostany Stys, a significant contributor to Folk architecture and "rubble construction" in the region.

The Great Depression brought about a lack of building resources which inspired Kostany Styes, a Polish immigrant, to build homes using salvaged materials in the nearby Claremont and Montclair areas. Styes built 15 Folk style residences in Claremont using salvaged materials, including rubble and stone between 1925-1940. The collection of homes known as "The Russian Village" was designated as a historic district and was added to the National Register of Historic Places in 1978 as a definitive example of Folk architecture. The houses were recognized based off the unique nature of the folk architecture and the social and economic setting that contributed to the construction of these houses. The rubble construction house at 409 North San Antonio Avenue is the only known example of this type in the City of Ontario and was built with many unique materials, including cement believed to have been salvaged from "A" street (Holt), concrete curbs, a door from an early broadcasting station and formal gardens. The house was completed in 1946, shortly after Kostany Styes completed his collection of homes in Claremont.

(3) Landmark Designation Criteria – A historic resource may be designated a local "historic landmark" by the City if it meets the criteria for listing in the National Register of Historic Places, the California Register of Historic Resources, or it meets the Local

Landmark Designation criteria in the Ontario Development Code, which is based on architecture and history. Historic resources must also have integrity for the time in which they are significant. The aspects considered when evaluating historic integrity of a property include design, setting, materials and workmanship, location, feeling and association. The architectural integrity of the residence and detached garage are high as they retain most of the original exterior features and have had minimal alterations. The integrity of the site is moderate, the preservation of the mature trees on the site contribute to the historic significance as it conveys the feeling and association of early life in Ontario. The removal of a mature tree in between the house and garage, new construction of storage sheds and a pool, and installation of chain link fencing along the perimeter of the property have reduced the integrity from high to moderate. The City currently has 99 locally designated historic landmarks and designation of the Maurice Johnson House would be Local Landmark No. 100.

The Maurice Johnson House is an excellent example of the Folk architectural style, which is evident by the presence of the building's character-defining features, including the use of salvaged materials such as the stone siding and ornate doors. Other characteristics of the residence that are typical of the Folk architectural style include a simple construction method, irregular placement on the lot, and the extensive plantings surrounding the property. The rubble construction residence is the only known example of this type in the City of Ontario and was built with many unique materials including cement believed to have been salvaged from Holt Boulevard (formerly known as "A" Street), concrete curbs, a door from an early broadcasting station and formal gardens.

On September 8, 2022, the Historic Preservation Subcommittee determined that the Maurice Johnson House was a Tier III Historic Resource eligible for individual listing on the Ontario Register of Historic Resources, Exhibit D: Tier Determination, and recommended local landmark approval finding that it met the following designation criteria (d) in Section 4.02.040 of the Development Code:

The historic resource embodies distinguishing architectural characteristics of a style, type, period, or method of construction. The Maurice Johnson House is an excellent example of the Folk architectural style, which is evident by the presence of the building's character-defining features, including the use of salvaged materials such as the stone siding and ornate doors. Other characteristics of the residence that are typical of the Folk architectural style include a simple construction method, irregular placement on the lot, and the extensive plantings surrounding the property. The rubble construction residence is the only known example of this type in the City of Ontario and was built with many unique materials including cement believed to have been salvaged from "A" Street, concrete curbs, a door from an early broadcasting station and formal gardens.

COMPLIANCE WITH THE ONTARIO PLAN: The proposed landmark designation 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.

- Focus Resources in Ontario's Commercial and Residential Neighborhoods

(2) Vision.

DYNAMIC STABILITY

- An appreciation for the "personality and charm" of this community, preserving important characteristics and values even as growth and change occur, all the while retaining a distinctive local feel where people love to be.

(3) Governance.

- **G1 Decision Making:** Sustained decision-making that consistently moves Ontario towards its Vision by using The Ontario Plan as a framework for assessing choices.

  - G1-1 Consistency with Policies. We require that staff recommendations to the City Council be consistent with adopted City Council Priorities (Goals and Objectives) and The Policy Plan

  - 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).

Community Design Element:

- **Goal CD-1 Image & Identity:** A dynamic, progressive city containing distinct and complete places that foster a positive sense of identity and belonging among residents, visitors, and businesses.

  - CD-1.1 City Identity. We take actions that are consistent with the City being a leading urban center in Southern California while recognizing, enhancing, and preserving the character of our existing viable neighborhoods.

  - CD-1.3 Existing Neighborhoods. We require the existing character of viable residential and non-residential neighborhoods be preserved, protected, and enhanced.

- **Goal CD-4 Historic Preservation:** Historic buildings, streets, landscapes, and neighborhoods, as well as the story of Ontario's people, businesses, and social and community organizations, have been preserved and serve as a focal point for civic pride and identity.

- CD-4.6 Promotion of Public Involvement in Preservation. We engage in programs to publicize and promote the City's and the public's involvement in preservation efforts.

- **Goal CD-5 Protection of Investment:** A sustained level of maintenance and improvement of properties, buildings, and infrastructure that protects the property values and encourages additional public and private investments.

- CD5-4 Neighborhood Involvement. We encourage active community involvement to implement programs aimed at the beautification and improvement of neighborhoods.

Exhibit A: Aerial Map



Exhibit B: Site Plan

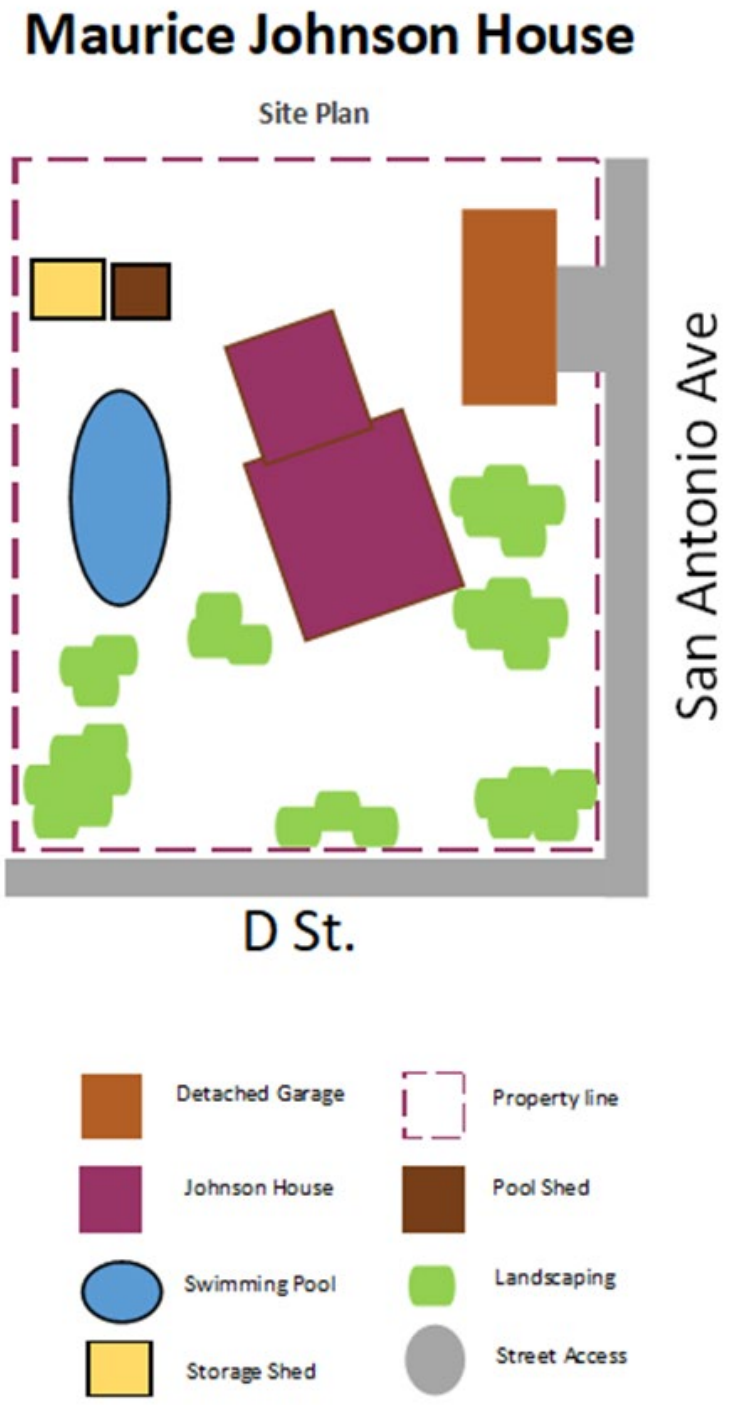


Exhibit C: Site Photographs and Contributing Buildings

The Maurice Johnson House

Year Built:

1946

Architectural Style:

Folk Architecture

Description:

The house has a flat roof and large exposed eves and rafters. The house was built with rough concrete blocks and salvage stone siding that are believed to be salvaged from "A" street, now known as Holt Blvd.
The majority of windows are steel, multi pane fixed & casement windows. With a few wood fixed windows



Image 1: View looking west Primary entrance



Image 2: Rear, view looking east

Private garage/ Workshop

Year Built:

1947

Architectural Style:

Folk Architecture

Description:

The detached garage, also built in 1946 has been used as a workshop and is constructed with similar concrete block walls and vertical wood paneling as the main house.

The garage also has unique doors pictured in the middle photo of the west elevation. The 1980s citywide architectural survey indicates that the doors were from the first broadcasting station in San Bernardino County. Clerestory windows are featured in front of the garage with different patterns and colors, and attached is a carport on the east side



Image 3: Detached Garage, east elevation



Image 4: Detached Garage, west elevation

Pool Shed

Year Built:

1947

Architectural Style:

Folk Architecture

Description:

The pool shed, also built in 1946 has been used as a workshop and is constructed with similar concrete block walls and vertical wood paneling as the main house.



Image 5: Original Pool shed

Informal Garden

Architectural Style:

Cultural Landscape

Description:

Informal Gardens located on east of the residence containing various species of trees.



Image 6: Landscaping of informal gardens

Exhibit D: Tier Determination

HISTORIC PRESERVATION SUBCOMMITTEE

TIER DETERMINATION

Date: September 8, 2022

Location: 409 North San Antonio Avenue

Historic Name: Maurice Johnson House

APN: 1048-314-11

Description:

Decision Date:	September 8, 2022
File No.:	PHP22-014
Decision No.:	
Tier Determination:	**III**
Current Historic Status:	Eligible



The single-family residence located at 409 North San Antonio Avenue was constructed in 1946 and is located at the northwest corner of D Street and San Antonio Avenue. The residence is setback approximately 30 feet from San Antonio Avenue and 85 feet from D Street and is plotted at an approximate 45-degree angle, with the primary entrance oriented toward the southeast corner of the property. The property is largely screened from public view with dense landscaping along the southern and eastern sides of the property, including Canary Island pine (Pinus canariensis).

The one-story residence was constructed in the Folk style of architecture by Maurice Johnson. The residence is T-shaped in plan with a flat roof, and large, exposed eaves and rafters. The residence is clad in stacked rough, irregular shaped concrete blocks on all facades except for a section at the northwest corner of the house that is clad in vertical wood panels. The residence features an off-center entrance on the primary (south) facade with a set of multi-paned steel casement windows to the west of the main entry. A corner window in the same design and pattern is at the southeast corner of the residence. The windows on the remainder of the residence consist of steel, multi-pane fixed and casement windows and wood fixed windows. The residence also features board-and batten doors, a stone chimney, and heavy exposed wood beams.

Approximately 20 feet northeast of the residence, is a detached garage and workshop constructed in the same style and materials as the residence, including irregular shaped concrete block walls and vertical wood paneling. The 1980s Citywide architectural survey notes that the double wide man door on the western façade of the garage is salvaged from the first broadcasting station in San Bernardino County. The wooden double door features a geometric pattern and octagon shaped glass panes. The east façade of the garage features a row of clerestory wood windows, alternating between a clear glass pane and a decorative frosted glass pane.

☒ **INDIVIDUAL PROPERTY** ☐ **HISTORIC DISTRICT**

TIER DETERMINATION

☐ **Tier I** – Properties which should not be demolished or significantly altered. These properties are the most significant historical or cultural properties and must meet any of the following:

- ☐ A property listed on the Ontario Register of Historical Resources and meets at least 1 of the architectural category and 3 criteria in the history category as listed below;
- ☐ A contributing structure in a district where the district meets 1 of the criterion in the architecture category and 3 criterion in the history category.

☐ **Tier II** – Properties where demolition should be avoided. These properties must meet any of the following:

- ☐ Any property listed or determined eligible for listing in the National Register of Historic Places; or
- ☐ Any property listed or determined eligible for listing in the California Register of Historic Resources; or
- ☐ A property listed on the Ontario Register of Historical Resources and meets at least 2 of the criteria in either the architecture or history categories; or
- ☐ A contributing structure in an Eligible Historic District where the district meets at least 2 of the criteria in either architecture or history categories.

☒ **Tier III** – Properties where demolition should be avoided where possible, but may be appropriate under certain circumstances. These properties must be one of the following:

- ☐ Designated Historic Landmarks, or
- ☐ Contributing structures in a Designated Historic District, or
- ☒ Eligible Historical Resources as defined in Section 4.02.040 of the Ontario Development Code.

TIER CRITERIA

Architecture (Check all that apply)

☒ The structure is (or the district contains resources which are) a prototype of, or one of the finest examples of a period, style, architectural movement, or construction in the City or a particular style of architecture or building type.

☐ The structure is (or the district contains resources which are) the first, last, only, or one of the finest examples, notable works, or the best surviving work by an architect or designer of major importance to the City, state or nation.

Explanation:

The Maurice Johnson House is an excellent example of the Folk style of architecture, which is evident by the presence of the building's character-defining features, including the use of salvaged materials such as the stone siding and ornate doors. The residence also features steel multi-pane casement windows, heavy wood beams, and wide exposed eaves. Other characteristics of the residence that are

typical of the architectural style include a simple construction method, irregular placement on the lot, and the extensive plantings surrounding the property. The house is the only known example of "rubble construction" in the City of Ontario having been built with many unique materials including concrete block siding believed to have been salvaged from "A" street (Holt Boulevard), concrete curbs, a door from an early broadcasting station and formal gardens.

History (Check all that apply)

☐ It is the location of an historic event(s) that have had a significant contribution to the history of the City, state or nation.

☐ It is associated with a business, company, or individual that has made a significant, cultural, social, or scientific contribution to the City, state, or nation.

☐ It is identified with a person(s) who has exerted a major influence on the heritage or history of the City, state, or nation.

☐ It embodies the ideals or principles of the "Model Colony" or furthers the ideals or principals established by the Chaffey Brothers.

☐ It has a direct relationship to one of the principle historic contexts in the City's history.

☐ It is related with a business, company or individual significant in the agricultural history of the City.

Explanation:

According to a city directory search and building permit history, Maurice Johnson built the house in 1946 and owned it until 1949. Maurice Johnson is reported to be the son-in-law of Kostany Stys, a significant contributor to Folk architecture and "rubble construction" in the region. Stys built 15 Folk style residences in Claremont using salvaged materials including rubble and stone between 1925 and 1940. The collection of homes known as "The Russian Village" was added to the National Register of Historic Places in 1978. While the association with Styes is notable, research has failed to indicate that Stys had direct involvement in the construction of the residence at 409 North San Antonio Avenue. Other owners of the home include Dr. Harold Cole who owned the home from 1950 until 1958, and Richard McMinn who acquired the property in 1959. The property has remained in the McMinn family to this day.

RESOLUTION NO. PC22-055

A RESOLUTION OF THE HISTORIC PRESERVATION COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE FILE NO. PHP21-016, TO DESIGNATE THE MAURICE JOHNSON HOUSE LOCATED AT 409 NORTH SAN ANTONIO AVENUE, AS LOCAL HISTORIC LANDMARK NO. 100 AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1048-314-11.

WHEREAS, Mallory Jean and Robby Gibson, and Gray McMinn ("Applicant") has filed an Application for the approval of a Local Historic Landmark Designation, File No. PHP21-016, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the City's character and history are reflected in its cultural, historical, and architectural heritage, with an emphasis on the "Model Colony" as declared by an act of the Congress of the United States and presented at the St. Louis World's Fair in 1904; and

WHEREAS, the City's historical foundations should be preserved as living parts of community life and development in order to foster an understanding of the City's past so that future generations may have a genuine opportunity to appreciate, enjoy, and understand Ontario's rich heritage; and

WHEREAS**,** the Community Design element of The Ontario Plan (General Plan) sets forth Goals and Policies to conserve Ontario's historic buildings and districts; and

WHEREAS, the Maurice Johnson House, a Folk architectural style, single-family residence constructed in 1946, located at 409 North San Antonio Avenue (APN: 1048-314-11) is worthy of preservation and designation as a Local Historic Landmark; and

WHEREAS, the detached garage/workshop, wooden shed, informal garden, and mature landscaping contributes to the historic significance of the property; and

WHEREAS, on September 8, 2022, the Historic Preservation Subcommittee of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Decision No. HPSC22-005, determining that the Maurice Johnson House met the Tier III Historic Resource Criteria as set forth in Section 4.02.040 (Historic Preservation-Local Historic Landmark and Local District Designations, Historic Resource Tiering, and Architectural Conservation Areas) of the Ontario Development Code; and

WHEREAS, the designation is not considered a project pursuant to Section 21065 of the CEQA Guidelines; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Historic Preservation Commission the responsibility and authority to review and make recommendation to the City Council on the subject Application; 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 September 8, 2022, the Historic Preservation Subcommittee of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Decision No. HPSC22-006, recommending the Historic Preservation Commission recommend to the City Council approval of the Application; and

WHEREAS, on October 25, 2022, the Historic Preservation 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 Historic Preservation Commission of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the recommending body for the Project, the Historic Preservation 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 Historic Preservation Commission, the Historic Preservation Commission finds as follows:

(1) The designation is not considered a project pursuant to Section 21065 of the CEQA Guidelines.

(2) The CEQA determination reflects the independent judgment of the Historic Preservation Commission.

SECTION 2: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Historic Preservation Commission during the above-referenced hearing, and upon the specific findings set forth in Section 1, above, the Historic Preservation Commission hereby concludes that the Maurice Johnson House meets local landmark designation criteria (d) as contained in Section 4.02.040 (Historic Preservation-Local Historic Landmark and Local District Designations, Historic Resource Tiering, and Architectural Conservation Areas) of the Ontario Development Code, finding

that “[t]he historic resource embodies distinguishing architectural characteristics of a style, type, period, or method of construction.” The Maurice Johnson House is an excellent example of the Folk architectural style, which is evident by the presence of the building’s character-defining features, including the use of salvaged materials such as the stone siding and ornate doors. Other characteristics of the residence that are typical of the Folk architectural style include a simple construction method, irregular placement on the lot, and the extensive plantings surrounding the property. The rubble construction residence is the only known example of this type in the City of Ontario and was built with many unique materials including cement believed to have been salvaged from “A” Street (now known as Holt Boulevard), concrete curbs, a door from an early broadcasting station and formal gardens.

SECTION 3: ***Historic Preservation Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 2, above, the Historic Preservation Commission hereby RECOMMENDS THE CITY COUNCIL APPROVE THE LOCAL LANDMARK DESIGNATION.

SECTION 4: ***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 5: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East “B” Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 6: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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The Secretary Pro Tempore for the Historic Preservation 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 Historic Preservation Commission of the City of Ontario at a regular meeting thereof held on the 25th day of October 2022, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Jim Willoughby
Historic Preservation Commission
Chairman

ATTEST:

Rudy Zeledon
Planning Director and
Secretary to the Historic Preservation Commission

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

I, Gwen Berendsen, Secretary Pro Tempore of the Historic Preservation Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC22-055, was duly passed and adopted by the Historic Preservation Commission of the City of Ontario at their regular meeting held on October 25, 2022, by the following roll call vote, to wit:

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

NOES: None

ABSENT: Ricci

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

RESOLUTION NO._____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PHP21-016, THE DESIGNATION OF THE MAURICE JOHNSON HOUSE, LOCATED AT 409 NORTH SAN ANTONIO AVENUE, AS A LOCAL HISTORIC LANDMARK AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1048-314-11.

WHEREAS, Mallory Jean and Robby Gibson, and Gray McMinn ("Applicant") have filed an Application for the approval of a Local Historic Landmark Designation, File No. PHP21-016, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the City's character and history are reflected in its cultural, historical, and architectural heritage with an emphasis on the "Model Colony" as declared by an act of the Congress of the United States and presented at the St. Louis World's Fair in 1904; and

WHEREAS, the City's historical foundations should be preserved as living parts of community life and development in order to foster an understanding of the City's past so that future generations may have a genuine opportunity to appreciate, enjoy, and understand Ontario's rich heritage; and

WHEREAS, the Community Design element of The Ontario Plan (General Plan) sets forth goals and policies to conserve Ontario's historic buildings and districts; and

WHEREAS, the Maurice Johnson House is situated on 0.89 acres of land located at the northwest corner of North San Antonio Avenue and West D Street at 409 North San Antonio (APN: 1048-314-11), and is legally described as ONTARIO COLONY LANDS S 181.5 FT E 120 FT LOT 956; and

WHEREAS, the Maurice Johnson House is a single-story residence constructed in the Folk style of architecture in 1946 and the detached garage/workshop, wooden shed, informal garden, and mature landscaping on the property contributes to the historic significance of the property; and

WHEREAS, on September 8, 2022, the Historic Preservation Subcommittee of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Decision No. HPSC22-005, determining that the Maurice Johnson House met the Tier III Historic Resource Criteria as set forth in Section 4.02.040 (Historic Preservation-Local Historic Landmark and Local District Designations, Historic Resource Tiering, and Architectural Conservation Areas) of the Ontario Development Code; and

WHEREAS, on September 8, 2022, the Historic Preservation Subcommittee reviewed this property and determined that it met local landmark designation criteria (d) as set forth in in Section 4.02.040 (Historic Preservation-Local Historic Landmark and

Local District Designations, Historic Resource Tiering, and Architectural Conservation Areas) of the Ontario Development Code) and unanimously recommended approval, adopting its Decision No. HPSC22-006; and

WHEREAS, on October 25, 2022, the Historic Preservation Commission reviewed this property and unanimously recommended approval, adopting its Resolution No. PC22-055.

NOW, THEREFORE, BE IT RESOLVED 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 that the designation is not considered a project pursuant to Section 21065 of the CEQA Guidelines.

SECTION 2. ***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 above, the City Council hereby concludes as follows:

(1) The historic resource meets criteria (d) for local landmark designation as contained in Section 4.02.040 (Historic Preservation-Local Historic Landmark and Local District Designations, Historic Resource Tiering, and Architectural Conservation Areas) of the Ontario Development Code); *The historic resource embodies distinguishing architectural characteristics of a style, type, period, or method of construction.*

(2) The Maurice Johnson House is an excellent example of the Folk architectural style, which is evident by the presence of the building's character-defining features, including the use of salvaged materials such as the stone siding and ornate doors. Other characteristics of the residence that are typical of the Folk architectural style include a simple construction method, irregular placement on the lot, and the extensive plantings surrounding the property. The rubble construction residence is the only known example of this type in the City of Ontario and was built with many unique materials including cement believed to have been salvaged from "A" Street (Holt Boulevard), concrete curbs, and a door from an early broadcasting station. Other contributing historical features include the detached garage/workshop, wooden shed, informal garden, and mature landscaping on the property.

SECTION 2. ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2 above, the City Council hereby APPROVES and designates the Maurice Johnson House, located at 409 North San Antonio, as Local Historic Landmark No. 100 and that is subject to the provisions of the Historic Preservation Ordinance.

SECTION 4. ***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 5. ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 6. ***Certification to Recordation.*** The City Clerk of the City of Ontario, California, shall cause a copy of this Resolution to be recorded in the office of the County Recorder of San Bernardino, County, California.

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

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

PASSED, APPROVED, AND ADOPTED this 15th day of November 2022.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2022- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 15, 2022 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No.2022- duly passed and adopted by the Ontario City Council at their regular meeting held November 15, 2022.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **November 15, 2022**	**SECTION:** **PUBLIC HEARINGS**
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: 20

SUBJECT: **A PUBLIC HEARING TO CONSIDER A DEVELOPMENT AGREEMENT (FILE NO. PDA22-001) BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC., TO ESTABLISH THE TERMS AND CONDITIONS ASSOCIATED WITH TENTATIVE TRACT MAP 20529 (FILE NO. PMTT22-010), AN 11.11-ACRE PROPERTY GENERALLY LOCATED ON THE EAST SIDE OF TWINKLE AVENUE, APPROXIMATELY 350 FEET SOUTH OF FUTURE CHINO AVENUE, WITHIN PLANNING AREAS 4A, 4B, AND 4C (RESIDENTIAL - SFD/ATTACHED) LAND USE DISTRICTS OF THE RICH HAVEN SPECIFIC PLAN (APN: 0218-161-14).**

RECOMMENDATION: That the City Council introduce and waive further reading of an Ordinance approving a Development Agreement (File No. PDA22-001) between the City of Ontario and BrookCal Ontario LLC., to establish the terms and conditions associated with Tentative Tract Map 20529 (File No. PMTT22-010), an 11.11-acre property generally located on the east side of Twinkle Avenue, approximately 350 feet south of future Chino Avenue, within Planning Areas 4A, 4B, and 4C (Residential - SFD/Attached) 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
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. PDA22-001) 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 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. PDA22-001) 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.

The Agreement proposes to include 11.11 acres of land within Planning Areas 4A, 4B, and 4C (Residential – SFD/Attached) land use districts 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 20529 (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 generally located on the east side of Twinkle Avenue approximately 350 feet south of future Chino Avenue and proposes to subdivide approximately 11.11 acres of land into three (3) numbered lots and 15 lettered lots, to facilitate the development of 120 multi-family dwelling units, drive aisles, utility easement, public/private streets, landscaped 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

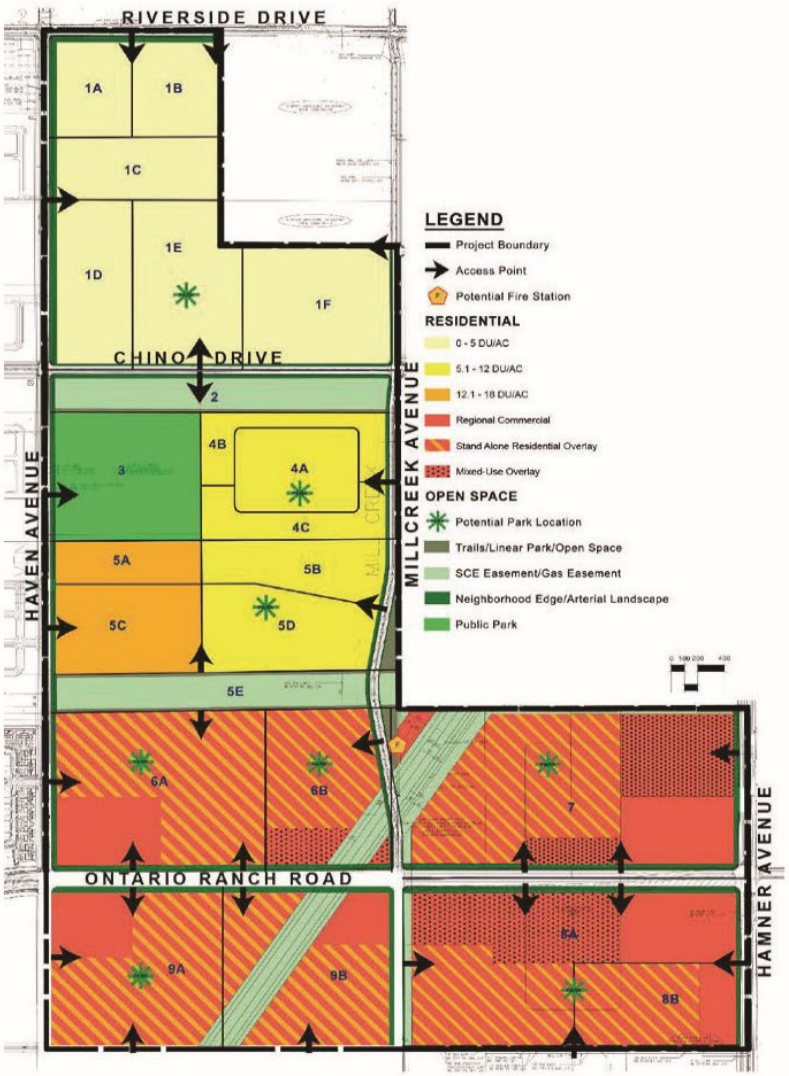
Agreement address funding for all new City expenses created by the project, which includes: Development Impact Fees ("DIF") for construction of public improvements (i.e., streets and bridges, sewer, water, storm drain and fiber); Public Service Funding to ensure adequate provisions of public services (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 October 25, 2022, the Planning Commission found that the Agreement was consistent with State law, The Ontario Plan, and the City's Development Agreement policies. As a result, the Planning Commission adopted Resolution No. PC22-062 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, as the Project site is not one of the properties in the Housing Element Sites contained in Table B-1 (Housing Element Sites Inventory) of the Housing Element Technical Report.

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 ("ONT ALUCP"), establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. 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 ONT 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.

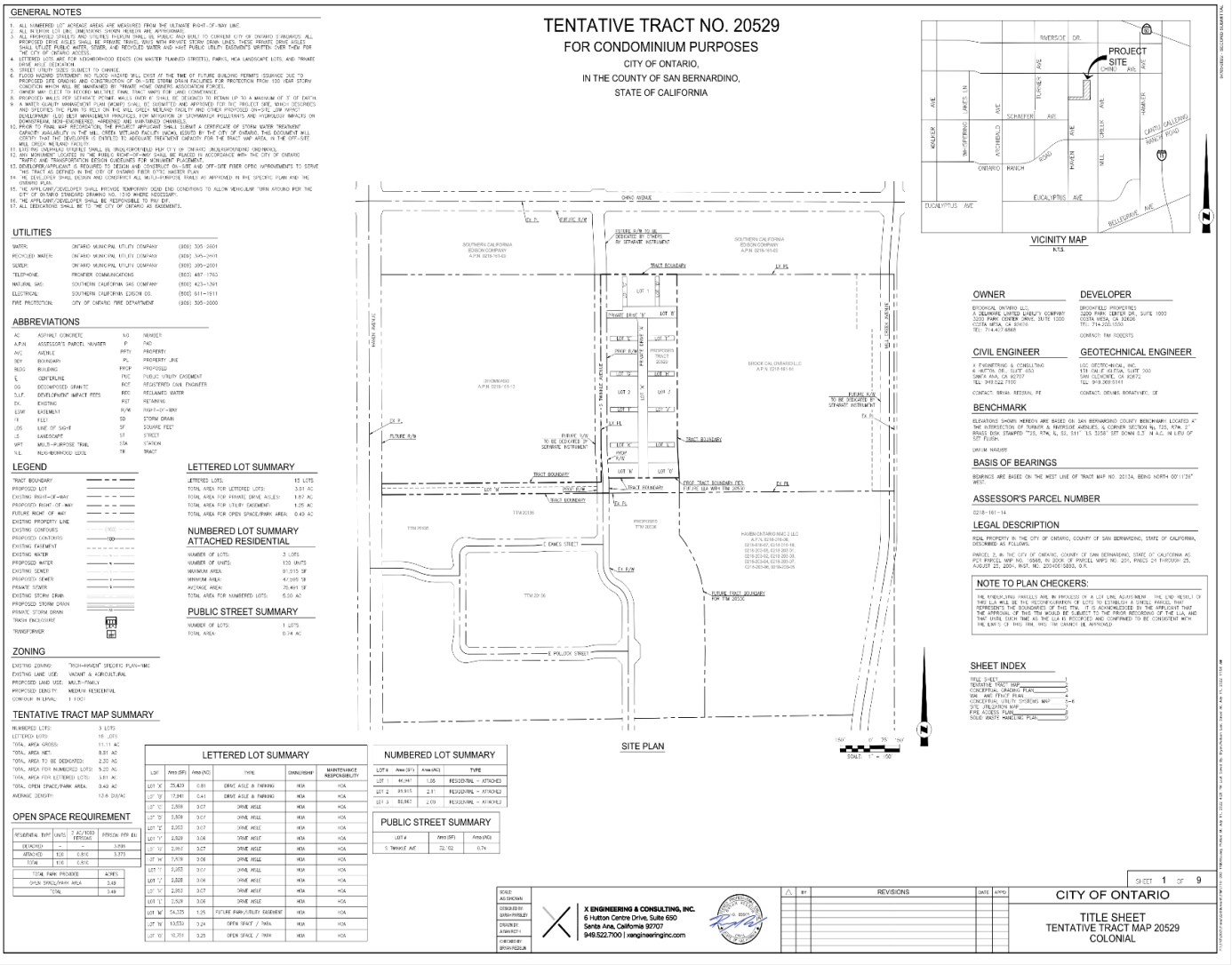
ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously reviewed in conjunction with the Rich-Haven Specific Plan (File No. PSP05-004), for which an Environmental Impact Report (State Clearinghouse No. 2006051081) was certified by the City Council on December 4, 2007. This application is consistent with the previously adopted Environmental Impact Report and introduces no new significant environmental impacts. The proposed project is located within the Airport Influence Area of Ontario International Airport and was evaluated and found to be consistent with the policies and criteria of the Ontario International Airport Land Use Compatibility Plan (ONT ALUCP).



* 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. 20529



CITY OF ONTARIO PLANNING DEPARTMENT

PLANNING COMMISSION STAFF REPORT

October 25, 2022

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

FILE NO: PDA22-001

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 Tentative Tract Map 20529 (PMTT22-010), an 11.11 acre property generally located on the east side of Twinkle Avenue approximately 350 feet south of future Chino Avenue, within Planning Areas 4A, 4B, and 4C (Residential – SFD/Attached) land use districts of the Rich-Haven Specific Plan; (APN: 218-161-14) **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. PDA22-001) 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 11.11 acres of land generally located 400 feet southwest of Chino Avenue and Mill Creek Avenue, within Planning Areas 4A, 4B, and 4C (Residential – SFD/Attached) land use districts 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 The Ontario Plan (TOP).

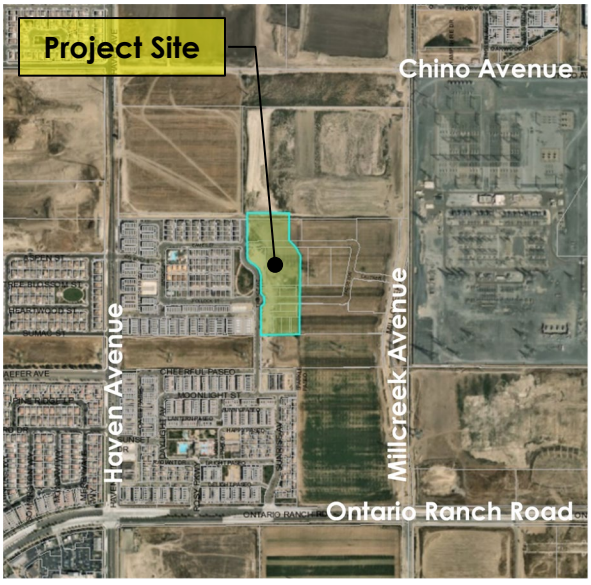


Figure 1: Project Location

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-

Case Planner:	Derrick Womble, Departmental Administrator
Planning Director Approval:	
Submittal Date:	N/A

Hearing Body	*Date*	*Decision*	*Action*
DAB	N/A	N/A	N/A
PC	10/25/2022	Approval	Recommend
CC	11/15/2022		Final

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. PDA22-001) 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 11.11 acres of land within Planning Areas 4A, 4B, and 4C (Residential – SFD/Attached) land use districts 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 20529 (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 generally located on the east side of Twinkle Avenue approximately 350 feet south of future Chino Avenue, and proposes to subdivide approximately 11.11 acres of land into three (3) numbered lots and 15 lettered lots, to facilitate the development of 120 multi-family dwelling units, drive aisles, utility easement, public/private streets, landscaped 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.

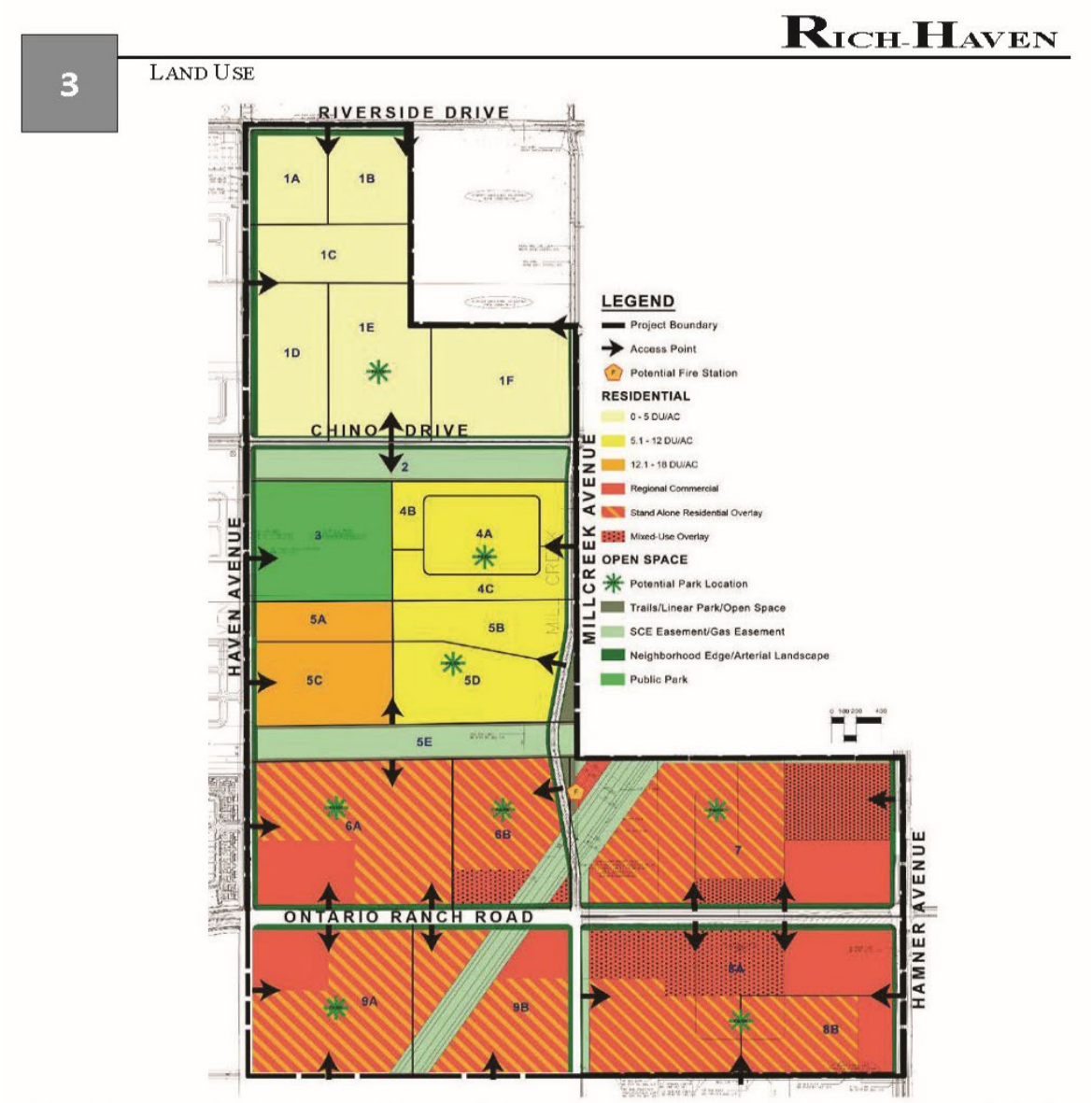
- CD5-2 Maintenance of Infrastructure. We require the continual maintenance of infrastructure.

HOUSING ELEMENT COMPLIANCE: The Project is consistent with the Housing Element of the Policy Plan (general plan) component of The Ontario Plan, as the Project site is not one of the properties in the Housing Element Sites contained in Table B-1 (Housing Element Sites Inventory) of the Housing Element Technical Report.

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 ("ONT ALUCP"), establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. 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 ONT 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 reviewed in conjunction with the Rich-Haven Specific Plan (File No. PSP05-004), for which an Environmental Impact Report (State Clearinghouse No. 2006051081) was certified by the City Council on December 4, 2007. This application is consistent with the previously adopted Environmental Impact Report and introduces no new significant environmental impacts. The proposed project is located within the Airport Influence Area of Ontario International Airport and was evaluated and found to be consistent with the policies and criteria of the Ontario International Airport Land Use Compatibility Plan (ONT ALUCP).

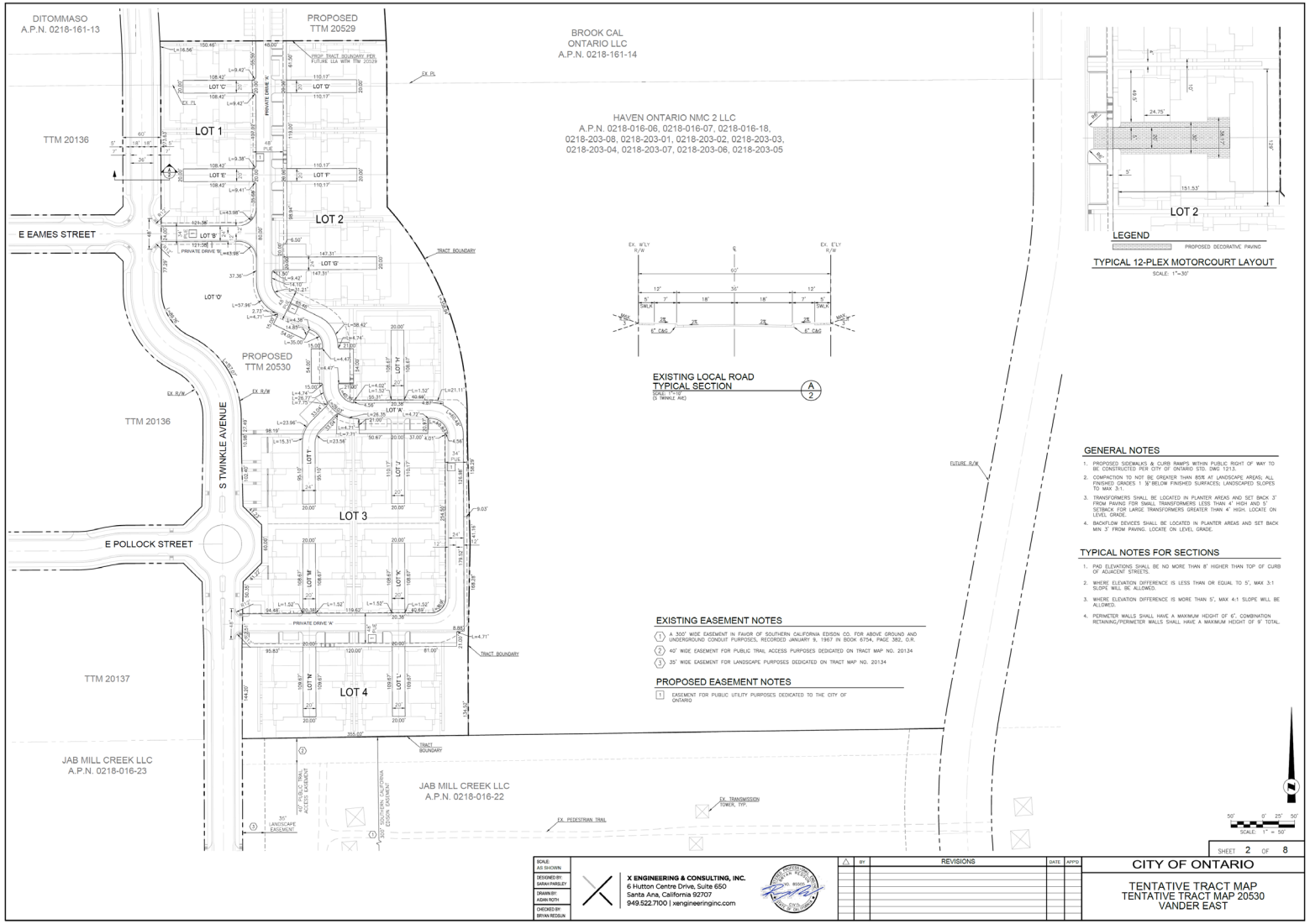
Exhibit A—RICH HAVEN SPECIFIC PLAN LAND USE PLAN



* 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. 20529



RESOLUTION NO. PC22-062

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THE CITY COUNCIL APPROVE FILE NO. PDA22-001, 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 NO. 20529 (FILE NO. PMTT22-010), AN 11.11 ACRE PROPERTY GENERALLY LOCATED ON THE EAST SIDE OF TWINKLE AVENUE APPROXIMATELY 350 FEET SOUTH OF FUTURE CHINO AVENUE, WITHIN PLANNING AREAS 4A, 4B, AND 4C (RESIDENTIAL – SFD/ATTACHED) LAND USE DISTRICTS OF THE RICH HAVEN SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0218-161-14.

WHEREAS, BrookCal Ontario, LLC., ("Applicant") has filed an Application for the approval of a Development Agreement, File No. PDA22-001, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 11.11 acres of land generally located on the east side of Twinkle Avenue approximately 350 feet south of future Chino Avenue, within Planning Areas 4A, 4B, and 4C (Residential – SFD/Attached) land use districts of the Rich Haven Specific Plan; and

WHEREAS, the Applicant has submitted a Tentative Tract Map 20529 (File No. PMTT22-010) to subdivide approximately 11.11 acres of land into three (3) numbered lots and 15 lettered lots, to facilitate the development of 120 multi-family dwelling units, drive aisles, utility easement, public/private streets, landscaped neighborhood edges and common open space purposes; and

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with the Rich-Haven Specific Plan (File No. PSP05-004), for which an Environmental Impact Report (State Clearinghouse No. 2006051081) was certified by the City Council on December 4, 2007. This application is consistent with the previously adopted Environmental Impact Report 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 October 25, 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 the Rich-Haven Specific Plan (File No. PSP05-004), for which an Environmental Impact Report (State Clearinghouse No. 2006051081) was certified by the City Council on December 4, 2007. This application is consistent with the previously adopted Environmental Impact Report 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 body for the Project, the PLANNING COMMISSION finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the Project site is not one of the properties in the Housing Element Sites contained in Table B-1 (Housing Element Sites Inventory) of the Housing Element Technical Report.

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 11.11 acres of land generally located on the east side of Twinkle Avenue approximately 350 feet south of future Chino Avenue, within Planning Areas 4A, 4B, and 4C (Residential – SFD/Attached) land use districts of the Rich Haven Specific Plan; and

b. The Development Agreement establishes parameters for the development of the Planning Areas 4A, 4B, and 4C Residential – SFD/Attached) land use districts 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 20529 (File No. PMTT22-010) as long as the Owner complies with the terms and conditions of the Specific Plan and EIR. Tentative Tract Map 20529 is generally located on the east side of Twinkle Avenue approximately 350 feet south of future Chino Avenue, and proposes to subdivide 11.11 acres of land into three (3) numbered lots and 15 lettered lots, to facilitate the development of 120 multi-family dwelling units, drive aisles, utility easement, public/private streets, landscaped neighborhood edges and common open space purposes; 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 the Rich-Haven Specific Plan (File No. PSP05-004), for which an Environmental Impact Report (State Clearinghouse No. 2006051081) was certified by the City Council on December 4, 2007; 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.

PDA22-001) attached hereto as "Attachment A," and incorporated herein by this reference.

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

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

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

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

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 25th day of October 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. PC22-062, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on October 25, 2022, by the following roll call vote, to wit:

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

NOES: None

ABSENT: Ricci

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

File No. PDA22-001

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. PDA22-001

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. PDA22-001

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. 20529 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 twelve (12) 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: 714.200.1550

(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 twelve (12) Model Units, private common recreation facilities and sales facilities, CITY may issue a maximum of twelve (12) 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 for Phase 1 and Phase 2, as described in Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the storm drain improvements for Phase 1, as described in Exhibit E and depicted in Exhibit F. OWNER agrees to design, construct, and complete the storm drain improvements for Phase 2, within three (3) years of the issuance of the first building permit for Production Units within Phase 1, as described in Exhibit E and depicted in Exhibit F. In no event shall OWNER be issued occupancy for any Production Unit within Phase 1 until the completion of the storm drain improvements within Phase 2, 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 for Phase 1 and Phase 2 as described in Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the street improvements for Phase 1, as described in Exhibit E and depicted in Exhibit F.

OWNER agrees to design, construct, and complete the street improvements for Phase 2, within three (3) years of the issuance of the first building permit for Production Units in Phase 1, as described in Exhibit E and depicted in Exhibit F. In no event shall OWNER be issued occupancy for any Production Unit within Phase 1 until the completion of the street improvements within Phase 2, 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 improvements for Phase 1 and Phase 2 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 for Phase 1, 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. OWNER agrees to design, construct, and complete the water and recycled water improvements for Phase 2, within three (3) years of the issuance of the first building permit for Production Units in Phase 1, as described in Exhibit E and depicted in Exhibit F. In no event shall OWNER be issued occupancy for any Production Unit within Phase 1 until the completion of the water and recycled water improvements within Phase 2, as described in Exhibit E and depicted in Exhibit F.

3.7.4 OWNER agrees that development of the Property shall require the extension of sewer improvements for Phase 1 and Phase 2, as described in the attached Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the sewer improvements for Phase 1, as described in Exhibit E and depicted in Exhibit F. OWNER agrees to design, construct, and complete the sewer improvements for Phase 2, within three (3) years of the issuance of the first building permit for Production Units in Phase 1, as described in Exhibit E and depicted in Exhibit F. In no event shall OWNER be issued occupancy for any Production Unit within Phase 1 until the completion of the sewer improvements within Phase 2, 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 for Phase 1 and Phase 2 as described in the attached Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the fiber optic communication improvements for Phase 1, as described in Exhibit E and depicted in Exhibit F. OWNER agrees to design, construct, and complete the fiber optic improvements for Phase 2, within three (3) years of the issuance of the first building permit for Production Units in Phase 1, as described in Exhibit E and depicted in Exhibit F. In no event shall OWNER be issued occupancy for any Production Unit within Phase 1 until the completion of the fiber optic improvements within Phase 2, as described in Exhibit E and depicted in Exhibit F.

3.7.6 OWNER further acknowledges and agrees that if the Phase 2 infrastructure improvements, as described in Exhibit E and depicted in Exhibit F, are not completed prior to the request of occupancy for Phase 1 Production Units, then OWNER, in order to satisfy the condition of completion of the Phase 2 infrastructure improvements prior to the issuance of occupancy permits for Phase 1 Production Units, shall deposit funds into an escrow account equal to the cost for the Phase 2 improvements (amount subject to the sole discretion of the City Engineer). OWNER's deposit does not alleviate the requirement for OWNER to construct and complete the Phase 2 infrastructure improvements. OWNER shall make their best reasonable efforts to receive right-of-way approvals from Southern California Edison and/or other agencies to complete the Phase 2 infrastructure improvements. OWNER shall provide periodic updates to the CITY every ninety (90) days, or upon written request from the CITY.

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. 20529.

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 Three Dollars Twelve Cents ($3.12) per square foot of residential development within OWNER's Project or, if pre-paid as set forth below, Two Dollars Seventy-Four Cents ($2.74) per square foot of residential development within OWNER's Project. If OWNER has partially complied with the requirements of Section 4.4.1 by construction or rehabilitation of less than the minimum number of units, then the Affordability In-lieu Fee shall be recalculated and reduced in consideration of the number and type of affordable units provided. The Affordability In-Lieu Fee shall be paid by OWNER to City no later than prior to the issuance of each building permit within OWNER's Project based on the square footage of the residential unit for which such building permit is sought; provided however that OWNER may, at OWNER's election, pre-pay such Affordability In-Lieu Fee by paying such Affordability In-Lieu Fee within thirty (30) days following the earliest discretionary approval by the City for OWNER's Project, including, but not limited to, any general plan amendment, specific plan adoption, development agreement, tentative map approval, variance, conditional use permit, or resolution of intention to form any public financing mechanism. The Three Dollars Twelve Cents Cents ($3.12) and the Two Dollars Seven

Cents ($2.74) per square foot amounts shall automatically be increased annually, commencing on July 1, 2023, 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 thirty (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.

4.7.4 Effectiveness of Agreement. Notwithstanding anything set forth in this Agreement, CITY and OWNER each acknowledge, confirm, and agree that (i) the CITY approval of this Agreement and (ii) the effectiveness of this Agreement, in each case, are conditioned upon OWNER's admission to NMC Builders as a "Member" (if not already a Member) thereof pursuant to the terms and conditions of the operating agreement of NMC Builders within thirty (30) days following the Effective Date of this Agreement. OWNER'S failure to maintain membership in NMC Builders LLC is and shall be a Default under this Agreement.

4.8 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 $1,443.71 per Single Family Detached Dwelling Unit, $1,251.15 per Multiple-Family Dwelling Unit, $1,048.96 per Gated Apartment Community Dwelling Unit, and $.27 per square foot for Non-Residential buildings. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year, unless otherwise modified by the CITY. CITY shall be the sole and exclusive lead agency in the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. In addition to the rights of the CITY pursuant to section 5.2 hereof, CITY shall have the right, but not the obligation, to condition the formation of any CFD, assessment district or other public

financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the condition to the formation of any CFD, assessment district or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit the City's ability to take any and all necessary steps requisite to the formation of the CFD to finance City services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district or to issue and sell bonds.

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

6.1.1 Time for and Initiation of Periodic Review. The CITY shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by the OWNER with the terms of this Agreement. The OWNER shall submit an Annual Monitoring Report to CITY, in a form acceptable to the City Manager, along with any applicable processing charge within ten (10) days after each anniversary date of the Effective Date of this Agreement. Within fifteen (15) days after the receipt of the Annual Monitoring Report, CITY shall review the Annual Monitoring Report. Prior to the expiration of the fifteen (15) day review period, CITY shall either issue a notice of continuing compliance or a notice of non-compliance and a notice of CITY's intent to conduct a Special Review pursuant to Sections 6.1.2 through 6.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his designee.

6.1.2 Initiation of Special Review. A special review may be called either by agreement between the parties or by initiation in one or more of the following ways:

(1) Recommendation of the Planning staff;

(2) Affirmative vote of at least four (4) members of the Planning Commission; or

(3) Affirmative vote of at least three (3) members of the City Council.

6.1.3 Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that the CITY intends to undertake a special review of this Agreement to the OWNER. Such notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission.

6.1.4 Public Hearing. The Planning Commission shall conduct a hearing at which the OWNER must demonstrate good faith compliance with the terms of this Agreement. The burden of proof on this issue is upon the OWNER.

6.1.5 Findings Upon Public Hearing. The Planning Commission shall determine upon the basis of substantial evidence whether or not the OWNER has, for the period under review, complied in good faith with the terms and conditions of this Agreement.

6.1.6 Procedure Upon Findings.

(a) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.

(b) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has not complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission may recommend to the City Council to modify or terminate this Agreement.

(c) The OWNER may appeal a determination pursuant to paragraph (b) to the City Council in accordance with the CITY's rule for consideration of appeals in zoning matters generally.

6.2 Proceedings Upon Modification or Termination. If, upon a finding under Section 6.1.6(b), the CITY determines to proceed with modification or termination of this Agreement, the CITY shall give notice to the property OWNER of its intention so to do. The notice shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not the CITY proposes to terminate or to modify this Agreement; and

(c) Other information that the CITY considers necessary to inform the OWNER of the nature of the proceeding.

6.3 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, the OWNER shall be given an opportunity to be

heard. The OWNER shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the OWNER. If the City Council finds, based upon substantial evidence in the administrative record, that the OWNER has not complied in good faith with the terms and conditions of the agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the CITY. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, OWNER is found to be in compliance with this Agreement, CITY shall, upon written request by OWNER, issue a Certificate of Agreement Compliance ("Certificate") to OWNER stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) OWNER is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. OWNER may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or OWNER, CITY shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [RESERVED]

8. DEFAULT AND REMEDIES.

8.1 Remedies in General. It is acknowledged by the parties that CITY would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that CITY shall not be liable in damages to OWNER, or to any successor in interest of OWNER, or to any other person, and OWNER covenants not to sue for damages or claim any damages:

(a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or

(b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

(c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

8.2 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all parties for the following reasons:

(a) Money damages are unavailable against CITY as provided in Section 8.1 above.

(b) Due to the size, nature and scope of the project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts.

8.3 Release. Except for nondamage remedies, including the remedy of specific performance and judicial review as provided for in Section 6.5, OWNER, for itself, its successors and assignees, hereby releases the CITY, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the CITY because it entered into this Agreement or because of the terms of this Agreement.

8.4 Termination or Modification of Agreement for Default of OWNER. Subject to the provisions contained in 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:

BEING A PORTION OF PARCEL 2 OF PARCEL MAP NO. 16568, AS PER MAP FILED IN PAGES 24 AND 25 IN PARCEL MAP BOOK NO. 204, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN BERNARDINO COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 6 OF TRACT MAP NO. 20134, AS PER MAP FILED IN BOOK 357, PAGES 23 THROUGH 33, INCLUSIVE, OF TRACT MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID CORNER BEING ON THE SOUTHERLY LINE OF SAID PARCEL MAP NO. 16568; THENCE EASTERLY ALONG SAID SOUTHERLY LINE NORTH 89°37’37” EAST, A DISTANCE OF 355.00 FEET,

THENCE NORTH 00°11’36” WEST, A DISTANCE OF 20.60 FEET, TO THE BEGINNING OF A TANGENT 1385.00 FOOT RADIUS CURVE, CONCAVE WESTERLY;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°13’59”, A LENGTH OF
78.15 FEET;

THENCE NORTH 03°25’35” WEST, A DISTANCE OF 99.85 FEET, TO THE BEGINNING OF A TANGENT 615.00 FOOT RADIUS CURVE, CONCAVE EASTERLY;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°14’00”, A LENGTH OF
34.71 FEET;

THENCE NORTH 00°11’35” WEST, A DISTANCE OF 761.32 FEET, TO THE NORTHERLY LINE OF SAID PARCEL 2;

THENCE ALONG SAID NORTHERLY LINE, SOUTH 89°58’40” WEST, A DISTANCE OF 385.00 FEET, TO THE EASTERLY LINE OF PARCEL 1 OF SAID PARCEL MAP NO.16568;

EXHIBIT "A" CONTINUED

THENCE SOUTHERLY ALONG SAID EASTERLY LINE, SOUTH 00°11’35” EAST, A DISTANCE OF
946.80 FEET, TO THE SOUTHERLY LINE OF SAID PARCEL 1;

THENCE WESTERLY ALONG SAID SOUTHERLY LINE, SOUTH 89°37’37” WEST, A DISTANCE OF 1168.19 FEET, TO THE CENTERLINE OF HAVEN AVENUE, AS SHOWN ON SAID PARCEL MAP NO. 16568:

THENCE SOUTHERLY ALONG SAID CENTERLINE, SOUTH 00°11’36” EAST, A DISTANCE OF
50.00 FEET, TO THE SOUTHERLY LINE OF SAID PARCEL 2;

THENCE EASTERLY ALONG SAID SOUTHERLY LINE, NORTH 89°37’37” EAST, A DISTANCE OF 1207.01 FEET, TO THE NORTHWEST CORNER OF LOT 6 OF TRACT MAP NO. 20134 AND THE POINT OF BEGINNING.

CONTAINING:
442,924 SQUARE FEET / 10.168 ACRES GROSS, MORE OR LESS.
439,824 SQUARE FEET / 10.097 ACRES NET, MORE OR LESS

SUBJECT TO ALL COVENANTS, CONDITIONS, RESERVATIONS, RESTRICTIONS, RIGHT-OF- WAY AND EASEMENTS OF RECORD, IF ANY.

EXHIBIT "B"
TO DEVELOPMENT AGREEMENT

Map showing Property and its location

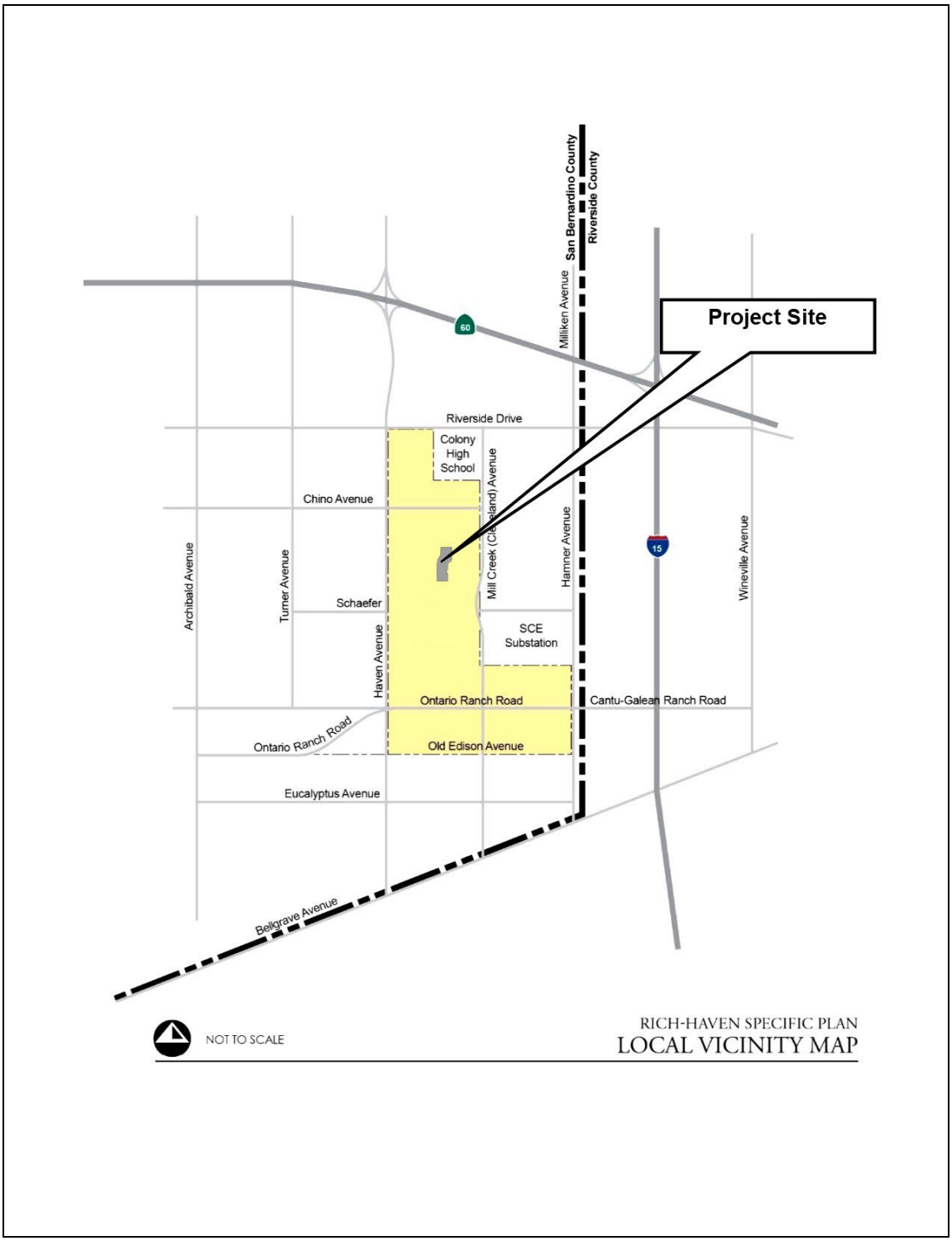


EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

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.

A) PHASE 1 IMPROVEMENTS include but not limited to the street, water, recycled water, sewer, storm drain, fiber optic, and traffic signal improvements along Twinkle Avenue.

B) PHASE 2 IMPROVEMENTS include but not limited to the street, water, recycled water, sewer, storm drain, fiber optic, and traffic signal improvements, north on Twinkle Avenue and west along Chino Avenue to Haven Avenue.

C) If the PHASE 2 IMPROVEMENTS are not completed prior to the request of occupancy for Phase 1 Production Units, then OWNER shall deposit funds into an escrow account equal to the cost for the Phase 2 improvements, subject to the sole discretion of the City Engineer.

EXHIBIT "F"
TO DEVELOPMENT AGREEMENT

Depiction of Required Infrastructure Improvements

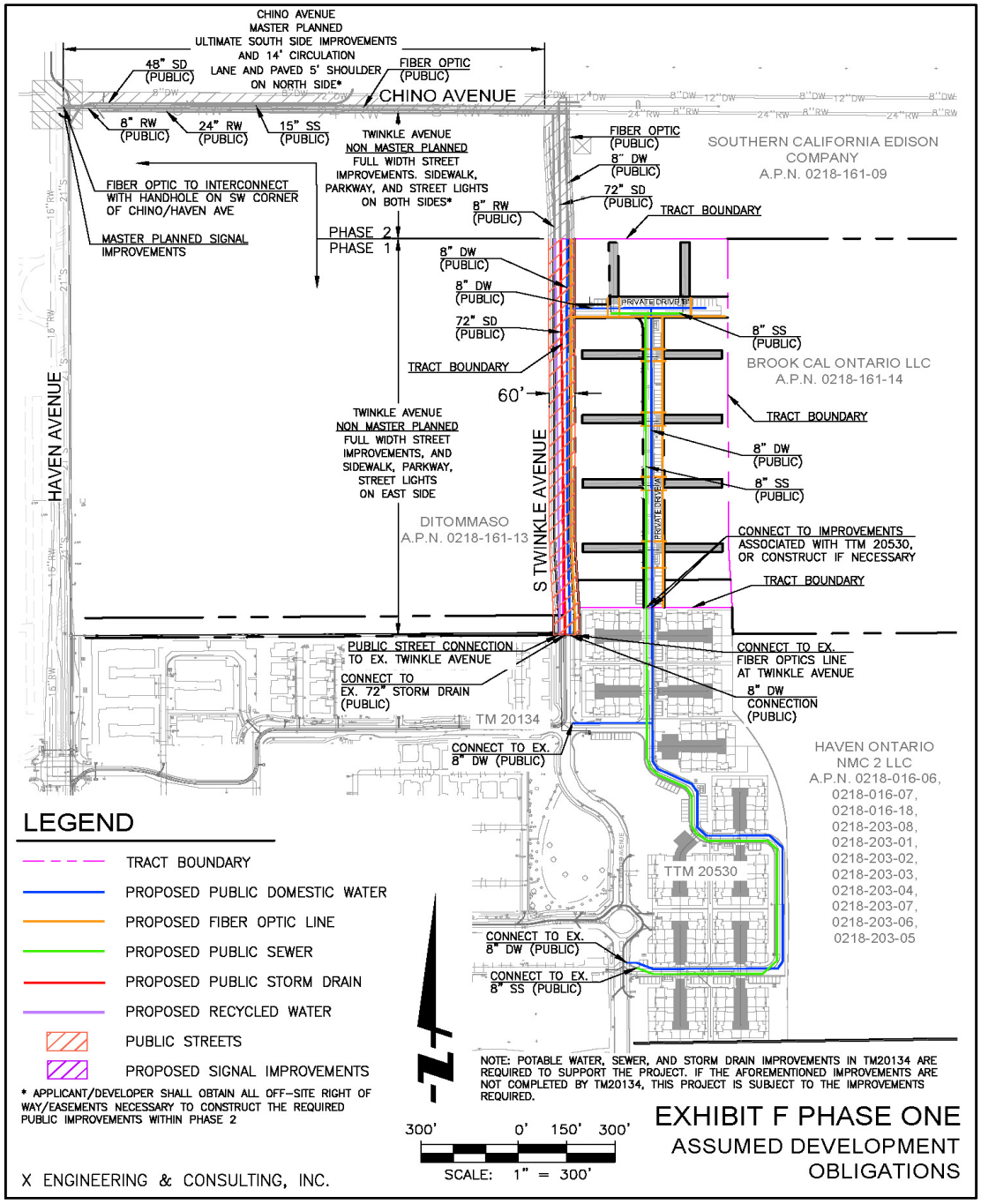


EXHIBIT "F" CONTINUED

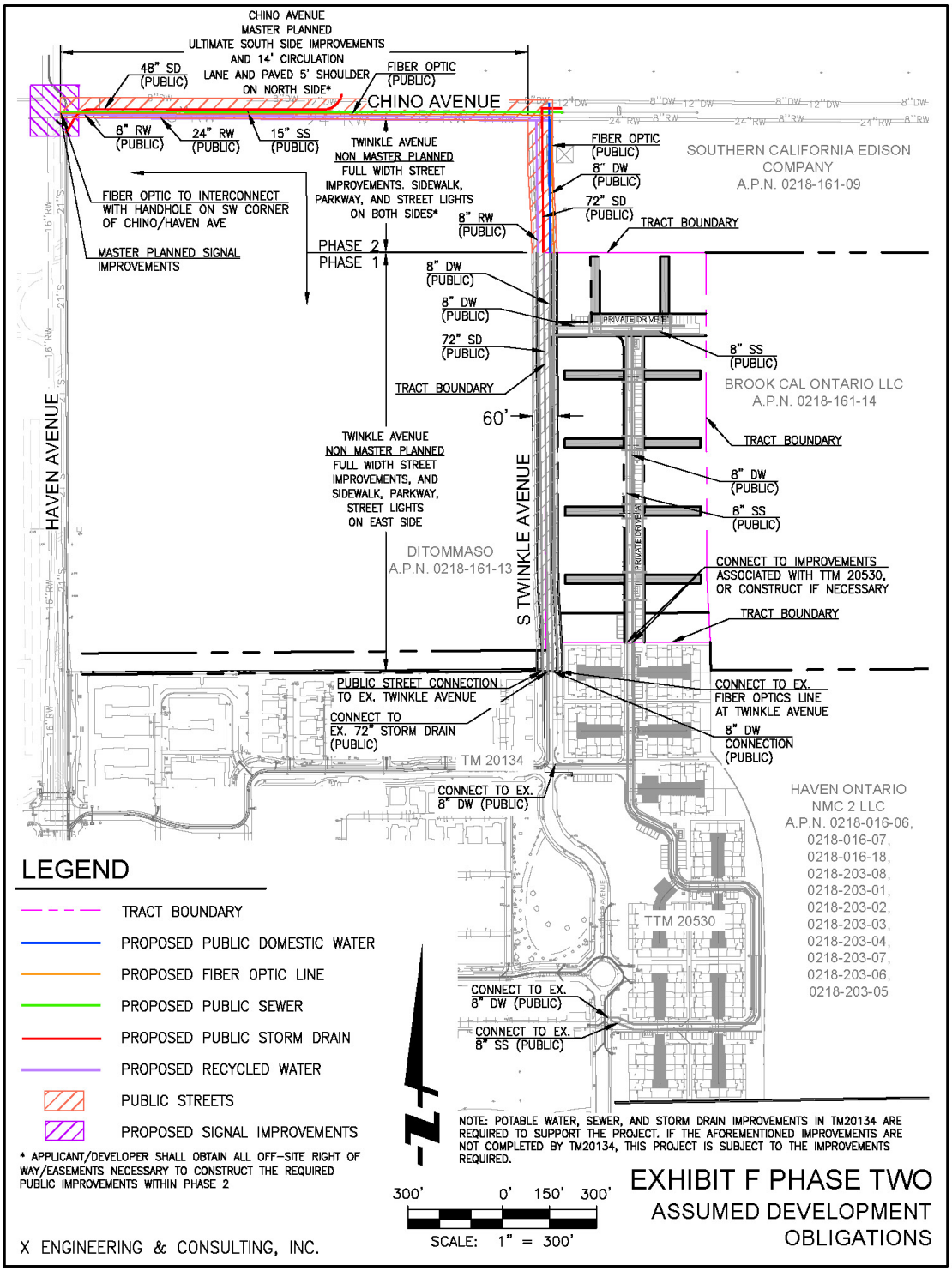


Exhibit "G"
TO DEVELOPMENT AGREEMENT

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. PDA22-001, 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 NO. 20529 (FILE NO. PMTT22-010), AN 11.11 ACRE PROPERTY GENERALLY LOCATED ON THE EAST SIDE OF TWINKLE AVENUE APPROXIMATELY 350 FEET SOUTH OF FUTURE CHINO AVENUE, WITHIN PLANNING AREAS 4A, 4B, AND 4C (RESIDENTIAL – SFD/ATTACHED) LAND USE DISTRICTS OF THE RICH HAVEN SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0218-161-14.

WHEREAS, BrookCal Ontario, LLC., ("Applicant") has filed an Application for the approval of a Development Agreement, File No. PDA22-001, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 11.11 acres of land generally located on the east side of Twinkle Avenue approximately 350 feet south of future Chino Avenue, within Planning Areas 4A, 4B, and 4C (Residential – SFD/Attached) land use districts of the Rich Haven Specific Plan; and

WHEREAS, the Applicant has submitted a Tentative Tract Map 20529 (File No. PMTT22-010) to subdivide approximately 11.11 acres of land into three (3) numbered lots and 15 lettered lots, to facilitate the development of 120 multi-family dwelling units, drive aisles, utility easement, public/private streets, landscaped neighborhood edges and common open space purposes; and

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with the Rich-Haven Specific Plan (File No. PSP05-004), for which an Environmental Impact Report (State Clearinghouse No. 2006051081) was certified by the City Council on December 4, 2007. This application is consistent with the previously adopted Environmental Impact Report and introduces no new significant environmental impacts; 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 ("ONT"), which encompasses lands within parts of San Bernardino,

Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (ALUCP), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on October 25, 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. PC22-062 recommending the City Council approve the Application; and

WHEREAS, on November 15, 2022, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1. ***Environmental Determination and Findings.*** As the 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 the Rich-Haven Specific Plan (File No. PSP05-004), for which an Environmental Impact Report (State Clearinghouse No. 2006051081) was certified by the City Council on December 4, 2007. This application is consistent with the previously adopted Environmental Impact Report 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 body for the Project, the PLANNING COMMISSION finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the Project site is not one of the properties in the Housing Element Sites contained in Table B-1 (Housing Element Sites Inventory) of the Housing Element Technical Report.

SECTION 5. ***Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan.

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

SECTION 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 11.11 acres of land generally located on the east side of Twinkle Avenue approximately 350 feet south of future Chino Avenue, within Planning Areas 4A, 4B, and 4C (Residential – SFD/Attached) land use districts of the Rich Haven Specific Plan; and

(b) The Development Agreement establishes parameters for the development of the Planning Areas 4A, 4B, and 4C Residential – SFD/Attached) land use districts 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 20529 (File No. PMTT22-010) as long as the Owner complies with the terms and conditions of the Specific Plan and EIR. Tentative Tract Map 20529 is generally located on the east side of Twinkle Avenue approximately 350 feet south of future Chino Avenue, and proposes to subdivide 11.11 acres of land into three (3) numbered lots and 15 lettered lots, to facilitate the development of 120 multi-family

dwelling units, drive aisles, utility easement, public/private streets, landscaped neighborhood edges and common open space purposes; 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 the Rich-Haven Specific Plan (File No. PSP05-004), for which an Environmental Impact Report (State Clearinghouse No. 2006051081) was certified by the City Council on December 4, 2007; 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 4, above, the City Council hereby APPROVES the herein described Development Agreement (File No. PDA22-001), 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 15th day of November 2022.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held _____ 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 _____ and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

File No. PDA22-001

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. PDA22-001

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. PDA22-001

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. 20529 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 twelve (12) 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: 714.200.1550

(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 twelve (12) Model Units, private common recreation facilities and sales facilities, CITY may issue a maximum of twelve (12) 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 for Phase 1 and Phase 2, as described in Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the storm drain improvements for Phase 1, as described in Exhibit E and depicted in Exhibit F. OWNER agrees to design, construct, and complete the storm drain improvements for Phase 2, within three (3) years of the issuance of the first building permit for Production Units within Phase 1, as described in Exhibit E and depicted in Exhibit F. In no event shall OWNER be issued occupancy for any Production Unit within Phase 1 until the completion of the storm drain improvements within Phase 2, 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 for Phase 1 and Phase 2 as described in Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the street improvements for Phase 1, as described in Exhibit E and depicted in Exhibit F.

OWNER agrees to design, construct, and complete the street improvements for Phase 2, within three (3) years of the issuance of the first building permit for Production Units in Phase 1, as described in Exhibit E and depicted in Exhibit F. In no event shall OWNER be issued occupancy for any Production Unit within Phase 1 until the completion of the street improvements within Phase 2, 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 improvements for Phase 1 and Phase 2 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 for Phase 1, 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. OWNER agrees to design, construct, and complete the water and recycled water improvements for Phase 2, within three (3) years of the issuance of the first building permit for Production Units in Phase 1, as described in Exhibit E and depicted in Exhibit F. In no event shall OWNER be issued occupancy for any Production Unit within Phase 1 until the completion of the water and recycled water improvements within Phase 2, as described in Exhibit E and depicted in Exhibit F.

3.7.4 OWNER agrees that development of the Property shall require the extension of sewer improvements for Phase 1 and Phase 2, as described in the attached Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the sewer improvements for Phase 1, as described in Exhibit E and depicted in Exhibit F. OWNER agrees to design, construct, and complete the sewer improvements for Phase 2, within three (3) years of the issuance of the first building permit for Production Units in Phase 1, as described in Exhibit E and depicted in Exhibit F. In no event shall OWNER be issued occupancy for any Production Unit within Phase 1 until the completion of the sewer improvements within Phase 2, 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 for Phase 1 and Phase 2 as described in the attached Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the fiber optic communication improvements for Phase 1, as described in Exhibit E and depicted in Exhibit F. OWNER agrees to design, construct, and complete the fiber optic improvements for Phase 2, within three (3) years of the issuance of the first building permit for Production Units in Phase 1, as described in Exhibit E and depicted in Exhibit F. In no event shall OWNER be issued occupancy for any Production Unit within Phase 1 until the completion of the fiber optic improvements within Phase 2, as described in Exhibit E and depicted in Exhibit F.

3.7.6 OWNER further acknowledges and agrees that if the Phase 2 infrastructure improvements, as described in Exhibit E and depicted in Exhibit F, are not completed prior to the request of occupancy for Phase 1 Production Units, then OWNER, in order to satisfy the condition of completion of the Phase 2 infrastructure improvements prior to the issuance of occupancy permits for Phase 1 Production Units, shall deposit funds into an escrow account equal to the cost for the Phase 2 improvements (amount subject to the sole discretion of the City Engineer). OWNER's deposit does not alleviate the requirement for OWNER to construct and complete the Phase 2 infrastructure improvements. OWNER shall make their best reasonable efforts to receive right-of-way approvals from Southern California Edison and/or other agencies to complete the Phase 2 infrastructure improvements. OWNER shall provide periodic updates to the CITY every ninety (90) days, or upon written request from the CITY.

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. 20529.

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 Three Dollars Twelve Cents ($3.12) per square foot of residential development within OWNER's Project or, if pre-paid as set forth below, Two Dollars Seventy-Four Cents ($2.74) per square foot of residential development within OWNER's Project. If OWNER has partially complied with the requirements of Section 4.4.1 by construction or rehabilitation of less than the minimum number of units, then the Affordability In-lieu Fee shall be recalculated and reduced in consideration of the number and type of affordable units provided. The Affordability In-Lieu Fee shall be paid by OWNER to City no later than prior to the issuance of each building permit within OWNER's Project based on the square footage of the residential unit for which such building permit is sought; provided however that OWNER may, at OWNER's election, pre-pay such Affordability In-Lieu Fee by paying such Affordability In-Lieu Fee within thirty (30) days following the earliest discretionary approval by the City for OWNER's Project, including, but not limited to, any general plan amendment, specific plan adoption, development agreement, tentative map approval, variance, conditional use permit, or resolution of intention to form any public financing mechanism. The Three Dollars Twelve Cents Cents ($3.12) and the Two Dollars Seven

Cents ($2.74) per square foot amounts shall automatically be increased annually, commencing on July 1, 2023, 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 thirty (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.

4.7.4 Effectiveness of Agreement. Notwithstanding anything set forth in this Agreement, CITY and OWNER each acknowledge, confirm, and agree that (i) the CITY approval of this Agreement and (ii) the effectiveness of this Agreement, in each case, are conditioned upon OWNER's admission to NMC Builders as a "Member" (if not already a Member) thereof pursuant to the terms and conditions of the operating agreement of NMC Builders within thirty (30) days following the Effective Date of this Agreement. OWNER'S failure to maintain membership in NMC Builders LLC is and shall be a Default under this Agreement.

4.8 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 $1,443.71 per Single Family Detached Dwelling Unit, $1,251.15 per Multiple-Family Dwelling Unit, $1,048.96 per Gated Apartment Community Dwelling Unit, and $.27 per square foot for Non-Residential buildings. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year, unless otherwise modified by the CITY. CITY shall be the sole and exclusive lead agency in the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. In addition to the rights of the CITY pursuant to section 5.2 hereof, CITY shall have the right, but not the obligation, to condition the formation of any CFD, assessment district or other public

financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the condition to the formation of any CFD, assessment district or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit the City's ability to take any and all necessary steps requisite to the formation of the CFD to finance City services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district or to issue and sell bonds.

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

6.1.1 Time for and Initiation of Periodic Review. The CITY shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by the OWNER with the terms of this Agreement. The OWNER shall submit an Annual Monitoring Report to CITY, in a form acceptable to the City Manager, along with any applicable processing charge within ten (10) days after each anniversary date of the Effective Date of this Agreement. Within fifteen (15) days after the receipt of the Annual Monitoring Report, CITY shall review the Annual Monitoring Report. Prior to the expiration of the fifteen (15) day review period, CITY shall either issue a notice of continuing compliance or a notice of non-compliance and a notice of CITY's intent to conduct a Special Review pursuant to Sections 6.1.2 through 6.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his designee.

6.1.2 Initiation of Special Review. A special review may be called either by agreement between the parties or by initiation in one or more of the following ways:

(1) Recommendation of the Planning staff;

(2) Affirmative vote of at least four (4) members of the Planning Commission; or

(3) Affirmative vote of at least three (3) members of the City Council.

6.1.3 Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that the CITY intends to undertake a special review of this Agreement to the OWNER. Such notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission.

6.1.4 Public Hearing. The Planning Commission shall conduct a hearing at which the OWNER must demonstrate good faith compliance with the terms of this Agreement. The burden of proof on this issue is upon the OWNER.

6.1.5 Findings Upon Public Hearing. The Planning Commission shall determine upon the basis of substantial evidence whether or not the OWNER has, for the period under review, complied in good faith with the terms and conditions of this Agreement.

6.1.6 Procedure Upon Findings.

(a) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.

(b) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has not complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission may recommend to the City Council to modify or terminate this Agreement.

(c) The OWNER may appeal a determination pursuant to paragraph (b) to the City Council in accordance with the CITY's rule for consideration of appeals in zoning matters generally.

6.2 Proceedings Upon Modification or Termination. If, upon a finding under Section 6.1.6(b), the CITY determines to proceed with modification or termination of this Agreement, the CITY shall give notice to the property OWNER of its intention so to do. The notice shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not the CITY proposes to terminate or to modify this Agreement; and

(c) Other information that the CITY considers necessary to inform the OWNER of the nature of the proceeding.

6.3 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, the OWNER shall be given an opportunity to be

heard. The OWNER shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the OWNER. If the City Council finds, based upon substantial evidence in the administrative record, that the OWNER has not complied in good faith with the terms and conditions of the agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the CITY. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, OWNER is found to be in compliance with this Agreement, CITY shall, upon written request by OWNER, issue a Certificate of Agreement Compliance ("Certificate") to OWNER stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) OWNER is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. OWNER may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or OWNER, CITY shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [RESERVED]

8. DEFAULT AND REMEDIES.

8.1 Remedies in General. It is acknowledged by the parties that CITY would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that CITY shall not be liable in damages to OWNER, or to any successor in interest of OWNER, or to any other person, and OWNER covenants not to sue for damages or claim any damages:

(a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or

(b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

(c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

8.2 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all parties for the following reasons:

(a) Money damages are unavailable against CITY as provided in Section 8.1 above.

(b) Due to the size, nature and scope of the project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts.

8.3 Release. Except for nondamage remedies, including the remedy of specific performance and judicial review as provided for in Section 6.5, OWNER, for itself, its successors and assignees, hereby releases the CITY, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the CITY because it entered into this Agreement or because of the terms of this Agreement.

8.4 Termination or Modification of Agreement for Default of OWNER. Subject to the provisions contained in 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:

BEING A PORTION OF PARCEL 2 OF PARCEL MAP NO. 16568, AS PER MAP FILED IN PAGES 24 AND 25 IN PARCEL MAP BOOK NO. 204, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN BERNARDINO COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 6 OF TRACT MAP NO. 20134, AS PER MAP FILED IN BOOK 357, PAGES 23 THROUGH 33, INCLUSIVE, OF TRACT MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID CORNER BEING ON THE SOUTHERLY LINE OF SAID PARCEL MAP NO. 16568; THENCE EASTERLY ALONG SAID SOUTHERLY LINE NORTH 89°37’37” EAST, A DISTANCE OF 355.00 FEET,

THENCE NORTH 00°11’36” WEST, A DISTANCE OF 20.60 FEET, TO THE BEGINNING OF A TANGENT 1385.00 FOOT RADIUS CURVE, CONCAVE WESTERLY;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°13’59”, A LENGTH OF
78.15 FEET;

THENCE NORTH 03°25’35” WEST, A DISTANCE OF 99.85 FEET, TO THE BEGINNING OF A TANGENT 615.00 FOOT RADIUS CURVE, CONCAVE EASTERLY;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°14’00”, A LENGTH OF
34.71 FEET;

THENCE NORTH 00°11’35” WEST, A DISTANCE OF 761.32 FEET, TO THE NORTHERLY LINE OF SAID PARCEL 2;

THENCE ALONG SAID NORTHERLY LINE, SOUTH 89°58’40” WEST, A DISTANCE OF 385.00 FEET, TO THE EASTERLY LINE OF PARCEL 1 OF SAID PARCEL MAP NO.16568;

EXHIBIT "A" CONTINUED

THENCE SOUTHERLY ALONG SAID EASTERLY LINE, SOUTH 00°11’35” EAST, A DISTANCE OF
946.80 FEET, TO THE SOUTHERLY LINE OF SAID PARCEL 1;

THENCE WESTERLY ALONG SAID SOUTHERLY LINE, SOUTH 89°37’37” WEST, A DISTANCE OF 1168.19 FEET, TO THE CENTERLINE OF HAVEN AVENUE, AS SHOWN ON SAID PARCEL MAP NO. 16568:

THENCE SOUTHERLY ALONG SAID CENTERLINE, SOUTH 00°11’36” EAST, A DISTANCE OF
50.00 FEET, TO THE SOUTHERLY LINE OF SAID PARCEL 2;

THENCE EASTERLY ALONG SAID SOUTHERLY LINE, NORTH 89°37’37” EAST, A DISTANCE OF 1207.01 FEET, TO THE NORTHWEST CORNER OF LOT 6 OF TRACT MAP NO. 20134 AND THE POINT OF BEGINNING.

CONTAINING:
442,924 SQUARE FEET / 10.168 ACRES GROSS, MORE OR LESS.
439,824 SQUARE FEET / 10.097 ACRES NET, MORE OR LESS

SUBJECT TO ALL COVENANTS, CONDITIONS, RESERVATIONS, RESTRICTIONS, RIGHT-OF- WAY AND EASEMENTS OF RECORD, IF ANY.

EXHIBIT "B"
TO DEVELOPMENT AGREEMENT

Map showing Property and its location

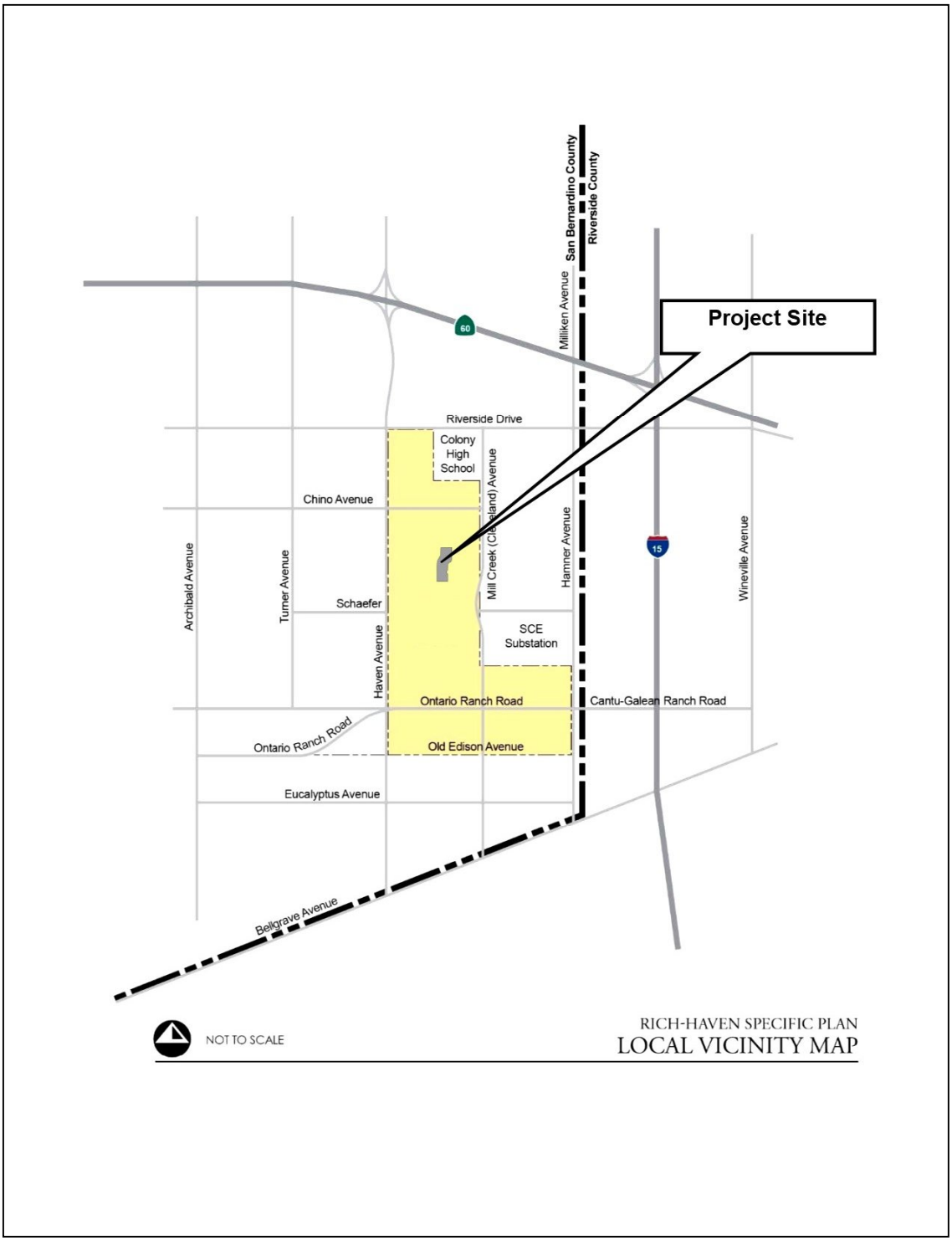


EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

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.

A) PHASE 1 IMPROVEMENTS include but not limited to the street, water, recycled water, sewer, storm drain, fiber optic, and traffic signal improvements along Twinkle Avenue.

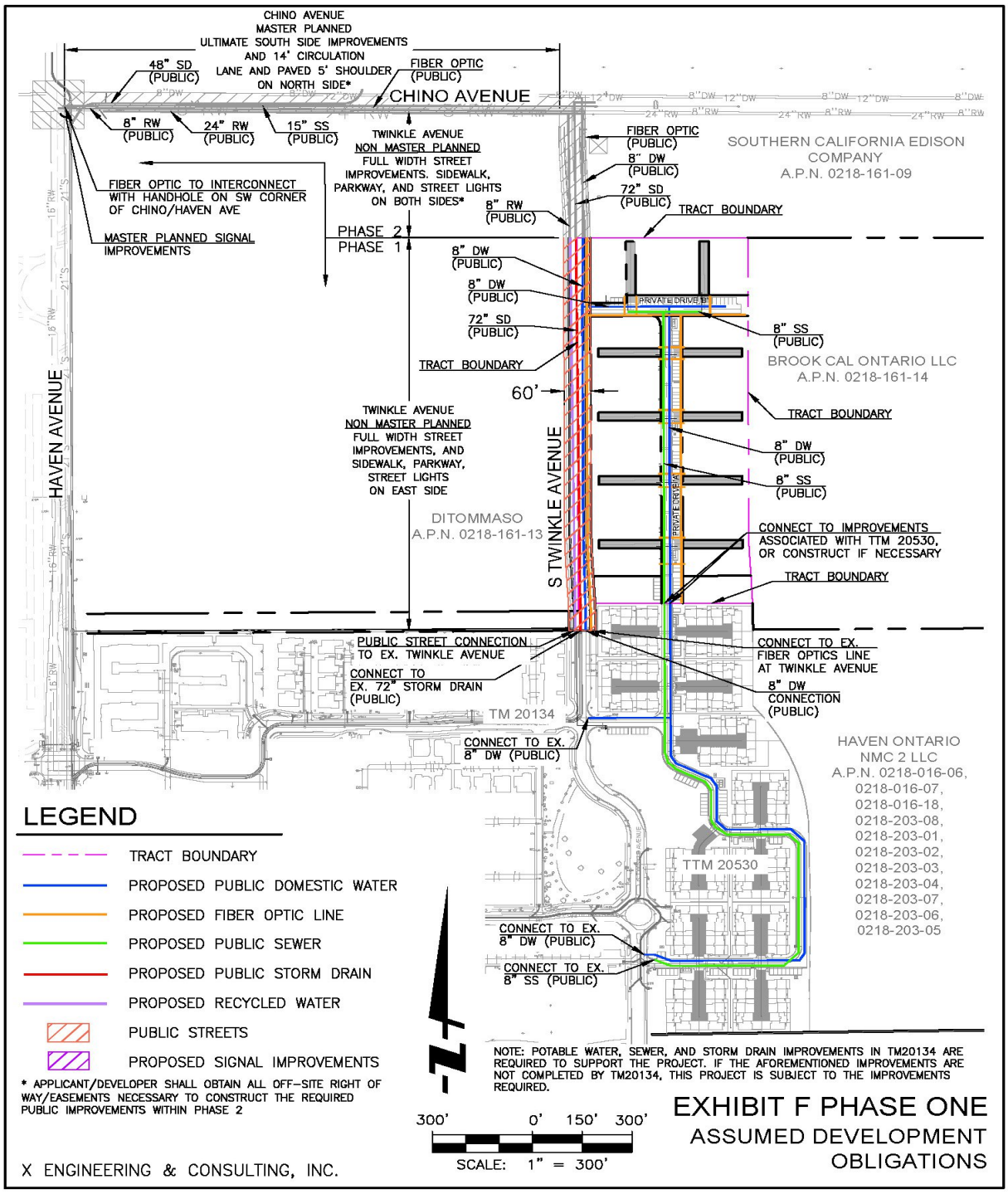
B) PHASE 2 IMPROVEMENTS include but not limited to the street, water, recycled water, sewer, storm drain, fiber optic, and traffic signal improvements, north on Twinkle Avenue and west along Chino Avenue to Haven Avenue.

C) If the PHASE 2 IMPROVEMENTS are not completed prior to the request of occupancy for Phase 1 Production Units, then OWNER shall deposit funds into an escrow account equal to the cost for the Phase 2 improvements, subject to the sole discretion of the City Engineer.

EXHIBIT "F"
TO DEVELOPMENT AGREEMENT

Depiction of Required Infrastructure Improvements

(SEE ATTACHED)


CHINO AVENUE
MASTER PLANNED
ULTIMATE SOUTH SIDE IMPROVEMENTS
AND 14' CIRCULATION
LANE AND PAVED 5' SHOULDER
ON NORTH SIDE*
48" SD (PUBLIC)
FIBER OPTIC (PUBLIC)
CHINO AVENUE
8" RW (PUBLIC)
24" RW (PUBLIC)
15" SS (PUBLIC)
TWINKLE AVENUE
NON MASTER PLANNED
FULL WIDTH STREET
IMPROVEMENTS. SIDEWALK,
PARKWAY, AND STREET LIGHTS
ON BOTH SIDES*
FIBER OPTIC (PUBLIC)
8" DW (PUBLIC)
72" SD (PUBLIC)
SOUTHERN CALIFORNIA EDISON COMPANY
A.P.N. 0218-161-09
FIBER OPTIC TO INTERCONNECT
WITH HANDHOLE ON SW CORNER
OF CHINO/HAVEN AVE
MASTER PLANNED SIGNAL
IMPROVEMENTS
8" RW (PUBLIC)
TRACT BOUNDARY
PHASE 2
PHASE 1
8" DW (PUBLIC)
8" DW (PUBLIC)
72" SD (PUBLIC)
PRIVATE DRIVE 'B'
8" SS (PUBLIC)
TRACT BOUNDARY
BROOK CAL ONTARIO LLC
A.P.N. 0218-161-14
60'
TRACT BOUNDARY
HAVEN AVENUE
TWINKLE AVENUE
NON MASTER PLANNED
FULL WIDTH STREET
IMPROVEMENTS, AND
SIDEWALK, PARKWAY,
STREET LIGHTS
ON EAST SIDE
S TWINKLE AVENUE
8" DW (PUBLIC)
8" SS (PUBLIC)
DITOMMASO
A.P.N. 0218-161-13
PRIVATE DRIVE 'A'
CONNECT TO IMPROVEMENTS
ASSOCIATED WITH TTM 20530,
OR CONSTRUCT IF NECESSARY
TRACT BOUNDARY
PUBLIC STREET CONNECTION
TO EX. TWINKLE AVENUE
CONNECT TO
EX. 72" STORM DRAIN
(PUBLIC)
CONNECT TO EX.
FIBER OPTICS LINE
AT TWINKLE AVENUE
8" DW
CONNECTION
(PUBLIC)
TM 20134
CONNECT TO EX.
8" DW (PUBLIC)
HAVEN ONTARIO
NMC 2 LLC
A.P.N. 0218-016-06,
0218-016-07,
0218-016-18,
0218-203-08,
0218-203-01,
0218-203-02,
0218-203-03,
0218-203-04,
0218-203-07,
0218-203-06,
0218-203-05
TTM 20530
CONNECT TO EX.
8" DW (PUBLIC)
CONNECT TO EX.
8" SS (PUBLIC)
LEGEND
TRACT BOUNDARY
PROPOSED PUBLIC DOMESTIC WATER
PROPOSED FIBER OPTIC LINE
PROPOSED PUBLIC SEWER
PROPOSED PUBLIC STORM DRAIN
PROPOSED RECYCLED WATER
PUBLIC STREETS
PROPOSED SIGNAL IMPROVEMENTS
* APPLICANT/DEVELOPER SHALL OBTAIN ALL OFF-SITE RIGHT OF WAY/EASEMENTS NECESSARY TO CONSTRUCT THE REQUIRED PUBLIC IMPROVEMENTS WITHIN PHASE 2
NOTE: POTABLE WATER, SEWER, AND STORM DRAIN IMPROVEMENTS IN TM20134 ARE REQUIRED TO SUPPORT THE PROJECT. IF THE AFOREMENTIONED IMPROVEMENTS ARE NOT COMPLETED BY TM20134, THIS PROJECT IS SUBJECT TO THE IMPROVEMENTS REQUIRED.
300' 0' 150' 300'
SCALE: 1" = 300'
X ENGINEERING & CONSULTING, INC.
EXHIBIT F PHASE ONE
ASSUMED DEVELOPMENT OBLIGATIONS
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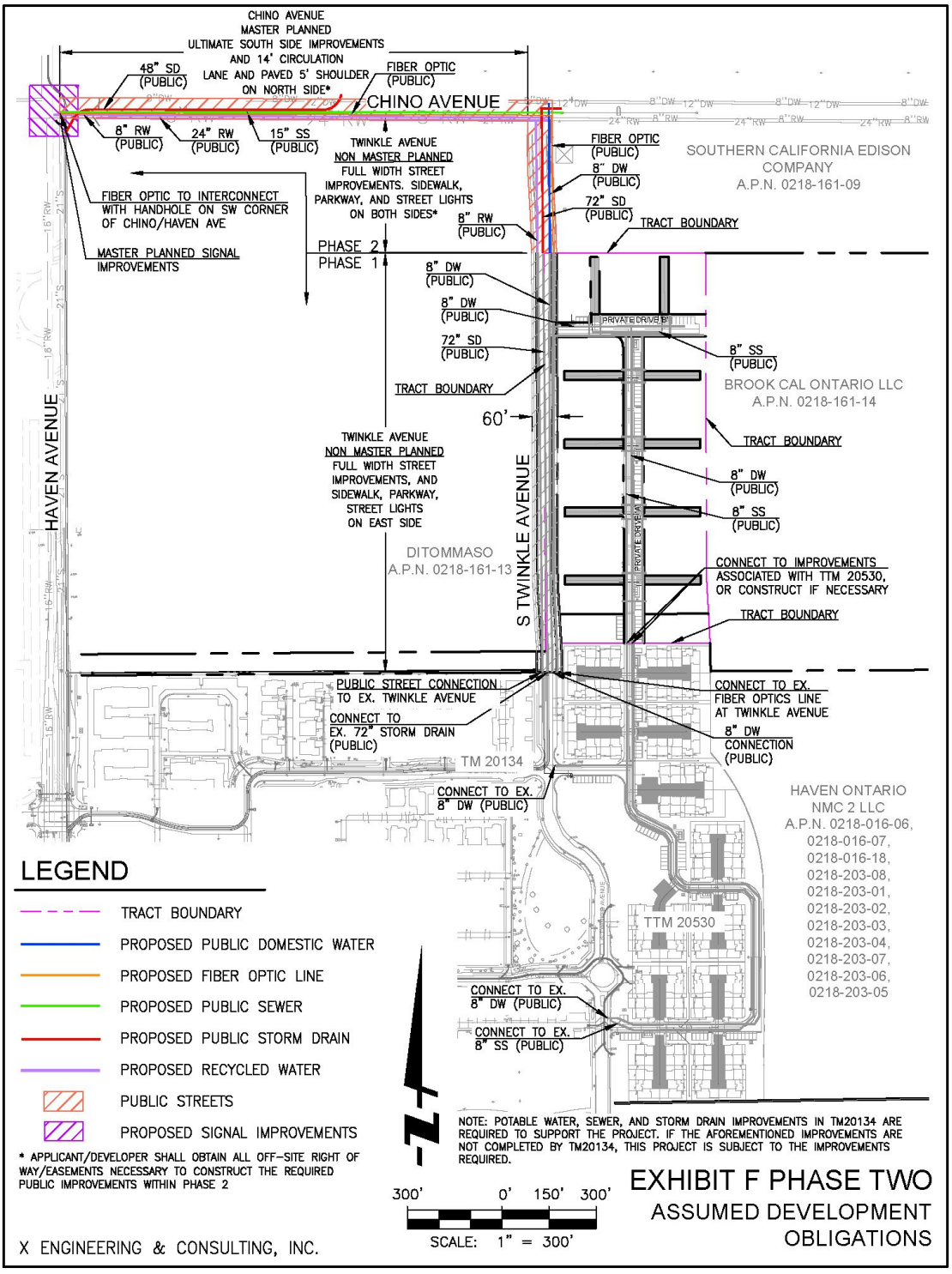

CHINO AVENUE
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AND 14' CIRCULATION
LANE AND PAVED 5' SHOULDER
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TRACT BOUNDARY
PRIVATE DRIVE B
8" SS (PUBLIC)
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A.P.N. 0218-161-14
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TM 20134
CONNECT TO EX.
8" DW (PUBLIC)
HAVEN ONTARIO
NMC 2 LLC
A.P.N. 0218-016-06,
0218-016-07,
0218-016-18,
0218-203-08,
0218-203-01,
0218-203-02,
0218-203-03,
0218-203-04,
0218-203-07,
0218-203-06,
0218-203-05
TTM 20530
CONNECT TO EX.
8" DW (PUBLIC)
CONNECT TO EX.
8" SS (PUBLIC)
LEGEND
TRACT BOUNDARY
PROPOSED PUBLIC DOMESTIC WATER
PROPOSED FIBER OPTIC LINE
PROPOSED PUBLIC SEWER
PROPOSED PUBLIC STORM DRAIN
PROPOSED RECYCLED WATER
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300' 0' 150' 300'
SCALE: 1" = 300'
EXHIBIT F PHASE TWO
ASSUMED DEVELOPMENT OBLIGATIONS
X ENGINEERING & CONSULTING, INC.
P:\110\003\Exhibits\Entitlement\DA Exhibits\110-003 Overall Exhibit F.dwg October 13, 2022 12:38 PM

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* **November 15, 2022**	**SECTION:** **PUBLIC HEARINGS**
Department: Building Prepared By: James J Caro Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 21

SUBJECT: **A PUBLIC HEARING TO CONSIDER ADOPTION OF AN ORDINANCE APPROVING THE 2021 INTERNATIONAL FIRE CODE AND THE 2022 CALIFORNIA BUILDING AND FIRE CODES ADOPTED BY THE CALIFORNIA BUILDING STANDARDS COMMISSION IN THE CALIFORNIA CODE OF REGULATIONS**

RECOMMENDATION: That the City Council introduce and waive further reading of:

A. An Ordinance amending Chapter 4, Title 4 of the Ontario Municipal Code entitled "Fire Code" adopting by reference, with certain amendments, additions, deletions, and exceptions, the 2021 International Fire Code and the 2022 California Fire Code (California Code of Regulations, Title 24, Part 9); and
B. An Ordinance amending Chapters 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, and 14 of Title 8 of the Ontario Municipal Code to adopt the California Building Standards Code by reference, with certain amendments, additions, and deletions.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
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
Invest in the Growth and Evolution of the Cityâ€™s Economy

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

BACKGROUND & ANALYSIS: Every three years, the California Building Standards Commission adopts the California Building Standards Code, which consists of the codes that regulate building construction. The California Health and Safety Code mandates that all public agencies responsible for administering Building and Safety and Fire Codes comply with the State adopted Building & Safety and Fire Codes; and local agencies are required to adopt and enforce the State codes. Local agencies may also adopt amendments to the State Codes based on findings relative to local geological or topographic conditions. Staff recommends amendments to the Codes based upon certain local conditions to ensure compliance with State mandates, to assure that Ontario's Codes

continue to address the latest technological advances, and to provide for the use of companion Fire and Building Codes.

Fire Codes: The proposed ordinance adopts the 2021 International Fire Code and the 2022 California Fire Code and provides for certain local amendments. These amendments are consistent with other provisions that are in the current version of the City's Fire Code. The State Codes incorporate, by reference, the Model Codes published by the International Code Council (ICC).

Building Codes: The proposed Ordinance adopts the 2022 California Building Code and related codes and includes a couple of amendments that are a function of Ontario's geography and energy concerns. The amendments include:

1. The design criteria for all structures built within the city is 110 MPH winds, Exposure C, seismic zone D;
2. Because of our proximity to the San Andreas fault, all underground pipe, conduit, and lines will be shaded with cleaned dirt void of any rocks or clean sand, six inches below and twelve inches above said pipe, conduit, or line. All electrical metal conduit will need a ground conductor, the metal conduit will not act as the ground conductor;
3. Retro-fit windows will need a building permit and will need to follow 2022 standards for emergency egress; and
4. All walls over 3 ft (36 inches) will need a building permit, and all retaining walls over 2 ft (24 inches) will need a building permit. Like ourselves increase the requirements mostly for energy conservation but also for geographical reasons like earthquakes, etc.

Adoption of the new version of the Building and Fire Codes will provide for proper construction guidelines for the health and safety of occupants and energy conservation.

ORDINANCE NO _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CHAPTER 4 OF TITLE 4 OF THE ONTARIO MUNICIPAL CODE; ADOPTING BY REFERENCE WITH CERTAIN AMENDMENTS, ADDITIONS, DELETIONS, AND CHANGES THERETO, THE 2022 CALIFORNIA FIRE CODE AND THE 2021 INTERNATIONAL FIRE CODE, PROVIDING FOR THE RECOVERY OF COSTS AND COLLECTION OF FEES; AND REPEALING ORDINANCE NO. 3062 OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA.

WHEREAS, pursuant to Government Code Section 50022.1, *et seq.,* the City of Ontario, California ("City") may adopt by reference the 2022 edition of the California Building Standards Code as provided in Title 24 of the California Code of Regulations; and

WHEREAS, California Health and Safety Code Sections 17958.7 and 18941.5 authorize cities to adopt the California Building Standards Code with modifications that are determined to be reasonably necessary because of local climatic, geological, or topographical conditions; and

WHEREAS, prior to making modifications permitted under California Health and Safety Code Sections 17958.7 and 18941.5, the City Council is required to make express findings that such modifications are needed in accordance with California Health and Safety Code Sections 17958.7; and

WHEREAS, the City held a public hearing on November 15, 2022, at which time all interested persons had the opportunity to appear and be heard on the matter of adopting the Codes as amended herein; and

WHEREAS, the City published notice of the aforementioned public hearing pursuant to California Government Code Section 6066 on November 4, 2022; and

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

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

SECTION 1. The City Council hereby finds that the following proposed amendments to the 2022 California Fire Code and the 2021 International Fire Code are:

(a) necessary because of local climatic, geological, or topographical conditions, or

(b) are of an administrative or procedural nature, and/or do not modify building standards and are reasonably necessary to safeguard life and property within the City.

Amendment	Applicable Findings from Listing Below
Sections 102.7, 103.1, 103.2, 104.7, 104.7.1, 104.11, 105.5.55, 111.1, 112.2, 112.4, 113.4	D-1
Section 503.2.1	D-2
Section 503.4	D-2
Section 507.5.1.2	A-1, B-1, B-2, C-1, C-2, C -3
Section 5704.2.9.6.1, 5706.2.4.4, 5806.2	D-2
Section 6104.2	D-2
Sections 2808.1, 2808.3, 2808.4, 2808.5, 2808.10,	C-1, C-2, C-3 & C-4
Appendix B Section B105.2	A-1, B-2, B-3, B-4 & B-5

A Local Geological Conditions.

A-1. The City of Ontario is subject to moderately strong to severe shaking and surface ruptures resulting from five earthquake faults located within or near the City. These local earthquake faults have the potential to cause severe personal and property damage and fire hazards. Moreover, there is also a potential for damage to roadways, water supplies, and the impairment of access allowing fire equipment to respond to emergencies in the event of a severe earthquake.

A-2. Adverse geological conditions exist in portions of the City that may cause excessive flooding. Flood control facilities are not adequate to handle the water flow that occurs during major storms or prolonged rains. Some of the streets in the City are actually designed and used for flood control purposes, thus making the fire and emergency access difficult during flood conditions. As a consequence, many of the streets within the City are impaired during such flood conditions and such flooding causes physical damage to the streets and the accumulation of debris, all of which hinder access to fire equipment for the purposes of responding to fire and other emergencies.

B. Local Topographical Conditions.

B-1. The topography of the City of Ontario is generally that of a gently sloping inclined plane that slopes in a southerly direction from an elevation of 1,190 feet to an elevation of 730 feet at the southern boundary of the City resulting in several water pressure zones to serve the City. The elevation changes caused by the mountains and hills creates the geological foundation upon which the City is built and will continue to build.

B-2. Located within the City are three major interstate freeways and a major state highway that provide for limited under crossing access points to traverse the City. These highways also restrict the ability of the water supply grid to provide water from multiple points to all areas of the City and necessitates the use of dead-end water mains to many areas adjacent to highways.

B-3. The City is bisected from east to west by two very active railroad main route tracks used by the Southern Pacific and Union Pacific Railroads. These lines are used for both commuter and large freight transport trains, including the transporting of large quantities of hazardous materials. Limited under-crossings and overcrossings exist within the City for uninterrupted emergency vehicle passage. Moreover, emergency vehicles are routinely delayed at grade crossings until passenger trains or passing freight trains clear the grade crossings.

B-4. Two large petroleum product pipelines bisect the City along the Southern Pacific Railroad right-of-way. The pipelines are used to transport large quantities of gasoline, diesel fuel, and jet fuels under high pressures. Another petroleum pipeline intersects the City along the east side en-route to the Etiwanda electrical generating station north and east of the City. While generally underground, these pipelines pass overhead at several overpasses located over main thoroughfares in the City. Damage to these pipelines during seismic events poses the dual potential of creating a time emergency and at the same time restricting emergency vehicle access within the City.

B-5. Two large, high pressure, natural gas transmission pipelines traverse the easterly part of the City, along the 1-15 Freeway and on the west side along Benson Avenue. These 36" transmission mains transport natural gas at pressures exceeding 500 psi and pass through developed residential and industrial areas. These transmission pipelines also intersect the previously mentioned petroleum pipelines. Interruption of these pipelines due to flooding or seismic events is possible and would result in reduced resources to protect the balance of the City.

B-6. A large commercial airport is located within the central portion of the City providing limited emergency vehicle access from the north to the south-central portions of the City. A majority of the City is located within the approach and/or departure paths of large commercial aircraft exposing a large part of the City to potential aircraft related emergencies. Moreover, Santa Ana Winds frequently require the flight paths of arriving and departing aircraft to be reversed.

C. Local Climatic Conditions.

C-1. The City is subject to extremely strong winds, commonly referred to as "Santa Ana Winds," which can reach speeds in excess of 80 miles per hour and approach the basin from the desert via the Devore Pass. Extensive damage often occurs during such winds, including downed electric wires, downed utility and light poles, fallen trees, blowing debris, sand, and dust. Blowing dust experienced during these winds has reduced visibility near zero and impacted the response times of emergency vehicles.

C-2. During the summer months, the Santa Ana Winds produce a period of extremely low humidity causing an increase in the threat of fire from dry vegetation and other common fuels. These conditions have, in the past, resulted in vegetation and structure fires.

C-3. The City experiences summer temperatures in excess of 100 degrees Fahrenheit. When coupled with severe Santa Ana Winds these conditions can cause a fire to spread quickly throughout portions of the City.

C-4. Weather conditions, coupled with flammable vegetation in bordering cities results in numerous wildland rims, which draw existing fire fighting forces from their structure protection duties for extended periods of time. This results in increased response times to structure fires when fire department personnel and equipment are committed to nonstructural fire protection activities.

D. Administrative/Procedural/Public Safety Amendments.

D-1. This amendment is necessary for administrative or procedural clarification and to establish administrative standards for the effective enforcement or the building standards of the City of Ontario and does not modify a building standard pursuant to California Health & Safety Code sections 17958, 17958.7, and/or 18941.5.

D-2. This amendment does not modify a building standard pursuant to California Health and Safety Code sections 17958, 17958.7, and/or 18941.5 and is reasonably necessary to safeguard life and property within the City of Ontario.

SECTION 2. Chapter 4 of Title 4 of the Ontario Municipal Code is hereby rewritten in its entirety to read as follows:

Chapter 4: Fire Code

Sections:

4-4.01	Adoption of California Fire Code and the International Fire Code
4-4.02	Cost Recovery
4-4.03	Establishment of the Limits of Districts in Which Stationary Containers of Flammable Cryogenic Fluids Are Prohibited
4-4.04	Establishment of the Limits of Districts in Which Storage of Class I and Class II Liquids in Unprotected Aboveground Tanks and in Below Grade Vaulted Tanks is Prohibited
4-4.05	Establishment of the Limits in Which Storage of Liquefied Petroleum Gases Is Restricted for the Protection of Heavily Populated or Congested Areas
4-4.06	Amendments to the 2022 California Fire Code and 2021

International Fire Code
4-4.07 Amendment: Referenced codes and standards
4-4.08 Amendment: General
4-4.09 Amendment: Appointment
4-4.10 Amendment: Liability and Legal Defense
4-4.11 Amendment: Investigations
4-4.12 Amendment: Pallets
4-4.13 Amendment: Board of Appeals Established
4-4.14 Amendment: Violation Penalties
4-4.15 Amendment: Failure to Comply
4-4.16 Amendment: Dimensions
4-4.17 Amendment: Obstruction of Fire Apparatus Access Roads
4-4.18 Amendment: Two Points of Connection
4-4.19 Amendment: General
4-4.20 Amendment: Size of Piles
4-4.21 Amendment: Combustible Waste
4-4.22 Amendment: Emergency Plan
4-4.23 Amendment: Buildings Other than One- and Two-Family Dwellings
4-4.24 Remote Annunciation
4-4.25 Monitoring

Section 4-4.01 Adoption of the California Fire Code and the International Fire Code.

The City Council of the City of Ontario hereby adopts by reference with certain amendments, additions, deletions and exceptions, the 2022 California Fire Code with errata, incorporating therein the 2021 International Fire Code, also referred to as Part 9 of Title 24 of the California Code of Regulations, with included appendices, as published by the International Code Council and adopted by the California State Building Standards Commission, (hereinafter also "this Code" or the "Ontario Fire Code",) for the purpose of prescribing regulations governing conditions hazardous to life and property from fire, hazardous materials or explosion.

Section 4-4.02. Cost Recovery.

(A) Expense for Responding to and Securing an Emergency.

1. Fire suppression, investigation and rescue or emergency medical costs shall be recoverable in accordance with Health & Safety Code Sections 13009 and 13009.1.

2. Any person or entity who negligently or intentionally, or in violation of law, causes an emergency response, including but not limited to, a traffic accident or spill of toxic or flammable fluids or chemicals, is liable for the costs of responding, securing and investigating such emergency,

including those costs set out in Health & Safety Code Section 13009, *et seq.* and Government Code Section 53150, *et seq.* Any expense incurred by the Fire Department for responding to, securing, or investigating such an emergency situation shall constitute a debt of the person or entity responsible and shall be subject to collection by the City in the same manner as an obligation under contract, expressed or implied.

4. The expense of responding to, securing and investigating any emergency or hazard which is the result of a violation of this Code or any other code, ordinance or state law, or any damages caused by malicious mischief requiring any corrective or preventive actions by the Fire Department shall be a charge against the person(s) or entity whose violation caused the emergency and/or damage. Damages caused by such emergency or action may constitute a debt of such person(s) or entity responsible and shall be collectible as provided below:

i. Liability for Hazardous Activities and Conditions. The Chief may also impose the reasonable cost of fire prevention, fire suppression, incident investigation and protection of the public from other safety hazards when a fire or hazardous condition results from any of the following activities or conditions:

(1) The manufacture, transportation, storage, handling, or spilling, of hazardous chemicals, flammable or combustible liquids, explosives, or blasting agents as defined in this Code; and
(2) The failure to correct a hazardous condition for which a "Notice of Violation," or equivalent notice, has been previously given by the Chief; and
(3) The use of welding equipment, cutting torches, tar pot, or other open flame devices; and
(4) Permitting or causing the accumulation of hazardous or flammable materials on property; and
(5) Setting of a fire or allowing a fire to be set in violation of any code, ordinance, law or regulation; and
(6) The possession of, or causing illegal fireworks, explosive devices or destructive devices to ignite, explode or detonate; and
(7) Creating, allowing, or maintaining a hazard as stated in California Fire Code Section 112.2.

ii. Determination of Costs. Whenever the Chief determines that the fire department or other public agency has incurred costs for fire suppression, fire prevention, or protection of the public from a fire or other hazardous condition that results from the activities or conditions described in subsection (a), the Chief shall:

(1) Calculate the costs incurred;
(2) Identify the person(s) or entity to be charged for those costs; and
(3) Send a report with this information to the City Clerk.

iii. Method of Calculation. In determining costs to be charged a responsible person or entity, the Chief shall include all necessary expenditures to correct the hazardous condition or extinguish the fire, including, but not limited to the following:

(1) The cost of personnel;
(2) The cost of extinguishing agents;
(3) The reasonable value of the use of City equipment;
(4) The cost incurred for the use of any private contractors to mitigate or remove the hazard or condition; and
(5) Any and all administrative costs incurred pursuant to the fee schedule as set by resolution duly adopted by the City Council.

iv. Reimbursement Hearing. The City Clerk shall, thereupon, set the report and account received by the Chief for hearing before the City Council at a regular or adjourned regular meeting to be held at least fourteen (14) calendar days after the date the Clerk mails the notice to the responsible person(s) or entity. The City Clerk shall send by regular mail a Notice of said hearing to the person or entity to be charged at the person's or entity's address as shown on the latest equalized tax assessor's roll, or as otherwise known to the City.

v. Notice to Person Charged. The Notice sent by the City Clerk to the responsible person(s) or entity shall contain:

(1) The name of the person(s) or entity sought to be charged;
(2) The location, date and time of the incident upon which the claim for reimbursement is based;
(3) The amount of, and the basis upon which the claim for reimbursement is made;
(4) The date, time and place of the hearing to be held on the claim for reimbursement with a statement describing the rights of the person or entity charged and the procedures for presenting evidence at said hearing; and
(5) The Chief's account of the sum claimed to be due.

vi. Procedure for Hearing Before the City Council. At the hearing on the Chiefs accounting of the costs and other evidence upon which reimbursement is sought, the City Council shall hear and consider

evidence by the person or entity against which reimbursement is sought. The City Council shall thereafter confirm or disallow the account, all or in part, and set forth in a resolution the amount of the account confirmed, if any. Thereafter, any amount confirmed by resolution of the City Council shall become a debt owing to the City of Ontario and shall be collectible by the City in the same manner as in the case of an obligation under contract expressed or implied.

(B) Service Fees.

1. Permit Fees. Any person, establishment, business, occupancy, or process requiring any permit or utilizing any special service or activity performed by or under the direction of the Fire Department shall compensate the City for the cost of such service or activity, in accordance with the adopted fee and charge schedule and any departmental policy.

2. Service Fee Refunds. The Fire Chief is authorized to refund any fee paid hereunder which is determined to be erroneously paid or collected.

i. The Fire Chief is authorized to refund eighty percent (80%) of the service fee paid when the permittee has performed no work nor commenced an operation for which a permit was issued in accordance with this Ordinance.

ii. The Fire Chief is authorized to refund eighty percent (80%) of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan review is completed.

iii. The Fire Chief shall not authorize the refund of any fee paid except upon written application filed by the original permittee not later than one hundred eighty (180) days after the date the fee was paid. Such written application shall state the reasons for the refund request and be accompanied with a receipt of payment.

Section 4-4.03. Establishment of the Limits of Districts in Which Stationary Containers of Flammable Cryogenic Fluids Are Prohibited.

The limits referred to in Section 5806.2 of the 2022 California Fire Code in which the storage of flammable cryogenic fluids in stationary containers is prohibited are hereby established as follows:

1. All areas and zoning districts of the City except the General Industrial District of the City Development Code, and with the specific approval of the Fire Chief.

Section 4-4.04. Establishment of the Limits of Districts in Which Storage of Flammable or Combustible Class I and Class II Liquids in Outside Unprotected Aboveground Tanks is Prohibited.

The limits referred to in Sections 5704.2.9.6.1 and 5706.2.4.4 of the 2022 California Fire Code in which the storage of flammable or combustible liquids in outside aboveground unprotected tanks are prohibited are hereby established as follows:

1. In all areas of the City unless upon specific written findings, the Chief determines that the installation of flammable and combustible unprotected aboveground storage tanks or below grade vaulted tanks will not create a hazard to occupants and property owners in the surrounding area.

Section 4-4.05. Establishment of the Limits in Which Storage of Liquified Petroleum Gases is Restricted for the Protection of Heavily Populated or Congested Areas.

The limits referred to in Section 6104.2 of 2022 California Fire Code, in which storage of liquefied petroleum gas is restricted, are hereby established as follows:

1. All areas and zoning districts of the City except the General Industrial District of the City zoning ordinance, and with the specific approval of the Fire Chief.

Section 4-4.06. Amendments to the 2022 California Fire Code (CFC) and 2021 International Fire Code (IFC).

1. Designated portions of the 2022 California Fire Code (CFC) and 2021 International Fire Code (IFC) are amended and changed as set forth in Sections 4-4.07 through 4-4.28.

Section 4-4.07. Amendment: Referenced codes and standards.

Section 102.7 of the 2022 CFC is amended to read as follows:

1. "102.7 Referenced codes and standards. The codes and standards referenced in this code shall be those that are listed in Chapter 80, and such codes and standards shall be considered to be part of the requirements of this code to the prescribed extent of each such reference and as further regulated by Sections 102.7.1 and 102.7.2. The Fire Chief also herby authorizes the use of the Ontario Fire Department Fire Protection Standards for the purposes of interpreting and clarifying requirements of this Code and its referenced codes and standards."

Section 4-4.08. Amendment: General.

Section 103.1 of the 2018 IFC is amended to read as follows:

1. "103.1 General. The Fire Code as adopted and amended herein shall be enforced by the Bureau of Fire Prevention of the Fire Department of the City of Ontario which is hereby established and shall operate under the supervision of the Chief of the Fire Department."

Section 4-4.09. Amendment: Appointment.

Section 103.2 of the 2022 CFC is amended to read as follows:

1. "103.2 Appointment. The Fire Marshal shall be responsible for operating the Bureau of Fire Prevention and shall be appointed by the Fire Chief on the basis of examination to determine his or her qualifications

Section 4-4.10. Amendment: Liability and Legal Defense.

Section 104.7 and 104.7.1 of the CFC of the IFC is amended to read as follows:

1. "104.7 and 104.7.1 Liability and legal defense. The Chief and other individuals charged by the Chief with the enforcement of this Code or any other official duties, acting in good faith and without malice in the discharge of their duties, shall not thereby be rendered personally liable for any damage that may accrue to persons or property as a result of any act or by reason of any act or omission in the discharge of their duties. Any suit brought against the Chief or such individuals because of such act or omission performed in the enforcement of any provision of such Code or other pertinent laws or ordinances implemented through the enforcement of this Code or enforced by the code enforcement agency shall be defended by this jurisdiction until final termination of such proceedings, and any judgment resulting there from shall be assumed by this jurisdiction subject to the provisions of Government Code Section 825."

Section 4-4.11. Amendment: Investigations.

Section 104.11 of the CFC is amended to read as follows:

1. "104.11 Investigations. The fire code official, the fire department or other responsible authority shall have the authority to investigate the cause, origin and circumstances of any fire, explosion, or other hazardous condition. Information that could be related to trade secrets or processes shall not be made part of the public record, except as directed by a court of law. Fire Investigators shall have the powers of a police officer in performing their duties under this code."

Section 4-4.12. Amendment: Pallets.

Section 105.5.55 is added to the CFC to read as follows:

1. "105.5.55 Pallets. An operational permit is required for idle storage, handling, repair or manufacturing of combustible pallets in excess of one thousand (1,000) units at any one site."

Section 4-4.13. Amendment: Board of Appeals.

Section 111.1 of the CFC is amended to read as follows:

1. "111.1 Board of Appeals Established. The City Council of the City of Ontario may hear and decide appeals of orders, decisions or determinations made by the fire code official relative to the application and interpretation of this code, pursuant to Chapter 4 of Title 1 of the City of Ontario Municipal Code. An application for appeal shall be submitted in writing, in a timely manner, and shall be based on a claim that the intent of this code or the rules, standards and interpretations adopted hereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equivalent method of protection or safety is proposed. The Council shall have no authority to waive requirements of this Code. The City Council shall set the matter for hearing and shall give written notice to the appellant. The fire code official shall act as staff in advising the City Council during such hearing. A written copy of the decision shall be mailed to the concerned parties after the conclusion of such proceedings."

Section 4-4.14. Amendment: Violation penalties.

Section 112.4 of the CFC is amended to read as follows:

1. "112.4 Violation penalties. Any person who violates any provision of the Fire Code as adopted and amended herein or fails to comply therewith, or who violates or fails to comply with any order made thereunder, or who builds in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or who fails to comply with such an order as affirmed or modified by the Board of Appeals or by a court of competent jurisdiction, within the required time, shall severally for each and every such violation and noncompliance, respectively, be guilty of an infraction or a misdemeanor, punishable as set forth in Chapter 2 of Title 1 of the Ontario Municipal Code. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each day that a prohibited condition is maintained shall constitute a separate offense. The application of this penalty shall not be held to prevent the enforced removal of prohibited conditions."

Section 4-4.15. Amendment: Failure to Comply.

Section 113.4 of the CFC is amended to read as follows:

1. "113.4 Failure to Comply. Any person who shall continue any work after having been served with a stop work order, except that work as that person is directed to perform to remove a violation or unsafe condition, shall be guilty of a misdemeanor, punishable as set forth in Chapter 2 of Title 1 of the Ontario Municipal Code. Each day that any work is done under a stop work order shall constitute a separate offense."

Section 4-4.16. Amendment: Dimensions.

Section 503.2.1 of the CFC is amended to read as follows:

1. "503.2.1 Dimensions. Fire apparatus access roads shall have an unobstructed width of not less than 24 feet, exclusive of shoulders or curbs, except for approved security gates in accordance with section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches."

Section 4-4.17. Amendment: Obstruction of Fire Apparatus Access Roads.

Section 503.4 of the CFC is amended to read as follows:

1. "503.4 Obstruction of fire apparatus access roads. The required width of a fire apparatus access road shall not be obstructed in any manner, including parking of vehicles. Access roads, private roadways and public roadways shall be always provided and maintained in a passable condition. Any obstruction or impediment to reasonable access may be removed by any public safety agency with the expense of such removal to be borne by the owner of the roadway, or in the case of an obstructing vehicle or object, by the owner of said vehicle or object."

Section 4-4.18. Amendment: Two points of connection. Section 507.5.1.2 of the

CFC is added to read as follows:

1. "507.5.1.2 Redundant water supplies. New on-site fire protection water systems that serve buildings greater than 100,000 square feet in floor area shall have two separate remote connections to the public water system designed and constructed in accordance with recognized standards. The locations of such water connections shall be approved by the fire code official."

Section 4-4.19. Amendment: General.

Section 2808.1 of the CFC is amended to read as follows:

1. "2808.1 General. The storage and processing of wood chips, hogged materials, fines, compost, solid biomass feedstock, and raw product produced from yard waste, debris, argo industrial, recycling, and green waste processing facilities shall comply with Sections 2808.2 through 2808.1O."

Section 4-4.20. Amendment: Size of piles.

Section 2808.3 of the CFC is amended to read as follows:

1. "2808.3 Size of piles. Piles shall not exceed 15 feet in height, 50 feet in width and 250 feet in length."

2. Exception: The fire code official is authorized to allow the pile size to be increased when in accordance with section 2808.3.1."

Section 4-4.21. Amendment: Combustible waste.

Section 2808.5 of the CFC is amended to read as follows:

1. "2808.5 Combustible waste. The storage, accumulation and handling of combustible materials and control of vegetation shall comply with Chapter 3. All incoming materials shall be ground or incorporated within 10 days. All incoming materials shall be incorporated into windrows within 15 days. Internal temperatures of stockpiles shall be continuously monitored.

Section 4-4.22. Amendment: Emergency plan.

Section 2808.10 of the CFC is amended to read as follows:

1. "2808.10 Emergency plan. The owner or operator shall develop a plan for monitoring, controlling and extinguishing spot fires and submit the plan to the Ontario Fire Department Fire Prevention Bureau for review and approval. The plan shall include, but not be limited to methods and policies for:

a. Monitoring, controlling and extinguishing spot fires.
b. Emergency contact information for personnel who are able to respond to location 24 hours a day, 7 days a week.
c. Onsite equipment to assist with firefighting operations, such as dozers, water tenders, and large tractors.
d. Special considerations for fire safety during extreme weather conditions.
e. Method of providing adequate onsite water supply for firefighting operation. Water system shall have a minimum delivery/replenish capability of 250 gallons per minute for 2 hours."

Section 4-4.23. Amendment: Buildings Other than One- and Two-family Dwellings, Group R-3 and R-4 buildings and townhomes.

Table 8105.2 of Appendix B is hereby deleted and Appendix B Section 8105.2

of the CFC is amended to read as follows:

1. "8105.2 Buildings other than one- and two-family dwellings. The minimum fire-flow and flow duration for buildings other than one- and two-family dwellings, Group R-3 and R-4 buildings and townhouses shall be as specified in Table 8105.1(2).

2. Exceptions:

a. A reduction in required fire-flow of up to 50 percent, as approved, is allowed when the building is provided with an approved sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2. The resulting fire-flow shall not be less than 1,500 gallons per minute (5678 L/min) for the prescribed duration as specified in Table B105.1(2).

b. [SFM] Group B, S-2 and U occupancies having a floor area not exceeding 1,000 square feet, primarily constructed of noncombustible exterior walls with wood or steel roof framing, having a Class A roof assembly, with uses limited to the following or similar uses:

b.1. California State Parks buildings of an accessory nature (restrooms).
b.2. Safety roadside rest areas, (SRRA), public restrooms.
b.3. Truck inspection facilities, (TIF), CHP office space and vehicle inspection bays.
b.4. Sand/salt storage buildings, storage of sand and salt."

Section 4-4.24. Remote Annunciation

Section 903.4.2.1 of the CFC is hereby added to read as follows:

1. "903.4.2.1 A dedicated fire alarm control unit for the fire sprinkler monitoring system shall be provided and located in an approved location, near the main entrance into the building for fire department use. An approved remote annunciator may be installed at the approved location in lieu of the fire alarm control unit. Zone indication on the remote annunciator may be required by the fire code official."

Section 4-4.25. Amendment: Monitoring

Section 904.3.5 of the CFC is hereby amended to read as follows:

1. "904.3.5 When a building fire alarm system or sprinkler monitoring system is installed, automatic fire-extinguishing systems shall be monitored by the building's fire alarm control unit in accordance with NFPA 72."

SECTION 3. Filing of Ordinance. The Fire Chief shall transmit a copy of this Ordinance for filing to the State of California Building Standards Commission, pursuant to Health and Safety Code Section 17958.7. One copy of the Ontario Fire Code shall be placed on file in the Office of the City Clerk and is hereby adopted and made a part of this Chapter as if fully set forth at length herein.

SECTION 4. Repeal of Conflicting Ordinances. Ordinance No. 3147, and all former ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance or of the Fire Code, as adopted and amended herein, are hereby repealed.

SECTION 5. Severability. Any section, paragraph, sentence or word of this ordinance or of the Fire Code as adopted and amended herein that for any reason has been determined to be invalid, it is the intent of the City Council that it will be considered severable from all other portions of this ordinance independent of the elimination therefrom of any such portion as may be declared invalid.

SECTION 6. Effective Date. This Ordinance shall take effect and be in force thirty (30) days after its final passage. From the date on which this Ordinance shall take effect, the provisions of the Ontario Fire Code shall be controlling within the City limits of the City of Ontario.

SECTION 7. CEQA. The City Council finds that the changes made to the California Fire Code and the International Fire Code are enacted to mitigate threats to public peace, health and safety from earthquakes, high winds and fire. Moreover, the amendments are substantially similar to those provisions previously enacted and contained in the current version of the City's Fire Code. Therefore, it can be seen with certainty that the adoption of this Ordinance will not have a significant adverse effect on the environment and is therefore exempt from the California Environmental Quality Act (CEQA) pursuant to section 15061(b)(3) of the CEQA Guidelines. Staff is directed to file a Notice of Exemption within five (5) days of the adopting of this Ordinance.

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 15th day of November 2022.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held _____ and adopted at the regular meeting held November 15, 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 _____ and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CHAPTERS 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, AND 14 OF TITLE 8 OF THE ONTARIO MUNICIPAL CODE, ADOPTING BY REFERENCE THE 2022 EDITION OF THE CALIFORNIA BUILDING STANDARDS CODE, INCORPORATING THE 2022 CALIFORNIA ADMINISTRATIVE CODE, THE 2022 CALIFORNIA BUILDING CODE, THE 2022 CALIFORNIA MECHANICAL CODE, THE 1997 CALIFORNIA HOUSING CODE, THE 2022 CALIFORNIA ELECTRICAL CODE, THE 2022 CALIFORNIA RESIDENTIAL CODE, THE 2022 CALIFORNIA PLUMBING CODE, THE 2022 CALIFORNIA ENERGY CODE, THE 2021 INTERNATIONAL PROPERTY MAINTENANCE CODE, THE 2022 CALIFORNIA GREEN BUILDING STANDARDS CODE, THE 2022 HISTORIC BUILDING CODE, 2022 CALIFORNIA EXISTING BUILDING CODE, AND THE 2022 CALIFORNIA REFERENCED STANDARDS, TOGETHER WITH CERTAIN AMENDMENTS THERETO.

WHEREAS, pursuant to Government Code Section 50022.1 *et seq.,* the City of Ontario, California ("City") may adopt by reference the 2022 Edition of the California Building Standards Code as provided in Titles 24 and 25 of the California Code of Regulations and other codes, including, without limitation, the Uniform Housing Code and the Uniform Code for the Abatement of Dangerous Buildings; and

WHEREAS, the California Building Standards Commission recently adopted the 2022 Edition of the California Building Standards Code; and

WHEREAS, California Health and Safety Code Sections 17958.7 and 18941.5 authorize cities to adopt the California Building Standards Code with modifications that are determined to be reasonably necessary because of local climatic, geological, or topographical conditions; and

WHEREAS, prior to making modifications permitted under California Health and Safety Code Sections 17958.7 and 18941.5, the City Council is required to make express findings that such modifications are needed in accordance with California Health and Safety Code Sections 17958.7; and

WHEREAS, the City desires to adopt the California Building Standards Code with the necessary amendments to assure it is tailored to the safety needs of the City as required by its unique climatic, geological, and topographical conditions; and

WHEREAS, the City held a public hearing on November 15, 2022, at which time all interested persons had the opportunity to appear and be heard on the matter of adopting the Codes as amended herein; and

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

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

SECTION 1. Findings. The City Council hereby finds that the proposed amendments to California Building Code Section 113.4 are necessary for administrative or procedural clarification and to establish administrative standards for the effective enforcement of the building standards of the City of Ontario and does not modify a building standard pursuant to California Health & Safety Code Section 17958, 17958.7, and/or 18941.5.

SECTION 2. Chapter 1 of Title 8 of the Ontario Municipal Code is amended in its entirety to read as follows:

Chapter 1 – Administrative and Building Code

Section 8-1.01. Adoption of the Administrative Code

The 2022 Edition of the California Administrative Code, as adopted by the California Building Standards Commission in California Code of Regulations Title 24, Part 1, is hereby adopted by reference and made a part of this chapter as if fully set forth at length herein. One (1) copy of said code is on file in the office of the City Clerk for public review.

Section 8-1.02. Adoption of the Building Code

The 2022 Edition of the California Building Code, as adopted by the California Building Standards Commission in California Code of Regulations Title 24, Part 2, Volumes 1 and 2, subject to the amendments set forth in this chapter, is hereby adopted by reference and made a part of this chapter as if fully set forth at length herein. One (1) copy of said code is on file in the office of the City Clerk for public review.

Section 8-1.03. Amendment: Section 113.4

Section 113.4 is added to the California Building Code to read as follows:

1. 113.4 Ontario Building Appeals Board. The City Manager shall recommend to the City Council five (5) individuals desirous to serve on the Building Appeals Board who are qualified by experience and training to pass on matters pertaining to building construction and are not employees of the City. Each Board Member's term on the Building Appeals Board shall remain indefinite unless the Board Member resigns, or the City Council wishes to designate a new Board Member in its discretion. Should any Board Member be unable to continue serving on the Building Appeals Board, he or she shall submit a written resignation to the City Manager as soon as possible. The City Manager shall, in turn, present a recommended replacement to the City Council for appointment.

Section 8-1.04. Amendment: Part 2, Volume 1, Section 105.2

Section 105.2 is amended as follows:

1. All walls over 3 ft (36 inches) require a building permit and all retaining walls over 2 ft (24 inches) require a building permit.

Section 8-1.05. Amendment: Part 2, Volume 2, Section 1609A

Section 1609A is amended as follows:

1, The City of Ontario design criteria for all structures built within the City is 110 MPH winds, Exposure C, Seismic Zone D

Section 8-1.06. Amendment: Part 2, Volume 2, Section 1613A

Section 1613A is amended as follows:

1. The City of Ontario design criteria for all structures built within the City is 110 MPH winds, Exposure C, Seismic Zone D; and

2. Because of the City's proximity to the San Andreas fault, all underground pipe, conduit, and lines will be shaded with cleaned dirt void of any rocks or clean sand, six inches below and twelve inches above said pipe, conduit, or line. All electrical metal conduit will need a ground conductor, the metal conduit will not act as the ground conductor.

SECTION 3. Chapter 2 of Title 8 of the Ontario Municipal Code is amended in its entirety to read as follows:

Chapter 2 - Mechanical Code

Section 8-2.01. Adoption of the Mechanical Code

The 2022 Edition of the California Mechanical Code, as adopted by the California Building Standards Commission in California Code of Regulations Title 24, Part 4, is hereby adopted by reference and made a part of this chapter as if fully set forth at length herein. One (1) copy of said code is on file in the office of the City Clerk for public review.

SECTION 4. Chapter 3 of Title 8 of the Ontario Municipal Code is amended in its entirety to read as follows:

Chapter 3 - Housing Code

Section 8-3.01. Adoption of Housing Code

The 1997 Edition of the Uniform Housing Code, as published by the International Conference of Building Officials, one (1) copy of which is on file for

public review in the office of the City Clerk, is hereby adopted by reference and made a part of this chapter as if fully set forth at length herein.

SECTION 5. Chapter 4 of Title 8 of the Ontario Municipal Code is amended in its entirety to read as follows:

Chapter 4 - Electrical Code

Section 8-4.01. Adoption of the Electrical Code

The 2022 Edition of the California Electrical Code, as adopted by the California Building Standards Commission in California Code of Regulations Title 24, Part 3, is hereby adopted by reference and made a part of this chapter as if fully set forth at length herein. One (1) copy of said code is on file in the office of the City Clerk for public review.

SECTION 6. Chapter 5 of Title 8 of the Ontario Municipal Code is hereby amended in its entirety to read as follows:

Chapter 5 - Residential Code

Section 8-5.01. Adoption of the Residential Code

The 2022 Edition of the California Residential Code, as adopted by the California Building Standards Commission in California Code of Regulations Title 24, Part 2.5, is hereby adopted by reference and made a part of this chapter as if fully set forth at length herein. One (1) copy of said code is on file in the office of the City Clerk for public review.

Section 8-5.02. Amendment: Section R310.5

Section R310.5 is amended as follows:

1. Retro-fit windows require a building permit and shall conform to the 2022 standards for emergency egress.

SECTION 7. Chapter 6 of Title 8 of the Ontario Municipal Code is amended in its entirety to read as follows:

Chapter 6 - General Provisions

Section 8-6.01. Fees

Fees for any permit, license or other approval issued pursuant to any of the codes adopted by this title shall be as set forth by resolution of the City Council.

Section 8-6.02. Violations

Violations of any provision of any of the codes adopted by this title shall subject

the violator to any or all of the penalties provided in this code or applicable law.

SECTION 8. Chapter 7 of Title 8 of the Ontario Municipal Code is hereby amended in its entirety to read as follows:

Chapter 7 - Plumbing Code

Section 8-7.01. Adoption of the Plumbing Code

The 2022 Edition of the California Plumbing Code, as adopted by the California Building Standards Commission in California Code of Regulations Title 24, Part 5, is hereby adopted by reference and made a part of this chapter as if fully set forth at length herein. One (1) copy of said code is on file in the office of the City Clerk for public review.

SECTION 9. Chapter 10 of Title 8 of the Ontario Municipal Code is hereby amended in its entirety to read as follows:

Chapter 10 – Energy Code

Section 8-10.01. Adoption of the Energy Code

The 2022 Edition of the California Energy Code, as adopted by the California Building Standards Commission in California Code of Regulations Title 24, Part 6, is hereby adopted by reference and made a part of this chapter as if fully set forth at length herein. One (1) copy of said code is on file in the office of the City Clerk for public review.

SECTION 10. Chapter 11 of Title 8 of the Ontario Municipal Code is hereby amended in its entirety to read as follows:

Chapter 11 - International Property Maintenance Code

Section 8-11.01. Adoption of the International Property Maintenance Code

The 2021 Edition of the International Property Maintenance Code, including the administration chapter, one (1) copy of which is on file for public review in the office of the City Clerk, is hereby adopted by reference and made a part of this chapter as if fully set forth at length herein.

SECTION 11. Chapter 12 of Title 8 of the Ontario Municipal Code is hereby amended in its entirety to read as follows:

Chapter 12 - Green Building Standards Code

Section 8-12.01. Adoption of California Green Building Standards Code

The 2022 Edition of the California Green Buildings Standards Code, as adopted by the California Building Standards Commission in California Code of Regulations Title 24, Part 11, is hereby adopted by reference and made a part of this chapter as if fully set forth as length herein. One (1) copy of said code is on file in the office of the City Clerk for public review.

SECTION 12. Chapter 14 of Title 8 of the Ontario Municipal Code is hereby amended in its entirety to read as follows:

Chapter 14 - Historic Building Code, Existing Building Code and Referenced Standards

Section 8-14.01. Adoption of California Historic Building Code

The 2022 Edition of the California Historic Building Code, as adopted by the California Building Standards Commission in California Code of Regulations Title 24, Part 8, is hereby adopted by reference and made a part of this chapter as if fully set forth as length herein. One (1) copy of said code is on file in the office of the City Clerk for public review.

Section 8-14.02. Adoption of California Existing Building Code

The 2022 Edition of the California Existing Building Code, as adopted by the California Building Standards Commission in California Code of Regulations Title 24, Part 10, is hereby adopted by reference, and made a part of this chapter as if fully set forth as length herein. One (1) copy of said code is on file in the office of the City Clerk for public review.

Section 8-14.03. Adoption of California Referenced Standards

The 2022 Edition of the California Referenced Standards, as adopted by the California Building Standards Commission in California Code of Regulations Title 24, Part 12, is hereby adopted by reference, and made a part of this chapter as if fully set forth as length herein. One (1) copy of said code is on file in the office of the City Clerk for public review.

SECTION 13. Filing of Ordinance. The Building Official shall transmit a copy of this Ordinance for filing to the State of California Building Standards Commission, pursuant to Health and Safety Code Section 17958.7. One copy of the Ontario Building Code shall be placed on file in the Office of the City Clerk and is hereby adopted and made a part of this Chapter as if fully set forth at length herein.

SECTION 14. Repeal of Conflicting Ordinances. Ordinance No. 3148, all former ordinances, or parts thereof conflicting or inconsistent with the provisions of this ordinance, as adopted and amended herein, are hereby repealed.

SECTION 15. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase added by this Ordinance, or any part

thereof, is for any reason held to be unconstitutional or invalid or in effective 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 passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

SECTION 16. CEQA. The City Council finds that the changes made to the California Building Code and the International Building Code are enacted to mitigate threats to public peace, health and safety from earthquakes, high winds and fire. Moreover, the amendments are substantially similar to those provisions previously enacted and contained in the current version of the City's Building Code. Therefore, it can be seen with certainty that the adoption of this Ordinance will not have a significant adverse effect on the environment and is therefore exempt from the California Environmental Quality Act (CEQA) pursuant to section 15061(b)(3) of the CEQA Guidelines. Staff is directed to file a Notice of Exemption within five (5) days of the adopting of this Ordinance.

SECTION 17. 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 15th day of November 2022.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held _____ and adopted at the regular meeting held November 15, 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 _____ and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **November 15, 2022**	**SECTION:** **PUBLIC HEARINGS**
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: 22

SUBJECT: **RESOLUTIONS OF NECESSITY FOR THE ACQUISITION BY EMINENT DOMAIN OF FEE INTERESTS IN CERTAIN REAL PROPERTIES LOCATED ON EAST HOLT BOULEVARD, MORE PARTICULARLY DESCRIBED AS ASSESSOR PARCEL NOS. 1048-481-27; 1048-481-07; 1048-481-28; AND 1048-481-29**

RECOMMENDATION: That the City Council conduct a public hearing and adopt Resolutions of Necessity declaring that the acquisition of fee interests in certain real properties located on East Holt Boulevard, more particularly described as Assessor Parcel Nos. 1048-481-27; 1048-481-07; 1048-481-28; and 1048-481-29, is necessary for the construction of affordable housing.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: If approved, appropriations adjustments in the Ontario Housing Authority will be included in the First Quarter Budget Update to cover the acquisition costs. Deposits to file the Resolution of Necessity total $8,977,000.

BACKGROUND & ANALYSIS:

The Property consists of four parcels located on East Holt Boulevard, as shown on Exhibit "A" ("Property"), for the construction of Vista Verde II affordable housing project ("Project"). The City seeks to acquire a full fee interest in each parcel referenced above.

The City obtained an appraisal of the Property from Bradford D. Thompson, MAI, AI-GRS, SR/WA, and Scott J. Thompson, MAI, AI-SRS, SR/WA of Thomson & Thompson Real Estate Valuation and Consulting Inc., and made offers of just compensation to the property owners for the acquisitions pursuant to California Government Code section 7267.2. The City retained Interwest to assist with acquisitions and relocations. Following standard public records and due diligence searches for ownership information, a notice of this public hearing was mailed to the property owners. City staff has attempted to negotiate voluntary settlements and will continue to do so.

Notice of the Resolution of Necessity hearing were mailed to each Property owner on October 28,

2022 by regular U.S. Mail.

The power of eminent domain is used by the City only as a last resort to obtain interests necessary for projects after 1) negotiations have stalled; or 2) the owner has requested that the City proceed directly to eminent domain for tax or other advantages; or 3) the eminent domain process is necessary to clear title to the property. In this case, offers of just compensation were made to the owners for the full Fair Market Value as determined by an independent appraisal. City staff attempted to acquire amicable settlement in good faith and will continue to do so throughout the process.

DESCRIPTION OF PROPERTY TO BE ACQUIRED: The Property affected by the proposed acquisition is located within the City of Ontario, at 907 East Holt Boulevard (B. Patel Family Trust); 935 East Holt Boulevard (Jimenez); 957 East Holt Boulevard (Harb); and vacant land with no situs address, aka: 957 East Holt Boulevard (Dali III, LLC). The Property is being condemned for the Project.

HEARINGS AND REQUIRED FINDINGS: The recommended actions of the City Council pertain to the acquisition property owned by:

907 East Holt Boulevard, Ontario, California, 91761, APN 1048-481-27: B. Patel Family Trust;

935 East Holt Boulevard, Ontario, California, 91761, APN 1048-481-07: Jose G. Jimenez;

957 East Holt Boulevard, Ontario, California, 91761, APN 1048-481-28: Maan F. Harb and Nadim F. Harb; and

957 East Holt Boulevard, Ontario, California, 91761, APN 1048-481-29: Dali III, LLC

California eminent domain law provides that a public entity may not commence an eminent domain proceeding until its governing body has adopted a Resolution of Necessity, which resolution may only be adopted after the governing body has given each party with an interest in the affected property or their representatives a reasonable opportunity to appear and be heard on the following matters:

1. The public interest and necessity require the proposed project.
2. The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
3. The real property to be acquired is necessary for the project.
4. The offer of just compensation has been made to the property owner.

The notice of hearing were mailed on October 28, 2022 by first class mail to the property owners in accordance with Section 1245.235 of the California Code of Civil Procedure.

The above four required findings are addressed as follows:

1. **The Public Interest and Necessity Require the Proposed Project**

Over the last several years the City has partnered with highly regarded housing developers to fulfill the City's commitment to increase the availability of affordable housing.

In 2020, Emporia Place, a 74-unit smoke-free affordable planned community located on the southeast corner of Holt Boulevard and Vine Avenue was completed. Amenities include a community room, splash pad, laundry facilities, a computer lab, and on-site management. These for rent apartments are highly desired by Ontario resident for households earning 60 percent below the area median income for San Bernardino County.

In 2021, the 101-unit Vista Verde affordable housing project located on the northeast corner of Holt Boulevard and Virginia Avenue opened to the public. This high-quality project houses families who earn between 30 and 60 percent of the area median income in Ontario. This project is an integral part of the City's plan to demonstrate a sustainable community. Vista Verde is one of the first all-electric, zero net energy communities, designed and constructed using cost-efficient technologies and innovative approaches to prepare for a world of bike-and pedestrian-friendly communities that encourage healthier lifestyles and reduce pollution. This sustainable development has a low carbon footprint, improving the quality of life for the community as a whole.

Vista Verde II is the next planned community to offer affordable housing to Ontario residents. The project is slated for the northeast corner of Holt Boulevard and Allyn Avenue and will be a continuance of the City's commitment in supporting the development of affordable housing in the City of Ontario.

2. **The Project is Planned or Located in a Manner That Will be Most Compatible With the Greatest Public Good and the Least Private Injury**

The proposed Project will support the City Council's goals and objectives and implement land use and development goals as stated in the Policy Plan component of the General Plan. The proposed Project is intended to minimize impacts on performing private assets along East Holt Boulevard while allowing for joint development opportunities with investment partners. The proposed Project also addresses absentee property owners and will allow for the removal of blighted and underutilized property in the area. The properties to be acquired are best suited for the Project and will cause the least private injury. To move this Project elsewhere would require significant land use policy changes, cause a greater impact to local property owners, and would effectively be cost prohibitive.

3. **The Real Property to be Acquired is Necessary for the Proposed Project**

The Property affected by the proposed acquisition is located within the City of Ontario, on East Holt Boulevard, located at 907 East Holt Boulevard, Ontario, California, 91761, APN 1048-481-27 (owned by B. Patel Family Trust); 935 East Holt Boulevard, Ontario, California, 91761, APN 1048-481-07 (owned by Jose Jimenez); 957 East Holt Boulevard, Ontario, California, 91761, APN 1048-481-28 (owned by Maan F. Harb and Nadim F. Harb); and 957 East Holt Boulevard, Ontario, California, 91761, APN 1048-481-29 (owned by Dali III, LLC). The Property is necessary for the Project. The acquisition is necessary to allow for the construction of affordable housing.

4. **The Offer of Just Compensation Has Been Made**

Appraisals were prepared by Bradford D. Thompson, MAI, AI-GRS, SR/WA, and Scott J. Thompson, MAI, AI-SRS, SR/WA of Thomson & Thompson Real Estate Valuation and Consulting Inc., to establish the Fair Market Value of the fee interest of each Property the City is seeking to acquire. An offer of just compensation was made to each record owner to purchase the fee interest in the Property to be acquired, as established by the approved appraisal and as required by Section 7267.2 of the California Government Code. Although negotiated settlements may still be possible for the fee interests cited above, it would be appropriate to commence the procedures to acquire the necessary interest through eminent domain.

ENVIRONMENTAL ANALYSIS: Pursuant to the State of California Environmental Quality Act Guidelines Section 15183 there has been compliance by the City with the requirements of the California Environmental Quality Act.

EXHIBIT 1


B. Patel Family Trust
Ontario Housing Authority
Jose G. Jimenez
Miller Family Trust (Willing Seller)
Dali III, LLC
Mann F. Harb

RESOLUTION NO._____

A RESOLUTION OF NECESSITY OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR THE ACQUISITION BY EMINENT DOMAIN OF A FEE SIMPLE INTEREST OF CERTAIN REAL PROPERTY LOCATED AT 907 EAST HOLT BOULEVARD, ONTARIO, CALIFORNIA, 91761, MORE PARTICULARLY DESCRIBED AS ASSESSOR PARCEL NO. 1048-481-27, FOR AFFORDABLE HOUSING.

WHEREAS, the City of Ontario (the "City") proposes to acquire, by eminent domain, a fee simple interest of real property located on East Holt Boulevard, at 907 East Holt Boulevard, Ontario, California, 91761, more particularly described as Assessor Parcel Number 1048-481-27, for the construction of affordable housing for the City of Ontario's Vista Verde II Project in the City of Ontario, San Bernardino County, California, pursuant to the authority granted to it by Section 37350.5 of the California Government Code; and

WHEREAS, pursuant to Section 1245.235 of the California Code of Civil Procedure, the City scheduled a public hearing for Tuesday, November 15, 2022, at 6:30 p.m. at the Ontario City Hall, Council Chambers, 303 East "B" Street, Ontario, California, and gave to each person whose property is to be acquired and whose name and address appeared on the last equalized county assessment roll, notice and a reasonable opportunity to appear at said hearing and be heard on the matters referred to in Section 1240.030 of the California Code of Civil Procedure; and

WHEREAS, said hearing has been held by the City and each person whose property is to be acquired by eminent domain was afforded an opportunity to be heard on said matters; and

WHEREAS, the City may now adopt a Resolution of Necessity pursuant to Section 1240.040 of the California Code of Civil Procedure.

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

SECTION 1. Compliance with California Code of Civil Procedure and California Environmental Quality Act. There has been compliance by the City with the requirements of Section 1245.235 of the California Code of Civil Procedure and the California Environmental Quality Act.

SECTION 2. Public Use. The public uses for which the real property interest is to be acquired are for construction of construction of affordable housing for the City of Ontario's Vista Verde II Project in the City of Ontario, San Bernardino County, California. Section 37350.5 of the California Government Code authorizes the City to acquire by eminent domain real property necessary for such purposes.

SECTION 3. Description of Property. Attached and marked as Exhibit A are the legal definition, description, and depiction of the real property to be acquired by the

City, which describes the general location and extent of the property to be acquired with sufficient detail for reasonable identification.

SECTION 4. Findings. The City hereby finds and determines each of the following:

(a) The public interest and necessity require the proposed project.

(b) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.

(c) The fee interest described in Exhibit A is necessary for the proposed project.

(d) The offer required by Section 7267.2 of the California Government Code was made.

SECTION 5. Further Activities. Counsel for the City is hereby authorized to file legal proceedings necessary to acquire the hereinabove described real property in the name of and on behalf of the City by eminent domain, and counsel is authorized to institute and prosecute such legal proceedings as may be required in connection therewith. Legal counsel is further authorized to take such steps as may be authorized and required by law, and to make such security deposits as may be required by order of court, to permit the City to take possession of and use said real property at the earliest possible time. Counsel is further authorized to correct any errors or to make or agree to non-material changes in the legal description of the real property that are deemed necessary for the conduct of the condemnation action or other proceedings or transaction required to acquire the subject real property.

SECTION 6. Effective Date. This Resolution shall take effect upon adoption.

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

PASSED, APPROVED AND ADOPTED this 15th day of November 2022.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

_____
BEST, BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2022- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 15, 2022 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2022- duly passed and adopted by the Ontario City Council at their regular meeting held November 15, 2022.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 2 OF PARCEL MAP NO. 9337, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 114, PAGES 96 AND 97 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 1048-481-27-0-000

Order: 30089386
Doc: SBA 1048-48

This map/plat is being furnished as an aid in locating the herein described Land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.

Page 1 of 1

Requested By: briankyle. Printed: 7/19/2022 9:28 AM

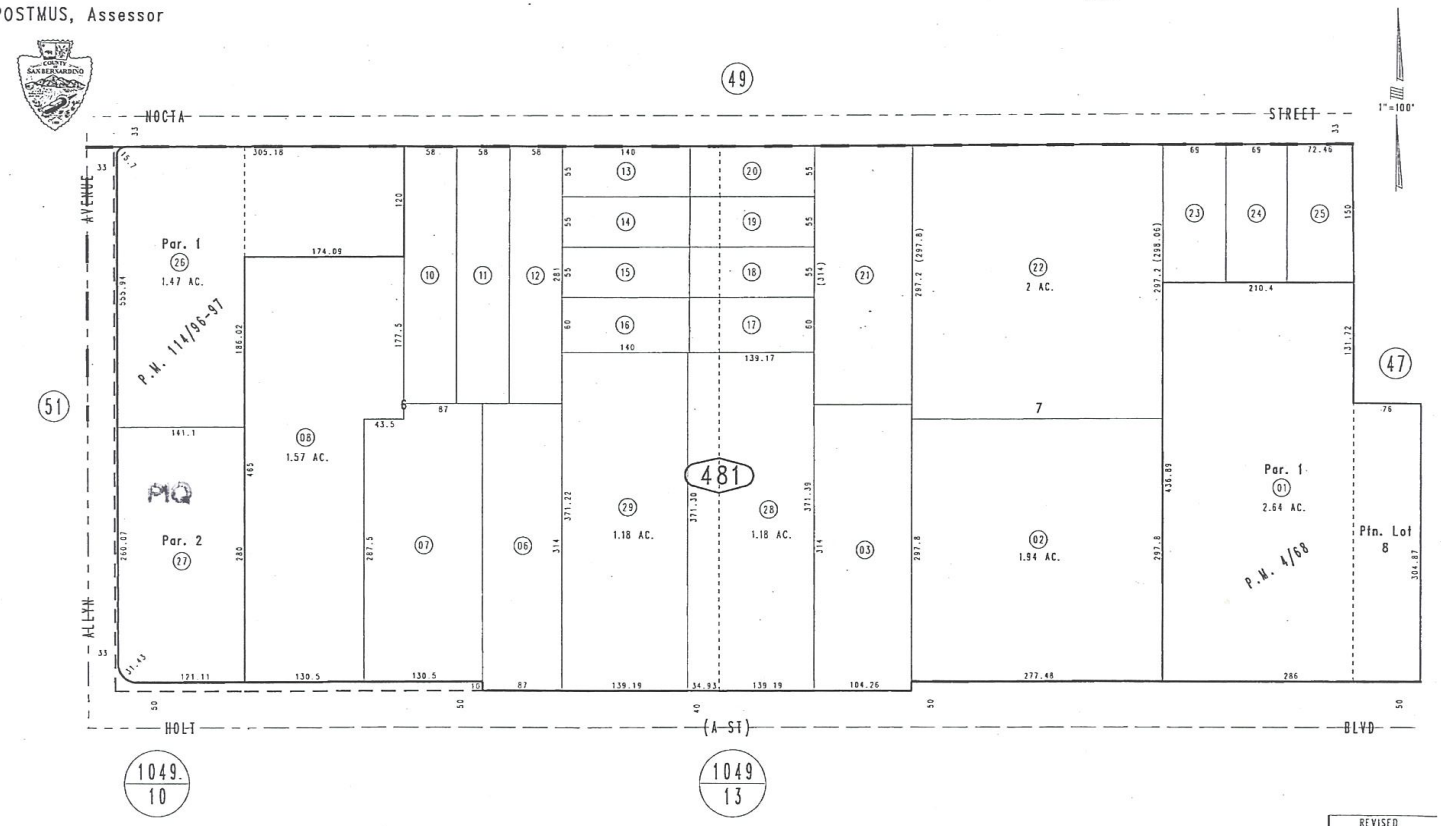
THIS MAP IS FOR THE PURPOSE OF AD VALOREN TAXATION ONLY.

BILL POSTMUS, Assessor

Ptn. Revised Map of Hanson Co's Add. M.B. 12/51

City of Ontario
Tax Rate Area
4001

1048 - 48



REVISED
12/09/06 GL

October 2004

Parcel Map No. 9337, P.M. 114/96-97
Parcel Map No. 291, P.M. 4/68

Ptn. S.E.1/4, Sec.20
T.1S.,R.7W.

Assessor's Map
Book 1048 Page 48
San Bernardino County

Legal Definition

The following is the definition of legal rights to be acquired by the City of Ontario:

"**Fee"** also known as fee simple or fee simple absolute, grants to the City of Ontario absolute ownership of the property.

RESOLUTION NO._____

A RESOLUTION OF NECESSITY OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR THE ACQUISITION BY EMINENT DOMAIN OF A FEE SIMPLE INTEREST OF CERTAIN REAL PROPERTY LOCATED AT 935 EAST HOLT BOULEVARD, ONTARIO, CALIFORNIA, 91761, MORE PARTICULARLY DESCRIBED AS ASSESSOR PARCEL NO. 1048-481-07, FOR AFFORDABLE HOUSING.

WHEREAS, the City of Ontario (the "City") proposes to acquire, by eminent domain, a fee simple interest of real property located on East Holt Boulevard, at 935 East Holt Boulevard, Ontario, California 91761, more particularly described as Assessor Parcel Number 1048-481-07, for the construction of affordable housing for the City of Ontario's Vista Verde II Project in the City of Ontario, San Bernardino County, California, pursuant to the authority granted to it by Section 37350.5 of the California Government Code; and

WHEREAS, pursuant to Section 1245.235 of the California Code of Civil Procedure, the City scheduled a public hearing for Tuesday, November 15, 2022, at 6:30 p.m. at the Ontario City Hall, Council Chambers, 303 East "B" Street, Ontario, California, and gave to each person whose property is to be acquired and whose name and address appeared on the last equalized county assessment roll, notice and a reasonable opportunity to appear at said hearing and be heard on the matters referred to in Section 1240.030 of the California Code of Civil Procedure; and

WHEREAS, said hearing has been held by the City and each person whose property is to be acquired by eminent domain was afforded an opportunity to be heard on said matters; and

WHEREAS, the City may now adopt a Resolution of Necessity pursuant to Section 1240.040 of the California Code of Civil Procedure.

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

SECTION 1. Compliance with California Code of Civil Procedure and California Environmental Quality Act. There has been compliance by the City with the requirements of Section 1245.235 of the California Code of Civil Procedure and the California Environmental Quality Act.

SECTION 2. Public Use. The public uses for which the real property interest is to be acquired are for construction of construction of affordable housing for the City of Ontario's Vista Verde II Project in the City of Ontario, San Bernardino County, California. Section 37350.5 of the California Government Code authorizes the City to acquire by eminent domain real property necessary for such purposes.

SECTION 3. Description of Property. Attached and marked as Exhibit A are the legal definition, description, and depiction of the real property to be acquired by the

City, which describes the general location and extent of the property to be acquired with sufficient detail for reasonable identification.

SECTION 4. Findings. The City hereby finds and determines each of the following:

(a) The public interest and necessity require the proposed project;

(b) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;

(c) The fee interest described in Exhibit A is necessary for the proposed project;

(d) The offer required by Section 7267.2 of the California Government Code was made.

SECTION 5. Further Activities. Counsel for the City is hereby authorized to file legal proceedings necessary to acquire the hereinabove described real property in the name of and on behalf of the City by eminent domain, and counsel is authorized to institute and prosecute such legal proceedings as may be required in connection therewith. Legal counsel is further authorized to take such steps as may be authorized and required by law, and to make such security deposits as may be required by order of court, to permit the City to take possession of and use said real property at the earliest possible time. Counsel is further authorized to correct any errors or to make or agree to non-material changes in the legal description of the real property that are deemed necessary for the conduct of the condemnation action or other proceedings or transaction required to acquire the subject real property.

SECTION 6. Effective Date. This Resolution shall take effect upon adoption.

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

PASSED, APPROVED AND ADOPTED this 15th day of November 2022.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

_____
BEST, BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2022- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 15, 2022 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2022- duly passed and adopted by the Ontario City Council at their regular meeting held November 15, 2022.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

FEE

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ONTARIO IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

THE WEST 87 FEET OF THE SOUTH ONE-HALF OF THE EAST ONE-HALF OF LOT 6, ACCORDING TO THE REVISED MAP OF HANSON AND COMPANY'S ADDITION TO ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 12, PAGE 51 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM THE SOUTH 10 FEET, AS CONVEYED TO THE CITY OF ONTARIO BY DEED RECORDED JULY 26, 1973, IN BOOK 8233, PAGE 679 OF OFFICIAL RECORDS.

PARCEL 2:

THE SOUTH 297.5 FEET OF THE EAST 43.5 FEET OF THE EAST ONE-HALF OF THE WEST ONE-HALF OF LOT 6, ACCORDING TO THE REVISED MAP OF HANSON AND COMPANY'S ADDITION TO ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 12, PAGE 51 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM THE SOUTH 10 FEET, AS CONVEYED TO THE CITY OF ONTARIO BY DEED RECORDED JULY 26, 1973, IN BOOK 8233, PAGE 679 OF OFFICIAL RECORDS.

APN 1048-481-07-0-000

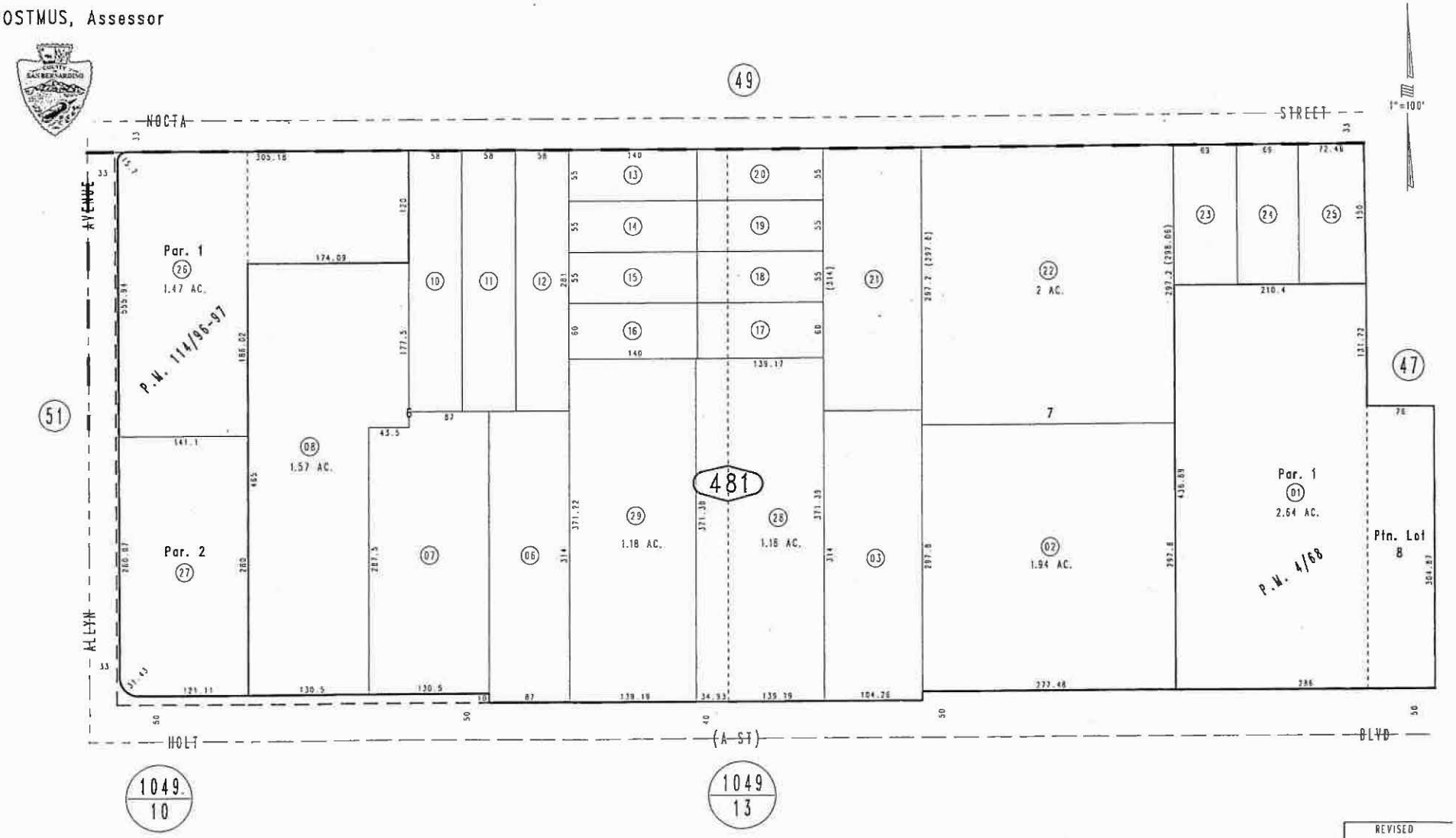
THIS MAP IS FOR THE PURPOSE OF AD VALOREM TAXATION ONLY.

BILL POSTMUS, Assessor

Ptn. Revised Map of Hanson Co's Add.
M.B. 12/51

City of Ontario
Tax Rate Area
4001

1048 - 48



October 2004

Parcel Map No. 9337, P.M. 114/96-97
Parcel Map No. 291, P.M. 4/68

Ptn. S.E.1/4, Sec.20
T.1S.,R.7W.

Assessor's Map
Book 1048 Page 48
San Bernardino County

REVISED
12/09/08 GL

Legal Definition

The following is the definition of legal rights to be acquired by the City of Ontario:

"**Fee"** also known as fee simple or fee simple absolute, grants to the City of Ontario absolute ownership of the property.

RESOLUTION NO. _____

A RESOLUTION OF NECESSITY OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR THE ACQUISITION BY EMINENT DOMAIN OF A FEE SIMPLE INTEREST OF CERTAIN REAL PROPERTY LOCATED AT 957 EAST HOLT BOULEVARD, ONTARIO, CALIFORNIA, 91761, MORE PARTICULARLY DESCRIBED AS ASSESSOR PARCEL NO. 1048-481-28, FOR AFFORDABLE HOUSING.

WHEREAS, the City of Ontario (the "City") proposes to acquire, by eminent domain, a fee simple interest of real property located on East Holt Boulevard, at 957 East Holt Boulevard, Ontario, California, 91761, more particularly described as Assessor Parcel Number 1048-481-28, for the construction of affordable housing for the City of Ontario's Vista Verde II Project in the City of Ontario, San Bernardino County, California, pursuant to the authority granted to it by Section 37350.5 of the California Government Code; and

WHEREAS, pursuant to Section 1245.235 of the California Code of Civil Procedure, the City scheduled a public hearing for Tuesday, November 15, 2022, at 6:30 p.m. at the Ontario City Hall, Council Chambers, 303 East "B" Street, Ontario, California, and gave to each person whose property is to be acquired and whose name and address appeared on the last equalized county assessment roll, notice and a reasonable opportunity to appear at said hearing and be heard on the matters referred to in Section 1240.030 of the California Code of Civil Procedure; and

WHEREAS, said hearing has been held by the City and each person whose property is to be acquired by eminent domain was afforded an opportunity to be heard on said matters; and

WHEREAS, the City may now adopt a Resolution of Necessity pursuant to Section 1240.040 of the California Code of Civil Procedure.

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

SECTION 1. Compliance with California Code of Civil Procedure and California Environmental Quality Act. There has been compliance by the City with the requirements of Section 1245.235 of the California Code of Civil Procedure and the California Environmental Quality Act.

SECTION 2. Public Use. The public uses for which the real property interest is to be acquired are for construction of construction of affordable housing for the City of Ontario's Vista Verde II Project in the City of Ontario, San Bernardino County, California. Section 37350.5 of the California Government Code authorizes the City to acquire by eminent domain real property necessary for such purposes.

SECTION 3. Description of Property. Attached and marked as Exhibit A are the legal definition, description and depiction of the real property to be acquired by the

City, which describes the general location and extent of the property to be acquired with sufficient detail for reasonable identification.

SECTION 4. Findings. The City hereby finds and determines each of the following:

(a) The public interest and necessity require the proposed project;

(b) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;

(c) The fee interest described in Exhibit A is necessary for the proposed project;

(d) The offer required by Section 7267.2 of the California Government Code was made.

SECTION 6. Further Activities. Counsel for the City is hereby authorized to file legal proceedings necessary to acquire the hereinabove described real property in the name of and on behalf of the City by eminent domain, and counsel is authorized to institute and prosecute such legal proceedings as may be required in connection therewith. Legal counsel is further authorized to take such steps as may be authorized and required by law, and to make such security deposits as may be required by order of court, to permit the City to take possession of and use said real property at the earliest possible time. Counsel is further authorized to correct any errors or to make or agree to non-material changes in the legal description of the real property that are deemed necessary for the conduct of the condemnation action or other proceedings or transaction required to acquire the subject real property.

SECTION 7. Effective Date. This Resolution shall take effect upon adoption.

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

PASSED, APPROVED AND ADOPTED this 15th day of November 2022.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

_____
BEST, BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2022- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 15, 2022 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2022- duly passed and adopted by the Ontario City Council at their regular meeting held November 15, 2022.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

FEE

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ONTARIO IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 2 OF THAT CERTAIN LOT LINE ADJUSTMENT 08-007, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, RECORDED NOVEMBER 10, 2008 AS INSTRUMENT NO. 2008-491390 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF HOLT BOULEVARD BEING 40 FEET WIDE AND DISTANT 34.93 FEET WEST OF THE SOUTHEAST CORNER OF LOT 6 AS SHOWN ON THE REVISED MAP OF HANSON AND COMPANY'S ADDITION TO ONTARIO, FILED IN BOOK 12, PAGE 51 OF MAPS, RECORDS OF SAID SAN BERNARDINO COUNTY, CALIFORNIA; THENCE NORTH 0° 01' 12" EAST A DISTANCE OF 371.30 FEET TO A POINT WHICH IS 258 FEET SOUTH OF THE NORTH LINE OF THE AFORESAID LOT 6; THENCE NORTH 89° 58' 03" EAST 139.17 FEET TO A POINT WHICH IS 258 FEET SOUTH OF THE NORTH LINE OF SAID LOT 6, SAID POINT ALSO BEING ON THE EAST LINE OF THE WEST 1 AND 1/2 ACRES OF LOT 7 OF THE AFOREMENTIONED HANSON AND COMPANY'S ADDITION TO ONTARIO; THENCE SOUTH 0° 01' 09" WEST A DISTANCE OF 371.39 FEET TO THE NORTH LINE OF HOLT BOULEVARD (BEING 40 FEET WIDE); THENCE WEST ALONG THE NORTH LINE OF HOLT BOULEVARD A DISTANCE OF 139.19 FEET TO THE POINT OF BEGINNING.

APN: 1048-481-28

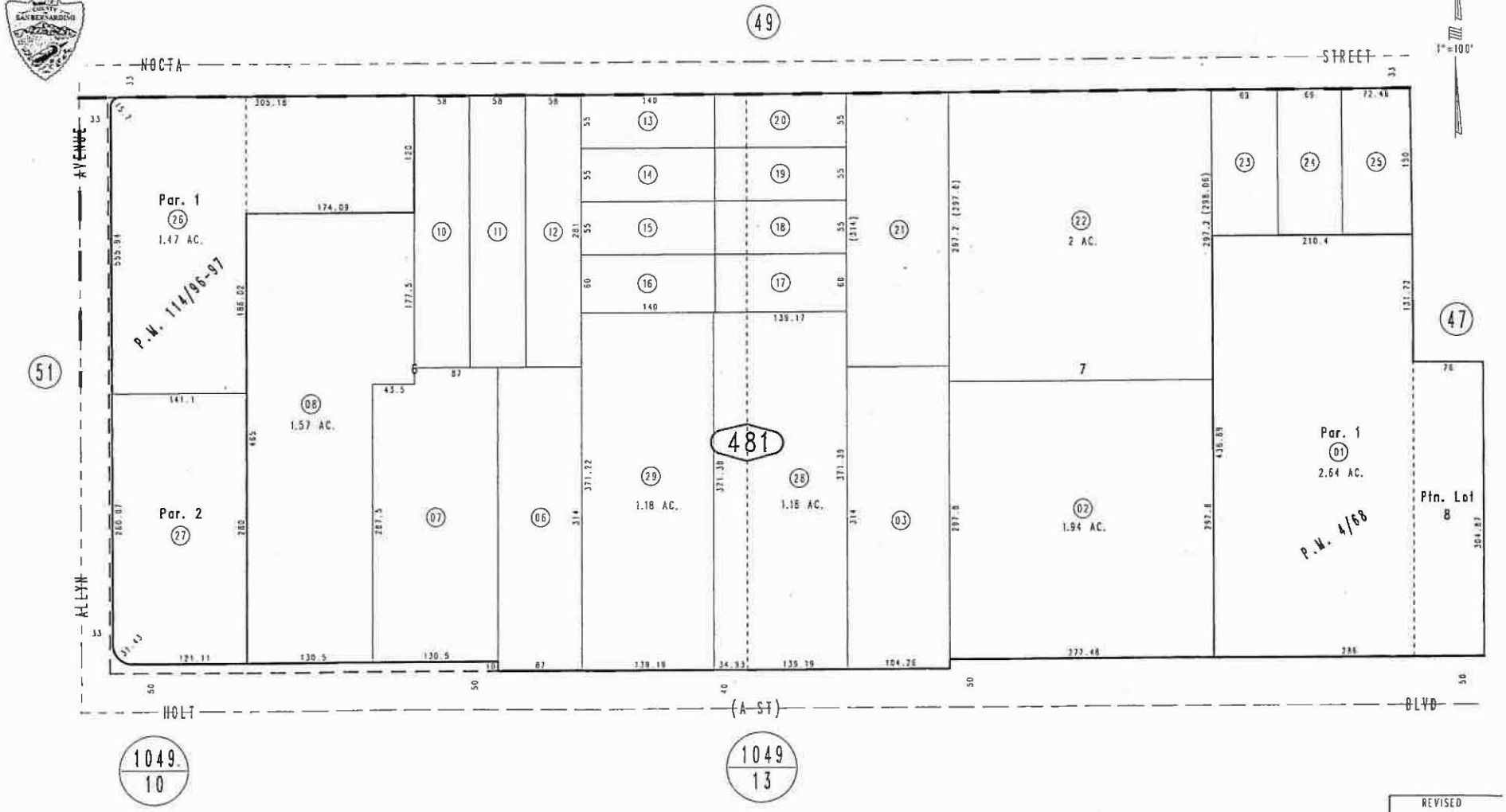
THIS MAP IS FOR THE PURPOSE OF AD VALOREM TAXATION ONLY.

Ptn. Revised Map of Hanson Co's Add.
M.B. 12/51

City of Ontario
Tax Rate Area
4001

1048 - 48

BILL POSTMUS, Assessor



Parcel Map No. 9337, P.M. 114/96-97
Parcel Map No. 291, P.M. 4/68

Ptn. S.E.1/4, Sec.20
T.1S.,R.7W.

Assessor's Map
Book 1048 Page 48
San Bernardino County

REVISED
12/09/08 GL

October 2004

Legal Definition

The following is the definition of legal rights to be acquired by the City of Ontario:

"**Fee"** also known as fee simple or fee simple absolute, grants to the City of Ontario absolute ownership of the property.

RESOLUTION NO._____

A RESOLUTION OF NECESSITY OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR THE ACQUISITION BY EMINENT DOMAIN OF A FEE SIMPLE INTEREST OF CERTAIN REAL PROPERTY LOCATED AT 957 EAST HOLT BOULEVARD, ONTARIO, CALIFORNIA, 91761, MORE PARTICULARLY DESCRIBED AS ASSESSOR PARCEL NO. 1048-481-29, FOR AFFORDABLE HOUSING.

WHEREAS, the City of Ontario (the "City") proposes to acquire, by eminent domain, a fee simple interest of real property located on East Holt Boulevard, at 957 East Holt Boulevard, Ontario, California, 91761, more particularly described as Assessor Parcel Number 1048-481-29, for the construction of affordable housing for the City of Ontario's Vista Verde II Project in the City of Ontario, San Bernardino County, California, pursuant to the authority granted to it by Section 37350.5 of the California Government Code; and

WHEREAS, pursuant to Section 1245.235 of the California Code of Civil Procedure, the City scheduled a public hearing for Tuesday, November 15, 2022, at 6:30 p.m. at the Ontario City Hall, Council Chambers, 303 East "B" Street, Ontario, California, and gave to each person whose property is to be acquired and whose name and address appeared on the last equalized county assessment roll, notice and a reasonable opportunity to appear at said hearing and be heard on the matters referred to in Section 1240.030 of the California Code of Civil Procedure; and

WHEREAS, said hearing has been held by the City and each person whose property is to be acquired by eminent domain was afforded an opportunity to be heard on said matters; and

WHEREAS, the City may now adopt a Resolution of Necessity pursuant to Section 1240.040 of the California Code of Civil Procedure.

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

SECTION 1. Compliance with California Code of Civil Procedure and California Environmental Quality Act. There has been compliance by the City with the requirements of Section 1245.235 of the California Code of Civil Procedure and the California Environmental Quality Act.

SECTION 2. Public Use. The public uses for which the real property interest is to be acquired are for construction of construction of affordable housing for the City of Ontario's Vista Verde II Project in the City of Ontario, San Bernardino County, California. Section 37350.5 of the California Government Code authorizes the City to acquire by eminent domain real property necessary for such purposes.

SECTION 3. Description of Property. Attached and marked as Exhibit A are the legal definition, description and depiction of the real property to be acquired by the

City, which describes the general location and extent of the property to be acquired with sufficient detail for reasonable identification.

SECTION 4. Findings. The City hereby finds and determines each of the following:

(a) The public interest and necessity require the proposed project;

(b) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;

(c) The fee interest described in Exhibit A is necessary for the proposed project;

(d) The offer required by Section 7267.2 of the California Government Code was made.

SECTION 5. Further Activities. Counsel for the City is hereby authorized to file legal proceedings necessary to acquire the hereinabove described real property in the name of and on behalf of the City by eminent domain, and counsel is authorized to institute and prosecute such legal proceedings as may be required in connection therewith. Legal counsel is further authorized to take such steps as may be authorized and required by law, and to make such security deposits as may be required by order of court, to permit the City to take possession of and use said real property at the earliest possible time. Counsel is further authorized to correct any errors or to make or agree to non-material changes in the legal description of the real property that are deemed necessary for the conduct of the condemnation action or other proceedings or transaction required to acquire the subject real property.

SECTION 6. Effective Date. This Resolution shall take effect upon adoption.

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

PASSED, APPROVED AND ADOPTED this 15th day of November 2022.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

_____
BEST, BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2022- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 15, 2022 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2022- duly passed and adopted by the Ontario City Council at their regular meeting held November 15, 2022.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A FEE

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1, AS SHOWN ON CERTIFICATE APPROVING A LOT LINE ADJUSTMENT NO. 08-007, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS EVIDENCED BY DOCUMENT RECORDED NOVEMBER 10, 2008, AS INSTRUMENT NO. 2008-0491390, OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF HOLT BOULEVARD BEING 40 FEET WIDE AND DISTANT 34.93 FEET WEST OF THE SOUTHEAST CORNER OF LOT 6, AS SHOWN ON THE REVISED MAP OF HANSON AND COMPANY'S ADDITION TO ONTARIO, FILED IN BOOK 12, PAGE 51 OF MAPS, RECORDS OF SAID SAN BERNARDINO COUNTY, CALIFORNIA; THENCE CONTINUING WEST ALONG THE NORTH LINE OF HOLT BOULEVARD A DISTANCE OF 139.19 FEET TO A POINT ON THE EAST LINE OF THE EAST 1/2 OF THE EAST 5 ACRES OF LOT 6 OF THE AFORESAID HANSON AND COMPANY'S ADDITION TO ONTARIO; THENCE NORTH 0° 01' 20" EAST ALONG SAID EAST LINE A DISTANCE OF 371.22 FEET TO A POINT WHICH IS 258 FEET SOUTH OF THE NORTH LINE OF THE AFORESAID LOT 6; THENCE NORTH 89° 58' 03" EAST A DISTANCE OF 139.18 FEET TO A POINT WHICH IS 258 FEET SOUTH OF THE NORTH LINE OF SAID LOT 6 AND 34.91 FEET WEST OF THE EAST LINE OF SAID LOT 6; THENCE SOUTH 0° 01' 12" WEST A DISTANCE OF 371.30 FEET TO THE POINT OF BEGINNING.

APN: 1048-481-29-0-000

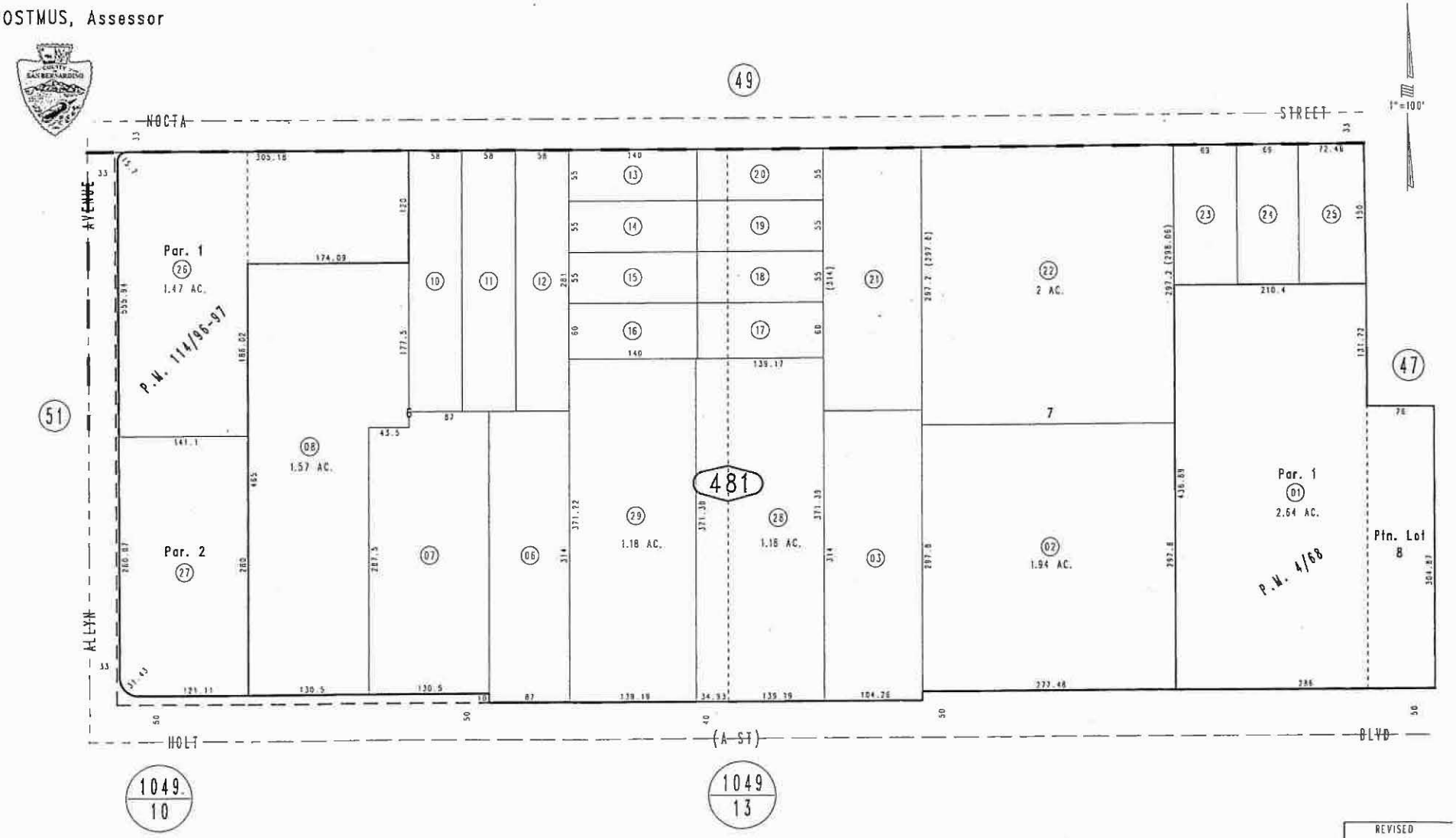
THIS MAP IS FOR THE PURPOSE OF AD VALOREM TAXATION ONLY.

BILL POSTMUS, Assessor

Ptn. Revised Map of Hanson Co's Add.
M.B. 12/51

City of Ontario
Tax Rate Area
4001

1048 - 48



Parcel Map No. 9337, P.M. 114/96-97
Parcel Map No. 291, P.M. 4/68

Ptn. S.E.1/4, Sec.20
T.1S.,R.7W.

Assessor's Map
Book 1048 Page 48
San Bernardino County

REVISED
12/09/08 GL

October 2004

Legal Definition

The following is the definition of legal rights to be acquired by the City of Ontario:

"**Fee"** also known as fee simple or fee simple absolute, grants to the City of Ontario absolute ownership of the property.

CITY OF ONTARIO *Agenda Report* **November 15, 2022**	**SECTION:** **ADMINISTRATIVE REPORTS/DISCUSSION/ACTION**
Department: Investments & Revenue Resources Prepared By: Nathaniel Gibson 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: 23

SUBJECT: **A RESOLUTION AUTHORIZING THE ISSUANCE OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 55 (PARKLANE) SPECIAL TAX BONDS, SERIES 2022, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $11 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. 55 (Parklane) Special Tax Bonds, Series 2022.

A. Authorize the issuance of special tax bonds for public improvements required to facilitate the development of the Parklane 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 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 Parklane project in the Ontario Ranch development, is estimated to generate approximately $11 million based on current market interest rates. These funds will be used to help fund a portion of the public infrastructure improvements that will serve the project area. The Resolution authorizing the issuance of City of Ontario Community Facilities District No. 55 (Parklane) Special

Tax Bonds, Series 2022, and related matters, limits the principal amount of the bonds to $11 million. The City currently expects the bonds to be sold no later than December 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. 55 (Parklane).

BACKGROUND & ANALYSIS: The Mello-Roos Community Facilities Act of 1982 provides local government, with the requisite consent and approval from the property owners, the authority to establish community facilities districts for levying special taxes to fund governmental services and finance various kinds of public infrastructure facilities. Under the Mello-Roos Act, the initial steps in the formation of a community facilities district to finance public improvements are adopting a Resolution declaring the City's intention to establish a community facilities district and levy special taxes, and a Resolution to issue bonds. On November 3, 2020 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. 2020-181, declaring the City's intention to establish the District and to authorize the levy of special taxes, and Resolution No. 2020-182 deeming it necessary for the District to incur bonded indebtedness. On December 15, 2020, the City Council adopted Resolution No. 2020-207 forming the District. Based on a successful property owner election held on December 15, 2020, the City Council adopted Ordinance No. 3177 on January 19, 2021, authorizing the levy of special taxes within the District to finance public improvements related to the Parklane project.

The public improvements to be financed by the District are as follows:

- Water and Recycled Water System Facilities;
- Streets and Traffic Circulation System Facilities; and
- Fiber Optic System Facilities.

The Parklane project addresses the residential development of approximately 52.22 gross acres located west of Haven Avenue, generally east of Monarch Place, south of Parkview Street and north of Merrill Avenue. At build out, the project is projected to include 226 detached residential 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. 55 (Parklane). 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. 55 (PARKLANE) SPECIAL TAX BONDS, SERIES 2022, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED $11,000,000, 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. 55 (Parklane) (the "Community Facilities District") under the provisions of the Mello-Roos Community Facilities Act of 1982 (the "Act");

WHEREAS, the Community Facilities District is authorized under the Act to levy a special tax (the "Special Tax") to pay for the costs of certain public facilities (the "Facilities") and to issue bonds payable from the Special Tax;

WHEREAS, in order to provide funds to finance certain of the Facilities, the Community Facilities District proposes to issue its City of Ontario Community Facilities District No. 55 (Parklane) Special Tax Bonds, Series 2022 (the "Series 2022 Bonds"), in the aggregate principal amount of not to exceed $11,000,000;

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");

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");

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;

WHEREAS, in order to cause such requirement to be satisfied, the Community Facilities District desires to enter into a Continuing Disclosure Agreement with the Trustee (such Continuing Disclosure Agreement, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Continuing Disclosure Agreement");

WHEREAS, a form of the Preliminary Official Statement to be distributed in connection with the public offering of the Series 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");

WHEREAS, there have been prepared and submitted to this meeting forms of:

a) the Indenture;
b) the Purchase Agreement;
c) the Continuing Disclosure Agreement; and
d) the Preliminary Official Statement;

WHEREAS, Kitty Siino & Associates, Inc. has prepared and provided to the Community Facilities District an appraisal report, dated October 10, 2022 (the "Appraisal"), providing an opinion of value of the property in the Community Facilities District, which has been submitted to this meeting;

WHEREAS, Section 5852.1 of the California Government Code requires that the City Council obtain from an underwriter, financial advisor or private lender and disclose, in a meeting open to the public, prior to authorization of the issuance of the Series 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;

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;

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 $11,000,000, 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 $11,000,000, shall not result in a final maturity date of the Series 2022 Bonds later than September 1, 2054, 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 1.5% 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 Tax, 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.

SECTION 13. This Resolution shall take effect immediately upon its adoption.

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

PASSED, APPROVED AND ADOPTED this 15th day of November 2022.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

_____
BEST, BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2022- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 15, 2022 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2022- duly passed and adopted by the Ontario City Council at their regular meeting held November 15, 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 $9,255,000 (the "Estimated Principal Amount"), which does not include approximately $89,000 of net premium estimated to be generated based on current market conditions. Net premium is generated when, on a net aggregate basis for a single issuance of bonds, the price paid for such bonds is higher than the face value of such bonds. Such Estimated Principal Amount and such estimated net premium amount would produce approximately $9,344,000 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 5.16%.

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 $374,000.

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 $8,362,000.

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 $18,599,000, 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 Distri

CITY OF ONTARIO *Agenda Report* **November 15, 2022**	**SECTION:** **ADMINISTRATIVE REPORTS/DISCUSSION/ACTION**
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: 24

SUBJECT: **AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA22-001) BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC., TO ESTABLISH THE TERMS AND CONDITIONS ASSOCIATED WITH TENTATIVE TRACT MAP 20529 (FILE NO. PMTT22-010), AN 11.11-ACRE PROPERTY GENERALLY LOCATED ON THE EAST SIDE OF TWINKLE AVENUE, APPROXIMATELY 350 FEET SOUTH OF FUTURE CHINO AVENUE, WITHIN PLANNING AREAS 4A, 4B, AND 4C (RESIDENTIAL - SFD/ATTACHED) LAND USE DISTRICTS OF THE RICH HAVEN SPECIFIC PLAN (APN: 0218-161-14).**

RECOMMENDATION: That the City Council consider and adopt an Ordinance approving a Development Agreement (File No. PDA22-001) between the City of Ontario and BrookCal Ontario LLC., to establish the terms and conditions associated with Tentative Tract Map 20529 (File No. PMTT22-010), an 11.11-acre property generally located on the east side of Twinkle Avenue, approximately 350 feet south of future Chino Avenue, within Planning Areas 4A, 4B, and 4C (Residential - SFD/Attached) 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
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. PDA22-001) 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 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. PDA22-001) 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.

The Agreement proposes to include 11.11 acres of land within Planning Areas 4A, 4B, and 4C (Residential – SFD/Attached) land use districts 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 20529 (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 generally located on the east side of Twinkle Avenue approximately 350 feet south of future Chino Avenue and proposes to subdivide approximately 11.11 acres of land into three (3) numbered lots and 15 lettered lots, to facilitate the development of 120 multi-family dwelling units, drive aisles, utility easement, public/private streets, landscaped 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

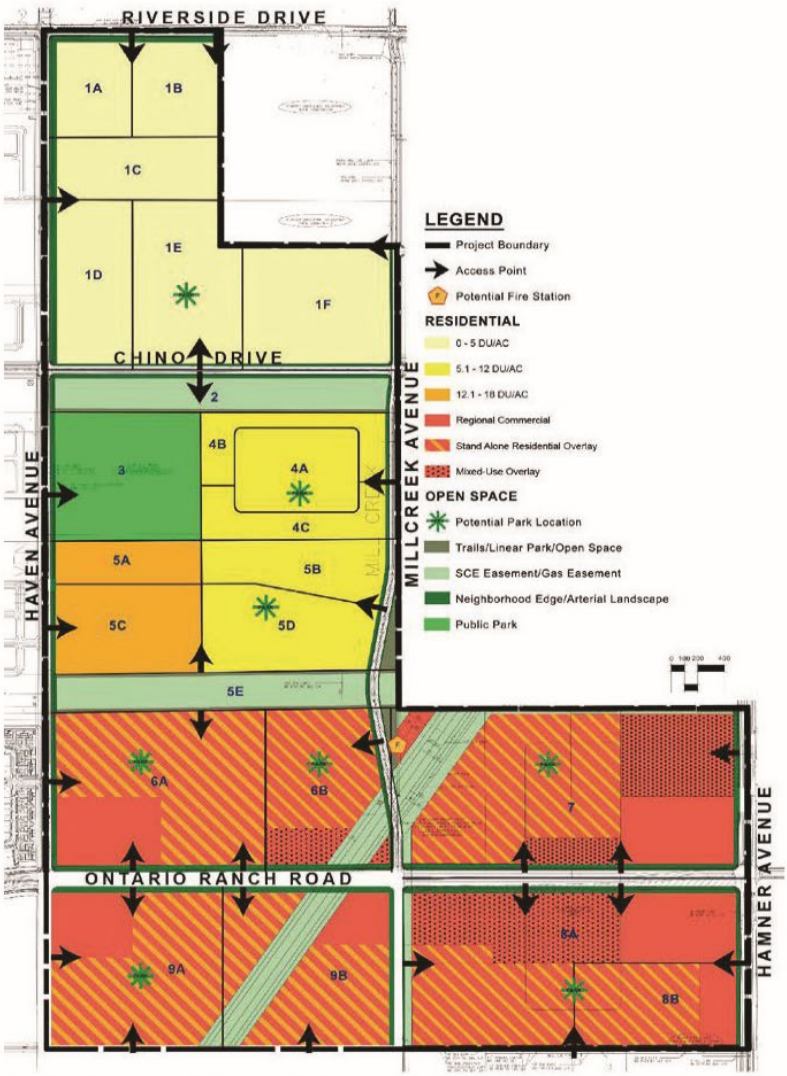
Agreement address funding for all new City expenses created by the project, which includes: Development Impact Fees ("DIF") for construction of public improvements (i.e., streets and bridges, sewer, water, storm drain and fiber); Public Service Funding to ensure adequate provisions of public services (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 October 25, 2022, the Planning Commission found that the Agreement was consistent with State law, The Ontario Plan, and the City's Development Agreement policies. As a result, the Planning Commission adopted Resolution No. PC22-062 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, as the Project site is not one of the properties in the Housing Element Sites contained in Table B-1 (Housing Element Sites Inventory) of the Housing Element Technical Report.

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 ("ONT ALUCP"), establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. 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 ONT 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.

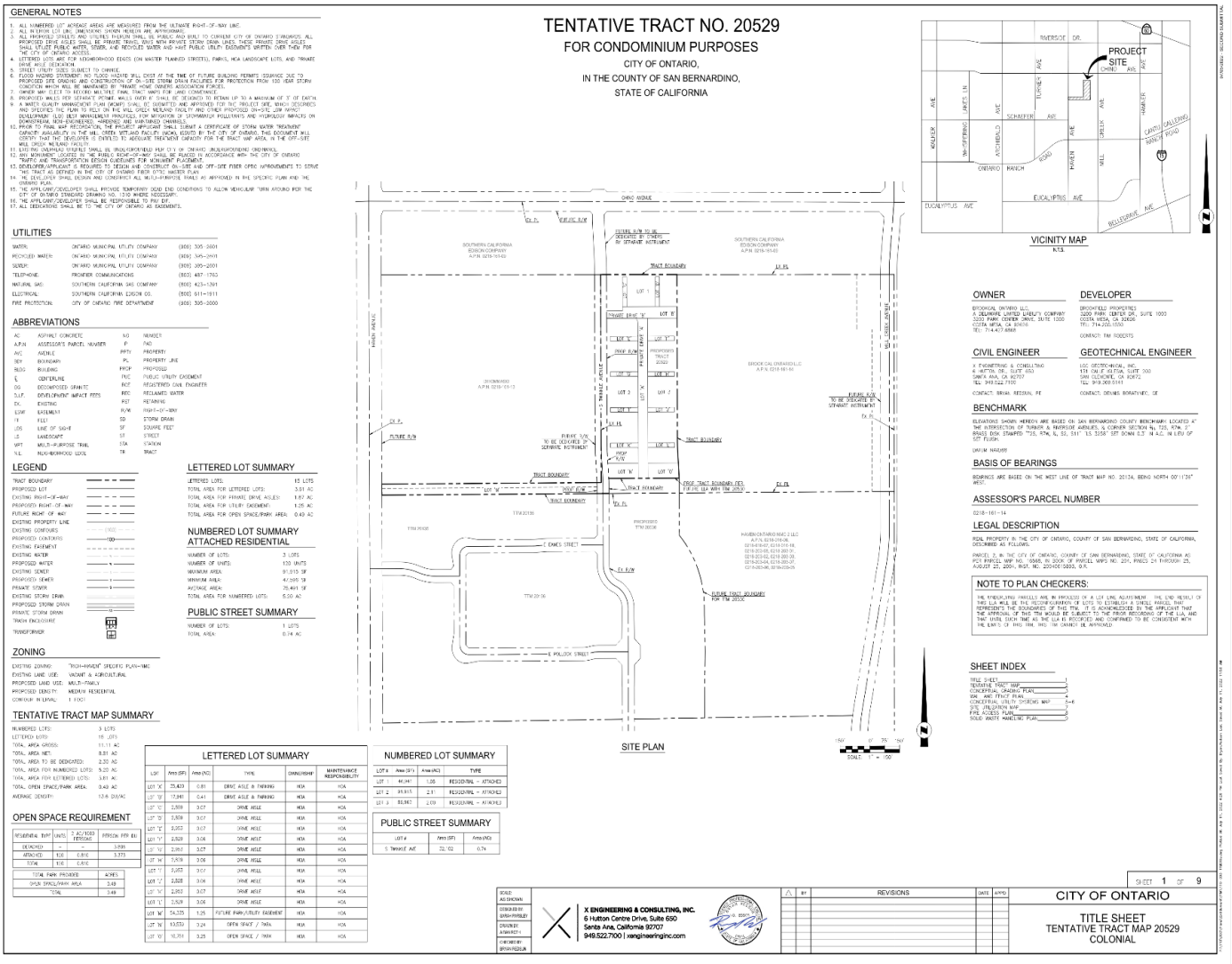
ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously reviewed in conjunction with the Rich-Haven Specific Plan (File No. PSP05-004), for which an Environmental Impact Report (State Clearinghouse No. 2006051081) was certified by the City Council on December 4, 2007. This application is consistent with the previously adopted Environmental Impact Report and introduces no new significant environmental impacts. The proposed project is located within the Airport Influence Area of Ontario International Airport and was evaluated and found to be consistent with the policies and criteria of the Ontario International Airport Land Use Compatibility Plan (ONT ALUCP).



* 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. 20529



GENERAL NOTES

1. ALL NUMBERED LOT ACREAGE AREAS ARE MEASURED FROM THE ULTIMATE RIGHT-OF-WAY LINE.
2. ALL INTERIOR LOT LINE DIMENSIONS SHOWN HEREON ARE APPROXIMATE.
3. ALL PROPOSED STREETS AND UTILITIES THEREIN SHALL BE PUBLIC AND BUILT TO CURRENT CITY OF ONTARIO STANDARDS. ALL PROPOSED DRIVE AISLES SHALL BE PRIVATE TRAVEL WAYS WITH PRIVATE STORM DRAIN LINES. THESE PRIVATE DRIVE AISLES SHALL UTILIZE PUBLIC WATER, SEWER, AND RECYCLED WATER AND HAVE PUBLIC UTILITY EASEMENTS WRITTEN OVER THEM FOR THE CITY OF ONTARIO ACCESS.
4. ALL LOTS SHALL BE FREE OF NEIGHBORHOOD EDGES (ON MASTER PLANNED STREETS), PARKS, HOA LANDSCAPE LOTS, AND PRIVATE DRIVE AISLE DESIGNATION.
5. STREET UTILITY SIZES SUBJECT TO CHANGE.
6. FLOOD HAZARD STATEMENT: NO FLOOD HAZARD WILL EXIST AT THE TIME OF FUTURE BUILDING PERMITS ISSUANCE DUE TO PROPOSED SITE GRADING AND CONSTRUCTION OF ON-SITE STORM DRAIN FACILITIES FOR PROTECTION FROM 100 YEAR STORM CONDITION WHICH WILL BE MAINTAINED BY "PRIVATE HOME OWNERS ASSOCIATION FORCES."
7. OWNER MAY ELECT TO RECORD MULTIPLE FINAL TRACT MAPS FOR LAND CONVEYANCE.
8. PROPOSED WALLS (PER SEPARATE PERMIT WALL) WITH 6' SHALL BE DESIGNED TO RETAIN UP TO A MAXIMUM OF 3' OF EARTH.
9. A WATER QUALITY MANAGEMENT PLAN (WQMP) SHALL BE SUBMITTED AND APPROVED FOR THIS PROJECT SITE, WHICH DESCRIBES AND SPECIFIES THE PLAN TO FULLY ON-SITE WELL SPECIFIC MEASURES FACILITY AND OTHER PROPOSED ON-SITE LOW IMPACT DEVELOPMENT (LID) BEST MANAGEMENT PRACTICES, FOR MITIGATION OF STORMWATER POLLUTANTS AND HYDROLOGY IMPACTS ON SURFACE WATERS WITH APPROVAL OF POST-DEVELOPMENT CONDITIONS.
10. PRIOR TO FINAL MAP RECORDATION, THE DEVELOPER SHALL SUBMIT A CERTIFICATE OF STORM WATER TREATMENT CAPACITY AVAILABILITY IN THE MILL CREEK WETLAND FACILITY (MCWL) ISSUED BY THE CITY OF ONTARIO. THIS DOCUMENT WILL CONFIRM THAT THE DEVELOPER IS ENTITLED TO ADEQUATE TREATMENT CAPACITY FOR THE TRACT MAP AREA, IN THE OFF-SITE MILL CREEK WETLAND FACILITY.
11. EXISTING UNLAWFULLY UTILITIES SHALL BE UNDERGROUNDED PER CITY OF ONTARIO UNDERGROUNDING ORDINANCE.
12. ANY MONUMENT LOCATED IN "THE PUBLIC RIGHT-OF-WAY SHALL BE PLACED IN ACCORDANCE WITH THE CITY OF ONTARIO "TRAFFIC AND TRANSPORTATION DESIGN GUIDELINES FOR MONUMENT PLACEMENT."
13. DEVELOPER/APPLICANT IS REQUIRED TO DESIGN AND CONSTRUCT ON-SITE AND OFF-SITE FIBER OPTIC IMPROVEMENTS TO SERVE THIS TRACT AS DEFINED IN THE CITY OF ONTARIO FIBER OPTIC MASTER PLAN.
14. THE DEVELOPER SHALL DESIGN AND CONSTRUCT ALL MULTI-PURPOSE TRAILS AS APPROVED IN THE SPECIFIC PLAN AND THE TRACT MAP.
15. THE APPLICANT/DEVELOPER SHALL PROVIDE TEMPORARY DEAD END CONDITIONS TO ALLOW VEHICULAR TURN AROUND PER THE CITY OF ONTARIO STANDARD DRAWING NO. 1310 WHERE NECESSARY.
16. THE APPLICANT/DEVELOPER SHALL BE RESPONSIBLE TO PAY ERF.
17. ALL DEDICATIONS SHALL BE TO "THE CITY OF ONTARIO AS EASEMENTS.

UTILITIES

WATER:	ONTARIO MUNICIPAL UTILITY COMPANY	(909) 395-2601
RECYCLED WATER:	ONTARIO MUNICIPAL UTILITY COMPANY	(909) 395-2601
SEWER:	ONTARIO MUNICIPAL UTILITY COMPANY	(909) 395-2001
TELEPHONE:	FRONTIER COMMUNICATIONS	(800) 487-1760
NATURAL GAS:	SOUTHERN CALIFORNIA GAS COMPANY	(800) 423-1391
ELECTRICAL:	SOUTHERN CALIFORNIA EDISON CO.	(800) 611-1911
FIRE PROTECTION:	CITY OF ONTARIO FIRE DEPARTMENT	(909) 395-2000

ABBREVIATIONS

AC	ASPHALT CONCRETE	NO	NUMBER
A.P.N.	ASSESSOR'S PARCEL NUMBER	P	PAD
AVE	AVENUE	PPTY	PROPERTY
BDY	BOUNDARY	PL	PROPERTY LINE
BLDG	BUILDING	PROP	PROPOSED
℄	CENTERLINE	PUE	PUBLIC UTILITY EASEMENT
DG	DECOMPOSED GRANITE	RCP	REINFORCED CONCRETE PIPE
D.I.F.	DEVELOPMENT IMPACT FEES	REC	RECLAIMED WATER
EX	EXISTING	RET	RETAINING
ESMT	EASEMENT	R/W	RIGHT-OF-WAY
FF	FINISH FLOOR	SD	STORM DRAIN
FT	FEET	SF	SQUARE FEET
LDS	LINE OF SIGHT	ST	STREET
LS	LANDSCAPE	STA	STATION
MPT	MULTI-PURPOSE TRAIL	TR	TRACT
N.E.	NEIGHBORHOOD EDGE		

LEGEND

TRACT BOUNDARY
PROPOSED LOT
EXISTING RIGHT-OF-WAY
PROPOSED RIGHT-OF-WAY
FUTURE RIGHT OF WAY
EXISTING PROPERTY LINE
EXISTING CONTOURS
PROPOSED CONTOURS
EXISTING EASEMENT
EXISTING WATER
PROPOSED WATER
EXISTING SEWER
PROPOSED SEWER
PRIVATE SEWER
EXISTING STORM DRAIN
PROPOSED STORM DRAIN
PRIVATE STORM DRAIN
TRASH ENCLOSURE
TRANSFORMER

ZONING

EXISTING ZONING: "HIGH-MIXED" SPECIFIC PLAN-MC
EXISTING LAND USE: VACANT & AGRICULTURAL
PROPOSED LAND USE: MULTI-FAMILY
PROPOSED DENSITY: MEDIUM RESIDENTIAL
CONTOUR INTERVAL: 1 FOOT

TENTATIVE TRACT MAP SUMMARY

NUMBERED LOTS:	3 LOTS
LETTERED LOTS:	18 LOTS
TOTAL AREA GROSS:	11.11 AC
TOTAL AREA NET:	8.81 AC
TOTAL AREA TO BE DEDICATED:	2.30 AC
TOTAL AREA FOR NUMBERED LOTS:	5.20 AC
TOTAL AREA FOR LETTERED LOTS:	3.61 AC
TOTAL OPEN SPACE/PARK AREA:	0.40 AC
AVERAGE DENSITY:	12.0 DU/AC

OPEN SPACE REQUIREMENT

RESIDENTIAL UNIT	UNITS	3 AC/1000 PERSONS	PERSON PER DU
DETACHED	-	-	3.699
ATTACHED	108	0.016	3.373
TOTAL	108	0.016	

TOTAL PARK PROVIDED	ACRES
OPEN SPACE/PARK AREA	0.40
TOTAL	0.40

LETTERED LOT SUMMARY

LETTERED LOTS:	18 LOTS
TOTAL AREA FOR LETTERED LOTS:	3.61 AC
TOTAL AREA FOR PRIVATE DRIVE AISLES:	1.87 AC
TOTAL AREA FOR UTILITY EASEMENT:	1.35 AC
TOTAL AREA FOR OPEN SPACE/PARK AREA	0.40 AC

NUMBERED LOT SUMMARY
ATTACHED RESIDENTIAL

NUMBER OF LOTS:	3 LOTS
NUMBER OF UNITS:	108 UNITS
MAXIMUM AREA:	91,915 SF
MINIMUM AREA:	47,995 SF
AVERAGE AREA:	70,469 SF
TOTAL AREA FOR NUMBERED LOTS:	5.20 AC

PUBLIC STREET SUMMARY

NUMBER OF LOTS:	1 LOTS
TOTAL AREA	0.74 AC

LETTERED LOT SUMMARY

LOT	Area (SF)	Area (AC)	TYPE	OWNERSHIP	MAINTENANCE RESPONSIBILITY
LOT 'A'	25,423	0.81	DRIVE AISLE & PARKING	HOA	HOA
LOT 'B'	17,841	0.41	DRIVE AISLE & PARKING	HOA	HOA
LOT 'C'	2,859	0.07	DRIVE AISLE	HOA	HOA
LOT 'D'	2,859	0.07	DRIVE AISLE	HOA	HOA
LOT 'E'	2,953	0.07	DRIVE AISLE	HOA	HOA
LOT 'F'	2,929	0.06	DRIVE AISLE	HOA	HOA
LOT 'G'	2,953	0.07	DRIVE AISLE	HOA	HOA
LOT 'H'	2,929	0.06	DRIVE AISLE	HOA	HOA
LOT 'I'	2,953	0.07	DRIVE AISLE	HOA	HOA
LOT 'J'	2,929	0.06	DRIVE AISLE	HOA	HOA
LOT 'K'	2,953	0.07	DRIVE AISLE	HOA	HOA
LOT 'L'	2,929	0.06	DRIVE AISLE	HOA	HOA
LOT 'M'	54,335	1.25	FUTURE PARK/UTILITY EASEMENT	HOA	HOA
LOT 'N'	13,553	0.24	OPEN SPACE / PARK	HOA	HOA
LOT 'O'	10,701	0.25	OPEN SPACE / PARK	HOA	HOA

NUMBERED LOT SUMMARY

LOT #	Area (SF)	Area (AC)	TYPE
LOT 1	46,941	1.08	RESIDENTIAL - ATTACHED
LOT 2	91,915	2.11	RESIDENTIAL - ATTACHED
LOT 3	88,967	2.03	RESIDENTIAL - ATTACHED

PUBLIC STREET SUMMARY

LOT #	Area (SF)	Area (AC)
S TRAVILLE AVE	32,152	0.74

TENTATIVE TRACT NO. 20529
FOR CONDOMINIUM PURPOSES
CITY OF ONTARIO,
IN THE COUNTY OF SAN BERNARDINO,
STATE OF CALIFORNIA

SITE PLAN

VICINITY MAP
N.T.S.

OWNER

BROOKCAL ONTARIO LLC
A DELAWARE LIMITED LIABILITY COMPANY
3200 PARK CENTER DRIVE, SUITE 1000
COSTA MESA, CA 92626
TEL: 714.427.6868

DEVELOPER

BROOKFIELD PROPERTIES
3200 PARK CENTER DR, SUITE 1000
COSTA MESA, CA 92626
TEL: 714.250.0500

CONTACT: TIM ROBERTS

CIVIL ENGINEER

X ENGINEERING & CONSULTING
6 HUTTON CTR., SUITE 650
SANTA ANA, CA 92707
TEL: 949.522.7700

CONTACT: BRYAN BESSUN, PE

GEOTECHNICAL ENGINEER

LGC GEOTECHNICAL, INC.
131 CALLE IGLESIA, SUITE 200
SAN CLEMENTE, CA 92672
TEL: 949.369.5141

CONTACT: DENNIS BOWATNICK, GE

BENCHMARK

ELEVATIONS SHOWN HEREON ARE BASED ON SAN BERNARDINO COUNTY BENCHMARK LOCATED AT THE INTERSECTION OF TURNER & RAMSEUR AVENUES, & CORNER SECTION No. 125, R7W, T 2S, BRASS DISK STAMPED "125, R7W, S, S3, S11" 1.5 S3.5S" SET DOWN 0.3' IN M.C. IN LIEU OF SET FLUSH.

DATUM: NAVD88

BASIS OF BEARINGS

BEARINGS ARE BASED ON THE WEST LINE OF TRACT MAP NO. 20124, BEING NORTH 00°11'36" WEST.

ASSESSOR'S PARCEL NUMBER

0218-161-14

LEGAL DESCRIPTION

REAL PROPERTY IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 2, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA AS PER PARCEL MAP NO. 10965, IN BOOK OF PARCEL MAPS NO. 209, PAGES 24 THROUGH 28, AUGUST 23, 2001, INST. NO. 2001401 5800, O.R.

NOTE TO PLAN CHECKERS:

THE PROPERTIES PARCELS ARE IN PROCESS OF A LOT LINE ADJUSTMENT. THE END RESULT OF THIS LLA WILL BE THE RECONFIGURATION OF LOTS TO ESTABLISH A SINGLE PARCEL THAT REPRESENTS THE BOUNDARIES OF THIS TTM. IT IS ACKNOWLEDGED BY THE APPLICANT THAT THE APPROVAL OF THIS TTM WOULD BE SUBJECT TO THE PRIOR RECORDING OF THE LLA, AND THAT UNTIL SUCH TIME AS THE LLA IS RECORDED AND CONFIRMED TO BE CONSISTENT WITH THE LIMITS OF THIS TRM, THIS TRM CANNOT BE APPROVED.

SHEET INDEX

TITLE SHEET 1
TENTATIVE TRACT MAP 1
CONCEPTUAL GRADING PLAN 2
VOA AND PHOT PLAN 3
CONCEPTUAL UTILITY SYSTEMS MAP 3-6
SITE UTILIZATION MAP 7
FIRE ACCESS PLAN 8
SOLID WASTE HANDLING PLAN 9

SHEET 1 OF 9

SCALE: AS SHOWN
DESIGNED BY: BRAH-PARSLEY
DRAWN BY: ANAHEIM-1
CHECKED BY: BRAH-PARSLEY

X ENGINEERING & CONSULTING, INC.
6 Hutton Centre Drive, Suite 650
Santa Ana, California 92707
949.522.7700 | xengineeringinc.com

NO.	BY	REVISIONS	DATE	APP'D

CITY OF ONTARIO

TITLE SHEET
TENTATIVE TRACT MAP 20529
COLONIAL

ORDINANCE NO._____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA22-001, 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 NO. 20529 (FILE NO. PMTT22-010), AN 11.11 ACRE PROPERTY GENERALLY LOCATED ON THE EAST SIDE OF TWINKLE AVENUE APPROXIMATELY 350 FEET SOUTH OF FUTURE CHINO AVENUE, WITHIN PLANNING AREAS 4A, 4B, AND 4C (RESIDENTIAL – SFD/ATTACHED) LAND USE DISTRICTS OF THE RICH HAVEN SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0218-161-14.

WHEREAS, BrookCal Ontario, LLC., ("Applicant") has filed an Application for the approval of a Development Agreement, File No. PDA22-001, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 11.11 acres of land generally located on the east side of Twinkle Avenue approximately 350 feet south of future Chino Avenue, within Planning Areas 4A, 4B, and 4C (Residential – SFD/Attached) land use districts of the Rich Haven Specific Plan; and

WHEREAS, the Applicant has submitted a Tentative Tract Map 20529 (File No. PMTT22-010) to subdivide approximately 11.11 acres of land into three (3) numbered lots and 15 lettered lots, to facilitate the development of 120 multi-family dwelling units, drive aisles, utility easement, public/private streets, landscaped neighborhood edges and common open space purposes; and

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with the Rich-Haven Specific Plan (File No. PSP05-004), for which an Environmental Impact Report (State Clearinghouse No. 2006051081) was certified by the City Council on December 4, 2007. This application is consistent with the previously adopted Environmental Impact Report and introduces no new significant environmental impacts; 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 ("ONT"), which encompasses lands within parts of San Bernardino,

Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (ALUCP), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on October 25, 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. PC22-062 recommending the City Council approve the Application; and

WHEREAS, on November 15, 2022, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1. ***Environmental Determination and Findings.*** As the 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 the Rich-Haven Specific Plan (File No. PSP05-004), for which an Environmental Impact Report (State Clearinghouse No. 2006051081) was certified by the City Council on December 4, 2007. This application is consistent with the previously adopted Environmental Impact Report 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 body for the Project, the PLANNING COMMISSION finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the Project site is not one of the properties in the Housing Element Sites contained in Table B-1 (Housing Element Sites Inventory) of the Housing Element Technical Report.

SECTION 5. ***Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan.

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

SECTION 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 11.11 acres of land generally located on the east side of Twinkle Avenue approximately 350 feet south of future Chino Avenue, within Planning Areas 4A, 4B, and 4C (Residential – SFD/Attached) land use districts of the Rich Haven Specific Plan; and

(b) The Development Agreement establishes parameters for the development of the Planning Areas 4A, 4B, and 4C Residential – SFD/Attached) land use districts 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 20529 (File No. PMTT22-010) as long as the Owner complies with the terms and conditions of the Specific Plan and EIR. Tentative Tract Map 20529 is generally located on the east side of Twinkle Avenue approximately 350 feet south of future Chino Avenue, and proposes to subdivide 11.11 acres of land into three (3) numbered lots and 15 lettered lots, to facilitate the development of 120 multi-family

dwelling units, drive aisles, utility easement, public/private streets, landscaped neighborhood edges and common open space purposes; 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 the Rich-Haven Specific Plan (File No. PSP05-004), for which an Environmental Impact Report (State Clearinghouse No. 2006051081) was certified by the City Council on December 4, 2007; 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 4, above, the City Council hereby APPROVES the herein described Development Agreement (File No. PDA22-001), 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 15th day of November 2022.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 2022- was duly introduced at a regular meeting of the City Council of the City of Ontario held _____ and adopted at the regular meeting held November 15, 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 _____ and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

File No. PDA22-001

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. PDA22-001

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. PDA22-001

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. 20529 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 twelve (12) 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: 714.200.1550

(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 twelve (12) Model Units, private common recreation facilities and sales facilities, CITY may issue a maximum of twelve (12) 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 for Phase 1 and Phase 2, as described in Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the storm drain improvements for Phase 1, as described in Exhibit E and depicted in Exhibit F. OWNER agrees to design, construct, and complete the storm drain improvements for Phase 2, within three (3) years of the issuance of the first building permit for Production Units within Phase 1, as described in Exhibit E and depicted in Exhibit F. In no event shall OWNER be issued occupancy for any Production Unit within Phase 1 until the completion of the storm drain improvements within Phase 2, 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 for Phase 1 and Phase 2 as described in Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the street improvements for Phase 1, as described in Exhibit E and depicted in Exhibit F.

OWNER agrees to design, construct, and complete the street improvements for Phase 2, within three (3) years of the issuance of the first building permit for Production Units in Phase 1, as described in Exhibit E and depicted in Exhibit F. In no event shall OWNER be issued occupancy for any Production Unit within Phase 1 until the completion of the street improvements within Phase 2, 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 improvements for Phase 1 and Phase 2 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 for Phase 1, 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. OWNER agrees to design, construct, and complete the water and recycled water improvements for Phase 2, within three (3) years of the issuance of the first building permit for Production Units in Phase 1, as described in Exhibit E and depicted in Exhibit F. In no event shall OWNER be issued occupancy for any Production Unit within Phase 1 until the completion of the water and recycled water improvements within Phase 2, as described in Exhibit E and depicted in Exhibit F.

3.7.4 OWNER agrees that development of the Property shall require the extension of sewer improvements for Phase 1 and Phase 2, as described in the attached Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the sewer improvements for Phase 1, as described in Exhibit E and depicted in Exhibit F. OWNER agrees to design, construct, and complete the sewer improvements for Phase 2, within three (3) years of the issuance of the first building permit for Production Units in Phase 1, as described in Exhibit E and depicted in Exhibit F. In no event shall OWNER be issued occupancy for any Production Unit within Phase 1 until the completion of the sewer improvements within Phase 2, 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 for Phase 1 and Phase 2 as described in the attached Exhibit E and depicted in Exhibit F. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the fiber optic communication improvements for Phase 1, as described in Exhibit E and depicted in Exhibit F. OWNER agrees to design, construct, and complete the fiber optic improvements for Phase 2, within three (3) years of the issuance of the first building permit for Production Units in Phase 1, as described in Exhibit E and depicted in Exhibit F. In no event shall OWNER be issued occupancy for any Production Unit within Phase 1 until the completion of the fiber optic improvements within Phase 2, as described in Exhibit E and depicted in Exhibit F.

3.7.6 OWNER further acknowledges and agrees that if the Phase 2 infrastructure improvements, as described in Exhibit E and depicted in Exhibit F, are not completed prior to the request of occupancy for Phase 1 Production Units, then OWNER, in order to satisfy the condition of completion of the Phase 2 infrastructure improvements prior to the issuance of occupancy permits for Phase 1 Production Units, shall deposit funds into an escrow account equal to the cost for the Phase 2 improvements (amount subject to the sole discretion of the City Engineer). OWNER's deposit does not alleviate the requirement for OWNER to construct and complete the Phase 2 infrastructure improvements. OWNER shall make their best reasonable efforts to receive right-of-way approvals from Southern California Edison and/or other agencies to complete the Phase 2 infrastructure improvements. OWNER shall provide periodic updates to the CITY every ninety (90) days, or upon written request from the CITY.

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. 20529.

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 Three Dollars Twelve Cents ($3.12) per square foot of residential development within OWNER's Project or, if pre-paid as set forth below, Two Dollars Seventy-Four Cents ($2.74) per square foot of residential development within OWNER's Project. If OWNER has partially complied with the requirements of Section 4.4.1 by construction or rehabilitation of less than the minimum number of units, then the Affordability In-lieu Fee shall be recalculated and reduced in consideration of the number and type of affordable units provided. The Affordability In-Lieu Fee shall be paid by OWNER to City no later than prior to the issuance of each building permit within OWNER's Project based on the square footage of the residential unit for which such building permit is sought; provided however that OWNER may, at OWNER's election, pre-pay such Affordability In-Lieu Fee by paying such Affordability In-Lieu Fee within thirty (30) days following the earliest discretionary approval by the City for OWNER's Project, including, but not limited to, any general plan amendment, specific plan adoption, development agreement, tentative map approval, variance, conditional use permit, or resolution of intention to form any public financing mechanism. The Three Dollars Twelve Cents Cents ($3.12) and the Two Dollars Seven

Cents ($2.74) per square foot amounts shall automatically be increased annually, commencing on July 1, 2023, 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 thirty (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.

4.7.4 Effectiveness of Agreement. Notwithstanding anything set forth in this Agreement, CITY and OWNER each acknowledge, confirm, and agree that (i) the CITY approval of this Agreement and (ii) the effectiveness of this Agreement, in each case, are conditioned upon OWNER's admission to NMC Builders as a "Member" (if not already a Member) thereof pursuant to the terms and conditions of the operating agreement of NMC Builders within thirty (30) days following the Effective Date of this Agreement. OWNER'S failure to maintain membership in NMC Builders LLC is and shall be a Default under this Agreement.

4.8 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 $1,443.71 per Single Family Detached Dwelling Unit, $1,251.15 per Multiple-Family Dwelling Unit, $1,048.96 per Gated Apartment Community Dwelling Unit, and $.27 per square foot for Non-Residential buildings. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year, unless otherwise modified by the CITY. CITY shall be the sole and exclusive lead agency in the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. In addition to the rights of the CITY pursuant to section 5.2 hereof, CITY shall have the right, but not the obligation, to condition the formation of any CFD, assessment district or other public

financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the condition to the formation of any CFD, assessment district or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit the City's ability to take any and all necessary steps requisite to the formation of the CFD to finance City services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district or to issue and sell bonds.

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

6.1.1 Time for and Initiation of Periodic Review. The CITY shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by the OWNER with the terms of this Agreement. The OWNER shall submit an Annual Monitoring Report to CITY, in a form acceptable to the City Manager, along with any applicable processing charge within ten (10) days after each anniversary date of the Effective Date of this Agreement. Within fifteen (15) days after the receipt of the Annual Monitoring Report, CITY shall review the Annual Monitoring Report. Prior to the expiration of the fifteen (15) day review period, CITY shall either issue a notice of continuing compliance or a notice of non-compliance and a notice of CITY's intent to conduct a Special Review pursuant to Sections 6.1.2 through 6.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his designee.

6.1.2 Initiation of Special Review. A special review may be called either by agreement between the parties or by initiation in one or more of the following ways:

(1) Recommendation of the Planning staff;

(2) Affirmative vote of at least four (4) members of the Planning Commission; or

(3) Affirmative vote of at least three (3) members of the City Council.

6.1.3 Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that the CITY intends to undertake a special review of this Agreement to the OWNER. Such notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission.

6.1.4 Public Hearing. The Planning Commission shall conduct a hearing at which the OWNER must demonstrate good faith compliance with the terms of this Agreement. The burden of proof on this issue is upon the OWNER.

6.1.5 Findings Upon Public Hearing. The Planning Commission shall determine upon the basis of substantial evidence whether or not the OWNER has, for the period under review, complied in good faith with the terms and conditions of this Agreement.

6.1.6 Procedure Upon Findings.

(a) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.

(b) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has not complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission may recommend to the City Council to modify or terminate this Agreement.

(c) The OWNER may appeal a determination pursuant to paragraph (b) to the City Council in accordance with the CITY's rule for consideration of appeals in zoning matters generally.

6.2 Proceedings Upon Modification or Termination. If, upon a finding under Section 6.1.6(b), the CITY determines to proceed with modification or termination of this Agreement, the CITY shall give notice to the property OWNER of its intention so to do. The notice shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not the CITY proposes to terminate or to modify this Agreement; and

(c) Other information that the CITY considers necessary to inform the OWNER of the nature of the proceeding.

6.3 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, the OWNER shall be given an opportunity to be

heard. The OWNER shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the OWNER. If the City Council finds, based upon substantial evidence in the administrative record, that the OWNER has not complied in good faith with the terms and conditions of the agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the CITY. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, OWNER is found to be in compliance with this Agreement, CITY shall, upon written request by OWNER, issue a Certificate of Agreement Compliance ("Certificate") to OWNER stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) OWNER is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. OWNER may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or OWNER, CITY shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [RESERVED]

8. DEFAULT AND REMEDIES.

8.1 Remedies in General. It is acknowledged by the parties that CITY would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that CITY shall not be liable in damages to OWNER, or to any successor in interest of OWNER, or to any other person, and OWNER covenants not to sue for damages or claim any damages:

(a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or

(b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

(c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

8.2 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all parties for the following reasons:

(a) Money damages are unavailable against CITY as provided in Section 8.1 above.

(b) Due to the size, nature and scope of the project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts.

8.3 Release. Except for nondamage remedies, including the remedy of specific performance and judicial review as provided for in Section 6.5, OWNER, for itself, its successors and assignees, hereby releases the CITY, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the CITY because it entered into this Agreement or because of the terms of this Agreement.

8.4 Termination or Modification of Agreement for Default of OWNER. Subject to the provisions contained in 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:

BEING A PORTION OF PARCEL 2 OF PARCEL MAP NO. 16568, AS PER MAP FILED IN PAGES 24 AND 25 IN PARCEL MAP BOOK NO. 204, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN BERNARDINO COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 6 OF TRACT MAP NO. 20134, AS PER MAP FILED IN BOOK 357, PAGES 23 THROUGH 33, INCLUSIVE, OF TRACT MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID CORNER BEING ON THE SOUTHERLY LINE OF SAID PARCEL MAP NO. 16568; THENCE EASTERLY ALONG SAID SOUTHERLY LINE NORTH 89°37’37” EAST, A DISTANCE OF 355.00 FEET,

THENCE NORTH 00°11’36” WEST, A DISTANCE OF 20.60 FEET, TO THE BEGINNING OF A TANGENT 1385.00 FOOT RADIUS CURVE, CONCAVE WESTERLY;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°13’59”, A LENGTH OF
78.15 FEET;

THENCE NORTH 03°25’35” WEST, A DISTANCE OF 99.85 FEET, TO THE BEGINNING OF A TANGENT 615.00 FOOT RADIUS CURVE, CONCAVE EASTERLY;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°14’00”, A LENGTH OF
34.71 FEET;

THENCE NORTH 00°11’35” WEST, A DISTANCE OF 761.32 FEET, TO THE NORTHERLY LINE OF SAID PARCEL 2;

THENCE ALONG SAID NORTHERLY LINE, SOUTH 89°58’40” WEST, A DISTANCE OF 385.00 FEET, TO THE EASTERLY LINE OF PARCEL 1 OF SAID PARCEL MAP NO.16568;

EXHIBIT "A" CONTINUED

THENCE SOUTHERLY ALONG SAID EASTERLY LINE, SOUTH 00°11’35” EAST, A DISTANCE OF
946.80 FEET, TO THE SOUTHERLY LINE OF SAID PARCEL 1;

THENCE WESTERLY ALONG SAID SOUTHERLY LINE, SOUTH 89°37’37” WEST, A DISTANCE OF 1168.19 FEET, TO THE CENTERLINE OF HAVEN AVENUE, AS SHOWN ON SAID PARCEL MAP NO. 16568:

THENCE SOUTHERLY ALONG SAID CENTERLINE, SOUTH 00°11’36” EAST, A DISTANCE OF
50.00 FEET, TO THE SOUTHERLY LINE OF SAID PARCEL 2;

THENCE EASTERLY ALONG SAID SOUTHERLY LINE, NORTH 89°37’37” EAST, A DISTANCE OF 1207.01 FEET, TO THE NORTHWEST CORNER OF LOT 6 OF TRACT MAP NO. 20134 AND THE POINT OF BEGINNING.

CONTAINING:
442,924 SQUARE FEET / 10.168 ACRES GROSS, MORE OR LESS.
439,824 SQUARE FEET / 10.097 ACRES NET, MORE OR LESS

SUBJECT TO ALL COVENANTS, CONDITIONS, RESERVATIONS, RESTRICTIONS, RIGHT-OF- WAY AND EASEMENTS OF RECORD, IF ANY.

EXHIBIT "B"
TO DEVELOPMENT AGREEMENT

Map showing Property and its location

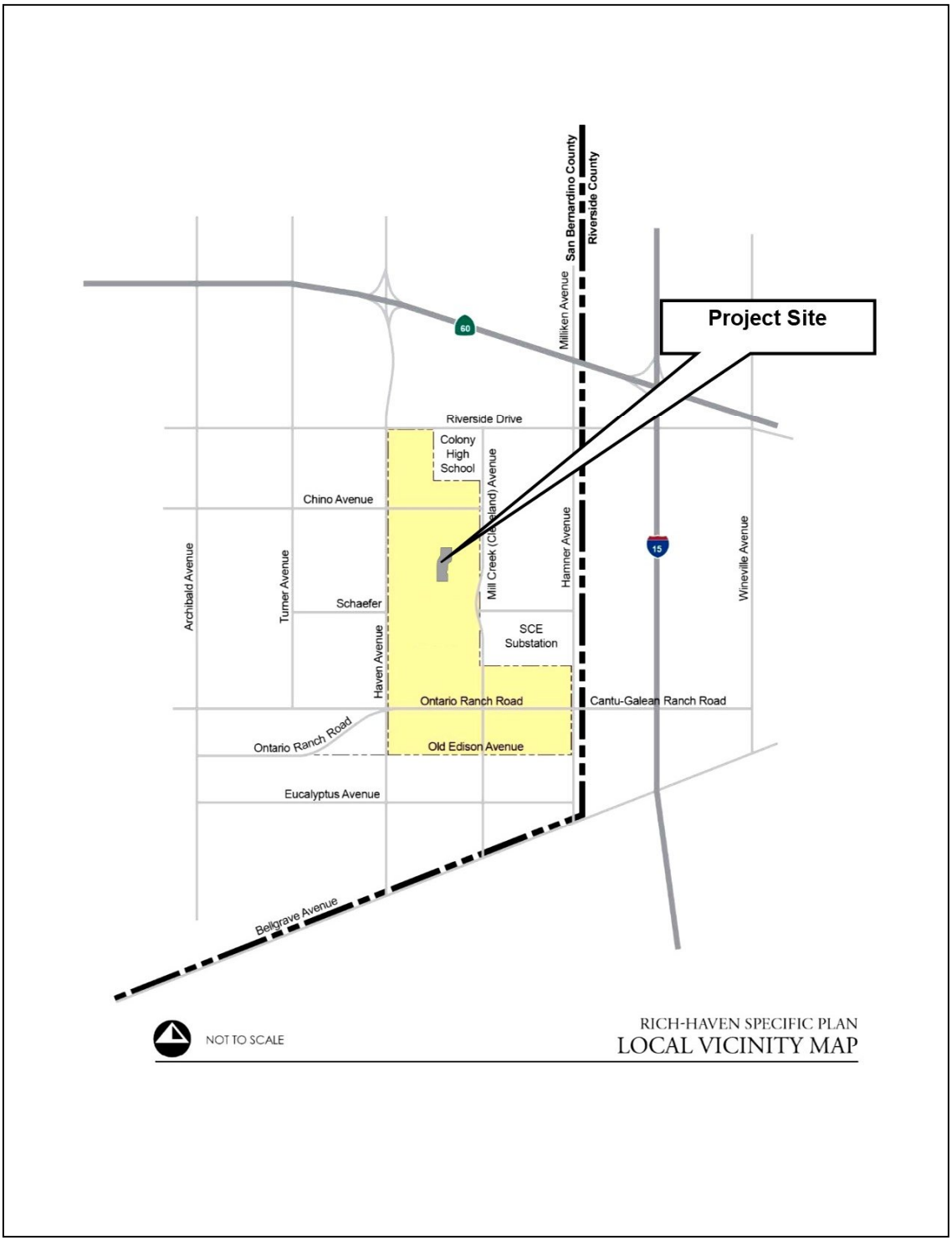


EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

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.

A) PHASE 1 IMPROVEMENTS include but not limited to the street, water, recycled water, sewer, storm drain, fiber optic, and traffic signal improvements along Twinkle Avenue.

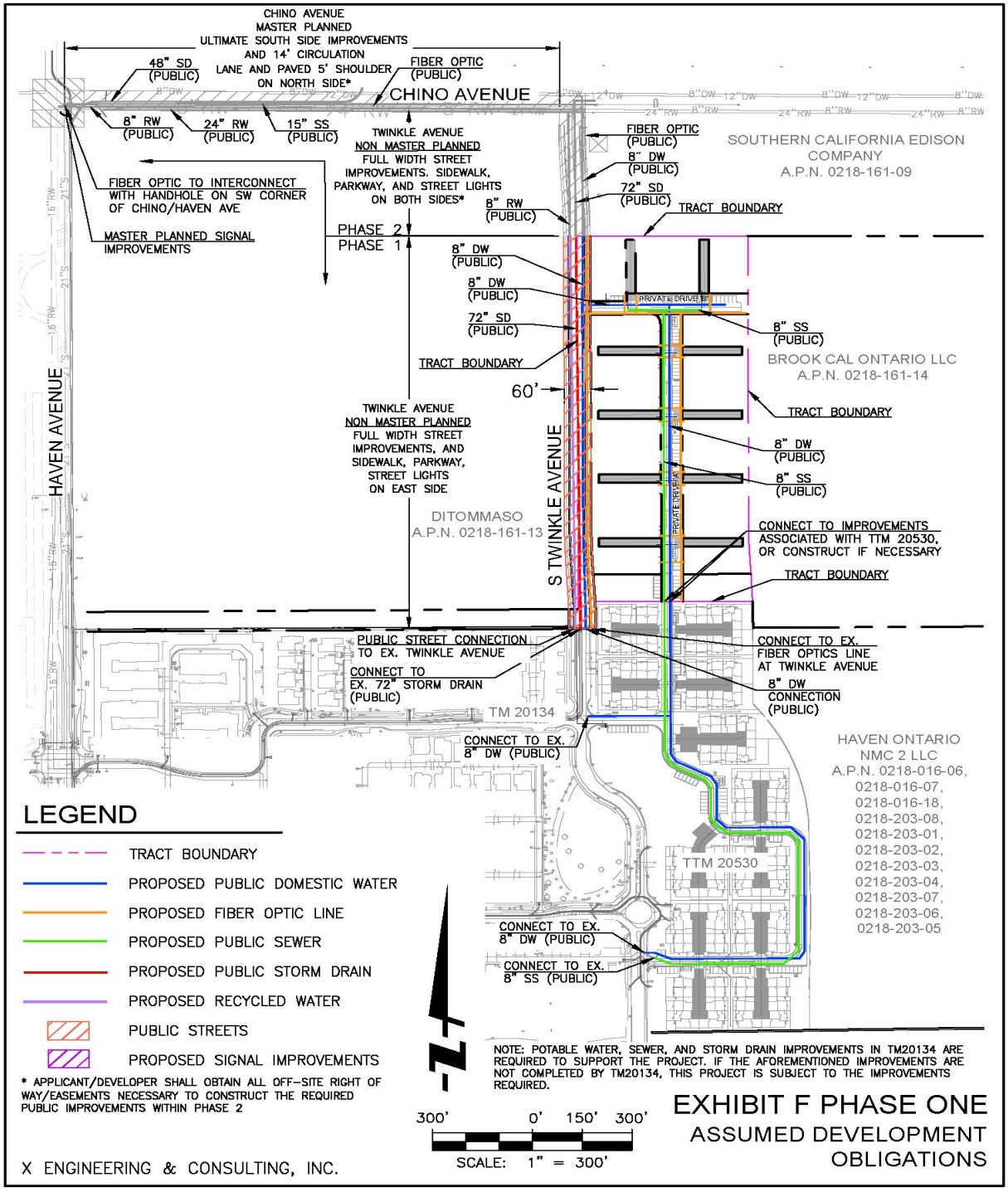
B) PHASE 2 IMPROVEMENTS include but not limited to the street, water, recycled water, sewer, storm drain, fiber optic, and traffic signal improvements, north on Twinkle Avenue and west along Chino Avenue to Haven Avenue.

C) If the PHASE 2 IMPROVEMENTS are not completed prior to the request of occupancy for Phase 1 Production Units, then OWNER shall deposit funds into an escrow account equal to the cost for the Phase 2 improvements, subject to the sole discretion of the City Engineer.

EXHIBIT "F"
TO DEVELOPMENT AGREEMENT

Depiction of Required Infrastructure Improvements

(SEE ATTACHED)


CHINO AVENUE
MASTER PLANNED
ULTIMATE SOUTH SIDE IMPROVEMENTS
AND 14' CIRCULATION
LANE AND PAVED 5' SHOULDER
ON NORTH SIDE*
48" SD (PUBLIC)
FIBER OPTIC (PUBLIC)
CHINO AVENUE
8" RW (PUBLIC)
24" RW (PUBLIC)
15" SS (PUBLIC)
TWINKLE AVENUE
NON MASTER PLANNED
FULL WIDTH STREET
IMPROVEMENTS. SIDEWALK,
PARKWAY, AND STREET LIGHTS
ON BOTH SIDES*
FIBER OPTIC (PUBLIC)
8" DW (PUBLIC)
72" SD (PUBLIC)
SOUTHERN CALIFORNIA EDISON COMPANY
A.P.N. 0218-161-09
FIBER OPTIC TO INTERCONNECT
WITH HANDHOLE ON SW CORNER
OF CHINO/HAVEN AVE
MASTER PLANNED SIGNAL
IMPROVEMENTS
8" RW (PUBLIC)
TRACT BOUNDARY
PHASE 2
PHASE 1
8" DW (PUBLIC)
8" DW (PUBLIC)
72" SD (PUBLIC)
PRIVATE DRIVE 'B'
8" SS (PUBLIC)
TRACT BOUNDARY
BROOK CAL ONTARIO LLC
A.P.N. 0218-161-14
60'
TRACT BOUNDARY
HAVEN AVENUE
TWINKLE AVENUE
NON MASTER PLANNED
FULL WIDTH STREET
IMPROVEMENTS, AND
SIDEWALK, PARKWAY,
STREET LIGHTS
ON EAST SIDE
S TWINKLE AVENUE
8" DW (PUBLIC)
8" SS (PUBLIC)
DITOMMASO
A.P.N. 0218-161-13
PRIVATE DRIVE 'A'
CONNECT TO IMPROVEMENTS
ASSOCIATED WITH TTM 20530,
OR CONSTRUCT IF NECESSARY
TRACT BOUNDARY
PUBLIC STREET CONNECTION
TO EX. TWINKLE AVENUE
CONNECT TO
EX. 72" STORM DRAIN
(PUBLIC)
CONNECT TO EX.
FIBER OPTICS LINE
AT TWINKLE AVENUE
8" DW
CONNECTION
(PUBLIC)
TM 20134
CONNECT TO EX.
8" DW (PUBLIC)
HAVEN ONTARIO
NMC 2 LLC
A.P.N. 0218-016-06,
0218-016-07,
0218-016-18,
0218-203-08,
0218-203-01,
0218-203-02,
0218-203-03,
0218-203-04,
0218-203-07,
0218-203-06,
0218-203-05
TTM 20530
CONNECT TO EX.
8" DW (PUBLIC)
CONNECT TO EX.
8" SS (PUBLIC)
LEGEND
TRACT BOUNDARY
PROPOSED PUBLIC DOMESTIC WATER
PROPOSED FIBER OPTIC LINE
PROPOSED PUBLIC SEWER
PROPOSED PUBLIC STORM DRAIN
PROPOSED RECYCLED WATER
PUBLIC STREETS
PROPOSED SIGNAL IMPROVEMENTS
* APPLICANT/DEVELOPER SHALL OBTAIN ALL OFF-SITE RIGHT OF WAY/EASEMENTS NECESSARY TO CONSTRUCT THE REQUIRED PUBLIC IMPROVEMENTS WITHIN PHASE 2
NOTE: POTABLE WATER, SEWER, AND STORM DRAIN IMPROVEMENTS IN TM20134 ARE REQUIRED TO SUPPORT THE PROJECT. IF THE AFOREMENTIONED IMPROVEMENTS ARE NOT COMPLETED BY TM20134, THIS PROJECT IS SUBJECT TO THE IMPROVEMENTS REQUIRED.
300' 0' 150' 300'
SCALE: 1" = 300'
X ENGINEERING & CONSULTING, INC.
EXHIBIT F PHASE ONE
ASSUMED DEVELOPMENT OBLIGATIONS
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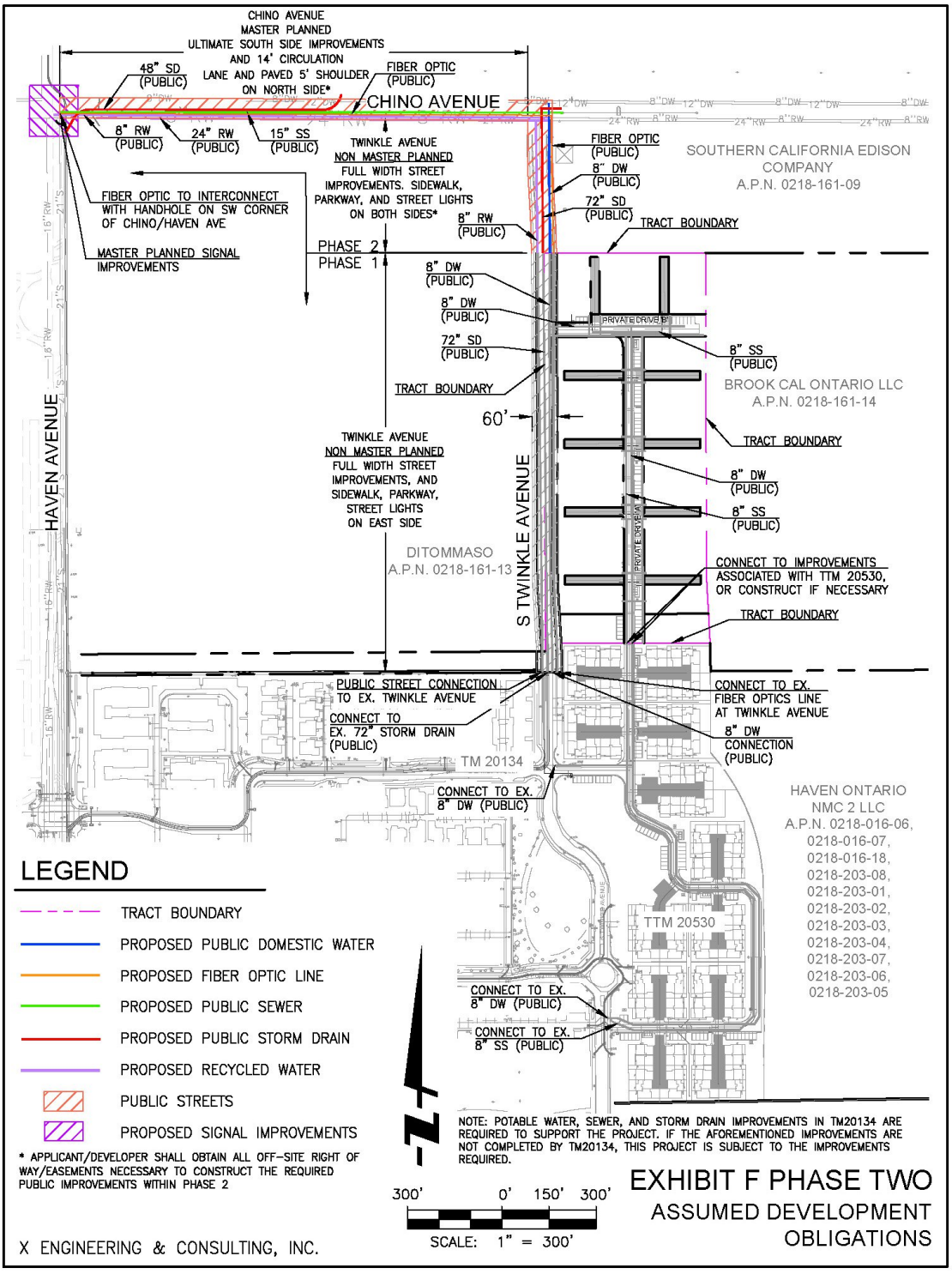

CHINO AVENUE
MASTER PLANNED
ULTIMATE SOUTH SIDE IMPROVEMENTS
AND 14' CIRCULATION
LANE AND PAVED 5' SHOULDER
ON NORTH SIDE*
48" SD (PUBLIC)
FIBER OPTIC (PUBLIC)
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ON BOTH SIDES*
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SOUTHERN CALIFORNIA EDISON COMPANY
A.P.N. 0218-161-09
FIBER OPTIC TO INTERCONNECT
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MASTER PLANNED SIGNAL
IMPROVEMENTS
8" RW (PUBLIC)
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PHASE 2
PHASE 1
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8" DW (PUBLIC)
72" SD (PUBLIC)
TRACT BOUNDARY
PRIVATE DRIVE B
8" SS (PUBLIC)
BROOK CAL ONTARIO LLC
A.P.N. 0218-161-14
TRACT BOUNDARY
60'
HAVEN AVENUE
TWINKLE AVENUE
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8" SS (PUBLIC)
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A.P.N. 0218-161-13
CONNECT TO IMPROVEMENTS
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PUBLIC STREET CONNECTION
TO EX. TWINKLE AVENUE
CONNECT TO
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(PUBLIC)
CONNECT TO EX.
FIBER OPTICS LINE
AT TWINKLE AVENUE
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(PUBLIC)
TM 20134
CONNECT TO EX.
8" DW (PUBLIC)
HAVEN ONTARIO
NMC 2 LLC
A.P.N. 0218-016-06,
0218-016-07,
0218-016-18,
0218-203-08,
0218-203-01,
0218-203-02,
0218-203-03,
0218-203-04,
0218-203-07,
0218-203-06,
0218-203-05
TTM 20530
CONNECT TO EX.
8" DW (PUBLIC)
CONNECT TO EX.
8" SS (PUBLIC)
LEGEND
TRACT BOUNDARY
PROPOSED PUBLIC DOMESTIC WATER
PROPOSED FIBER OPTIC LINE
PROPOSED PUBLIC SEWER
PROPOSED PUBLIC STORM DRAIN
PROPOSED RECYCLED WATER
PUBLIC STREETS
PROPOSED SIGNAL IMPROVEMENTS
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NOTE: POTABLE WATER, SEWER, AND STORM DRAIN IMPROVEMENTS IN TM20134 ARE REQUIRED TO SUPPORT THE PROJECT. IF THE AFOREMENTIONED IMPROVEMENTS ARE NOT COMPLETED BY TM20134, THIS PROJECT IS SUBJECT TO THE IMPROVEMENTS REQUIRED.
300' 0' 150' 300'
SCALE: 1" = 300'
EXHIBIT F PHASE TWO
ASSUMED DEVELOPMENT OBLIGATIONS
X ENGINEERING & CONSULTING, INC.
P:\110\003\Exhibits\Entitlement\DA Exhibits\110-003 Overall Exhibit F.dwg October 13, 2022 12:38 PM

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