CITY OF ONTARIO

Regular City Council/Housing Authority Meeting
FEBRUARY 18, 2025

City Hall
303 East B Street, Ontario, CA 91764

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

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

WELCOME TO A MEETING OF THE ONTARIO CITY COUNCIL

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

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

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

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

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

ACCOMMODATIONS

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

ORDER OF BUSINESS

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

CALL TO ORDER *(OPEN SESSION)*

ROLL CALL

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

PLEDGE OF ALLEGIANCE

Council Member Macias

INVOCATION

Pastor Hernandez, The Church of God Ontario

PUBLIC COMMENTS 6:30 P.M.

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

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

AGENDA REVIEW/ANNOUNCEMENTS

The City Manager will go over all updated materials and correspondence received after the

Agenda was distributed to ensure Council Members have received them. He will also make any necessary recommendations regarding Agenda modifications or announcements regarding Agenda items to be considered.

INFORMATION RELATIVE TO POSSIBLE CONFLICT OF INTEREST

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

CONSENT CALENDAR

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

1. APPROVAL OF MINUTES

Minutes for the regular meetings of the City Council and Housing Authority of January 21, 2025 and approving same as on file in the Records Management Department.

ATTACHMENT: 20250121 Meeting Minutes (Not Official Until Approved)

2. BILLS & PAYROLL

Bills January 17, 2025 through January 30, 2025, and Payroll December 29, 2024 through January 11, 2025.

3. AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT WITH BRIGHTVIEW LANDSCAPE SERVICES, INC. FOR WEED ABATEMENT

That the City Council authorize the City Manager, or his designee, to execute Amendment No. 2 to the Maintenance Services Agreement No. PM 2122-1 with BrightView Landscape Services, Inc., of Upland, California, for Weed Abatement in the amount of $20,496 for a total not-to-exceed contract amount of $321,764.

ATTACHMENT: Brightview Landscape - Amdt No. 2 - Weed Abatement 1.pdf
ATTACHMENT: Exhibit A OMC WEED ABATEMENT 1.pdf

4. ACCEPT WRITTEN PETITIONS TO CREATE A COMMUNITY FACILITIES DISTRICT; ADOPT A RESOLUTION OF INTENTION TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 73 (WILDFLOWER ACRES) AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES; AND ADOPT A RESOLUTION DECLARING IT NECESSARY TO INCUR BONDED INDEBTEDNESS

That the City Council consider and:

A. Accept written petitions (on file with the Records Management Department) from Pulte Home Company, LLC and AG EHC II (PHM) CA 2, L.P. ("Landowners"), to create a Community Facilities District ("CFD") and to waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982;
B. Adopt a Resolution of Intention to establish City of Ontario Community Facilities District No. 73 (Wildflower Acres), authorize the associated levy of special taxes therein; and set a public hearing for the formation of the CFD as part of the regularly scheduled City Council meeting on Tuesday, April 1, 2025; and
C. Adopt a Resolution Declaring it Necessary for the City of Ontario Facilities District No. 73 (Wildflower Acres) to Incur Bonded Indebtedness.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF INTENTION TO ESTABLISH A COMMUNITY FACILITIES DISTRICT PROPOSED TO BE NAMED CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 73 (WILDFLOWER ACRES) AND TO AUTHORIZE THE LEVY OF A SPECIAL TAX THEREIN.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING IT NECESSARY FOR CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 73 (WILDFLOWER ACRES) TO INCUR BONDED INDEBTEDNESS.

ATTACHMENT: CFD No. 73 Wildflower Acres Intent to Establish 01^RESO^RM
ATTACHMENT: CFD No. 73 Wildflower Acres^01A EXH A, Boundary Map.pdf
ATTACHMENT: CFD No. 73 Wildflower Acres^01B^ EXH C, RMA.pdf
ATTACHMENT: CFD No. 73 Wildflower Acres Incur Bonded Indebtedness 02^RESO^RM

5. A CHANGE ORDER TO THE CONSTRUCTION CONTRACT WITH GRBCON, INC. FOR EASEMENT AND STORM DRAIN PIPE REPLACEMENT PROJECT

That the City Council authorize the City Manager, or his designee, to approve Change Order No. 3 to the Construction Contract with GRBCON, Inc., of Baldwin Park, California, for the Easement and Storm Drain Pipe Replacement Project in the amount of $163,576 for a total not-to-exceed contract amount of $1,408,677.

ATTACHMENT: Change Order 3 GRBCON.pdf

6. INCREASE NOT-TO-EXCEED AMOUNT OF CO-OPERATIVE PURCHASES & PRE-AUTHORIZED VENDORS FOR FLEET EQUIPMENT SERVICES AND PARTS

That the City Council take the following actions:

A. Authorize the purchasing threshold increase for the co-operative purchase and delivery of fleet parts in the amount of $350,000 for a not-to-exceed amount of $475,000 from Factory Motor Parts, of Pomona, California, consistent with the terms and conditions of the CA-State Contract DGS-7-21-99-41-01, and
B. Authorize the purchasing threshold increase for the co-operative purchase and delivery of fleet parts in the amount of $300,000 for a not-to-exceed amount of $455,000 from

Parts Authority, of Rancho Cucamonga, California, consistent with the terms and conditions of the CA-State Contract DGS-7-21-99-41-03; and

C. Authorize the purchasing threshold increase for the pre-authorized purchase and delivery of fleet parts and services in the amount of $450,000 for a not-to-exceed amount of $799,000 from Rush Truck Center, of Fontana, California.

ATTACHMENT: 7-21-99-41-01_FMP_Executed.pdf
ATTACHMENT: 7-21-99-41-01_FMP_Am_1.pdf
ATTACHMENT: 7-21-99-41-03_Parts_Authority.pdf
ATTACHMENT: 7-21-99-41-03_Parts_Authority_Am_1.pdf

7. ACCEPTANCE OF BROADBAND PROGRAM BENEFICIARIES FROM SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS (SCAG)

That the City Council approve a Memorandum of Understanding with Southern California Association of Governments (SCAG) of Los Angeles, California, for broadband program beneficiaries relating to the Local Agency Technical Assistance Program.

ATTACHMENT: M-013-25 LATA City of Ontario MOU V2.pdf

8. PURCHASE ADDITIONAL MICROSOFT 365 SUBSCRIPTIONS WITH SOFTWAREONE INC.

That the City Council authorize the City Manager, or his designee, to execute the purchase of additional Microsoft 365 subscriptions with SoftwareONE Inc., of Milwaukee, Wisconsin, for $65,805 plus $100,000 in contingency, revising not-to-exceed amount on the agreement to $1,774,456.

ATTACHMENT: SoftwareOne_Additional_License_Quote.pdf

9. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH CALTEK TECHNOLOGIES, INC., FOR LOW-VOLTAGE CABLING AND EQUIPMENT INSTALLATION

That the City Council take the following actions:

A. Authorize the City Manager, or designee, to execute Amendment No. 7 to the Professional Services with Caltek Technologies, Inc., of Ontario, CA, for low-voltage cabling, extending the terms for three years and increase the authorized amount by $300,000 for a total contract not-to-exceed amount of $475,957.

B. Authorize the City Manager, or designee, to execute Amendment No. 7 to the Professional Services with Caltek Technologies, Inc., of Ontario, CA, for low-voltage cabling for the Animal Resource Center of the Inland Empire's (ARC) temporary animal shelter, increasing the authorized amount by $71,276 for a total contract not-to-exceed amount of $547,233.

ATTACHMENT: Amendment No.7_CalTek_Professional Services Agreement.pdf

10. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH AXON ENTERPRISE, INC. FOR THE ACQUISITION OF POLICE DEPARTMENT FRONTLINE EQUIPMENT

That the City Council authorize the City Manager, or his designee, to execute Amendment No. 6 to the Professional Services Agreement with Axon Enterprise, Inc. of Scottsdale, Arizona, for

the purchase of twelve (12) Axon Skydio police unmanned aircraft systems (drones) in the amount of $1,812,703 and Axon Standards, an Early Intervention System (EIS), in the amount of $65,000 for a new total not-to-exceed contract amount of $11,658,373.

ATTACHMENT: Amendment No 6 Upd 02 13 25.pdf

PUBLIC HEARINGS

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

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11. A PUBLIC HEARING TO CONSIDER AN URGENCY ORDINANCE APPROVING A DEVELOPMENT CODE AMENDMENT, FILE NO PDCA24-004, REGARDING ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS

That the City Council consider, waive further reading, and adopt an Urgency Ordinance approving File No. PDCA24-004, to amend Division 5.03 - Supplemental Land Use Regulations, Section 5.03.010 (Accessory Dwelling Units) of the City's Development Code to comply with recent changes to state law that impose new limits on local authority to regulate Accessory Dwelling Units ("ADUs") and Junior Accessory Dwelling Units ("JADUs"), which took effect on January 1, 2025.

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT CODE AMENDMENT, FILE NO. PDCA24-004, AMENDING DIVISION 5.03 & SUPPLEMENTAL LAND USE REGULATIONS, SECTION 5.03.010 OF THE CITY'S DEVELOPMENT CODE RELATING TO ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS AND FINDING THE ACTION TO BE STATUTORILY EXEMPT FROM CEQA UNDER PUBLIC RESOUCES CODE SECTION 21080.17.

ATTACHMENT: 20250218 File No PDCA24-004 ADU Urgency Ordinance 01^ORD^RM.docx
ATTACHMENT: 20250218 File No PDCA24-004 ADU Urgency Ordinance ^02 Exhibit A rev.docx
ATTACHMENT: 20250218 File No PDCA24-004^03 Dev Code Text 5.03.010 rev.pdf

12. A PUBLIC HEARING TO CONSIDER APPROVAL OF A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND ONTARIO RANCH HOTELS, LLC. FOR THE DEVELOPMENT OF A HOTEL FEATURING 227-GUEST ROOMS AT THE SOUTHEAST CORNER OF EAST RIVERSIDE DRIVE AND ONTARIO AVENUE; MAKING CERTAIN CEQA FINDINGS IN CONNECTION THEREWITH

That the City Council ("City") consider and:

A. Adopt a Resolution approving pursuant to the Certified Final Environmental Impact

Report for the Ontario Regional Sports Complex (SCH No. 2023110328) the Disposition and Development Agreement ("Agreement") between the City of Ontario and Ontario Ranch Hotels, LLC. ("Developer") (on file with the Records Management Department) and approving the acquisition of real property for road improvements needed at the corner of East Riverside Drive and Vineyard Avenue.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING, PURSUANT TO THE CERTIFIED FINAL ENVIRONMENTAL IMPACT REPORT FOR THE ONTARIO REGIONAL SPORTS COMPLEX (SCH NO. 2023110328), A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY AND ONTARIO RANCH HOTELS, LLC FOR THE DEVELOPMENT OF CERTAIN REAL PROPERTY LOCATED ON THE SOUTHEAST CORNER OF EAST RIVERSIDE DRIVE AND ONTARIO AVENUE, ONTARIO, CALIFORNIA (PORTION OF APN 0218-111-12-0000); MAKING CERTAIN CEQA FINDINGS IN CONNECTION THEREWITH.

ATTACHMENT: Ontario Ranch Hotels DDA Staff Report Exhibit A^01.pdf
ATTACHMENT: Ontario Ranch Hotels DDA 02^RESO^RM
ATTACHMENT: Ontario Ranch Hotels LLC 52201 Summary Report ED Opp^03.docx
ATTACHMENT: Ontario DDA Ontario Ranch Hotels LLC-c1.docx

13. A PUBLIC HEARING TO CONSIDER ADOPTING A RESOLUTION OF NECESSITY FOR THE ACQUISITION BY EMINENT DOMAIN OF A FEE SIMPLE INTEREST IN CERTAIN REAL PROPERTY LOCATED AT 434 NORTH EUCLID AVENUE

That the City Council conduct a public hearing and adopt A Resolution of Necessity declaring that the acquisition by eminent domain of a fee simple interest in certain real property located at 434 North Euclid Avenue, more particularly described as Assessor Parcel No. 1048-363-01 (the Property), is necessary for the Downtown Public Parking Project (the Project).

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 IN CERTAIN REAL PROPERTY LOCATED AT 434 NORTH EUCLID AVENUE IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, CALIFORNIA AND MORE PARTICULARLY DESCRIBED AS ASSESSOR PARCEL NUMBER 1048-363-01, FOR THE ONTARIO DOWNTOWN PUBLIC PARKING PROJECT, ONTARIO, CALIFORNIA.

ATTACHMENT: 434 North Euclid Staff Report Exhibit 1^01.pdf
ATTACHMENT: 434 North Euclid Resolution of Necessity^02 RESO RM.doc
ATTACHMENT: 434 North Euclid Reso Exhibit A^03.pdf

STAFF MATTERS

City Manager Ochoa

COUNCIL MATTERS

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

ADJOURNMENT

ONTARIO CITY COUNCIL/
ONTARIO HOUSING AUTHORITY
MINUTES
JANUARY 21, 2025
(Not Official Until Approved)

JOINT MEETINGS

The regular meetings of the Ontario City Council and Housing Authority were held on Tuesday, January 21, 2025 at Ontario City Hall, 303 E. B Street Ontario, California.

OPEN MEETING CALLED TO ORDER

Mayor Leon called the joint meetings to order at 6:03 p.m.

ROLL CALL

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

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

INFORMATION RELATIVE TO POSSIBLE CONFLICTS OF INTEREST

There were no conflicts of interest announced.

CLOSED SESSION

Mayor Leon inquired whether persons were present who wished to speak to the Closed Session items. Hearing no one, City Attorney Duran announced the matters for discussion as listed on the agenda and recessed to Closed Session at 6:05 p.m. for discussion of the following:

GC 54956.9(d)(1), CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
City of Ontario, et al. v. Inland Empire Utilities Agency, Orange County Superior Court Case No. 30-2023-01344236-CU-WM-CJC
Chino Basin Municipal Water District v. City of Chino, et al. , San Bernardino Superior Court Case No. RCVRS 51010
Chino Basin Municipal Water District v. City of Chino et al ., San Bernardino Superior Court Case No. RCVRS 51010, 4th District Appellate Case No. E080457

GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN: 1047-172-17; 1005-1007 East Sixth Street; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: T&S Allied Investments, LLC; Under negotiation: Price and terms of payment

GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN: 1047-172-22; 1023 East Sixth Street; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: TAVK Holding, LLC; Under negotiation: Price and terms of payment

OPEN MEETING CALLED TO ORDER

Mayor Leon reconvened the meetings at 6:37 p.m. for the regular session.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Bowman.

INVOCATION

Invocation was led by Senior Pastor Gresford Thomas, Ontario Seventh Day Adventist.

REPORT ON CLOSED SESSION

City Attorney Duran announced there was no reportable action.

PUBLIC COMMENT

Assistant City Clerk Isbell announced that there were three written comments:
Andrew McAfee, poor air quality due to construction.
Lillie Bayless, complaint regarding loud music.
Brad Neumann, regarding his personnel matters.

Mayor Leon called upon the first speaker:
Brad Neumann, spoke regarding his personnel grievance.
Doug McAllister, spoke on the recent increase of copper cable theft.
Steven and Malinda, chose not to speak.
Ruby Mora, spoke regarding parking issues.

AGENDA REVIEW/ANNOUNCEMENTS

The City Manager announced the updated copy of the exhibits to the Resolution being considered under agenda Item No. 4. The update reflected payments received from property owners up to 9:00 am on Tuesday, January 21, 2025. The updated materials reflected a revised and reduced amount for assessments totaling $39,086.87 related to 71 parcels, which meant that $19,549.80 for 29 parcels were collected, postponed, or

settled since the public agenda was prepared. The updated materials provided were incorporated into the public record.

CONSENT CALENDAR

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

1. APPROVAL OF MINUTES

Minutes for the regular meetings of the City Council and Housing Authority of December 3, 2024 and December 17, 2024 and approving same as on file in the Records Management Department.

2. BILLS & PAYROLL

Approved bills December 12, 2024 through January 2, 2025, in the amount of $47,841,280.27, and Payroll December 1, 2024 through December 14, 2024 in the amount of $5,737,736.63.

3. PRE-AUTHORIZED LIST OF VENDORS TO PROVIDE SPECIALIZED PERSONAL PROTECTIVE EQUIPMENT, MAINTENANCE AND SPECIALIZED SERVICE

The City Council approved a pre-authorized vendors list to provide personal protective equipment and maintenance services for emergency equipment and services for the Fire Department.

4. 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. 2025-001 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.

5. DESIGNATION OF VOTING DELEGATE FOR THE SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS GENERAL ASSEMBLY

The City Council designated Mayor Pro Tem Debra Porada as the City's voting delegate and Mayor Paul Leon as the alternate representative for the Southern

California Association of Governments (SCAG) General Assembly scheduled for May 1, 2025.

6. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH PURESOUND PRODUCTIONS FOR AUDIO, VISUAL AND LIGHTING SERVICES

The City Council authorized the City Manager, or his designee, to execute Amendment No. 3 to the Professional Services Agreement with Puresound Productions in the amount of $170,000 for a total not-to-exceed contract amount of $320,000 and extend the contract term to June 30, 2026.

7. A CONSTRUCTION CONTRACT WITH PUB CONSTRUCTION, INC. FOR THE JAMES R. BRYANT PARK FUTSAL COURT RENOVATION

The City Council took the following actions:

A. Authorized the City Manager, or his designee, to execute Construction Contract No. PM 2425-20 with PUB Construction, Inc., of Diamond Bar, California, for the James R. Bryant Park Futsal Court Renovation Project for a total contract amount of $329,202 and authorized a 10% contingency of $32,920 for a total not-to-exceed contract amount of $362,122; and
B. Authorized the City Manager, or his designee, to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, reductions of retention accounts, and filing a notice of completion at the conclusion of all construction-related activities.

8. MAINTENANCE SERVICES AGREEMENTS WITH BRIGHTVIEW LANDSCAPE SERVICES, INC. FOR OLD MODEL COLONY WEED ABATEMENT AND PRIORITY LANDSCAPE SERVICES, LLC. FOR CELEBRATION PARK NORTH AND SOUTH

The City Council took the following actions:

A. Authorized the City Manager, or his designee, to execute a Maintenance Services Agreement with BrightView Landscape Services, Inc., of Upland, California, for Old Model Colony Weed Abatement for a total not-to-exceed contract amount of $863,784 for up to five (5) years; and
B. Authorized the City Manager, or his designee, to execute a Maintenance Services Agreement with Priority Landscape Services, LLC., of Anaheim, California, for Celebration Park North and South for a total not-to-exceed contract amount of $952,902 for up to five (5) years.

9. AMENDMENTS TO THE MAINTENANCE SERVICES AGREEMENT WITH CONVERGINT TECHNOLOGIES, LLC FOR THE ONTARIO MUSEUM OF HISTORY AND ARTS EXTERIOR DOOR ACCESS CONTROL UPGRADE AND THE CCTV INTERSECTION CAMERA INSTALLATION PROJECT

The City Council took the following actions:

A. Authorized the City Manager, or his designee, to execute Amendment No. 3 to the Maintenance Services Agreement with Convergint Technologies, LLC, of La Palma, California, for the Ontario Museum of History and Arts Exterior Door Access Control Upgrade in the amount of $8,648 for a total not-to-exceed contract amount of $3,851,128, and
B. Authorized the City Manager, or his designee, to execute Amendment No. 4 to the Maintenance Services Agreement with Convergint Technologies, LLC, of La Palma, California, for the Closed-Circuit Television (CCTV) Intersection Camera Installation Project in the amount of $402,348 for a total not-to-exceed contract amount of $4,253,476; and
C. Authorized the City Manager, or his designee, to execute all documents required for the completion of the project including, but not limited to agreements, assessments, easements, reduction of retention accounts, contracts amendments within the authorization limits, and filing a notice of completion at the conclusion of all construction related activities.

10. AN AMENDMENT TO THE DESIGN SERVICES AGREEMENT WITH RJM DESIGN GROUP, INC. FOR ON-CALL LANDSCAPE ARCHITECTURAL SERVICES FOR THE ONTARIO SPORTS EMPIRE PROJECT

The City Council took the following actions:

A. Authorized the City Manager, or his designee, to execute Amendment No. 2 to the Design Services Agreement with RJM Design Group, Inc. (RJM), of San Juan Capistrano, California, to provide on-call landscape architectural services for the Ontario Sports Empire Project in the amount of $581,710 for a total not-to-exceed contract amount of $1,240,575;
B. Authorized the City Manager, or his designee, to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, easements, reduction of retention accounts, and filing a notice of completion at the conclusion of all construction related activities.

11. AN AMENDMENT TO THE GOODS AND SERVICES AGREEMENT WITH FLOCK GROUP INC FOR THE AUTOMATED LICENSE PLATE RECOGNITION SYSTEM

The City Council authorized the City Manager, or his designee, to execute Amendment No. 1 to the Goods and Services Agreement with Flock Group Inc., with its principal place of business in Atlanta, Georgia, increasing the authorized contract amount for the Automated License Plate Recognition by $243,500 for a total not-to-exceed amount of $1,731,000.

12. AMENDMENT TO THE WEST END ANIMAL SERVICES AGENCY JOINT POWERS AUTHORITY AGREEMENT

The City Council considered and:

A. Approved an amendment to the Joint Exercise of Powers Agreement renaming the Agency to Animal Resource Center of the Inland Empire (ARC); and
B. Approved the admission of both the City of Montclair and the County of San Bernardino (West end unincorporated area only) as member agencies to the Joint Powers Agency; and
C. Authorized the City Manager, or designee, to sign the amendment and to take all other actions and execute all other documents to carry out the terms of this action.

ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

13. AN ORDINANCE AMENDING CERTAIN SECTIONS UNDER ARTICLE 16 TO CHAPTER 6 OF TITLE 4 OF THE MUNICIPAL CODE RELATED TO PARKING PENALTIES AND CITATIONS

The City Council introduced and waived further reading of an Ordinance amending Sections 4-6.1602 (Penalties: Citations), 4-6.1603 (Penalties: Citations: Method of Payment), and 4-6.1604 (Penalties: Citations: State-mandated added penalties) under Article 16 (Violations and Penalties) to Chapter 6 (Traffic) to Title 4 (Public Safety) of the Municipal Code ("Code").

ORDINANCE NO. 3295 (FIRST READING) AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CERTAIN SECTIONS UNDER ARTICLE 16 TO CHAPTER 6 OF TITLE 4 OF THE MUNICIPAL CODE RELATED TO PARKING PENALTIES AND CITATIONS.

There were no written communications to the item. Mayor Leon inquired if anyone was interested in speaking to the item. Hearing no one, Mayor Leon opened the item for Council discussion.

MOTION: Moved by Mayor pro Tem Porada, seconded by Council Member Bowman and carried by a unanimous vote 5-0, to introduce Ordinance No. 3295.

STAFF MATTERS

City Manager Ochoa made no announcements.

COUNCIL MATTERS

City Council Reorganization – Mayor pro Tem

MOTION: Moved by Council Member Macias, seconded by Council Member Bowman

and carried by a unanimous vote 5-0, to appoint Council Member Wapner as Mayor pro Tem.

Council Member Macias made no comments.

Council Member Bowman made no comments.

Mayor pro Tem Wapner made no comments.

Council Member Porada made no comments.

Mayo Leon made no comments.

ADJOURNMENT

Mayor Leon adjourned the meetings of the Joint Agencies at 6:58 p.m., in memory of Ontario Firefighter Javan L. Settles and announced the next regular meeting was scheduled for February 4, 2025.

Respectfully submitted,

_____
SHEILA MAUTZ, CITY CLERK/SECRETARY

APPROVED:

_____
PAUL S. LEON, MAYOR/CHAIRMAN

CITY OF ONTARIO *Agenda Report* **February 18, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Philip Marino Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Jacqueline Leon, Bonnie Tam Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 3

SUBJECT: AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT WITH BRIGHTVIEW LANDSCAPE SERVICES, INC. FOR WEED ABATEMENT

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute Amendment No. 2 to the Maintenance Services Agreement No. PM 2122-1 with BrightView Landscape Services, Inc., of Upland, California, for Weed Abatement in the amount of $20,496 for a total not-to-exceed contract amount of $321,764.

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 Amendment No. 2 to the Maintenance Services Agreement with Brightview Landscape Services, Inc. is in the amount of $20,496 for a total not-to-exceed contract amount of $321,764. The Fiscal Year 2024-25 Adopted Budget includes appropriations in the General Fund for Weed Abatement services.

BACKGROUND & ANALYSIS: On December 7, 2021, the City Council approved the Maintenance Services Agreement with Brightview Landscape Services for Weed Abatement in the Old Model Colony for three years in the amount of $332,994 plus a contingency of $16,650 for a total not-to-exceed $349,644. On March 3, 2022, Amendment No. 1 to the Maintenance Services Agreement with Brightview Landscape Services, Inc. was executed to remove 13 sites from the scope of services and decrease the compensation amount by $48,376 for a total contract cost not-to-exceed $301,268. If Amendment No. 2 is approved, Brightview Landscape Services, Inc. will increase the contract amount by $20,496 for a total not-to-exceed amount of $305,114 plus a contingency of $16,650 for an overall not-to-exceed $321,764 in order to close out their current agreement with the City.

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

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 2 TO THE MAINTENANCE SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND BRIGHTVIEW LANDSCAPE SERVICES INC.

1. Parties and Date.

This Amendment No. 2 to the Agreement (as defined herein) is made and entered as of _____, by and between the City of Ontario ("City") and Brightview Landscape Services Inc., a Corporation ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties."

2. Recitals.

2.1 Agreement. The City and Contractor have entered into an agreement entitled "Maintenance Services Agreement" dated December 7, 2021 ("Agreement").

2.2 Amendment Purpose. The City and Contractor desire to amend the Agreement for additional funding in the amount of T**wenty Thousand Four Hundred Ninety-Six ($20,496)** for a total contract amount not-to-exceed $305,114. The Parties have heretofore entered into that Amendment No. 1 dated March 3, 2022.

2.3 Amendment Authority. This Amendment No. 2 is authorized pursuant to Section 3.7.19 of the Agreement.

3. Terms.

3.1 Amendment. Section 3.2.1, of the Agreement is hereby amended in its entirety to read as follows:

> 3.2.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total

compensation shall not exceed T**hree Hundred Five Thousand One Hundred Fourteen Dollars ($305,114)** without written approval of City's Manager. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2 Continuing Effect of Agreement. Except as amended by this Amendment No. 2, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 2. From and after the date of this Amendment No. 2, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 2.

3.3 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 2.

3.4 Severability. If any portion of this Amendment No. 2 is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5 Integration. This Amendment represents the entirety of the Parties' understanding relating to the subject of this Amendment, including written or verbal communications between the Parties, which shall have no relevance unless expressly incorporated herein. This is an integrated amendment.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR AMENDMENT NO. 2 TO MAINTENANCE SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND BRIGHTVIEW LANDSCAPE SERVICES INC.

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 2 as of the day and year first above written.

CITY OF ONTARIO

Approved By:

By:_____

_____ Its:_____

Scott Ochoa
City Manager

Printed Name:_____

Approved as to Form:

By:_____

_____ Its:_____

Best Best & Krieger LLP
City Attorney

Printed Name:_____

Attested By:

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

_____

City Clerk

LANDSCAPE MAINTENANCE SERVICES FOR OLD MODEL COLONY WEED ABATEMENT

BID SCHEDULE NO. 2
LANDSCAPE MAINTENANCE CONTRACT PM 2122-1
FISCAL YEAR 2024/2025 4th YEAR OF CONTRACT

No.	Description
1	821 S Grove
2	Location Removed
3	Guasti from the Channel to Archibald
4	Guasti N/S sides from Holt to Archibald
5	Inland Empire from Archibald to Vineyard
6	Location Removed
7	California N/side west of Grove
8	Location Removed
9	6th St. N/side Corona to Baker
10	"G" Street from Grove to Vineyard
11	Location Removed
12	Richland S/side E of Campus
13	Brooks and Mountain N/E corner and S/side
14	Mountain overpass Mission to Holt and E/W islands
15	Main Street cul-de-sac W of Euclid
16	8th St. from Sacramento to W/ of Grove to Channel
17	Grove E/W sides from 6th to 8th
18	Benson E/side from 10 Fwy. to 6th Street
19	Grove S/side from the tracks to Mission
20	Location Removed
21	"G" Street Mountain to Benson
22	Grove W/side S/60 Fwy. behind BK
23	Mission Ave. N/S side shoulder Cypress to Bon View
24	Ontario Blvd. N/S sides from Campus to Grove
25	State St. N/S sides from Campus to Benson
26	Location Removed
27	419 S. Caldwell
28	Location Removed
30	Brentstone S/side west of Stanford to Ponderosa
31	Dupont from Greystone to cul-de-sac and east of cul-de-sac
32	Greystone N/side west of Milliken
33	Lot on S/E corner of Haven south of 60 fwy.
34	Location Removed
35	Location Removed
36	Philadelphia N/S sides at 15 Fwy.
37	Rochester E/W sides between Philadelphia and Francis

38 Guasti west of Sequoia to cul-de-sac south side
39 Milliken E/W sides from Guasti to Ontario Mills Drive
40 Milliken W side between Philadelphia and Francis
41 Milliken W side south of Mission to 60 Fwy.
42 Milliken W side plus median 60 Fwy. to Winery
43 Mission N/S sides plus median from Milliken to Cucamonga
44 Bike trail (east of Grove) from Mission to Philadelphia
45 Location Removed
46 Philadelphia N side from Vineyard to bike trail
47 Turner E/side north of Walnut to 60 Fwy.
48 Location Removed
49 Location Removed
50 Location Removed
51 Francis and Hellman S/W and Hellman Westside (old vineyard)
52 Vineyard E/W sides from 60 Fwy to Riverside Avenue
53 San Antonio W/side from Phillips to Francis
54 Francis N/side from San Antonio to Tiffany
55 Location Removed
56 Walnut W/ of Vineyard to concrete gutter on S/side
57 Grove shoulders from Mission to Philadelphia
58 Bon View shoulder from Francis to Philadelphia
59 Campus W/side from Philadelphia to Cedar
60 560 E. Phillips gated Lot- Phillips and Monterey
61 Main Street N/S sides east of Euclid
62 Phillips from San Antonio to Cypress south side
63 Phillips and San Antonio N/E corner
64 Philadelphia and Cucamonga N/E corner
65 Ontario Mills Parkway 15 Fwy. underpass to east channel
66 Etiwanda W/side from Ontario Mills to Airport Drive
67 Location Removed
68 Kettering W/side from Airport south to landscaped area
69 Airport N/W sides at 15 Fwy. underpass
70 La Salle N/side from Carnegie to Haven shoulder
71 Carnegie and Commerce to Jurupa shoulder (10 feet)
72 Santa Ana to Doubleday and to Commerce (10 feet)
73 Doubleday S/side from Dupont to Santa Ana shoulder
74 Turner shoulders from 4th Street S to Via Bario
75 Drainage ditch between Santa Ana and Airport Dr. train tracks
76 Turner cul-de-sac from I-10 Fwy. to railroad tracks
77 4th and Vineyard near Corona School (easement)
78 Porsche and Inland Empire cul-de-sac
79 Dupont north of Jurupa west side to Doubleday
80 Location Removed
81 Mercedes N of Inland Empire to Concours
82 Francis N side from Tiffany to Palmetto
83 Holt Blvd, Vineyard to Benson north and south side (maps)

84	Location Removed
85	Vine south of Emporia Parkway by railroad
86	Emporia west of Vine south side by railroad
87	Plaza Serena and Vineyard parkway and behind homes
88	Vineyard between 6th and 7th west side
89	Haven west side approximately 150' S of Francis to tracks
90	Location Removed
91	Grove E/W side and median from Holt to G St.
92	San Antonio from 6th to 10 Fwy. eastside

Total Annual $79,206.90

CITY OF ONTARIO *Agenda Report* **February 18, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Financial Services Prepared By: Cruz Torres Staff Member Presenting: Armen Harkalyan, Executive Director of Finance Reviewed By: Claudia Hernandez, Matthew Hernandez Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 4

SUBJECT: **ACCEPT WRITTEN PETITIONS TO CREATE A COMMUNITY FACILITIES DISTRICT; ADOPT A RESOLUTION OF INTENTION TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 73 (WILDFLOWER ACRES) AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES; AND ADOPT A RESOLUTION DECLARING IT NECESSARY TO INCUR BONDED INDEBTEDNESS**

RECOMMENDATION: That the City Council consider and:

A. Accept written petitions (on file with the Records Management Department) from Pulte Home Company, LLC and AG EHC II (PHM) CA 2, L.P. ("Landowners"), to create a Community Facilities District ("CFD") and to waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982;
B. Adopt a Resolution of Intention to establish City of Ontario Community Facilities District No. 73 (Wildflower Acres), authorize the associated levy of special taxes therein; and set a public hearing for the formation of the CFD as part of the regularly scheduled City Council meeting on Tuesday, April 1, 2025; and
C. Adopt a Resolution Declaring it Necessary for the City of Ontario Facilities District No. 73 (Wildflower Acres) to Incur Bonded Indebtedness.

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

FISCAL IMPACT: Mello-Roos financing in the Wildflower Acres residential development is projected to generate approximately $445,357 per year, at build-out, to fund administrative fees and municipal services; and approximately $17.7 million in bond proceeds to be used to fund a portion

of the public infrastructure improvements needed to serve the project. Mello-Roos bonds are not a direct obligation of the City and are paid from special taxes levied on each taxable parcel in the district; therefore, there is no fiscal impact on the General Fund from the issuance of Mello-Roos bonds. City Council approval will be required to process annual special tax levies in future years.

BACKGROUND & ANALYSIS: The Mello-Roos Community Facilities Act of 1982 provides local government, with the consent from a majority of the property owners, the authority to establish community facilities districts for the purpose of levying special taxes to finance various kinds of public infrastructure facilities and municipal services. Municipal services that may be funded by a community facilities district include: police protection services, fire protection and suppression services, ambulance and paramedic services, maintenance and lighting of parks, parkways, streets, roads, open space, flood and storm drain protection services, maintenance and operation of fiber optic telecommunication, wireless communication and public safety camera systems and maintenance and operation of any real property or tangible property with an estimated useful life of five or more years that is owned by the governmental entity. Under the Mello-Roos Act, the initial steps in the formation of a community facilities district to finance public improvements and municipal services are to adopt a Resolution declaring the intention to establish a community facilities district, authorize the levy of special tax and issue bonds.

In the First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve an Easterly portion of the New Model Colony ("First Amended and Restated Construction Agreement") between the City of Ontario and NMC Builders, LLC, the City agreed to cooperate with the members of NMC Builders, LLC in the formation of community facilities districts to assist in the financing of the public improvements included in the agreement. Pulte Home Company, LLC and AG EHC II (PHM) CA 2, L.P. have provided written petitions to the City requesting the formation of a community facilities district, along with a deposit pursuant to a Deposit Agreement dated December 1, 2023, to be used to pay costs incurred in creating the Community Facilities District and the incurrence of bonded indebtedness and provides for the repayment to Pulte from the proceeds from any bonded indebtedness by the Community Facilities District. The Wildflower Acres project addresses the development of approximately 31.18 gross acres located south of Ontario Ranch Road, north of Eucalyptus Avenue, west of Hamner Avenue, and east of Clifton Avenue. As proposed, the project is anticipated to include 333 residential units consisting of 177 single-family units and 156 attached units at build-out.

Included, as part of the Resolution of Intention, is the proposed Rate and Method of Apportionment of Special Tax for the district. Under the proposed Rate and Method of Apportionment, the portion of the maximum annual special tax rates which will be used to fund debt service payments on the bonds is fixed and will not increase over time. As proposed, the amount of bonds authorized for the district ($70 million) is set intentionally higher than the current estimated bond amount (approximately $17.7 million) in order to allow future City Councils, the option, without increasing the amount of the annual special taxes, to issue additional bonds to replace and/or construct new public infrastructure improvements in the future, or to fund municipal services. The term and structure of the Rate and Method of Apportionment of Special Tax for the Wildflower Acres project is consistent with those of previously adopted Rates and Methods of Apportionment for Ontario Ranch community facilities districts. This ensures that the special tax rates levied on all residential property owners in community facilities districts in Ontario Ranch are developed in a consistent

and equivalent manner. In addition, under the provisions of the Mello-Roos Act, to ensure that home buyers are making an informed decision, all residential builders in the Ontario Ranch community facilities districts will be required to disclose the maximum annual special tax amount to each homeowner before entering into a sales contract.

List of Infrastructure that may be financed:

- Water and Recycled Water System Facilities
- Sewer System Facilities
- Storm Drain System Facilities
- Streets and Traffic Circulation System Facilities
- Fiber Optic System Facilities

City Staff has discussed the proposed Rate and Method of Apportionment of Special Tax with the landowners. As proposed, the Resolution of Intention to establish the district and to levy special taxes will set a public hearing date on the formation of the community facilities district for the regularly scheduled City Council meeting on Tuesday, April 1, 2025, to consider the matter.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF INTENTION TO ESTABLISH A COMMUNITY FACILITIES DISTRICT PROPOSED TO BE NAMED CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 73 (WILDFLOWER ACRES) AND TO AUTHORIZE THE LEVY OF A SPECIAL TAX THEREIN

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

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

WHEREAS, the City Council (the "City Council") of the City of Ontario (the "City") has received from each of Pulte Home Company, LLC ("Pulte") and AG EHC II (PHM) CA 2, L.P. (collectively, the "Landowners") a written petition (together, the "Petitions"), requesting the City Council to institute proceedings pursuant to the Act to establish a community facilities district (the "Community Facilities District") and to authorize the Community Facilities District to levy a special tax within the Community Facilities District, describing the boundaries of the territory that is proposed for inclusion in the Community Facilities District and specifying the types of facilities and services to be financed by the Community Facilities District; and

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

WHEREAS, the Landowners have represented and warranted to the City Council that the Landowners are the owners of 100% of the area of land proposed to be included within the Community Facilities District and not proposed to be exempt from the special tax; and

WHEREAS, Section 53314.9 of the Act provides that, at any time either before or after the formation of a community facilities district, the legislative body may accept advances of funds from any source, including, but not limited to, private persons or

private entities and may provide, by resolution, for the use of those funds for any authorized purpose, including, but not limited to, paying any cost incurred by the local agency in creating a community facilities district; and

WHEREAS, Section 53314.9 of the Act further provides that the legislative body may enter into an agreement, by resolution, with the person or entity advancing the funds, to repay all or a portion of the funds advanced, as determined by the legislative body, with or without interest, under all the following conditions: (a) the proposal to repay the funds is included in both the resolution of intention to establish a community facilities district adopted pursuant to Section 53321 of the Act and in the resolution of formation to establish a community facilities district pursuant to Section 53325.1 of the Act, (b) any proposed special tax is approved by the qualified electors of the community facilities district pursuant to the Act, and (c) any agreement shall specify that if the qualified electors of the community facilities district do not approve the proposed special tax, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election to the person or entity advancing the funds; and

WHEREAS, the City and Pulte have entered into the Deposit and Reimbursement Agreement, dated as of December 1, 2023 (the "Deposit Agreement"), which provides for the advancement of funds by Pulte to be used to pay costs incurred in creating the Community Facilities District and the incurrence of bonded indebtedness thereby, and provides for the repayment to Pulte of such funds advanced, without interest, from the proceeds of any such bonded indebtedness incurred by the Community Facilities District; and

WHEREAS, the City desires to include in this Resolution, in accordance with Section 53314.9 of the Act, the proposal to repay funds pursuant to the Deposit Agreement;

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

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

SECTION 2. The City Council hereby finds that the Petitions are signed by the landowners owning the requisite area of land proposed to be included within the Community Facilities District and not proposed to be exempt from the Special Tax.

SECTION 3. The City Council proposes to establish the Community Facilities District under the terms of the Act. The boundaries of the territory proposed for inclusion in the Community Facilities District are described in the map showing the proposed Community Facilities District (the "Boundary Map") on file in the office of the City Clerk of the City (the "City Clerk"), a copy of which is attached hereto as Exhibit A, which boundaries are hereby preliminarily approved and to which map reference is hereby made for further particulars. The City Clerk is hereby directed to sign the original Boundary Map and record, or cause to be recorded, the Boundary Map with all proper

endorsements thereon in the office of the San Bernardino County Recorder within 15 days of the date of adoption of this Resolution, all as required by Section 3111 of the California Streets and Highways Code.

SECTION 4. The name proposed for the Community Facilities District is "City of Ontario Community Facilities District No. 73 (Wildflower Acres)."

SECTION 5. The public facilities (the "Facilities") proposed to be financed by the Community Facilities District pursuant to the Act are described under the caption "Facilities" on Exhibit B hereto, which is by this reference incorporated herein. Those Facilities proposed to be purchased as completed public facilities are identified under the caption "Facilities to be Purchased" on Exhibit B hereto. The services (the "Services") proposed to be financed by the Community Facilities District pursuant to the Act are described under the caption "Services" on Exhibit B hereto. The incidental expenses proposed to be incurred are identified under the caption "Incidental Expenses" on Exhibit B hereto. All or any portion of the Facilities may be financed through a financing plan, including, but not limited to, a lease, lease-purchase or installment-purchase arrangement.

SECTION 6. The City Council proposes that, except where funds are otherwise available, the Community Facilities District be authorized to annually levy within the Community Facilities District a special tax (the "Special Tax") sufficient to pay for all Facilities and Services, secured by recordation of a continuing lien against all nonexempt real property in the Community Facilities District. The rate, method of apportionment and manner of collection of the Special Tax in sufficient detail to allow each landowner or resident within the proposed Community Facilities District to estimate the maximum amount that he or she will have to pay, is specified in the Rate and Method of Apportionment of Special Tax (the "Rate and Method") attached hereto as Exhibit C, which is by this reference incorporated herein. The conditions under which the obligation to pay the Special Tax to be levied to pay for Facilities may be prepaid and permanently satisfied are specified in the Rate and Method. The Special Tax will be collected in the same manner as ordinary *ad valorem* property taxes or in such other manner as the City Council shall determine, including direct billing of the affected property owners.

SECTION 7. The Special Tax may only finance the Services to the extent that they are in addition to those provided in the territory of the Community Facilities District before the Community Facilities District is created. The Services may not supplant services already available within that territory when the Community Facilities District is created. Bonds of the Community Facilities District may not be issued to fund any of the Services.

SECTION 8. The tax year after which no further Special Tax to pay for Facilities shall be levied against any parcel used for private residential purposes is specified in the Rate and Method. Under no circumstances shall the Special Tax to pay for Facilities in any fiscal year against any parcel used for private residential purposes be increased as a consequence of delinquency or default by the owner or owners of any other parcel or parcels within the Community Facilities District by more than 10% above the amount that would have been levied in that fiscal year had there never been any such delinquencies

or defaults. For purposes of this paragraph, a parcel shall be considered "used for private residential purposes" not later than the date on which an occupancy permit for private residential use is issued. The Special Tax to pay for Services will be levied in perpetuity, as provided in the Rate and Method.

SECTION 9. Pursuant to Section 53344.1 of the Act, the City Council hereby reserves to itself the right and authority to allow any interested owner of property within the Community Facilities District, subject to the provisions of said Section 53344.1 and to those conditions as it may impose, and any applicable prepayment penalties as prescribed in the bond indenture or comparable instrument or document, to tender to the Community Facilities District treasurer in full payment or part payment of any installment of the Special Tax or the interest or penalties thereon that may be due or delinquent, but for which a bill has been received, any bond or other obligation secured thereby, the bond or other obligation to be taken at par and credit to be given for the accrued interest shown thereby computed to the date of tender.

SECTION 10. The City Council hereby fixes Tuesday, April 1, 2025, at 6:30 p.m., or as soon thereafter as the City Council may reach the matter, at 303 East B Street, Ontario, California, as the time and place when and where the City Council will conduct a public hearing on the establishment of the Community Facilities District; provided, that, in the event the April 1, 2025 City Council meeting is held via teleconference and/or videoconference only, the means by which the public may observe such public hearing and offer public comment shall be prescribed in the notice and agenda for such City Council meeting.

SECTION 11. The City Clerk is hereby directed to publish, or cause to be published, a notice of said public hearing one time in a newspaper of general circulation published in the area of the proposed Community Facilities District. Publication of said notice shall be completed at least seven days prior to the date herein fixed for said public hearing. Said notice shall contain all of the information prescribed by Section 53322 of the Act.

SECTION 12. The authorization to levy the Special Tax shall be submitted to the qualified electors of the Community Facilities District at a special election. The proposed voting procedure shall be a vote by the landowners in the Community Facilities District conducted by mail or hand-delivered ballots, with each owner having one vote for each acre or portion of an acre such owner owns in the Community Facilities District.

SECTION 13. Each officer of the City who is or will be responsible for providing one or more of the proposed types of Facilities or Services is hereby directed to study, or cause to be studied, the proposed Community Facilities District and, at or before said public hearing, file a report with the City Council containing a brief description of the Facilities and Services by type that will in his or her opinion be required to adequately meet the needs of the Community Facilities District, and his or her estimate of the cost of providing the Facilities and Services. Such officers are hereby also directed to estimate the fair and reasonable cost of the Facilities proposed to be purchased as completed public facilities and of the incidental expenses proposed to be paid. Such report shall be made a part of the record of said public hearing.

SECTION 14. Pulte has heretofore advanced certain funds, and may advance additional funds, that have been or may be used to pay costs incurred in connection with the creation of the Community Facilities District and the incurrence of bonded indebtedness thereby. The City Council proposes to repay all or a portion of such funds so advanced, without interest, solely from the proceeds of such bonded indebtedness, pursuant to the Deposit Agreement. The Deposit Agreement is hereby incorporated herein as though set forth in full herein.

SECTION 15. All actions heretofore taken by the officers, employees and agents of the City with respect to the establishment of the Community Facilities District, or in connection with or related to any of the matters referred to herein, are hereby approved, confirmed and ratified.

SECTION 16. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things that they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof.

SECTION 17. 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 18th day of February, 2025.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2025- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held February 18, 2025 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2025- duly passed and adopted by the Ontario City Council at their regular meeting held February 18, 2025.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

BOUNDARY MAP

EXHIBIT B

FACILITIES, SERVICES AND INCIDENTAL EXPENSES

Facilities

The types of public facilities to be financed by the Community Facilities District are street and bridge improvements, including grading, paving, curbs and gutters, sidewalks, street signalization and signage, street lights and parkway and landscaping related thereto, domestic and recycled water distribution facilities, sewer collection facilities, solid waste facilities, storm drainage facilities, park and recreation facilities and equipment, aquatic facilities and equipment, fire facilities and equipment, police facilities and equipment, library facilities and equipment, fiber optic telecommunication, wireless communication and public safety camera facilities and equipment, general governmental office, administrative and meeting facilities, and land, rights-of-way and easements necessary for any of such facilities.

Facilities to be Purchased

The types of public facilities to be purchased as completed facilities are street and bridge improvements, including grading, paving, curbs and gutters, sidewalks, street signalization and signage, street lights and parkway and landscaping related thereto, domestic and recycled water distribution facilities, sewer collection facilities, solid waste facilities, storm drainage facilities, and land, rights-of-way and easements necessary for any of such facilities.

Services

The types of City services to be financed by the Community Facilities District are police protection services, fire protection and suppression services, ambulance and paramedic services, maintenance and lighting of parks, parkways, streets, roads and open space, flood and storm protection services, maintenance and operation of fiber optic telecommunication, wireless communication and public safety camera systems and maintenance and operation of any real property or other tangible property with an estimated useful life of five or more years that is owned by the City.

Incidental Expenses

The incidental expenses proposed to be incurred include the following:

(a) the cost of planning and designing public facilities to be financed, including the cost of environmental evaluations of those facilities;

(b) the costs associated with the creation of the Community Facilities District, issuance of bonds, determination of the amount of taxes, collection of taxes, payment of taxes, or costs otherwise incurred in order to carry out the authorized purposes of the Community Facilities District; and

(c) any other expenses incidental to the construction, completion, and inspection of the authorized work.

EXHIBIT C

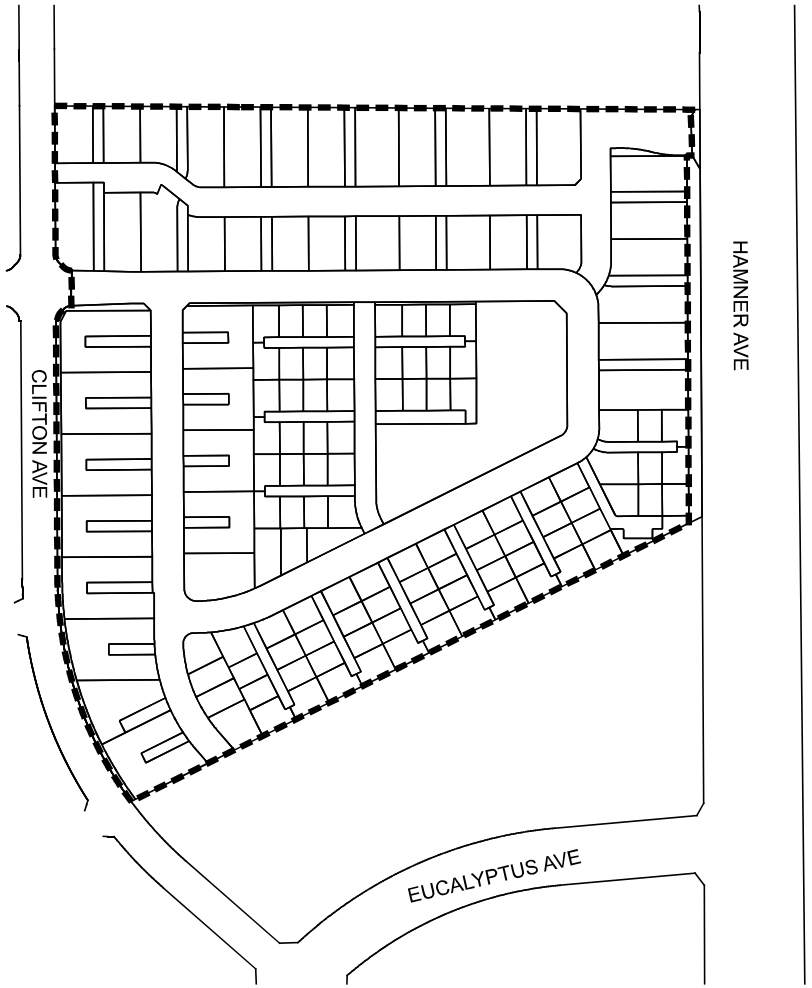
RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

SHEET 1 OF 1

PROPOSED BOUNDARIES OF

CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 73
(WILDFLOWER ACRES)

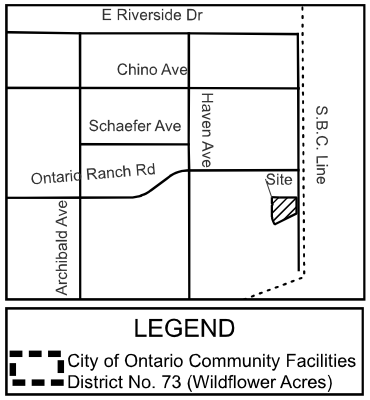
SAN BERNARDINO COUNTY, STATE OF CALIFORNIA



Assessor's Parcel Numbers within Community Facilities District No. 73 (Wildflower Acres):

0218-313-01 through -34
0218-314-01 through -65
0218-666-01 through -41
0218-667-01 through -30
0218-667-32 through -48

VICINITY MAP



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

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

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

(2) I hereby certify that the within map showing the proposed boundaries of City of Ontario Community Facilities District No. 73 (Wildflower Acres), San Bernardino County, State of California, was approved by the City Council of the City of Ontario at a regular meeting thereof, held on the _____ day of _____, 2025, by its Resolution No. _____.

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

CITY OF ONTARIO INCORPORATED DECEMBER 1891 CALIFORNIA

San Bernardino County Recorder's Certificate

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

Josie Gonzales
Assessor-Recorder
San Bernardino County

By: _____
Deputy Recorder

GCG
GOODWIN CONSULTING GROUP

CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 73
(WILDFLOWER ACRES)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

Special Taxes shall be levied on all Assessor's Parcels in the City of Ontario Community Facilities District No. 73 (Wildflower Acres) ("CFD No. 73") and collected each Fiscal Year, commencing in Fiscal Year 2025-26, in an amount determined by the City Council of the City of Ontario through the application of the Rate and Method of Apportionment, as described below. All of the real property in CFD No. 73, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent, and in the manner herein provided.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

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

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

"Administrative Expenses" means the following actual or reasonably estimated costs directly related to the administration of CFD No. 73: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or CFD No. 73 or both); the costs of collecting the Special Taxes (whether by the County or otherwise); the costs of remitting the Special Taxes to the Trustee; the costs of the Trustee (including its legal counsel) in the discharge of the duties required of it under the Indenture; the costs to the City or CFD No. 73 of complying with arbitrage rebate requirements; the costs to the City or CFD No. 73 of complying with City, CFD No. 73, or obligated persons disclosure requirements associated with applicable federal and state securities laws and of the Act; the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City or CFD No. 73 related to the analysis and reduction, if any, of the Special Tax A on Single Family Property in accordance with Section C.1 herein; the costs of the City or CFD No. 73 related to an appeal of the Special Tax; the costs associated with the release of funds from any escrow account; the City's administration fees and third party expenses; the costs of City staff time and reasonable overhead relating to CFD No. 73; and amounts estimated or advanced by the City or CFD No. 73 for any other administrative purposes of the CFD, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

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

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

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

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

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

"Bonds" means any bonds or other debt (as defined in Section 53317(d) of the Act) issued by CFD No. 73 under the Act and payable from Special Tax A.

"Buildable Lot" means an individual lot, within a Final Subdivision Map or an area expected by CFD No. 73 to become Final Mapped Property, such as the area within a Tentative Tract Map, for which a building permit may be issued without further subdivision of such lot.

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

"CFD No. 73" means City of Ontario Community Facilities District No. 73 (Wildflower Acres).

"City" means the City of Ontario, California.

"City Council" means the City Council of the City, acting as the legislative body of CFD No. 73.

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

"County" means the County of San Bernardino.

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

"Developed Property" means for each Fiscal Year, all Taxable Property, exclusive of Final Mapped Property, Taxable Property Owner Association Property, and Taxable Public Property, for which a building permit or other applicable permit for new construction was issued after January 1, 2024, and before May 1 of the prior Fiscal Year.

"Expected Residential Lot Count" means 156 Buildable Lots of Single Family Attached Property and 177 Buildable Lots of Single Family Detached Property, or, as determined by the CFD Administrator, the number of Buildable Lots of Single Family Property based on the most recent Tentative Tract Map(s) or most recently recorded Final Subdivision Map(s) or modified Final Subdivision Map(s).

"Facilities" means the public facilities authorized to be financed, in whole or in part, by CFD No. 73.

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

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

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

"Gated Community Attached Dwelling Unit" means, with respect to Special Tax B, a Unit within any residential building containing two or more dwelling units (including attached condominiums, townhouses, duplexes, triplexes, and apartments) within a gated community that, within such community, is primarily served by private interior streets.

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

"Land Use Class" means any of the classes listed in Tables 1 and 2 below.

"Lower Income Household Welfare Exemption Property" means, for each Fiscal Year, an Assessor's Parcel within the boundaries of CFD No. 73 that is subject to a welfare exemption under subdivision (g) of Section 214 of the California Revenue and

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

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

"Maximum Special Tax B" means, with respect to an Assessor's Parcel of Taxable Property, the Maximum Special Tax B determined in accordance with Section C.2 below that can be levied in any Fiscal Year on such Assessor's Parcel of Taxable Property.

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

"Multiple Family Dwelling Unit" means, with respect to Special Tax B, a Unit within any residential building containing two or more dwelling units, including attached condominiums, townhomes, duplexes, triplexes, and apartments, but excluding Gated Community Attached Dwelling Units.

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

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

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

"Price Point Consultant" means any consultant or firm of such consultants selected by CFD No. 73 that (a) has substantial experience in performing price point studies for residential units within community facilities districts established under the Act or otherwise estimating or confirming pricing for residential units in such community facilities districts, (b) has recognized expertise in analyzing economic and real estate data that relates to the pricing of residential units in such community facilities districts, (c) is in fact independent and not under the control of CFD No. 73 or the City, (d) does not have any substantial interest, direct or indirect, with or in (i) CFD No. 73, (ii) the City, (iii) any owner of real property in CFD No. 73, or (iv) any real property in CFD No. 73, and (e) is not connected with CFD No. 73 or the City as an officer or employee thereof, but who may be regularly retained to make reports to CFD No. 73 or the City.

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

"Property Owner Association Property" means, for each Fiscal Year, any property within the boundaries of CFD No. 73 that was owned by a property owner association, including any master or sub-association, as of January 1 of the prior Fiscal Year.

"Proportionately" means (a) for Developed Property in the first step of Section D.1 below, that the ratio of the actual Special Tax A levy to the Maximum Special Tax A is equal for all Assessor's Parcels of Developed Property; however, for Developed Property in the fourth step of Section D.1 below, Proportionately means that the amount of the increase above the Assigned Special Tax A, if necessary, is equal for all Assessor's Parcels of Developed Property, except that if the Backup Special Tax A limits the increase on any Assessor's Parcel(s), then the amount of the increase shall be equal for the remaining Assessor's Parcels; (b) with respect to Special Tax B, that the ratio of the actual Special Tax B levy to the Maximum Special Tax B is equal for all Assessor's Parcels of Developed Property; (c) for Final Mapped Property, that the ratio of the actual Special Tax A levy to the Maximum Special Tax A is equal for all Assessor's Parcels of Final Mapped Property; (d) for Undeveloped Property, that the ratio of the actual Special Tax A levy to the Maximum Special Tax A is equal for all Assessor's Parcels of Undeveloped Property; (e) for Taxable Property Owner Association Property, that the ratio of the actual Special Tax A levy to the Maximum Special Tax A is equal for all Assessor's Parcels of Taxable Property Owner Association Property; and (f) for Taxable Public Property, that the ratio of the actual Special Tax A levy to the Maximum Special Tax A is equal for all Assessor's Parcels of Taxable Public Property.

"Public Property" means, for each Fiscal Year, property within the boundaries of CFD No. 73 that is (a) owned by, irrevocably offered to, or dedicated to the federal government, the State, the County, the City, or any local government or other public agency or (b) encumbered by an easement for purposes of public or utility right-of-way that makes impractical its use for any purpose other than that set forth in such easement; provided that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act shall be taxed and classified according to its use.

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

"Residential Floor Area" means all of the Square Footage of living area within the perimeter of a Unit, not including any carport, walkway, garage, overhang, patio, enclosed patio, or similar area. The determination of Residential Floor Area shall be as set forth in the building permit(s) issued for such Assessor's Parcel, or as set forth in other official records maintained by the City's Building Department or other appropriate means selected by CFD No. 73. The actual Square Footage shall be rounded up to the next whole square foot. Once such determination has been made for an Assessor's Parcel, it shall remain fixed in all future Fiscal Years unless an appeal pursuant to Section F below is approved that results in a change in the actual Square Footage.

"Residential Property" means, for each Fiscal Year, an Assessor's Parcel for which a building permit for new construction of one or more Units was issued after January 1, 2024, and before May 1 of the prior Fiscal Year.

"Services" means the services authorized to be financed, in whole or in part, by CFD No. 73.

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

"Single Family Detached Dwelling Unit" means, with respect to Special Tax B, a Unit of Single Family Detached Property.

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

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

"Special Taxes" means, collectively, Special Tax A and Special Tax B.

"Special Tax A" means the special tax authorized by the qualified electors of CFD No. 73 to be levied within the boundaries of CFD No. 73 to pay for Facilities and Services.

"Special Tax A Requirement" means for any Fiscal Year that amount required, after taking into account available amounts held in the funds and accounts established under the Indenture, for CFD No. 73 to: (i) pay debt service on all Outstanding Bonds which is due in the calendar year that commences in such Fiscal Year; (ii) pay periodic costs on the Bonds, including, but not limited to, credit enhancement and rebate payments on the Bonds; (iii) pay a pro rata share of Administrative Expenses; (iv) provide any amounts required to establish or replenish any reserve fund for the Bonds; (v) pay directly for acquisition or construction of Facilities, or the cost of Services, to the extent that the inclusion of such amounts does not increase the Special Tax A levy on Final Mapped Property or Undeveloped Property; and (vi) provide an amount equal to Special Tax A delinquencies based on the historical delinquency rate for Special Tax A as determined by the CFD Administrator.

"Special Tax B" means the special tax authorized by the qualified electors of CFD No. 73 to be levied within the boundaries of CFD No. 73 to pay for Services.

"Special Tax B Requirement" means for any Fiscal Year that amount required, after taking into account available amounts in any funds and accounts established to pay for Services, to pay the cost of Services, a pro rata share of Administrative Expenses, and an

amount equal to Special Tax B delinquencies based on the historical delinquency rate for Special Tax B as determined by the CFD Administrator.

"Square Footage" or **"Sq. Ft."** means the floor area square footage reflected on the original construction building permit, or as set forth in other official records maintained by the City's Building Department or other appropriate means selected by CFD No. 73, issued for construction of Residential Property or Non-Residential Property, plus any square footage subsequently added to a building of Non-Residential Property after issuance of a building permit for expansion or renovation of such building.

"State" means the State of California.

"Taxable Property" means, for each Fiscal Year, all of the Assessor's Parcels within the boundaries of CFD No. 73 that are not exempt from the Special Taxes pursuant to law or Section E below.

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

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

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

"Total Tax Burden" means, for a Unit within a Land Use Class, for the Fiscal Year in which the Total Tax Burden is being calculated, the sum of (a) the Assigned Special Tax A for such Land Use Class for such Fiscal Year, plus (b) the Special Tax B for such Land Use Class for such Fiscal Year, plus (c) the *ad valorem* property taxes, special assessments, special taxes for any overlapping community facilities districts, and any other governmental fees, charges (other than fees or charges for services such as sewer and trash), taxes, and assessments (which do not include Contractual Impositions) collected by the County on *ad valorem* tax bills, plus (d) property owner association assessments (but excluding the refuse collection portion of such assessments), and that the CFD Administrator estimates would be levied or imposed on such Unit in such Fiscal Year if the residential dwelling unit thereon or therein had been completed and sold, and was subject to such fees, charges, taxes, and assessments in such Fiscal Year.

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

"TTM 20451" means Tentative Tract Map No. 20451, the area of which is located within CFD No. 73.

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

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

B. ASSIGNMENT TO LAND USE CATEGORIES

Each Fiscal Year, beginning with Fiscal Year 2025-26, all Taxable Property within CFD No. 73 shall be classified as Developed Property, Final Mapped Property, Taxable Public Property, Taxable Property Owner Association Property, or Undeveloped Property, and shall be subject to Special Taxes in accordance with the Rate and Method of Apportionment as determined pursuant to Sections C and D below.

Assessor's Parcels of Developed Property shall be further classified as: Single Family Property (and further classified as Single Family Attached Property or Single Family Detached Property, as needed) or Other Residential Property (for Special Tax A); Single Family Detached Dwelling Unit, Multiple Family Dwelling Unit, or Gated Community Attached Dwelling Unit (for Special Tax B); or Non-Residential Property. For Special Tax A, Assessor's Parcels of Single Family Attached Property shall be assigned to Land Use Classes 1 through 5, and Single Family Detached Property shall be assigned to Land Use Classes 6 through 12, as listed in Table 1 below based on the Residential Floor Area of the Units on such Assessor's Parcels. Also for Special Tax A, Other Residential Property and Non-Residential Property shall be assigned to Land Use Classes 13 and 14, respectively.

C. MAXIMUM SPECIAL TAX

1. Special Tax A

At least 30 days prior to the issuance of Bonds, the Assigned Special Tax A on Developed Property (set forth in Table 1 below) shall be analyzed in accordance with and subject to the conditions set forth in this Section C. At such time, CFD No. 73 shall select and engage a Price Point Consultant and the CFD Administrator shall request the Price Point Consultant to prepare a Price Point Study setting forth the Minimum Sale Price of Units within each Land Use Class.

If based upon such Price Point Study the CFD Administrator calculates that the Total Tax Burden, excluding property owner association assessments, applicable to Units within one or more Land Use Classes of Single Family Property to be constructed within CFD No. 73 exceeds 1.95% of the Minimum Sale Price of such Units, the Assigned Special Tax A shall be reduced to the extent necessary to cause the Total Tax Burden, excluding property owner association assessments, that shall apply to Units within such Land Use Class(es) not to exceed 1.95% of the Minimum Sale Price of such Units.

Each Assigned Special Tax A reduction for a Land Use Class shall be calculated by the CFD Administrator separately, and it shall not be required that such reduction be proportionate among Land Use Classes. In connection with any reduction in the Assigned Special Tax A, the Backup Special Tax A shall also be reduced by the CFD Administrator based on the percentage reduction in Maximum Special Tax A revenues within the Tentative Tract Map area(s) where the Assigned Special Tax A reductions occurred. Upon determining the reductions, if any, in the Assigned Special Tax A and Backup Special Tax A required pursuant to this Section C, the CFD Administrator shall complete the Certificate of Modification of Special Tax substantially in the form attached hereto as Exhibit A (the "Certificate of Modification"), shall execute such completed Certificate of Modification, and shall deliver such executed Certificate of Modification to CFD No. 73. Upon receipt thereof, if in satisfactory form, CFD No. 73 shall execute such Certificate of Modification. The reduced Assigned Special Tax A and Backup Special Tax A specified in such Certificate of Modification shall become effective upon the execution of such Certificate of Modification by CFD No. 73.

The Special Tax A reductions required pursuant to this section shall be reflected in an amended notice of Special Tax lien, which CFD No. 73 shall cause to be recorded with the County Recorder as soon as practicable after execution of the Certificate of Modification by CFD No. 73. The reductions in this section apply to Single Family Property, but not to Other Residential Property or Non-Residential Property.

a. Developed Property

1) *Maximum Special Tax A*

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

2) *Assigned Special Tax A*

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

TABLE 1
ASSIGNED SPECIAL TAX A – DEVELOPED PROPERTY

Land Use Class	Description	Residential Floor Area (Square Footage)	Assigned Special Tax A
1	Single Family Attached Property	< 1,401	$3,280 per Unit
2	Single Family Attached Property	1,401 – 1,500	$3,877 per Unit
3	Single Family Attached Property	1,501 – 1,600	$4,101 per Unit
4	Single Family Attached Property	1,601 – 1,700	$4,336 per Unit
5	Single Family Attached Property	> 1,700	$4,491 per Unit
6	Single Family Detached Property	< 1,501	$4,192 per Unit
7	Single Family Detached Property	1,501 – 1,700	$4,447 per Unit
8	Single Family Detached Property	1,701 – 1,900	$4,757 per Unit
9	Single Family Detached Property	1,901 – 2,100	$5,241 per Unit
10	Single Family Detached Property	2,101 – 2,300	$5,466 per Unit
11	Single Family Detached Property	2,301 – 2,500	$5,903 per Unit
12	Single Family Detached Property	> 2,500	$6,025 per Unit
13	Other Residential Property		$97,705 per Acre
14	Non-Residential Property		$97,705 per Acre

3) Backup Special Tax A

The Backup Special Tax A shall be $4,127 per Unit of Single Family Attached Property and $5,201 per Unit of Single Family Detached Property. However, if the Expected Residential Lot Count for Single Family Attached Property does not equal 156 and for Single Family Detached Property does not equal 177, and the City has not issued Bonds, then the Backup Special Tax A for Designated Buildable Lots of Single Family Attached Property and Single Family Detached Property shall be calculated according to the following formulas:

Attached = $643,798 ÷ Expected Residential Lot Count for Single Family Attached Property

Detached = $920,551 ÷ Expected Residential Lot Count for Single Family Detached Property

If any portion of a Final Subdivision Map, or any area expected by CFD No. 73 to become Final Mapped Property – such as the area within TTM 20451, or any other Tentative Tract Map – changes any time after the City has issued Bonds, causing an adjustment to the number of Designated Buildable Lots, then the Backup Special Tax A for all Designated Buildable Lots of Single Family Property subject to the change shall be calculated according to the following steps:

Step 1: Determine the total Backup Special Tax A that could have been collected from Designated Buildable Lots of Single Family Attached Property or Single Family Detached Property prior to the Final Subdivision Map or expected Final Mapped Property change.

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

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

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

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

The Maximum Special Tax A for Final Mapped Property, Taxable Public Property, Taxable Property Owner Association Property, and Undeveloped Property shall be $97,705 per Acre, and shall not be subject to increase or reduction and, therefore, shall remain the same in every Fiscal Year.

2. Special Tax B

The Maximum Special Tax B for each Assessor's Parcel classified as Developed Property shall be determined by reference to Table 2 below.

TABLE 2
MAXIMUM SPECIAL TAX B – DEVELOPED PROPERTY

Land Use Class	Maximum Special Tax B Fiscal Year 2025-26
Residential Property	
Single Family Detached Dwelling Unit	$1,426.38 per Unit
Multiple Family Dwelling Unit	$1,236.46 per Unit
Gated Community Attached Dwelling Unit	$1,036.38 per Unit
Non-Residential Property	$0.260110 per Sq. Ft.

On January 1 of each Fiscal Year, commencing January 1, 2026, the Maximum Special Tax B to be applied in the next Fiscal Year shall be subject to an automatic increase at a rate equal to 4.0% of the amount in effect for the prior Fiscal Year.

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

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

4. Developed Property Special Tax Obligation

Once an Assessor's Parcel has been taxed in any Fiscal Year as Developed Property, the Assessor's Parcel shall continue to be taxed as Developed Property regardless of changes to or expiration of the original building permit, and regardless of revisions to or destruction of the structure that was, or was expected to be, constructed pursuant to the original building permit.

D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX

1. Special Tax A

Each Fiscal Year, beginning with Fiscal Year 2025-26, the CFD Administrator shall determine the Special Tax A Requirement for such Fiscal Year. The Special Tax A shall then be levied as follows:

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

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

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

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

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

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

Notwithstanding the above, under no circumstances shall Special Tax A levied in any Fiscal Year on any Assessor's Parcel of Single Family Property or Other Residential Property for which an occupancy permit for private residential use has been issued be increased as a result of delinquency or default by the owner or owners of any other Assessor's Parcel or Assessor's Parcels within CFD No. 73 by more than ten percent above the amount that would have been levied in that Fiscal Year had there never been any such delinquencies or defaults.

2. Special Tax B

Each Fiscal Year, beginning with Fiscal Year 2025-26, the CFD Administrator shall determine the Special Tax B Requirement. The Special Tax B shall then be levied Proportionately on each Assessor's Parcel of Developed Property up to 100% of the applicable Maximum Special Tax B for such Assessor's Parcel, until the Special Tax B Requirement is satisfied. However, the Special Tax B levied in any Fiscal Year shall not increase by more than 4.0% of the amount of the Special Tax B levied in the prior Fiscal Year.

E. EXEMPTIONS

No Special Tax shall be levied on up to 2.27 Acres of Public Property and up to 11.13 Acres of Property Owner Association Property. Tax-exempt status will be assigned by the CFD Administrator in the chronological order in which property becomes Public Property or Property Owner Association Property.

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

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

F. APPEALS

Any property owner may file a written appeal of the Special Tax with CFD No. 73 claiming that the amount or application of the Special Tax is not correct. The appeal must be filed not later than one calendar year after having paid the Special Tax that is disputed, and the appellant must be current in all payments of Special Taxes. In addition, during the term of the appeal process, all Special Taxes levied must be paid on or before the payment date established when the levy was made.

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

If the property owner disagrees with the CFD Administrator's decision relative to the appeal, the owner may then file a written appeal with the City Council whose subsequent decision shall be final and binding on all interested parties. If the decision of the CFD

Administrator or subsequent decision by the City Council requires the Special Tax to be modified or changed in favor of the property owner, then the CFD Administrator shall determine if sufficient Special Tax revenue is available to make a cash refund. If a cash refund cannot be made, then an adjustment shall be made to credit future Special Tax levy(ies).

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

G. MANNER OF COLLECTION

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

H. PREPAYMENT OF SPECIAL TAX A

The following definitions apply to this Section H:

"CFD Public Facilities" means $19,744,000 for each Prepayment Period, or such lower number as determined by the City Council to be sufficient to fund the Facilities and Services to be provided by CFD No. 73.

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

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

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

"Prepayment Period 1" means July 1, 2025, through June 30, 2059.

"Prepayment Period 2" means July 1, 2059, through June 30, 2092.

"Prepayment Period 3" means July 1, 2092, through June 30, 2126.

Only Special Tax A may be prepaid; Special Tax B shall continue to be levied on an annual basis on all Developed Property in CFD No. 73.

1. Prepayment in Full

The obligation of an Assessor's Parcel to pay the Special Tax A may be prepaid as described herein, provided that a prepayment may be made only for Assessor's Parcels for which a building permit for new construction was issued after January 1, 2024, and only if there are no delinquent Special Taxes with respect to such Assessor's Parcel at the time of prepayment. An owner of an Assessor's Parcel intending to prepay the Special Tax A obligation shall provide the CFD Administrator with written notice of intent to prepay. Within 30 days of receipt of such written notice, the CFD Administrator shall notify such owner of the prepayment amount for such Assessor's Parcel. The CFD Administrator may charge a fee for providing this service. Prepayment in any six month period must be made not less than 45 days prior to the next occurring date that notice of redemption of Bonds from the proceeds of such prepayment may be given to the Trustee pursuant to the Indenture.

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

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

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

Paragraph No.

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

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

3. (a) Divide the Assigned Special Tax A computed pursuant to Paragraph 2 by the total estimated Assigned Special Tax A for CFD No. 73 based on the Developed Property Special Tax A which could be charged in the current Fiscal Year on all

expected development through buildout of CFD No. 73, excluding any Assessor's Parcels which have been prepaid, and

(b) Divide the Backup Special Tax A computed pursuant to Paragraph 2 by the estimated total Backup Special Tax A at buildout of CFD No. 73, excluding any Assessor's Parcels which have been prepaid.

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

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

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

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

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

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

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

11. Verify the administrative fees and expenses of CFD No. 73, including the costs to compute the prepayment, the costs to invest the prepayment proceeds, the costs to redeem Bonds, and the costs to record any notices to evidence the prepayment and the redemption (the "Administrative Fees and Expenses").

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

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

14. From the Prepayment Amount, the amounts computed pursuant to Paragraphs 4, 5, 10, and 12 shall be deposited into the appropriate fund as established under the Indenture and be used to retire Outstanding Bonds or make debt service payments. The amount computed pursuant to Paragraph 7 shall be deposited into the Expenditures Fund. The amount computed pursuant to Paragraph 11 shall be retained by CFD No. 73.

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

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

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

Notwithstanding the foregoing, no Special Tax A prepayment shall be allowed unless the amount of Maximum Special Tax A that may be levied on Taxable Property within CFD No. 73 (after excluding 2.27 Acres of Public Property and 11.13 Acres of Property Owner Association Property) both prior to and after the proposed prepayment is at least 1.1 times the maximum annual debt service on all Outstanding Bonds.

2. Prepayment in Part

The Special Tax A on an Assessor's Parcel for which a building permit for new construction was issued after January 1, 2024, may be partially prepaid. The amount of the prepayment shall be calculated as in Section H.1, except that a partial prepayment shall be calculated by the CFD Administrator according to the following formula:

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

The terms above have the following meaning:

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

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

The owner of any Assessor's Parcel who desires such prepayment shall notify the CFD Administrator of such owner's intent to partially prepay Special Tax A and the percentage by which Special Tax A shall be prepaid. The CFD Administrator shall provide the owner with a statement of the amount required for the partial prepayment of Special Tax A for an Assessor's Parcel within thirty (30) days of the request and may charge a fee for providing this service. With respect to any Assessor's Parcel that is partially prepaid, the CFD Administrator shall (i) distribute the remitted prepayment funds according to Section H.1, and (ii) indicate in the records of CFD No. 73 that there has been a partial prepayment of Special Tax A and that a portion of Special Tax A with respect to such Assessor's Parcel, equal to the outstanding percentage (100% - "%", as defined above) of the Maximum Special Tax A, shall continue to be levied on such Assessor's Parcel pursuant to Section D during the Prepayment Period in which the partial prepayment is made.

For partial prepayments made during Prepayment Period 1 or Prepayment Period 2, the full amount of Special Tax A shall resume in the first Fiscal Year of the Prepayment Period following the Prepayment Period in which the partial prepayment was made. Once the obligation of an Assessor's Parcel to pay Special Tax A resumes, Special Tax A for the then applicable Prepayment Period may be prepaid.

I. TERM OF SPECIAL TAX

The Fiscal Year after which no further Special Tax A shall be levied or collected is Fiscal Year 2125-2126, except that Special Tax A that was lawfully levied in or before such Fiscal Year and that remains delinquent may be collected in subsequent years. Special Tax B shall continue to be levied indefinitely on an annual basis on all Developed Property in CFD No. 73.

EXHIBIT A

CERTIFICATE OF MODIFICATION OF SPECIAL TAX A
(PAGE 1 OF 3)

CITY OF ONTARIO AND CFD NO. 73 CERTIFICATE

1. Pursuant to Section C.1 of the Rate and Method of Apportionment of Special Tax (the "Rate and Method") for City of Ontario Community Facilities District No. 73 (Wildflower Acres) ("CFD No. 73"), the Assigned Special Tax A and the Backup Special Tax A for Developed Property within CFD No. 73 has been modified.

    a. The information in Table 1 below relating to Assigned Special Tax A for Developed Property within CFD No. 73, as stated in Section C.1.a.2 of the Rate and Method of Apportionment, has been modified as follows:

TABLE 1
ASSIGNED SPECIAL TAX A – DEVELOPED PROPERTY

Land Use Class	Description	Residential Floor Area (Square Footage)	Assigned Special Tax A
1	Single Family Attached Property	< 1,401	$[ ] per Unit
2	Single Family Attached Property	1,401 – 1,500	$[ ] per Unit
3	Single Family Attached Property	1,501 – 1,600	$[ ] per Unit
4	Single Family Attached Property	1,601 – 1,700	$[ ] per Unit
5	Single Family Attached Property	> 1,700	$[ ] per Unit
6	Single Family Detached Property	< 1,501	$[ ] per Unit
7	Single Family Detached Property	1,501 – 1,700	$[ ] per Unit
8	Single Family Detached Property	1,701 – 1,900	$[ ] per Unit
9	Single Family Detached Property	1,901 – 2,100	$[ ] per Unit
10	Single Family Detached Property	2,101 – 2,300	$[ ] per Unit
11	Single Family Detached Property	2,301 – 2,500	$[ ] per Unit
12	Single Family Detached Property	> 2,500	$[ ] per Unit
13	Other Residential Property		$[ ] per Acre
14	Non-Residential Property		$[ ] per Acre

EXHIBIT A

CERTIFICATE OF MODIFICATION OF SPECIAL TAX A
(PAGE 2 OF 3)

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

The Backup Special Tax A shall be $[ ] per Unit of Single Family Attached Property and $[ ] per Unit of Single Family Detached Property. However, if the Expected Residential Lot Count for Single Family Attached Property does not equal 156 and for Single Family Detached Property does not equal 177, and the City has not issued Bonds, then the Backup Special Tax A for Designated Buildable Lots of Single Family Attached Property and Single Family Detached Property shall be calculated according to the following formulas:

Attached	=	$[ ] ÷ Expected Residential Lot Count for Single Family Attached Property
Detached	=	$[ ] ÷ Expected Residential Lot Count for Single Family Detached Property

2. The Special Tax A for Developed Property may only be modified prior to the first issuance of CFD No. 73 Bonds.

3. Upon execution of this certificate by CFD No. 73, CFD No. 73 shall cause an amended notice of Special Tax lien for CFD No. 73 to be recorded reflecting the modifications set forth herein.

EXHIBIT A

CERTIFICATE OF MODIFICATION OF SPECIAL TAX A
(PAGE 3 OF 3)

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

GOODWIN CONSULTING GROUP, INC.
CFD ADMINISTRATOR

By:_____ Date:_____

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

CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 73
(WILDFLOWER ACRES)

By:_____ Date:_____

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING IT NECESSARY FOR CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 73 (WILDFLOWER ACRES) TO INCUR BONDED INDEBTEDNESS

WHEREAS, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), has this date adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Intention to Establish a Community Facilities District Proposed to be Named City of Ontario Community Facilities District No. 73 (Wildflower Acres) and to Authorize the Levy of a Special Tax Therein," stating its intention to establish City of Ontario Community Facilities District No. 73 (Wildflower Acres) (the "Community Facilities District") and to authorize the Community Facilities District to levy a special tax within the Community Facilities District for the purpose of financing certain public facilities (the "Facilities") and services; and

WHEREAS, the City Council deems it necessary for the Community Facilities District to incur bonded indebtedness;

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

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

SECTION 2. The City Council declares it necessary for the Community Facilities District to incur bonded indebtedness.

SECTION 3. The proposed debt will be incurred for the purpose of financing the costs of the Facilities, including all costs and estimated costs incidental to, or connected with, the accomplishment of said purpose, including, but not limited to, such costs and estimated costs as are described in Section 53345.3 of the Act.

SECTION 4. The maximum amount of the proposed debt is $70,000,000.

SECTION 5. The City Council hereby fixes Tuesday, April 1, 2025, at 6:30 p.m., or as soon thereafter as the City Council may reach the matter, at 303 East B Street, Ontario, California, as the time and place when and where the City Council will conduct a public hearing on the proposed debt authorization; provided, that, in the event the April 1, 2025 City Council meeting is held via teleconference and/or videoconference only, the means by which the public may observe such public hearing and offer public comment shall be prescribed in the notice and agenda for such City Council meeting.

SECTION 6. The City Clerk of the City is hereby directed to publish, or cause to be published, a notice of said public hearing one time in a newspaper of general

circulation published in the area of the proposed Community Facilities District. Publication of said notice shall be completed at least seven days prior to the date herein fixed for said public hearing. Said notice shall contain all of the information prescribed by Section 53346 of the Act.

SECTION 7. All actions heretofore taken by the officers, employees and agents of the City with respect to the incurrence of bonded indebtedness by the Community Facilities District, or in connection with or related to any of the matters referred to herein, are hereby approved, confirmed and ratified.

SECTION 8. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things that they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof.

SECTION 9. This Resolution shall take effect immediately upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 18th day of February, 2025.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2025- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held February 18, 2025 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2025- duly passed and adopted by the Ontario City Council at their regular meeting held February 18, 2025.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **February 18, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Niles Boyer Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Jacqueline Leon, Bonnie Tam Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 5

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

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to approve Change Order No. 3 to the Construction Contract with GRBCON, Inc., of Baldwin Park, California, for the Easement and Storm Drain Pipe Replacement Project in the amount of $163,576 for a total not-to-exceed contract amount of $1,408,677.

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

FISCAL IMPACT: The proposed Change Order No. 3 to the Construction Contract with GRBCON, Inc., of Baldwin Park, California, is in the amount of $163,576 for a total not-to-exceed contract amount of $1,408,677. The Fiscal Year 2024-25 Adopted Budget includes appropriations in the Capital Projects - Measure Q Fund for the Easement and Storm Drain Pipe Replacement Project.

BACKGROUND & ANALYSIS: On June 4, 2024, the City Council authorized a Construction Contract with GRBCON, Inc. to perform video inspections and replace damaged storm drain pipes at various locations citywide. Change Order No. 1 was then approved for additional pipeline repairs once video inspection was conducted. Change Order No. 2 was then approved to replace the collapsed pipes at the intersections of Mission Boulevard and Bon View Avenue, and Emporia Avenue and Plum Street and do further needed remediation.

After performing a video inspection, GRBCON, Inc. observed extensive damage to the storm drain line from the inlet on College Way to the outlet on Columbia Avenue. Heavy debris flows have impacted the storm drain catch basins at the northwest corner of Mission Avenue and Bon View Avenue, as well as at Emporia Avenue and Plum Street. To address this, debris screens have been installed at both catch basins. Excavation work was also necessary at the intersection of Mountain Avenue and Mission Boulevard, as well as Mission Boulevard and Bon View Avenue, due to severe damage to the storm drain lines, which affected traffic signal loops. Additionally, it was determined that repairing five storm drain catch basin deck lids at various locations would be beneficial. Staff recommends executing Change Order No. 3 to complete all necessary repairs.

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

PAUL S. LEON
MAYOR

ALAN WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
CHANGE ORDER

Project: City Wide Storm Drain Repair Project

Change Order Number: **3**

Contract Date: **June 24, 2024,**

Change Order Date: February 18, 2025,

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

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

The Contract is changed as follows:

Addition of Full Pipelining of Bid Item #1
Addition of Catch Basin Debris Screens
Traffic Loop Repairs
Heavy Cleaning prior to Catch Basin Debris Screen installation
Catch Basin Decklid Repairs.

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

NOT VALID UNTIL SIGNED BY OWNER

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

The original Contract Price was	$ 707,191.00
Net change by previously authorized Change Orders	$ 537,910.00
The Contract Price prior to this Change Order was	$ 1,245,101.00
The Contract Price will be changed by this Change Order in the amount of	$ 163,575.50
The new Contract Price including this Change Order will be	$ 1,408,676.50

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

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

Attachments: Change Order Proposal from GRBCON Inc.

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

Accepted:

(Signature) Krisiton Grbavac, President	Date

Approved:

(Signature) Tito Haes, Executive Director Public Works	Date

Approved:

(Signature) Scott Ochoa, City Manager	Date

CITY OF ONTARIO *Agenda Report* **February 18, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Manuel Rebolledo Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Jacqueline Leon, Bonnie Tam Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 6

SUBJECT: INCREASE NOT-TO-EXCEED AMOUNT OF CO-OPERATIVE PURCHASES & PRE-AUTHORIZED VENDORS FOR FLEET EQUIPMENT SERVICES AND PARTS

RECOMMENDATION: That the City Council take the following actions:

A. Authorize the purchasing threshold increase for the co-operative purchase and delivery of fleet parts in the amount of $350,000 for a not-to-exceed amount of $475,000 from Factory Motor Parts, of Pomona, California, consistent with the terms and conditions of the CA-State Contract DGS-7-21-99-41-01, and
B. Authorize the purchasing threshold increase for the co-operative purchase and delivery of fleet parts in the amount of $300,000 for a not-to-exceed amount of $455,000 from Parts Authority, of Rancho Cucamonga, California, consistent with the terms and conditions of the CA-State Contract DGS-7-21-99-41-03; and
C. Authorize the purchasing threshold increase for the pre-authorized purchase and delivery of fleet parts and services in the amount of $450,000 for a not-to-exceed amount of $799,000 from Rush Truck Center, of Fontana, California.

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

FISCAL IMPACT: The purchase and delivery of automotive parts and materials with Factory Motor Parts is not-to-exceed the amount of $475,000 over three (3) years. The purchase and delivery of automotive parts and materials with Parts Authority is not-to-exceed the amount of $455,000 over three (3) years. The purchase and delivery of automotive parts and services with Rush Truck Center is not-to-exceed the amount of $799,000 over three (3) years. The Fiscal Year 2024-25 Adopted Budget includes appropriations in the Equipment Services Fund for the purchase of fleet equipment and parts.

The approval of co-operative suppliers to provide services and parts for the variety of the City's fleet vehicles does not commit the City to any specific levels of future expenditures with these suppliers. Expenditures for each supplier, and in total for each fiscal year, will not exceed the Fleet Services

Division's appropriations limits established by the City Council.

BACKGROUND & ANALYSIS: The Public Works Agency maintains the vehicles and equipment used by various City Departments. To ensure that the vehicles and equipment are safe to operate, maintenance and repairs are necessary on a regular basis; and undue time delays affect the City's ability to provide services to the community. On November 7, 2023, the City Council approved the piggyback of the California State Contracts with Factory Motor Parts, Parts Authority, and pre-authorized Rush Truck Center as a preferred vendor.

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

SCO ID: 7760-721994101

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES
STANDARD AGREEMENT
STD 213 (Rev. 04/2020)

AGREEMENT NUMBER	PURCHASING AUTHORITY NUMBER (If Applicable)
7-21-99-41-01	

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME
Department of General Services

CONTRACTOR NAME
Elliott Auto Supply Co., Inc. dba Factory Motor Parts

2. The term of this Agreement is:

START DATE
October 20, 2021, or upon DGS approval of contract, whichever is later.

THROUGH END DATE
October 19, 2024 with the option to extend one (1) additional two (2) year period

3. The maximum amount of this Agreement is:
$0.00

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibits		Title	Pages
	Exhibit A	Scope of Work	15
	Exhibit B	Category Discounts	1
	Exhibit C	Lead State General Provisions	1
+ -	Exhibit D	NASPO ValuePoint Master Agreement Terms	22

Items shown with an asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
These documents can be viewed at https://www.dgs.ca.gov/OLS/Resources

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)
Elliott Auto Supply Co., Inc. dba Factory Motor Parts

CONTRACTOR BUSINESS ADDRESS	CITY	STATE	ZIP
1600 E Orangthorpe	Fullerton	CA	92831

PRINTED NAME OF PERSON SIGNING	TITLE
Dana Carney	Fleet Sales and Operations Manager

CONTRACTOR AUTHORIZED SIGNATURE	DATE SIGNED
Dana Carney — Digitally signed by Dana Carney DN: cn=Dana Carney, o=Factory Motor Parts, ou=Fleet Sales, email=d.carney@fmpco.com, c=US Date: 2021.10.20 10:49:53 -07'00'	10-20-2021

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME
Department of General Services, Procurement Division

CONTRACTING AGENCY ADDRESS	CITY	STATE	ZIP
707 3rd Street	West Sacramento	CA	95605

PRINTED NAME OF PERSON SIGNING	TITLE
Stephanne Lim	MAU2 Supervisor

CONTRACTING AGENCY AUTHORIZED SIGNATURE	DATE SIGNED
stephanne lim — Digitally signed by stephanne lim Date: 2021.10.20 13:06:35 -07'00'	10/20/2021

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL	EXEMPTION (If Applicable)

EXHIBIT A: SCOPE OF WORK

1. AGREEMENT OVERVIEW

This Scope of Work reflects the products and supplies to be provided by Elliott Auto Supply Co., Inc. dba Factory Motor Parts hereinafter referred to as the "Contractor," for the State of California hereinafter referred to as the "Lead State" and all other Participating States and Entities, for the Automotive Parts Master Agreement ("Agreement" or "Master Agreement").

Contractor shall permit State of California agencies, California local governmental agencies and NASPO ValuePoint Participating States and Entities to participate under this Master Agreement. Subject to the approval of the Contractor, any Canadian provincial government or provincially funded entity in Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta, Northwest Territories, Nunavut, Yukon, and Newfoundland and Labrador, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

Contractor will provide the entire portfolio of quality Automotive Parts to the Lead State, Participating States and Entities and local governmental agencies in a timely and efficient manner. Contractor will be the primary point of contact for data collection, reporting, and distribution of Automotive Parts to the Lead State and all other Participating States and Entities.

2. AGREEMENT TERM

The term of this Agreement is for a three (3) year period from the date of Master Agreement execution with the option to extend one (1) additional two (2) year period at the discretion of the Lead State. Extensions will be made by amendment to the Agreement at the same contracted discounts, terms and conditions.

3. RESPONSIBILITIES

A. Contractor shall meet all requirements identified in this Agreement.
B. Contractor will provide a Contract Manager in accordance with Exhibit A, Section 6.I.3 that will work with the Lead State Contract Administrator to fully implement and manage the Agreement.
C. Contractor will work closely with subcontractors (if applicable) to fully implement and manage this Agreement in accordance with Exhibit A, Section 6.I.1.
D. Contractor shall make available to the Lead State, technically competent personnel to accomplish the tasks and deliverables for the implementation and management of the Agreement.

E. Contractor shall promptly notify the Lead State Contract Administrator in writing of any unresolved issues or problems related to the Agreement that have been outstanding for more than five (5) business days.

4. REQUIREMENTS

A. Available Product Categories

Contractor shall provide products for Automotive Parts categories at the discount provided in Exhibit B, Category Discounts. Products outside the scope of categories listed in Exhibit B may not be purchased from the Master Agreement.

B. Electronic Catalog

Item	Description
1.	**Automotive Parts Electronic Catalog** Contractor shall develop and maintain an electronic catalog for use by Purchasing Entities. Contractor's electronic catalog must be separate from the Contractor's commercially available (i.e., public) online catalog and shall contain only category items and pricing as specified in the awarded Master Agreement. No other items or pricing may be shown in the electronic catalog without written approval from the Lead State Contract Administrator.
2.	**Electronic Catalog/Contract Website Contents** The Lead State Contract Administrator will review and determine acceptability of the electronic catalog format and data. The Electronic Catalog shall contain the following data elements at minimum: • Item descriptions • Contractor's stock keeping number (SKU) • Unit of measure (UOM) • Quantity in the UOM • List Price/MSRP • Master Agreement price • Quote generation (if applicable) • Publicly available OEM price lists (current and archives) Within 30 calendar days of notice of award, Contractor will be required to provide the Electronic Catalog for Lead State Contract Administrator approval.
3.	**Availability** The Electronic Catalog shall be available twenty-four (24) hours per day, seven (7) days per week, except for regularly scheduled maintenance

Item	Description
	times. Contractor shall not have any catalog viewing access restrictions for Participating States or Entities.

C. Pricing

Item	Description
1.	**Category Discounts** Master Agreement employs a discount-off Manufacturer Suggested Retail Price (MSRP) structure. Category discounts outlined in Exhibit B, Category Discounts, will remain firm for the entire term of the agreement, including extension periods. However, Contractors may offer lower pricing on a per order basis to Purchasing Entities. In the event a product falls into two or more categories the highest category discount will be applied.
2.	**Promotions** Contractor may offer promotional discounts, including but not limited to statewide promotional discounts, customer location specific discounts, bulk discounts, or spot discounts. During special pricing promotions, the Contractor shall offer Participating Entities the promotional pricing or the category discount percentage off MSRP, whichever is lower. Promotional pricing shall not be cause for a permanent change in pricing. Promotional items shall come with all benefits of the Master Agreement terms and conditions and shall include all provisions such as warranty and delivery.

D. Retail Sales Establishments

Item	Description
1.	**Retail Sales Establishments** Retail Sales Establishments are defined as any facilities that the Contractor uses on a regular basis to warehouse and/or sell merchandise, and at which the Contractor conducts regular business transactions at either the retail or wholesale level. Contractor facility should provide: • Walk-in and will-call order system during regular work hours. • Customer service associate to support walk-in and will-call order system. • Itemized sales receipts for all walk-in and will-call transactions.

Item	Description
	• Availability of delivery. • Acceptance of Purchasing Card. These facilities shall be operated in accordance with state law and comply with all zoning requirements as implemented by local, county or state governments. Examples of unacceptable retail sales establishments include houses, garages, or storage rental facilities. Contractor shall provide a list of authorized retail sales establishment locations to be used on this Master Agreement to the Lead State within 15 calendar days of notice of award. If Contractor is offering Retail Sales Establishments, Contractor shall ensure state agencies, local government agencies and other Participating Entities will receive Master Agreement pricing when purchasing items through Retail Sales Establishments.

E. Ordering

Item	Description
1.	**Ordering Methods** Contractor shall accept orders through the following methods: • **Electronic (email)** – An email address to be used by Purchasing Entities for placing orders must be in place before the commencement of this Master Agreement. • **Facsimile** – A toll-free facsimile number to be used by Purchasing Entities for placing orders must be in place before the commencement of this Master Agreement. Facsimile orders must be accepted between the hours of 8:00 AM and 5:00 PM, Monday through Friday in the time zone the order is placed. • **U.S. Mail** – Contractor must have the capability to receive orders by mail in place before the commencement of this Master Agreement. • **Over-the-counter/Walk-In** – Contractor shall provide over-the-counter order and delivery at all commercial locations. See Exhibit A, Section 6.D (Retail Sales Establishments). • **Online (internet)** – Contractor's Electronic Catalog website to be used by Purchasing Entities for placing orders must be in

Item	Description
	place before the commencement of this Master Agreement. See Exhibit A, Section 6.B (Electronic Catalog). Prior to contract award, Contractor shall provide the ordering information within five (5) business days of the Lead State's request.
2.	**Purchase Execution** California state agencies must submit orders on a Purchasing Authority Purchase Order (Std. 65) or using the FI$Cal Purchase Order process in accordance with posted User Instructions. Local government agencies and other Purchasing Entities may use their own approved Purchase Order document process as addressed in their Participating Addendum. Contractor shall not accept purchase documents from Purchasing Entities that are incomplete or contain items outside the scope of the Master Agreement.
3.	**Minimum Order (M)** There is no minimum order.
4.	**Order Acknowledgement** The Contractor must provide Purchasing Entities with an order receipt acknowledgment via e-mail/facsimile within one (1) business day after receipt of an order. The acknowledgement will include: • Purchasing Entity Name • Purchase Order Number • Description of Goods / SKUs • Total Cost • Anticipated Delivery Date • Identification of any Out of Stock/Discontinued Items
5.	**Out-of-Stock Remedy** Upon receipt of order acknowledgment identifying out of stock items, the Purchasing Entity shall have the following options: • Request back order • Cancel the item from the order Upon request, Contractor shall provide updates on back ordered items to the Purchasing Entity. Contractor is not permitted to make

Item	Description
	substitutions or cancellations without authorization from the Purchasing Entity.
6.	**Core Exchange/Charges** All parts supplied which require core exchange shall be monitored by the Contractor to ensure proper cores are returned. Core credit is to be issued the same day as received. Any core that is not usable or not returned shall be billed at the core price listed in the manufacturer's price sheet for that particular part.
7.	**Remanufactured Parts** Contractor may provide remanufactured parts when new parts are not available with authorization from the Purchasing Entity. Used, previously installed or shop-worn parts shall not be accepted.

F. Delivery

Item	Description
1.	**Delivery Locations** Deliveries are to be made to the Purchasing Entities' location specified on the individual order, which may include, but not be limited to inside buildings, high-rise office buildings, and receiving docks.
2.	**Delivery Schedule** Delivery of ordered product shall be completed within two (2) business days after receipt of an order, unless otherwise agreed to by the Purchasing Entity. Since receiving hours for each Purchasing Entity will vary by facility, it will be the Contractor's responsibility to check with each facility for their specific receiving hours before delivery occurs. Contractor must notify the Purchasing Entity within 12 hours of scheduled delivery time, if delivery cannot be made within the time frame specified on the order.
3.	**Delivery from Retail Sales Establishments** Delivery of standard in-stock items to locations within five (5) miles from company's retail business establishment shall be accomplished within 45 minutes. Delivery outside the five (5) mile range will be accomplished by a scheduled delivery.

Item	Description
4.	**Security Requirements for Institutions** Deliveries may be made to locations inside secure institutional grounds (such as state prisons) that require prior clearances to be made for delivery drivers. Contractor will be responsible for contacting the secure location for security clearance procedures, hours of operation for deliveries and service, dress code, and other rules of delivery. These security clearance procedures may vary from facility to facility. Deliveries that are delayed due to drivers not being cleared to enter institutional grounds may cause the contractor to be declared in default of contract requirements.
5.	**Free on Board (F.O.B.) Destination (Shipping Terms)** All prices offered shall be F.O.B. destination, freight prepaid by the Contractor, to the Purchasing Entity's final receiving point. Responsibility and liability for loss or damage for all orders shall remain with the Contractor until final inspection and acceptance, when all responsibility shall pass to the ordering organization, except the responsibility for latent defects, fraud, and the warranty obligations. All emergency or rush deliveries that require special shipping and handling should be at the ordering entities expense, with prior approval from the Purchasing Entity. Emergency or rush shipping charges shall be added to an invoice as a separate line item. In the event an emergency or rush delivery is required as the result of a Contractor's error; all shipping cost shall be paid by the Contractor.
6.	**Manufacturer Warranty** Contractor must honor all manufacturers' warranties and guarantees on all products offered as part of the Master Agreement. If a product warranty extends beyond the term of the Master Agreement, the Contractor must agree to provide warranty services throughout the life of the warranty. These parts must be warranted to be free of defective parts and workmanship, provided they are properly installed on the vehicle for which they were intended, for the time and mileage shown in the product literature or catalog. Statement of warranty is to be provided by Contractor with items delivered under this Master Agreement. For all items ordered, warranty begins on the date of delivery.

Item	Description
7.	**Return Policy** Items purchased under this Master Agreement may be returned at no cost for a full refund if item is unused, in its original packaging and within thirty (30) calendar days of delivery. All returns shall be picked up within seven (7) business days of notification. Notification is defined as notice in writing, by facsimile or e-mail.
8.	**Credit Policy** The Contractor shall offer a full credit/refund for the following items: • Items shipped in error • Defective or freight-damaged items • Items returned within 30 calendar days of delivery In all cases, the Purchasing Entity shall have the option of taking an exchange, receiving a credit, or receiving a refund. The Contractor will be responsible for the credit/refund or replacement of all products, including those covered by manufacturer warranties as stated in Exhibit A, Section 6.F.6, Warranty. Contractor cannot require the Purchasing Entity to deal directly with the manufacturer.
9.	**Product Recall Procedures** Contractor shall provide recall notification, regardless of level, in writing to the Lead State Contract Administrator and each applicable Purchasing Entity through the most expedient method possible. The notices, at a minimum, shall include a complete product description and/or identification, contract number, delivery order number and disposition instructions. Contractor agrees to use commercially reasonable efforts in identifying the applicable manufacturer in order that the Lead State and any Participating Entities or Purchasing Entities may work with such manufacturer to handle any applicable recall issues.

G. Invoicing and Payment

Item	Description
1.	**Invoices** Invoices shall be submitted to the Purchasing Entity within seven (7) calendar days from date of delivery. Invoices should include the following at a minimum: • Agency Order Number (Purchase Order Number) • Purchasing Entity Name • Delivery address of the order • Product(s) description • Manufacturer's product(s) number(s) • Quantities of merchandise issued • Price(s) per unit(s) and extended price • Date ordered • Date delivered • Listing of returns or back ordered items • Discounts (i.e. Cash Discounts, Prompt Payment • Totals for each order. Each invoice shall have a total for all orders, a total for all credits, and amount due from each agency • Any other mutually agreed upon requirements
2.	**Payment** California state agencies and local government agencies may pay by check, electronic funds transfer, or with the State of California purchase card (CAL-Card). Payments are to be made in accordance with paragraph 30 of the Lead State's General Provisions (Exhibit C). Purchasing Entities may pay by check, electronic funds transfer, or by a State Purchasing card (P-card). The Contractor will be solely responsible for the credit card user-handling fee associated with credit card purchases. Participating States and Entities may have their own payment terms which will be identified within individual Participating Addendums.
3.	**State of California CAL-Card Invoicing** For orders paid through CAL-Card, invoices are to be processed separately from other payment methods and submitted to the CAL-Card

Item	Description
	account holder. For additional information, visit the CAL-Card Program website (https://www.dgs.ca.gov/cal-card). The total invoice amount for each order paid by CAL-Card must reflect a zero balance due or credit, if applicable, and identified as "paid by CAL-Card".

H. Reporting

Item	Description
1.	**Usage Report (Lead State)** During the term of the Master Agreement, Contractor shall submit usage reports on a quarterly basis to the Lead State Contract Administrator for all California Purchasing Entity sales using the report template provided by the Lead State Contract Administrator. Usage Report will contain the following data elements at a minimum: • Ordering Agency Name • Agency Type (State/Local) • Purchase Order Number • Order Date • Category • Manufacturer Part Number (OEM #) • Item Description • Unit of Measure • Quantity • List Price/MSRP • Unit Price • Extended Price Paid • Catalog Version Date The Lead State Contract Administrator reserves the right to modify the reporting template and require Contractor to provide additional order information during the course of this Agreement. The report shall be an Excel spreadsheet transmitted electronically to PDCooperatives@dgs.ca.gov. The report is due even when there is no activity. Any report that does not follow the required format or that excludes information will be deemed incomplete. Contractor will be responsible for submitting corrected

Item	Description
	reports within five (5) business days of the date of written notification from the State. Tax must not be included in the report, even if it is on the purchase order. Reports are due by the 30th day following a calendar quarter. Failure to meet reporting requirements and submit the reports on a timely basis shall constitute grounds for suspension of the Master Agreement. Amendment for term extensions may be approved only if all quarterly reports due have been submitted to the Lead State. The Lead State Contract Administrator will provide the reporting template upon award.
2.	**Participating State/Entity Reporting** Contractor must provide usage reporting to Participating States and Entities as defined in the individual Participating Addendum.
3.	**NASPO ValuePoint Summary and Detail Usage Reports** Contractor shall submit specific summary and detailed usage reports directly to NASPO ValuePoint as set forth in Section V of the NASPO ValuePoint Master Agreement Terms (Exhibit D). The Lead State Contract Administrator will provide the Detail Usage Report template upon award.
4.	**Ad Hoc Reporting** Contractor shall have the ability to provide ad hoc reports at no cost to the Lead State. Upon written request, Contractor shall permit and provide access to all data that pertains to any procurement action taken by a Purchasing Entity or Participating Entity as a whole. The Lead State or Purchasing Entity may make copies of procurement data in any form and the use of such data shall not be restricted. Dependent on future reporting requirements, the Lead State may ask that certain reports become standard and delivered to the Lead State on a monthly or quarterly basis.
5.	**Lead State Administrative Fee** Contractor shall remit a quarterly Lead State administrative fee of 1.25 percent of all goods purchased by California Purchasing Entities for each reporting quarter. Prices submitted shall not reflect the California administrative fee. The Lead State administrative fee shall not be

Item	Description
	invoiced or charged to the ordering agency and is specific to California only. This fee will be due to the Lead State on the 30th day following the ending of the quarterly reporting period. Payment of the Lead State administrative fee is due irrespective of payment status on orders or service contracts from a Purchasing Entity.
6.	**NASPO ValuePoint Administrative Fee** Contractor shall remit a NASPO ValuePoint administrative fee as specified in Section V of the NASPO ValuePoint Master Agreement Terms (Exhibit D).
7.	**Participating Entity Administrative Fee** If a Participating Entity requires an administrative fee, each fee will be negotiated and articulated in the individual state's Participating Addendum.

I. Management and Customer Service

Item	Description
1.	**Contractor Responsibility** Contractor shall be responsible for successful contract performance of the Master Agreement and successful performance of any and all of their subcontractors. Contractor agrees to comply with requirements under the Master Agreement, even if requirements are delegated to subcontractors. All Lead State policies, guidelines, and requirements apply to subcontractors. The prime Contractor and subcontractor(s) shall not in any way represent themselves in the name of the Lead State without prior written approval. Furthermore, the Lead State will consider the prime Contractor to be the sole point of contact with regard to contractual matters, payments, warranty issues, for the term of the Master Agreement and any extensions. Use of subcontractors will be addressed within each state's Participating Addendum.

Item	Description
2.	**Lead State Contract Administrator** The Lead State Contract Administrator will be the contact person for issues relating to the Master Agreement. Any modifications to the requirements contained in the Master Agreement may only be authorized by the State Contract Administrator or his/her designee through Master Agreement Amendment.
3.	**Contractor Contract Manager** Contractor will assign a contact person for contract management purposes. The Contractor Contract Manager must be authorized to make decisions on behalf of the Contractor.
4.	**Changes in Contract Manager** Contractor must notify the Lead State Contract Administrator of Contractor Contract Manager changes in writing within 10 calendar days of the change.
5.	**Contractor Name Change** An amendment is required to change the Contractor's name as listed on this agreement. Contractor shall notify the Lead State of any name change. Upon receipt of legal documentation of the name change the Lead State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
6.	**Customer Service Unit** Contractor will have a customer service unit that supports this Master Agreement. The customer service unit shall provide office and personnel resources for responding to inquiries, including telephone and email coverage weekdays during business hours. The customer service unit shall be staffed with individuals that: • Are trained in the requirements of this contract • Have the authority to take administrative action to correct problems that may occur • Are designated for training and general customer service follow-up Contractor shall respond to customer inquiries within one (1) business day of initial contact. Prior to Master Agreement award, Contractor shall provide customer service information to the Lead State within five (5) business days of written request.

J. Transition / End of Agreement

Item	Description
1.	**Transition Plan at End of Contract** Contractor agrees that at the end of this Master Agreement, should the Lead State conduct another procurement and award a new Master Agreement, the Contractor will work with the Lead State Contract Administrator, if requested to ensure that an efficient and effective transition takes place. Upon termination or expiration of the Master Agreement the following will occur: • All on-line offering systems and Electronic Catalog functions supported and/or available as part of the Master Agreement will cease and be removed from public viewing access without redirecting to another website. • Customer data/user accounts acquired during the term of the contract shall be destroyed or returned to the Lead State at the request of the Lead State Contract Administrator. • No references to the Master Agreement shall be made after contract end on the Contractor's commercial website without permission by the State Contract Administrator. • All invoicing disputes and/or order tracking will be conducted through the Contractor's Customer Service Unit via telephone or email.

K. Environmentally Preferable Purchasing

The following requirements are specific to the State of California and may be incorporated within Participating Addenda at the Participating Entity's discretion.

Item	Description
1.	**Environmentally Preferable Purchasing (EPP)** California Department of General Services is responsible for the implementation of EPP as mandated by the California Public Contract Code (PCC), Chapter 6, sections 12400-12404. Contractor certifies the products or services offered comply with the Federal Trade Commission's Guidelines for the Use of Environmental Marketing Terms (PCC Section 12404).
2.	**Post-Consumer Recycled Content (PCRC) Certification** California state agencies are required to report purchases made within eleven (11) product categories in the California Department of Resources Recycling and Recovery's (CalRecycle), State Agency Buy Recycled

Item	Description
	Campaign (SABRC) in accordance with Public Contract Code sections 12200-12217.In order to comply with those requirements, Contractor will be required to certify in writing the minimum percentage, if not the exact percentage, of post-consumer recycled content (PCRC) material in each of the products ordered, upon request.
3.	**Green Product Marking and Labeling** Contractor shall identify products that possess third party environmental certifications on the Electronic Catalog.
4.	**Wheel Weights** California law prohibits the manufacture, sale, or installation of wheel weights containing more than 0.1% lead. California Health and Safety Code Section 25215.6-25215.7 (https://codes.findlaw.com/ca/health-and-safety-code/hsc-sect-25215-6.html).
5.	**Mercury Containing Products** A person cannot sell or distribute for promotional purposes, in California, certain types of new or refurbished products and devices that contain mercury. This law can be found in Health and Safety Code, Division 20, Chapter 6.5; Mercury-Added Thermostats, Relays, Switches, and Measuring Devices (Sections 25214.8.1-25214.8.6). (https://codes.findlaw.com/ca/health-and-safety-code/hsc-sect-25214-8-4.html).
6.	**Consumer Products** Contractor may not sell, supply, offer for sale, or manufacture for sale in California consumer products that do not comply with the Consumer Products Regulatory Program, whose aim is to reduce the amount of volatile organic compounds (VOCs), toxic air contaminants (TACs), and greenhouse gases (GHGs) that are emitted from using chemically formulated consumer products. Background information including enforcement of the program can be found at: https://ww2.arb.ca.gov/our-work/programs/consumer-products-program/about. Regulations for the program can be found in Article 2: Regulation for Reducing Emissions from Consumer Products, commonly referred to as the General Consumer Products Regulation.
7.	**Brake Friction Material** All motor vehicle brake friction materials sold in California must meet the requirements as identified in California Health and Safety Code Section 25250.51 (Source: https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/07/Final_regulation_language_10032016.pdf).

EXHIBIT B: CATEGORY DISCOUNTS

Category	Description	Percent Discount Off MSRP
1	Air Conditioning	62%
2	Alternators and Starters	64%
3	Batteries	64%
4	Bearings, Ball and Roller	67%
5	Belts and Hoses	60%
6	Brakes	68%
7	Electrical and Ignition	62%
8	Emission, Sensors and Exhaust	62%
9	Engine and Drive Train	62%
10	Filters, Oil, Gas, Air and Transmission	71%
11	Gaskets and Seals	65%
12	Heating and Cooling (Engine)	62%
13	Lamps, Lighting and Mirrors	62%
14	Oils, Chemicals, Fluids and Lubricants	62%
15	Pumps, Fuel and Water	65%
16	Suspension, Shocks, Struts and Steering	65%
17	Wipers/Washers	77%
18	Winter Accessories	60%
19	General Automotive Parts (Aftermarket Automotive Parts not included in Categories 1-18.)	62%
20	Automotive Repair Shop Supplies and Equipment/Tools (e.g., cleaning supplies, wrenches, etc.)	30%

EXHIBIT C: LEAD STATE GENERAL PROVISIONS

Non-IT General Provisions (6/8/2010) is hereby incorporated by reference and made part of this agreement as if attached hereto. This document can be viewed at: https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Model-Contract-Language

These terms are applicable for State of California purchases only.

EXHIBIT D: NASPO VALUEPOINT MASTER AGREEMENT TERMS

I. Definitions

1.1 **Acceptance** means acceptance of goods and services as set forth in Section IX of this Master Agreement.

1.2 **Contractor** means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.

1.3 **Embedded Software** means one or more software applications which permanently reside on a computing device.

1.4 **Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

1.5 **Lead State** means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.

1.6 **Master Agreement** means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.

1.7 **NASPO ValuePoint** is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) limited liability company. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.

1.8 **Order** or **Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

1.9 **Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (*e.g.*, ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).

1.10 **Participating Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.

1.11 **Participating State** means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.

1.12 **Product** or **Products and Services** means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Product includes goods and services.

1.13 **Purchasing Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

II. Term of Master Agreement

2.1 **Initial Term.** The initial term and extension options for this Master Agreement is listed in Section 2 of Exhibit A, Scope of Work.

2.2 **Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

2.3 **Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

III. Order of Precedence

3.1 **Order.** The following order of precedence shall apply for Orders executed by Purchasing Entities:

3.1.1 A Participating Entity's Participating Addendum ("PA");

3.1.2 NASPO ValuePoint Master Agreement, including all attachments thereto;

3.1.3 A Purchase Order issued against the Master Agreement;

3.1.4 The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;

3.1.5 Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

3.2 **Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

3.3 Participating Addenda. Participating Addenda will not be construed to dimmish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement.

IV. Participants and Scope

4.1 Requirement for a Participating Addendum. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.

4.2 Applicability of Master Agreement. NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum, subject to Section III. For the purposes of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (*e.g.*, purchase order or contract) used by the Purchasing Entity to place the Order.

4.3 Authorized Use. Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities is subject to applicable state law and the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

4.4 Obligated Entities. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.

4.5 Notice of Participating Addendum. Contractor shall email a fully executed PDF copy of each Participating Addendum to pa@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.

4.6 Eligibility for a Participating Addendum. Eligible entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent of the Chief Procurement Official of the state where the entity is located. Entities should coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists; the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.

4.7 Prohibition on Resale. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

4.8 Individual Customers. Except as may otherwise be agreed to by the Purchasing Entity and Contractor, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement and as the Participating Entity has in the Participating Addendum, including but not limited to any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

4.9 Release of Information. Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.

4.10 No Representations. The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

V. NASPO ValuePoint Provisions

5.1 Applicability. NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section V are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.

5.2 Administrative Fees

5.2.1 NASPO ValuePoint Fee. Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with a vendor's response to the Lead State's solicitation.

5.2.2 State Imposed Fees. Some states may require an additional fee be paid directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee rate or amount, payment method and schedule for such reports and payments will be incorporated into the applicable Participating Addendum. Unless agreed to in writing by the state, Contractor may not adjust the Master Agreement pricing to include the state fee for purchases made by Purchasing Entities within the jurisdiction of the state. No such agreement will affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

5.3 NASPO ValuePoint Summary and Detailed Usage Reports

5.3.1 Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at http://calculator.naspovaluepoint.org. All sales made under this Master Agreement must be reported as cumulative totals by state. Contractor must submit a report for each quarter, including quarters during which a Contractor has no sales, in which case this will be indicated in the Reporting Tool. Reports must be submitted no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

5.3.2 Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, *e.g.* local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and

line item description, including product number if used. The report must be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days following the end of the calendar quarter. Reports must be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports must include sales information for all sales under Participating Addenda executed under this Master Agreement.

5.3.3 Reporting on Personal Use. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity ((state and agency, city, county, school district, etc.) under whose authority the employee is purchasing Product for personal use and the amount of sales. No personal identification numbers (*e.g.*, names, addresses, **social security numbers or any other numerical identifier)** may be submitted with any report.

5.3.4 Executive Summary. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

5.3.5 Use of Data. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports will have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

5.4 NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review

5.4.1 Staff Education. Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of

NASPO ValuePoint procurements, the master agreement and participating addendum process, and the manner in which eligible entities can participate in the Master Agreement.

5.4.2 Onboarding Plan. Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.

5.4.3 Annual Contract Performance Review. Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.

5.4.4 Use of NASPO ValuePoint Logo. The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.

5.4.5 Most Favored Customer. Contractor shall, within thirty (30) days of their effective date, notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions provided to another competing cooperative. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

5.5 Cancellation. In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Master Agreement or not exercise an option to renew, when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two (2) years after execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.

5.6 Canadian Participation. Subject to the approval of Contractor, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest Territories, Nunavut, or Yukon, including municipalities,

universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

5.7 Additional Agreement with NASPO. Upon request by NASPO ValuePoint, awarded Contractor shall enter into a direct contractual relationship with NASPO ValuePoint related to Contractor's obligations to NASPO ValuePoint under the terms of the Master Agreement, the terms of which shall be the same or similar (and not less favorable) than the terms set forth in the Master Agreement.

VI. Pricing, Payment & Leasing

6.1 Pricing. The discounts contained in this Master Agreement represent the minimum discount to any Purchasing Entity.

6.1.1 All discounts must be guaranteed for the entire term of the Master Agreement, including extension years.

6.2 Payment. Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within forty-five (45) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.

6.3 Leasing or Alternative Financing Methods. The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

VII. Ordering

7.1 Order Numbers. Master Agreement, Participating Addendum, and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.

7.2 Quotes. Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be

solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.

7.3 Applicable Rules. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

7.4 Required Documentation. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

7.5 Term of Purchase. Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.

7.5.1 Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.

7.5.2 Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.

7.5.3 Financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

7.5.4 Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement's terms.

7.5.5 Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

7.6 Order Form Requirements. All Orders pursuant to this Master Agreement, at a minimum, must include:

7.6.1 The services or supplies being delivered;

7.6.2 A shipping address and other delivery requirements, if any;

7.6.3 A billing address;

7.6.4 Purchasing Entity contact information;

7.6.5 Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;

7.6.6 A not-to-exceed total for the products or services being ordered; and

7.6.7 The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.

7.7 Communication. All communications concerning administration of Orders placed must be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

7.8 Contract Provisions for Orders Utilizing Federal Funds. Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

VIII. Shipping and Delivery

8.1 Shipping Terms. All deliveries will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor.

8.1.1 Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor's until final inspection and acceptance when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations.

8.2 Minimum Shipping. The minimum shipment amount, if any, must be contained in the Master Agreement. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered will be shipped without charge.

8.3 Inside Deliveries. To the extent applicable, all deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to a location other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Costs to repair any damage to the building interior (*e.g.*, scratched walls, damage to the freight elevator, etc.) caused by Contractor or Contractor's carrier will be the responsibility of the Contractor. Immediately upon becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.

8.4 Packaging. All products must be delivered in the manufacturer's standard package. Costs must include all packing and/or crating charges. Cases must be of durable construction, in good condition, properly labeled and suitable in every respect for storage and handling of contents. Each

shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

IX. Inspection and Acceptance

9.1 Laws and Regulations. Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.

9.2 Applicability. Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section IX will apply. This section is not intended to limit rights and remedies under the applicable commercial code.

9.3 Inspection. All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.

9.3.1 Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.

9.3.2 Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

9.4 Failure to Conform. If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect the reduced value of services performed.

9.5 Acceptance Testing. Purchasing Entity may establish a process, in keeping with industry standards, to ascertaining whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.

9.5.1 The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.

9.5.2 If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.

9.5.3 Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.

9.5.4 Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section.

9.5.5 No Product will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

X. Warranty

10.1 Applicability. Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section X will apply.

10.2 Warranty. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects.

10.3 Breach of Warranty. Upon breach of the warranty set forth above, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made.

10.4 Rights Reserved. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

10.5 Warranty Period Start Date. The warranty period will begin upon Acceptance, as set forth in Section IX.

XI. Product Title

11.1 Conveyance of Title. Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests.

11.2 Embedded Software. Transfer of title to the Product must include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

11.3 License of Pre-Existing Intellectual Property. Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third-party rights in the Pre-existing Intellectual Property.

XII. Indemnification

12.1 General Indemnification. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from any act, error, or omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement.

12.2 Intellectual Property Indemnification. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use infringes Intellectual Property rights of another person or entity ("Intellectual Property Claim").

12.2.1 The Contractor's obligations under this section will not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

12.2.1.1 provided by the Contractor or the Contractor's subsidiaries or affiliates;

12.2.1.2 specified by the Contractor to work with the Product;

12.2.1.3 reasonably required to use the Product in its intended manner, and the infringement could not have been

avoided by substituting another reasonably available product, system or method capable of performing the same function; or

12.2.1.4 reasonably expected to be used in combination with the Product.

12.2.2 The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.

12.2.3 The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.

12.2.4 Unless otherwise set forth herein, Section 12.2 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

XIII. Insurance

13.1 **Term.** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in their Participating Addendum.

13.2 **Class.** Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

13.3 **Coverage.** Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:

13.3.1 Contractor shall maintain Commercial General Liability insurance covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than $1 million per occurrence and $2 million general aggregate;

13.3.2 Contractor shall maintain motor vehicle liability with limits not less than $1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired, and non-owned motor vehicles.

13.3.3 Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

13.4 Notice of Cancellation. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

13.5 Notice of Endorsement. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.

13.6 Participating Entities. Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in Section XIII, except the endorsement is provided to the applicable Participating State or Participating Entity.

13.7 Furnishing of Certificates. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

13.8 Disclaimer. Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

XIV. General Provisions

14.1 Records Administration and Audit

14.1.1 The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as will adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right will survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Master Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

14.1.2 Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

14.1.3 The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement that requires the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

14.2 Confidentiality, Non-Disclosure, and Injunctive Relief

14.2.1 **Confidentiality.** Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients.

14.2.1.1 Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is

confidential information of Purchasing Entity ("Confidential Information").

14.2.1.2 Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information.

14.2.1.3 Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity; or (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

14.2.2 Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement.

14.2.2.1 Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.

14.2.2.2 Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.

14.2.2.3 Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.

14.2.2.4 Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of the performance of this Master Agreement.

14.2.3 **Injunctive Relief.** Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be inadequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

14.2.4 **Purchasing Entity Law.** These provisions will be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

14.2.5 **NASPO ValuePoint.** The rights granted to Purchasing Entities and Contractor's obligations under this section will also extend to NASPO ValuePoint's Confidential Information, including but not limited to Participating Addenda, Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line-item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

14.2.6 **Public Information.** This Master Agreement and all related documents are subject to disclosure pursuant to the Lead State's public information laws.

14.3 Assignment/Subcontracts

14.3.1 Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

14.3.2 The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties, to NASPO ValuePoint and other third parties.

14.4 Changes in Contractor Representation. The Contractor must, within ten (10) calendar days, notify the Lead State in writing of any changes in the Contractor's key administrative personnel managing the Master Agreement. The Lead State reserves the right to approve or reject changes in key personnel, as identified in the Contractor's proposal. The Contractor shall propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

14.5 Independent Contractor. Contractor is an independent contractor. Contractor has no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and shall not to hold itself out as agent except as expressly set forth herein or as expressly set forth in an applicable Participating Addendum or Order.

14.6 Cancellation. Unless otherwise set forth herein, this Master Agreement may be canceled by either party upon sixty (60) days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision will not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

14.7 Force Majeure. Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or acts of war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement upon determining such delay or default will reasonably prevent successful performance of the Master Agreement.

14.8 Defaults and Remedies

14.8.1 The occurrence of any of the following events will be an event of default under this Master Agreement:

14.8.1.1 Nonperformance of contractual requirements;
14.8.1.2 A material breach of any term or condition of this Master Agreement;
14.8.1.3 Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading;
14.8.1.4 Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
14.8.1.5 Any default specified in another section of this Master Agreement.

14.8.2 Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of fifteen (15) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure will not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

14.8.3 If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:
14.8.3.1 Any remedy provided by law;
14.8.3.2 Termination of this Master Agreement and any related Contracts or portions thereof;
14.8.3.3 Assessment of liquidated damages as provided in this Master Agreement;
14.8.3.4 Suspension of Contractor from being able to respond to future bid solicitations;
14.8.3.5 Suspension of Contractor's performance; and
14.8.3.6 Withholding of payment until the default is remedied.

14.8.4 Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and

remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

14.9 Waiver of Breach. Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies will not operate as a waiver under this Master Agreement, any Participating Addendum, or any Purchase Order. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order will not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, any Participating Addendum, or any Purchase Order.

14.10 Debarment. The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in public procurement or contracting by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

14.11 No Waiver of Sovereign Immunity

14.11.1 In no event will this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

14.11.2 This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of

immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

14.12 Governing Law and Venue

14.12.1 The procurement, evaluation, and award of the Master Agreement will be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award will be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement will be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's state.

14.12.2 Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the state serving as Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement will be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum will be in the Purchasing Entity's state.

14.12.3 If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

14.13 Assignment of Antitrust Rights. Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT - AMENDMENT

SCO ID: 7760-721994101-A1

STD 213A (Rev. 4/2020)

☒ CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 40 PAGES

AGREEMENT NUMBER	AMENDMENT NUMBER	Purchasing Authority Number
7-21-99-41-01	1	

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME
Department of General Services

CONTRACTOR NAME
Elliott Auto Supply Co., Inc. dba Factory Motor Parts

2. The term of this Agreement is:

START DATE
October 20, 2021

THROUGH END DATE
October 19, 2026

3. The maximum amount of this Agreement after this Amendment is:
$0.00

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

A. Agreement end date is extended from October 19, 2024, to October 19, 2026.

B. Exhibit A - Scope of Work is revised to update website link in Section 4.K.7 (Brake Friction Material) and add Section 4.L (Generative Artificial Intelligence (GenAI) Reporting). Exhibits A - D are hereby replaced with attached Exhibit A - D (40 pages).

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)
Elliott Auto Supply Co., Inc. dba Factory Motor Parts

CONTRACTOR BUSINESS ADDRESS	CITY	STATE	ZIP
1600 E Orangthrope	Fullerton	CA	92831

PRINTED NAME OF PERSON SIGNING	TITLE
Dana Carney	Sr. Fleet Manager
CONTRACTOR AUTHORIZED SIGNATURE	DATE SIGNED
Dana Carney	8/27/2024

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME
Department of General Services, Procurement Division

CONTRACTING AGENCY ADDRESS	CITY	STATE	ZIP
707 Third Street, 2nd Floor	West Sacramento	CA	95605

PRINTED NAME OF PERSON SIGNING	TITLE
Julie Matthews	MAU2 Supervisor
CONTRACTING AGENCY AUTHORIZED SIGNATURE	DATE SIGNED
Julie Matthews Digitally signed by Julie Matthews Date: 2024.09.06 14:00:31 -07'00'	9/6/2024
CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL	EXEMPTION (If Applicable)

EXHIBIT A: SCOPE OF WORK

1. AGREEMENT OVERVIEW

This Scope of Work reflects the products and supplies to be provided by Elliott Auto Supply Co., Inc. dba Factory Motor Parts hereinafter referred to as the "Contractor," for the State of California hereinafter referred to as the "Lead State" and all other Participating States and Entities, for the Automotive Parts Master Agreement ("Agreement" or "Master Agreement").

Contractor shall permit State of California agencies, California local governmental agencies and NASPO ValuePoint Participating States and Entities to participate under this Master Agreement. Subject to the approval of the Contractor, any Canadian provincial government or provincially funded entity in Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta, Northwest Territories, Nunavut, Yukon, and Newfoundland and Labrador, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

Contractor will provide the entire portfolio of quality Automotive Parts to the Lead State, Participating States and Entities and local governmental agencies in a timely and efficient manner. Contractor will be the primary point of contact for data collection, reporting, and distribution of Automotive Parts to the Lead State and all other Participating States and Entities.

2. AGREEMENT TERM

The term of this Agreement is for a three (3) year period from the date of Master Agreement execution with the option to extend one (1) additional two (2) year period at the discretion of the Lead State. Extensions will be made by amendment to the Agreement at the same contracted discounts, terms and conditions.

3. RESPONSIBILITIES

A. Contractor shall meet all requirements identified in this Agreement.
B. Contractor will provide a Contract Manager in accordance with Exhibit A, Section 6.I.3 that will work with the Lead State Contract Administrator to fully implement and manage the Agreement.
C. Contractor will work closely with subcontractors (if applicable) to fully implement and manage this Agreement in accordance with Exhibit A, Section 6.I.1.
D. Contractor shall make available to the Lead State, technically competent personnel to accomplish the tasks and deliverables for the implementation and management of the Agreement.

E. Contractor shall promptly notify the Lead State Contract Administrator in writing of any unresolved issues or problems related to the Agreement that have been outstanding for more than five (5) business days.

4. REQUIREMENTS

A. Available Product Categories

Contractor shall provide products for Automotive Parts categories at the discount provided in Exhibit B, Category Discounts. Products outside the scope of categories listed in Exhibit B may not be purchased from the Master Agreement.

B. Electronic Catalog

Item	Description
1.	**Automotive Parts Electronic Catalog** Contractor shall develop and maintain an electronic catalog for use by Purchasing Entities. Contractor's electronic catalog must be separate from the Contractor's commercially available (i.e., public) online catalog and shall contain only category items and pricing as specified in the awarded Master Agreement. No other items or pricing may be shown in the electronic catalog without written approval from the Lead State Contract Administrator.
2.	**Electronic Catalog/Contract Website Contents** The Lead State Contract Administrator will review and determine acceptability of the electronic catalog format and data. The Electronic Catalog shall contain the following data elements at minimum: • Item descriptions • Contractor's stock keeping number (SKU) • Unit of measure (UOM) • Quantity in the UOM • List Price/MSRP • Master Agreement price • Quote generation (if applicable) • Publicly available OEM price lists (current and archives) Within 30 calendar days of notice of award, Contractor will be required to provide the Electronic Catalog for Lead State Contract Administrator approval.
3.	**Availability** The Electronic Catalog shall be available twenty-four (24) hours per day, seven (7) days per week, except for regularly scheduled maintenance

Item	Description
	times. Contractor shall not have any catalog viewing access restrictions for Participating States or Entities.

C. Pricing

Item	Description
1.	**Category Discounts** Master Agreement employs a discount-off Manufacturer Suggested Retail Price (MSRP) structure. Category discounts outlined in Exhibit B, Category Discounts, will remain firm for the entire term of the agreement, including extension periods. However, Contractors may offer lower pricing on a per order basis to Purchasing Entities. In the event a product falls into two or more categories the highest category discount will be applied.
2.	**Promotions** Contractor may offer promotional discounts, including but not limited to statewide promotional discounts, customer location specific discounts, bulk discounts, or spot discounts. During special pricing promotions, the Contractor shall offer Participating Entities the promotional pricing or the category discount percentage off MSRP, whichever is lower. Promotional pricing shall not be cause for a permanent change in pricing. Promotional items shall come with all benefits of the Master Agreement terms and conditions and shall include all provisions such as warranty and delivery.

D. Retail Sales Establishments

Item	Description
1.	**Retail Sales Establishments** Retail Sales Establishments are defined as any facilities that the Contractor uses on a regular basis to warehouse and/or sell merchandise, and at which the Contractor conducts regular business transactions at either the retail or wholesale level. Contractor facility should provide: • Walk-in and will-call order system during regular work hours. • Customer service associate to support walk-in and will-call order system. • Itemized sales receipts for all walk-in and will-call transactions.

Item	Description
	• Availability of delivery. • Acceptance of Purchasing Card. These facilities shall be operated in accordance with state law and comply with all zoning requirements as implemented by local, county or state governments. Examples of unacceptable retail sales establishments include houses, garages, or storage rental facilities. Contractor shall provide a list of authorized retail sales establishment locations to be used on this Master Agreement to the Lead State within 15 calendar days of notice of award. If Contractor is offering Retail Sales Establishments, Contractor shall ensure state agencies, local government agencies and other Participating Entities will receive Master Agreement pricing when purchasing items through Retail Sales Establishments.

E. Ordering

Item	Description
1.	**Ordering Methods** Contractor shall accept orders through the following methods: • **Electronic (email)** – An email address to be used by Purchasing Entities for placing orders must be in place before the commencement of this Master Agreement. • **Facsimile** – A toll-free facsimile number to be used by Purchasing Entities for placing orders must be in place before the commencement of this Master Agreement. Facsimile orders must be accepted between the hours of 8:00 AM and 5:00 PM, Monday through Friday in the time zone the order is placed. • **U.S. Mail** – Contractor must have the capability to receive orders by mail in place before the commencement of this Master Agreement. • **Over-the-counter/Walk-In** – Contractor shall provide over-the-counter order and delivery at all commercial locations. See Exhibit A, Section 6.D (Retail Sales Establishments). • **Online (internet)** – Contractor's Electronic Catalog website to be used by Purchasing Entities for placing orders must be in

Item	Description
	place before the commencement of this Master Agreement. See Exhibit A, Section 6.B (Electronic Catalog). Prior to contract award, Contractor shall provide the ordering information within five (5) business days of the Lead State's request.
2.	**Purchase Execution** California state agencies must submit orders on a Purchasing Authority Purchase Order (Std. 65) or using the FI$Cal Purchase Order process in accordance with posted User Instructions. Local government agencies and other Purchasing Entities may use their own approved Purchase Order document process as addressed in their Participating Addendum. Contractor shall not accept purchase documents from Purchasing Entities that are incomplete or contain items outside the scope of the Master Agreement.
3.	**Minimum Order (M)** There is no minimum order.
4.	**Order Acknowledgement** The Contractor must provide Purchasing Entities with an order receipt acknowledgment via e-mail/facsimile within one (1) business day after receipt of an order. The acknowledgement will include: • Purchasing Entity Name • Purchase Order Number • Description of Goods / SKUs • Total Cost • Anticipated Delivery Date • Identification of any Out of Stock/Discontinued Items
5.	**Out-of-Stock Remedy** Upon receipt of order acknowledgment identifying out of stock items, the Purchasing Entity shall have the following options: • Request back order • Cancel the item from the order Upon request, Contractor shall provide updates on back ordered items to the Purchasing Entity. Contractor is not permitted to make

Item	Description
	substitutions or cancellations without authorization from the Purchasing Entity.
6.	**Core Exchange/Charges** All parts supplied which require core exchange shall be monitored by the Contractor to ensure proper cores are returned. Core credit is to be issued the same day as received. Any core that is not usable or not returned shall be billed at the core price listed in the manufacturer's price sheet for that particular part.
7.	**Remanufactured Parts** Contractor may provide remanufactured parts when new parts are not available with authorization from the Purchasing Entity. Used, previously installed or shop-worn parts shall not be accepted.

F. Delivery

Item	Description
1.	**Delivery Locations** Deliveries are to be made to the Purchasing Entities' location specified on the individual order, which may include, but not be limited to inside buildings, high-rise office buildings, and receiving docks.
2.	**Delivery Schedule** Delivery of ordered product shall be completed within two (2) business days after receipt of an order, unless otherwise agreed to by the Purchasing Entity. Since receiving hours for each Purchasing Entity will vary by facility, it will be the Contractor's responsibility to check with each facility for their specific receiving hours before delivery occurs. Contractor must notify the Purchasing Entity within 12 hours of scheduled delivery time, if delivery cannot be made within the time frame specified on the order.
3.	**Delivery from Retail Sales Establishments** Delivery of standard in-stock items to locations within five (5) miles from company's retail business establishment shall be accomplished within 45 minutes. Delivery outside the five (5) mile range will be accomplished by a scheduled delivery.

Item	Description
4.	**Security Requirements for Institutions** Deliveries may be made to locations inside secure institutional grounds (such as state prisons) that require prior clearances to be made for delivery drivers. Contractor will be responsible for contacting the secure location for security clearance procedures, hours of operation for deliveries and service, dress code, and other rules of delivery. These security clearance procedures may vary from facility to facility. Deliveries that are delayed due to drivers not being cleared to enter institutional grounds may cause the contractor to be declared in default of contract requirements.
5.	**Free on Board (F.O.B.) Destination (Shipping Terms)** All prices offered shall be F.O.B. destination, freight prepaid by the Contractor, to the Purchasing Entity's final receiving point. Responsibility and liability for loss or damage for all orders shall remain with the Contractor until final inspection and acceptance, when all responsibility shall pass to the ordering organization, except the responsibility for latent defects, fraud, and the warranty obligations. All emergency or rush deliveries that require special shipping and handling should be at the ordering entities expense, with prior approval from the Purchasing Entity. Emergency or rush shipping charges shall be added to an invoice as a separate line item. In the event an emergency or rush delivery is required as the result of a Contractor's error; all shipping cost shall be paid by the Contractor.
6.	**Manufacturer Warranty** Contractor must honor all manufacturers' warranties and guarantees on all products offered as part of the Master Agreement. If a product warranty extends beyond the term of the Master Agreement, the Contractor must agree to provide warranty services throughout the life of the warranty. These parts must be warranted to be free of defective parts and workmanship, provided they are properly installed on the vehicle for which they were intended, for the time and mileage shown in the product literature or catalog. Statement of warranty is to be provided by Contractor with items delivered under this Master Agreement. For all items ordered, warranty begins on the date of delivery.

Item	Description
7.	**Return Policy** Items purchased under this Master Agreement may be returned at no cost for a full refund if item is unused, in its original packaging and within thirty (30) calendar days of delivery. All returns shall be picked up within seven (7) business days of notification. Notification is defined as notice in writing, by facsimile or e-mail.
8.	**Credit Policy** The Contractor shall offer a full credit/refund for the following items: • Items shipped in error • Defective or freight-damaged items • Items returned within 30 calendar days of delivery In all cases, the Purchasing Entity shall have the option of taking an exchange, receiving a credit, or receiving a refund. The Contractor will be responsible for the credit/refund or replacement of all products, including those covered by manufacturer warranties as stated in Exhibit A, Section 6.F.6, Warranty. Contractor cannot require the Purchasing Entity to deal directly with the manufacturer.
9.	**Product Recall Procedures** Contractor shall provide recall notification, regardless of level, in writing to the Lead State Contract Administrator and each applicable Purchasing Entity through the most expedient method possible. The notices, at a minimum, shall include a complete product description and/or identification, contract number, delivery order number and disposition instructions. Contractor agrees to use commercially reasonable efforts in identifying the applicable manufacturer in order that the Lead State and any Participating Entities or Purchasing Entities may work with such manufacturer to handle any applicable recall issues.

G. Invoicing and Payment

Item	Description
1.	**Invoices** Invoices shall be submitted to the Purchasing Entity within seven (7) calendar days from date of delivery. Invoices should include the following at a minimum: • Agency Order Number (Purchase Order Number) • Purchasing Entity Name • Delivery address of the order • Product(s) description • Manufacturer's product(s) number(s) • Quantities of merchandise issued • Price(s) per unit(s) and extended price • Date ordered • Date delivered • Listing of returns or back ordered items • Discounts (i.e. Cash Discounts, Prompt Payment • Totals for each order. Each invoice shall have a total for all orders, a total for all credits, and amount due from each agency • Any other mutually agreed upon requirements
2.	**Payment** California state agencies and local government agencies may pay by check, electronic funds transfer, or with the State of California purchase card (CAL-Card). Payments are to be made in accordance with paragraph 30 of the Lead State's General Provisions (Exhibit C). Purchasing Entities may pay by check, electronic funds transfer, or by a State Purchasing card (P-card). The Contractor will be solely responsible for the credit card user-handling fee associated with credit card purchases. Participating States and Entities may have their own payment terms which will be identified within individual Participating Addendums.
3.	**State of California CAL-Card Invoicing** For orders paid through CAL-Card, invoices are to be processed separately from other payment methods and submitted to the CAL-Card

Item	Description
	account holder. For additional information, visit the CAL-Card Program website (https://www.dgs.ca.gov/cal-card). The total invoice amount for each order paid by CAL-Card must reflect a zero balance due or credit, if applicable, and identified as "paid by CAL-Card".

H. Reporting

Item	Description
1.	**Usage Report (Lead State)** During the term of the Master Agreement, Contractor shall submit usage reports on a quarterly basis to the Lead State Contract Administrator for all California Purchasing Entity sales using the report template provided by the Lead State Contract Administrator. Usage Report will contain the following data elements at a minimum: • Ordering Agency Name • Agency Type (State/Local) • Purchase Order Number • Order Date • Category • Manufacturer Part Number (OEM #) • Item Description • Unit of Measure • Quantity • List Price/MSRP • Unit Price • Extended Price Paid • Catalog Version Date The Lead State Contract Administrator reserves the right to modify the reporting template and require Contractor to provide additional order information during the course of this Agreement. The report shall be an Excel spreadsheet transmitted electronically to PDCooperatives@dgs.ca.gov. The report is due even when there is no activity. Any report that does not follow the required format or that excludes information will be deemed incomplete. Contractor will be responsible for submitting corrected

Item	Description
	reports within five (5) business days of the date of written notification from the State. Tax must not be included in the report, even if it is on the purchase order. Reports are due by the 30th day following a calendar quarter. Failure to meet reporting requirements and submit the reports on a timely basis shall constitute grounds for suspension of the Master Agreement. Amendment for term extensions may be approved only if all quarterly reports due have been submitted to the Lead State. The Lead State Contract Administrator will provide the reporting template upon award.
2.	**Participating State/Entity Reporting** Contractor must provide usage reporting to Participating States and Entities as defined in the individual Participating Addendum.
3.	**NASPO ValuePoint Summary and Detail Usage Reports** Contractor shall submit specific summary and detailed usage reports directly to NASPO ValuePoint as set forth in Section V of the NASPO ValuePoint Master Agreement Terms (Exhibit D). The Lead State Contract Administrator will provide the Detail Usage Report template upon award.
4.	**Ad Hoc Reporting** Contractor shall have the ability to provide ad hoc reports at no cost to the Lead State. Upon written request, Contractor shall permit and provide access to all data that pertains to any procurement action taken by a Purchasing Entity or Participating Entity as a whole. The Lead State or Purchasing Entity may make copies of procurement data in any form and the use of such data shall not be restricted. Dependent on future reporting requirements, the Lead State may ask that certain reports become standard and delivered to the Lead State on a monthly or quarterly basis.
5.	**Lead State Administrative Fee** Contractor shall remit a quarterly Lead State administrative fee of 1.25 percent of all goods purchased by California Purchasing Entities for each reporting quarter. Prices submitted shall not reflect the California administrative fee. The Lead State administrative fee shall not be

Item	Description
	invoiced or charged to the ordering agency and is specific to California only. This fee will be due to the Lead State on the 30th day following the ending of the quarterly reporting period. Payment of the Lead State administrative fee is due irrespective of payment status on orders or service contracts from a Purchasing Entity.
6.	**NASPO ValuePoint Administrative Fee** Contractor shall remit a NASPO ValuePoint administrative fee as specified in Section V of the NASPO ValuePoint Master Agreement Terms (Exhibit D).
7.	**Participating Entity Administrative Fee** If a Participating Entity requires an administrative fee, each fee will be negotiated and articulated in the individual state's Participating Addendum.

I. Management and Customer Service

Item	Description
1.	**Contractor Responsibility** Contractor shall be responsible for successful contract performance of the Master Agreement and successful performance of any and all of their subcontractors. Contractor agrees to comply with requirements under the Master Agreement, even if requirements are delegated to subcontractors. All Lead State policies, guidelines, and requirements apply to subcontractors. The prime Contractor and subcontractor(s) shall not in any way represent themselves in the name of the Lead State without prior written approval. Furthermore, the Lead State will consider the prime Contractor to be the sole point of contact with regard to contractual matters, payments, warranty issues, for the term of the Master Agreement and any extensions. Use of subcontractors will be addressed within each state's Participating Addendum.

Item	Description
2.	**Lead State Contract Administrator** The Lead State Contract Administrator will be the contact person for issues relating to the Master Agreement. Any modifications to the requirements contained in the Master Agreement may only be authorized by the State Contract Administrator or his/her designee through Master Agreement Amendment.
3.	**Contractor Contract Manager** Contractor will assign a contact person for contract management purposes. The Contractor Contract Manager must be authorized to make decisions on behalf of the Contractor.
4.	**Changes in Contract Manager** Contractor must notify the Lead State Contract Administrator of Contractor Contract Manager changes in writing within 10 calendar days of the change.
5.	**Contractor Name Change** An amendment is required to change the Contractor's name as listed on this agreement. Contractor shall notify the Lead State of any name change. Upon receipt of legal documentation of the name change the Lead State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
6.	**Customer Service Unit** Contractor will have a customer service unit that supports this Master Agreement. The customer service unit shall provide office and personnel resources for responding to inquiries, including telephone and email coverage weekdays during business hours. The customer service unit shall be staffed with individuals that: • Are trained in the requirements of this contract • Have the authority to take administrative action to correct problems that may occur • Are designated for training and general customer service follow-up Contractor shall respond to customer inquiries within one (1) business day of initial contact. Prior to Master Agreement award, Contractor shall provide customer service information to the Lead State within five (5) business days of written request.

J. Transition / End of Agreement

Item	Description
1.	**Transition Plan at End of Contract** Contractor agrees that at the end of this Master Agreement, should the Lead State conduct another procurement and award a new Master Agreement, the Contractor will work with the Lead State Contract Administrator, if requested to ensure that an efficient and effective transition takes place. Upon termination or expiration of the Master Agreement the following will occur: • All on-line offering systems and Electronic Catalog functions supported and/or available as part of the Master Agreement will cease and be removed from public viewing access without redirecting to another website. • Customer data/user accounts acquired during the term of the contract shall be destroyed or returned to the Lead State at the request of the Lead State Contract Administrator. • No references to the Master Agreement shall be made after contract end on the Contractor's commercial website without permission by the State Contract Administrator. • All invoicing disputes and/or order tracking will be conducted through the Contractor's Customer Service Unit via telephone or email.

K. Environmentally Preferable Purchasing

The following requirements are specific to the State of California and may be incorporated within Participating Addenda at the Participating Entity's discretion.

Item	Description
1.	**Environmentally Preferable Purchasing (EPP)** California Department of General Services is responsible for the implementation of EPP as mandated by the California Public Contract Code (PCC), Chapter 6, sections 12400-12404. Contractor certifies the products or services offered comply with the Federal Trade Commission's Guidelines for the Use of Environmental Marketing Terms (PCC Section 12404).
2.	**Post-Consumer Recycled Content (PCRC) Certification** California state agencies are required to report purchases made within eleven (11) product categories in the California Department of Resources Recycling and Recovery's (CalRecycle), State Agency Buy Recycled

Item	Description
	Campaign (SABRC) in accordance with Public Contract Code sections 12200-12217.In order to comply with those requirements, Contractor will be required to certify in writing the minimum percentage, if not the exact percentage, of post-consumer recycled content (PCRC) material in each of the products ordered, upon request.
3.	**Green Product Marking and Labeling** Contractor shall identify products that possess third party environmental certifications on the Electronic Catalog.
4.	**Wheel Weights** California law prohibits the manufacture, sale, or installation of wheel weights containing more than 0.1% lead. California Health and Safety Code Section 25215.6-25215.7 (https://codes.findlaw.com/ca/health-and-safety-code/hsc-sect-25215-6.html).
5.	**Mercury Containing Products** A person cannot sell or distribute for promotional purposes, in California, certain types of new or refurbished products and devices that contain mercury. This law can be found in Health and Safety Code, Division 20, Chapter 6.5; Mercury-Added Thermostats, Relays, Switches, and Measuring Devices (Sections 25214.8.1-25214.8.6). (https://codes.findlaw.com/ca/health-and-safety-code/hsc-sect-25214-8-4.html).
6.	**Consumer Products** Contractor may not sell, supply, offer for sale, or manufacture for sale in California consumer products that do not comply with the Consumer Products Regulatory Program, whose aim is to reduce the amount of volatile organic compounds (VOCs), toxic air contaminants (TACs), and greenhouse gases (GHGs) that are emitted from using chemically formulated consumer products. Background information including enforcement of the program can be found at: https://ww2.arb.ca.gov/our-work/programs/consumer-products-program/about. Regulations for the program can be found in Article 2: Regulation for Reducing Emissions from Consumer Products, commonly referred to as the General Consumer Products Regulation.
7.	**Brake Friction Material** All motor vehicle brake friction materials sold in California must meet the requirements as identified in California Health and Safety Code Section 25250.51 (Source: https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=20.&chapter=6.5.&lawCode=HSC&article=13.5

L. Generative Artificial Intelligence (GenAI) Reporting

The following requirements are specific to the State of California only.

Item	Description
1.	**Generative Artificial Intelligence (GenAI) Reporting** The State of California seeks to realize the potential benefits of GenAI, through the development and deployment of GenAI tools, while balancing the risks of these new technologies. Upon request by an ordering agency, Contractor must complete a GenAI Reporting and Fact Sheet (STD 1000) to identify if their solution or service includes, or makes available, any GenAI including, GenAI from third parties or subcontractors. During the term of the contract, Contractor must notify the State in writing if their services or any work under this contract includes, or makes available, any previously unreported GenAI technology, including GenAI from third parties or subcontractors. Contractor shall immediately complete the GenAI Reporting and Factsheet (STD 1000) to notify the State of any new or previously unreported GenAI technology. At the direction of the State, Contractor shall discontinue the use of any new or previously undisclosed GenAI technology that materially impacts functionality, risk or contract performance, until use of such GenAI technology has been approved by the State. Failure to disclose GenAI use to the State and submit the GenAI Reporting and Factsheet (STD 1000) may be considered a breach of the contract by the State at its sole discretion and the State may consider such failure to disclose GenAI and/or failure to submit the GenAI Reporting and Factsheet (STD 1000) as grounds for the immediate termination of the contract. The State is entitled to seek any and all relief to which it may be entitled to as a result of such non-disclosure. The State reserves the right to amend the contract, without additional cost, to incorporate GenAI Special Provisions into the contract at its sole discretion and/or terminate any contract that presents an unacceptable level of risk to the State. If Contractor identifies GenAI in their solution, a copy of the STD 1000 must be submitted to the State Contract Administrator.

EXHIBIT B: CATEGORY DISCOUNTS

Category	Description	Percent Discount Off MSRP
1	Air Conditioning	62%
2	Alternators and Starters	64%
3	Batteries	64%
4	Bearings, Ball and Roller	67%
5	Belts and Hoses	60%
6	Brakes	68%
7	Electrical and Ignition	62%
8	Emission, Sensors and Exhaust	62%
9	Engine and Drive Train	62%
10	Filters, Oil, Gas, Air and Transmission	71%
11	Gaskets and Seals	65%
12	Heating and Cooling (Engine)	62%
13	Lamps, Lighting and Mirrors	62%
14	Oils, Chemicals, Fluids and Lubricants	62%
15	Pumps, Fuel and Water	65%
16	Suspension, Shocks, Struts and Steering	65%
17	Wipers/Washers	77%
18	Winter Accessories	60%
19	General Automotive Parts (Aftermarket Automotive Parts not included in Categories 1-18.)	62%
20	Automotive Repair Shop Supplies and Equipment/Tools (e.g., cleaning supplies, wrenches, etc.)	30%

EXHIBIT C: LEAD STATE GENERAL PROVISIONS

Non-IT General Provisions (6/21/2022) is hereby incorporated by reference and made part of this agreement as if attached hereto. This document can be viewed at: https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Required-Language-for-Solicitations-and-Contracts?search=model%20contract

These terms are applicable for State of California purchases only.

EXHIBIT D: NASPO VALUEPOINT MASTER AGREEMENT TERMS

I. Definitions

1.1 **Acceptance** means acceptance of goods and services as set forth in Section IX of this Master Agreement.

1.2 **Contractor** means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.

1.3 **Embedded Software** means one or more software applications which permanently reside on a computing device.

1.4 **Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

1.5 **Lead State** means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.

1.6 **Master Agreement** means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.

1.7 **NASPO ValuePoint** is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) limited liability company. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.

1.8 **Order** or **Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

1.9 **Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (*e.g.*, ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).

1.10 **Participating Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.

1.11 **Participating State** means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.

1.12 **Product** or **Products and Services** means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Product includes goods and services.

1.13 **Purchasing Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

II. Term of Master Agreement

2.1 **Initial Term.** The initial term and extension options for this Master Agreement is listed in Section 2 of Exhibit A, Scope of Work.

2.2 **Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

2.3 **Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

III. Order of Precedence

3.1 **Order.** The following order of precedence shall apply for Orders executed by Purchasing Entities:

3.1.1 A Participating Entity's Participating Addendum ("PA");

3.1.2 NASPO ValuePoint Master Agreement, including all attachments thereto;

3.1.3 A Purchase Order issued against the Master Agreement;

3.1.4 The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;

3.1.5 Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

3.2 **Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

3.3 **Participating Addenda.** Participating Addenda will not be construed to dimmish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement.

IV. Participants and Scope

4.1 **Requirement for a Participating Addendum.** Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.

4.2 **Applicability of Master Agreement.** NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum, subject to Section III. For the purposes of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (*e.g.*, purchase order or contract) used by the Purchasing Entity to place the Order.

4.3 **Authorized Use.** Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities is subject to applicable state law and the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

4.4 **Obligated Entities.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.

4.5 **Notice of Participating Addendum.** Contractor shall email a fully executed PDF copy of each Participating Addendum to pa@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.

4.6 Eligibility for a Participating Addendum. Eligible entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent of the Chief Procurement Official of the state where the entity is located. Entities should coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists; the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.

4.7 Prohibition on Resale. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

4.8 Individual Customers. Except as may otherwise be agreed to by the Purchasing Entity and Contractor, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement and as the Participating Entity has in the Participating Addendum, including but not limited to any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

4.9 Release of Information. Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.

4.10 No Representations. The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

V. NASPO ValuePoint Provisions

5.1 Applicability. NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section V are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.

5.2 Administrative Fees

5.2.1 NASPO ValuePoint Fee. Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with a vendor's response to the Lead State's solicitation.

5.2.2 State Imposed Fees. Some states may require an additional fee be paid directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee rate or amount, payment method and schedule for such reports and payments will be incorporated into the applicable Participating Addendum. Unless agreed to in writing by the state, Contractor may not adjust the Master Agreement pricing to include the state fee for purchases made by Purchasing Entities within the jurisdiction of the state. No such agreement will affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

5.3 NASPO ValuePoint Summary and Detailed Usage Reports

5.3.1 Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at http://calculator.naspovaluepoint.org. All sales made under this Master Agreement must be reported as cumulative totals by state. Contractor must submit a report for each quarter, including quarters during which a Contractor has no sales, in which case this will be indicated in the Reporting Tool. Reports must be submitted no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

5.3.2 Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, *e.g.* local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and

line item description, including product number if used. The report must be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days following the end of the calendar quarter. Reports must be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports must include sales information for all sales under Participating Addenda executed under this Master Agreement.

5.3.3 Reporting on Personal Use. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity ((state and agency, city, county, school district, etc.) under whose authority the employee is purchasing Product for personal use and the amount of sales. No personal identification numbers (*e.g.*, names, addresses, **social security numbers or any other numerical identifier)** may be submitted with any report.

5.3.4 Executive Summary. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

5.3.5 Use of Data. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports will have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

5.4 NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review

5.4.1 Staff Education. Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of

NASPO ValuePoint procurements, the master agreement and participating addendum process, and the manner in which eligible entities can participate in the Master Agreement.

5.4.2 Onboarding Plan. Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.

5.4.3 Annual Contract Performance Review. Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.

5.4.4 Use of NASPO ValuePoint Logo. The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.

5.4.5 Most Favored Customer. Contractor shall, within thirty (30) days of their effective date, notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions provided to another competing cooperative. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

5.5 Cancellation. In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Master Agreement or not exercise an option to renew, when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two (2) years after execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.

5.6 Canadian Participation. Subject to the approval of Contractor, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest Territories, Nunavut, or Yukon, including municipalities,

universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

5.7 Additional Agreement with NASPO. Upon request by NASPO ValuePoint, awarded Contractor shall enter into a direct contractual relationship with NASPO ValuePoint related to Contractor's obligations to NASPO ValuePoint under the terms of the Master Agreement, the terms of which shall be the same or similar (and not less favorable) than the terms set forth in the Master Agreement.

VI. Pricing, Payment & Leasing

6.1 Pricing. The discounts contained in this Master Agreement represent the minimum discount to any Purchasing Entity.

6.1.1 All discounts must be guaranteed for the entire term of the Master Agreement, including extension years.

6.2 Payment. Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within forty-five (45) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.

6.3 Leasing or Alternative Financing Methods. The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

VII. Ordering

7.1 Order Numbers. Master Agreement, Participating Addendum, and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.

7.2 Quotes. Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be

solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.

7.3 Applicable Rules. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

7.4 Required Documentation. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

7.5 Term of Purchase. Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.

7.5.1 Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.

7.5.2 Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.

7.5.3 Financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

7.5.4 Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement's terms.

7.5.5 Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

7.6 Order Form Requirements. All Orders pursuant to this Master Agreement, at a minimum, must include:

7.6.1 The services or supplies being delivered;

7.6.2 A shipping address and other delivery requirements, if any;

7.6.3 A billing address;

7.6.4 Purchasing Entity contact information;

7.6.5 Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;

7.6.6 A not-to-exceed total for the products or services being ordered; and

7.6.7 The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.

7.7 Communication. All communications concerning administration of Orders placed must be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

7.8 Contract Provisions for Orders Utilizing Federal Funds. Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

VIII. Shipping and Delivery

8.1 Shipping Terms. All deliveries will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor.

8.1.1 Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor's until final inspection and acceptance when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations.

8.2 Minimum Shipping. The minimum shipment amount, if any, must be contained in the Master Agreement. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered will be shipped without charge.

8.3 Inside Deliveries. To the extent applicable, all deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to a location other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Costs to repair any damage to the building interior (*e.g.*, scratched walls, damage to the freight elevator, etc.) caused by Contractor or Contractor's carrier will be the responsibility of the Contractor. Immediately upon becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.

8.4 Packaging. All products must be delivered in the manufacturer's standard package. Costs must include all packing and/or crating charges. Cases must be of durable construction, in good condition, properly labeled and suitable in every respect for storage and handling of contents. Each

shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

IX. Inspection and Acceptance

9.1 Laws and Regulations. Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.

9.2 Applicability. Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section IX will apply. This section is not intended to limit rights and remedies under the applicable commercial code.

9.3 Inspection. All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.

9.3.1 Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.

9.3.2 Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

9.4 Failure to Conform. If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect the reduced value of services performed.

9.5 Acceptance Testing. Purchasing Entity may establish a process, in keeping with industry standards, to ascertaining whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.

9.5.1 The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.

9.5.2 If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.

9.5.3 Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.

9.5.4 Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section.

9.5.5 No Product will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

X. Warranty

10.1 Applicability. Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section X will apply.

10.2 Warranty. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects.

10.3 Breach of Warranty. Upon breach of the warranty set forth above, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made.

10.4 Rights Reserved. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

10.5 Warranty Period Start Date. The warranty period will begin upon Acceptance, as set forth in Section IX.

XI. Product Title

11.1 Conveyance of Title. Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests.

11.2 Embedded Software. Transfer of title to the Product must include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

11.3 License of Pre-Existing Intellectual Property. Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third-party rights in the Pre-existing Intellectual Property.

XII. Indemnification

12.1 General Indemnification. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from any act, error, or omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement.

12.2 Intellectual Property Indemnification. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use infringes Intellectual Property rights of another person or entity ("Intellectual Property Claim").

12.2.1 The Contractor's obligations under this section will not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

12.2.1.1 provided by the Contractor or the Contractor's subsidiaries or affiliates;

12.2.1.2 specified by the Contractor to work with the Product;

12.2.1.3 reasonably required to use the Product in its intended manner, and the infringement could not have been

avoided by substituting another reasonably available product, system or method capable of performing the same function; or

12.2.1.4 reasonably expected to be used in combination with the Product.

12.2.2 The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.

12.2.3 The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.

12.2.4 Unless otherwise set forth herein, Section 12.2 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

XIII. Insurance

13.1 **Term.** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in their Participating Addendum.

13.2 **Class.** Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

13.3 **Coverage.** Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:

13.3.1 Contractor shall maintain Commercial General Liability insurance covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than $1 million per occurrence and $2 million general aggregate;

13.3.2 Contractor shall maintain motor vehicle liability with limits not less than $1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired, and non-owned motor vehicles.

13.3.3 Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

13.4 Notice of Cancellation. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

13.5 Notice of Endorsement. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.

13.6 Participating Entities. Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in Section XIII, except the endorsement is provided to the applicable Participating State or Participating Entity.

13.7 Furnishing of Certificates. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

13.8 Disclaimer. Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

XIV. General Provisions

14.1 Records Administration and Audit

14.1.1 The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as will adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right will survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Master Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

14.1.2 Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

14.1.3 The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement that requires the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

14.2 Confidentiality, Non-Disclosure, and Injunctive Relief

14.2.1 **Confidentiality.** Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients.

14.2.1.1 Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is

confidential information of Purchasing Entity ("Confidential Information").

14.2.1.2 Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information.

14.2.1.3 Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity; or (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

14.2.2 Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement.

14.2.2.1 Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.

14.2.2.2 Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.

14.2.2.3 Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.

14.2.2.4 Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of the performance of this Master Agreement.

14.2.3 **Injunctive Relief.** Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be inadequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

14.2.4 **Purchasing Entity Law.** These provisions will be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

14.2.5 **NASPO ValuePoint.** The rights granted to Purchasing Entities and Contractor's obligations under this section will also extend to NASPO ValuePoint's Confidential Information, including but not limited to Participating Addenda, Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line-item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

14.2.6 **Public Information.** This Master Agreement and all related documents are subject to disclosure pursuant to the Lead State's public information laws.

14.3 Assignment/Subcontracts

14.3.1 Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

14.3.2 The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties, to NASPO ValuePoint and other third parties.

14.4 Changes in Contractor Representation. The Contractor must, within ten (10) calendar days, notify the Lead State in writing of any changes in the Contractor's key administrative personnel managing the Master Agreement. The Lead State reserves the right to approve or reject changes in key personnel, as identified in the Contractor's proposal. The Contractor shall propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

14.5 Independent Contractor. Contractor is an independent contractor. Contractor has no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and shall not to hold itself out as agent except as expressly set forth herein or as expressly set forth in an applicable Participating Addendum or Order.

14.6 Cancellation. Unless otherwise set forth herein, this Master Agreement may be canceled by either party upon sixty (60) days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision will not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

14.7 Force Majeure. Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or acts of war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement upon determining such delay or default will reasonably prevent successful performance of the Master Agreement.

14.8 Defaults and Remedies

14.8.1 The occurrence of any of the following events will be an event of default under this Master Agreement:

14.8.1.1 Nonperformance of contractual requirements;
14.8.1.2 A material breach of any term or condition of this Master Agreement;
14.8.1.3 Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading;
14.8.1.4 Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
14.8.1.5 Any default specified in another section of this Master Agreement.

14.8.2 Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of fifteen (15) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure will not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

14.8.3 If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:
14.8.3.1 Any remedy provided by law;
14.8.3.2 Termination of this Master Agreement and any related Contracts or portions thereof;
14.8.3.3 Assessment of liquidated damages as provided in this Master Agreement;
14.8.3.4 Suspension of Contractor from being able to respond to future bid solicitations;
14.8.3.5 Suspension of Contractor's performance; and
14.8.3.6 Withholding of payment until the default is remedied.

14.8.4 Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and

remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

14.9 Waiver of Breach. Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies will not operate as a waiver under this Master Agreement, any Participating Addendum, or any Purchase Order. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order will not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, any Participating Addendum, or any Purchase Order.

14.10 Debarment. The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in public procurement or contracting by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

14.11 No Waiver of Sovereign Immunity

14.11.1 In no event will this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

14.11.2 This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of

immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

14.12 Governing Law and Venue

14.12.1 The procurement, evaluation, and award of the Master Agreement will be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award will be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement will be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's state.

14.12.2 Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the state serving as Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement will be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum will be in the Purchasing Entity's state.

14.12.3 If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

14.13 Assignment of Antitrust Rights. Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

SCO ID: 7760-721994103

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES
STANDARD AGREEMENT
STD 213 (Rev. 04/2020)

AGREEMENT NUMBER	PURCHASING AUTHORITY NUMBER (If Applicable)
7-21-99-41-03	

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME
Department of General Services

CONTRACTOR NAME
Parts Authority, LLC

2. The term of this Agreement is:

START DATE
October 20, 2021, or upon DGS approval of contract, whichever is later.

THROUGH END DATE
October 19, 2024 with the option to extend one (1) additional two (2) year period

3. The maximum amount of this Agreement is:
$0.00

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibits		Title	Pages
	Exhibit A	Scope of Work	15
	Exhibit B	Category Discounts	1
	Exhibit C	Lead State General Provisions	1
+ -	Exhibit D	NASPO ValuePoint Master Agreement Terms	22

Items shown with an asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
These documents can be viewed at https://www.dgs.ca.gov/OLS/Resources

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)
Parts Authority, LLC

CONTRACTOR BUSINESS ADDRESS	CITY	STATE	ZIP
535 Tennis Court Lane	San Bernardino	CA	92408

PRINTED NAME OF PERSON SIGNING	TITLE
Christopher Hill	Government Sales Manager

CONTRACTOR AUTHORIZED SIGNATURE	DATE SIGNED
Christopher Hill — Digitally signed by Christopher Hill Date: 2021.10.21 14:17:52 -04'00'	10/21/2021

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME
Department of General Services, Procurement Division

CONTRACTING AGENCY ADDRESS	CITY	STATE	ZIP
707 3rd Street	West Sacramento	CA	95605

PRINTED NAME OF PERSON SIGNING	TITLE
Stephanne Lim	MAU2 Supervisor

CONTRACTING AGENCY AUTHORIZED SIGNATURE	DATE SIGNED
stephanne lim — Digitally signed by stephanne lim Date: 2021.10.22 17:24:26 -07'00'	10/22/2021

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL	EXEMPTION (If Applicable)

EXHIBIT A: SCOPE OF WORK

1. AGREEMENT OVERVIEW

This Scope of Work reflects the products and supplies to be provided by Parts Authority, LLC hereinafter referred to as the "Contractor," for the State of California hereinafter referred to as the "Lead State" and all other Participating States and Entities, for the Automotive Parts Master Agreement ("Agreement" or "Master Agreement").

Contractor shall permit State of California agencies, California local governmental agencies and NASPO ValuePoint Participating States and Entities to participate under this Master Agreement. Subject to the approval of the Contractor, any Canadian provincial government or provincially funded entity in Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta, Northwest Territories, Nunavut, Yukon, and Newfoundland and Labrador, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

Contractor will provide the entire portfolio of quality Automotive Parts to the Lead State, Participating States and Entities and local governmental agencies in a timely and efficient manner. Contractor will be the primary point of contact for data collection, reporting, and distribution of Automotive Parts to the Lead State and all other Participating States and Entities.

2. AGREEMENT TERM

The term of this Agreement is for a three (3) year period from the date of Master Agreement execution with the option to extend one (1) additional two (2) year period at the discretion of the Lead State. Extensions will be made by amendment to the Agreement at the same contracted discounts, terms and conditions.

3. RESPONSIBILITIES

A. Contractor shall meet all requirements identified in this Agreement.
B. Contractor will provide a Contract Manager in accordance with Exhibit A, Section 6.I.3 that will work with the Lead State Contract Administrator to fully implement and manage the Agreement.
C. Contractor will work closely with subcontractors (if applicable) to fully implement and manage this Agreement in accordance with Exhibit A, Section 6.I.1.
D. Contractor shall make available to the Lead State, technically competent personnel to accomplish the tasks and deliverables for the implementation and management of the Agreement.

E. Contractor shall promptly notify the Lead State Contract Administrator in writing of any unresolved issues or problems related to the Agreement that have been outstanding for more than five (5) business days.

4. REQUIREMENTS

A. Available Product Categories

Contractor shall provide products for Automotive Parts categories at the discount provided in Exhibit B, Category Discounts. Products outside the scope of categories listed in Exhibit B may not be purchased from the Master Agreement.

B. Electronic Catalog

Item	Description
1.	**Automotive Parts Electronic Catalog** Contractor shall develop and maintain an electronic catalog for use by Purchasing Entities. Contractor's electronic catalog must be separate from the Contractor's commercially available (i.e., public) online catalog and shall contain only category items and pricing as specified in the awarded Master Agreement. No other items or pricing may be shown in the electronic catalog without written approval from the Lead State Contract Administrator.
2.	**Electronic Catalog/Contract Website Contents** The Lead State Contract Administrator will review and determine acceptability of the electronic catalog format and data. The Electronic Catalog shall contain the following data elements at minimum: • Item descriptions • Contractor's stock keeping number (SKU) • Unit of measure (UOM) • Quantity in the UOM • List Price/MSRP • Master Agreement price • Quote generation (if applicable) • Publicly available OEM price lists (current and archives) Within 30 calendar days of notice of award, Contractor will be required to provide the Electronic Catalog for Lead State Contract Administrator approval.
3.	**Availability** The Electronic Catalog shall be available twenty-four (24) hours per day, seven (7) days per week, except for regularly scheduled maintenance

Item	Description
	times. Contractor shall not have any catalog viewing access restrictions for Participating States or Entities.

C. Pricing

Item	Description
1.	**Category Discounts** Master Agreement employs a discount-off Manufacturer Suggested Retail Price (MSRP) structure. Category discounts outlined in Exhibit B, Category Discounts, will remain firm for the entire term of the agreement, including extension periods. However, Contractors may offer lower pricing on a per order basis to Purchasing Entities. In the event a product falls into two or more categories the highest category discount will be applied.
2.	**Promotions** Contractor may offer promotional discounts, including but not limited to statewide promotional discounts, customer location specific discounts, bulk discounts, or spot discounts. During special pricing promotions, the Contractor shall offer Participating Entities the promotional pricing or the category discount percentage off MSRP, whichever is lower. Promotional pricing shall not be cause for a permanent change in pricing. Promotional items shall come with all benefits of the Master Agreement terms and conditions and shall include all provisions such as warranty and delivery.

D. Retail Sales Establishments

Item	Description
1.	**Retail Sales Establishments** Retail Sales Establishments are defined as any facilities that the Contractor uses on a regular basis to warehouse and/or sell merchandise, and at which the Contractor conducts regular business transactions at either the retail or wholesale level. Contractor facility should provide: • Walk-in and will-call order system during regular work hours. • Customer service associate to support walk-in and will-call order system. • Itemized sales receipts for all walk-in and will-call transactions.

Item	Description
	• Availability of delivery. • Acceptance of Purchasing Card. These facilities shall be operated in accordance with state law and comply with all zoning requirements as implemented by local, county or state governments. Examples of unacceptable retail sales establishments include houses, garages, or storage rental facilities. Contractor shall provide a list of authorized retail sales establishment locations to be used on this Master Agreement to the Lead State within 15 calendar days of notice of award. If Contractor is offering Retail Sales Establishments, Contractor shall ensure state agencies, local government agencies and other Participating Entities will receive Master Agreement pricing when purchasing items through Retail Sales Establishments.

E. Ordering

Item	Description
1.	**Ordering Methods** Contractor shall accept orders through the following methods: • **Electronic (email)** – An email address to be used by Purchasing Entities for placing orders must be in place before the commencement of this Master Agreement. • **Facsimile** – A toll-free facsimile number to be used by Purchasing Entities for placing orders must be in place before the commencement of this Master Agreement. Facsimile orders must be accepted between the hours of 8:00 AM and 5:00 PM, Monday through Friday in the time zone the order is placed. • **U.S. Mail** – Contractor must have the capability to receive orders by mail in place before the commencement of this Master Agreement. • **Over-the-counter/Walk-In** – Contractor shall provide over-the-counter order and delivery at all commercial locations. See Exhibit A, Section 6.D (Retail Sales Establishments). • **Online (internet)** – Contractor's Electronic Catalog website to be used by Purchasing Entities for placing orders must be in

Item	Description
	place before the commencement of this Master Agreement. See Exhibit A, Section 6.B (Electronic Catalog). Prior to contract award, Contractor shall provide the ordering information within five (5) business days of the Lead State's request.
2.	**Purchase Execution** California state agencies must submit orders on a Purchasing Authority Purchase Order (Std. 65) or using the FI$Cal Purchase Order process in accordance with posted User Instructions. Local government agencies and other Purchasing Entities may use their own approved Purchase Order document process as addressed in their Participating Addendum. Contractor shall not accept purchase documents from Purchasing Entities that are incomplete or contain items outside the scope of the Master Agreement.
3.	**Minimum Order (M)** There is no minimum order.
4.	**Order Acknowledgement** The Contractor must provide Purchasing Entities with an order receipt acknowledgment via e-mail/facsimile within one (1) business day after receipt of an order. The acknowledgement will include: • Purchasing Entity Name • Purchase Order Number • Description of Goods / SKUs • Total Cost • Anticipated Delivery Date • Identification of any Out of Stock/Discontinued Items
5.	**Out-of-Stock Remedy** Upon receipt of order acknowledgment identifying out of stock items, the Purchasing Entity shall have the following options: • Request back order • Cancel the item from the order Upon request, Contractor shall provide updates on back ordered items to the Purchasing Entity. Contractor is not permitted to make

Item	Description
	substitutions or cancellations without authorization from the Purchasing Entity.
6.	**Core Exchange/Charges** All parts supplied which require core exchange shall be monitored by the Contractor to ensure proper cores are returned. Core credit is to be issued the same day as received. Any core that is not usable or not returned shall be billed at the core price listed in the manufacturer's price sheet for that particular part.
7.	**Remanufactured Parts** Contractor may provide remanufactured parts when new parts are not available with authorization from the Purchasing Entity. Used, previously installed or shop-worn parts shall not be accepted.

F. Delivery

Item	Description
1.	**Delivery Locations** Deliveries are to be made to the Purchasing Entities' location specified on the individual order, which may include, but not be limited to inside buildings, high-rise office buildings, and receiving docks.
2.	**Delivery Schedule** Delivery of ordered product shall be completed within two (2) business days after receipt of an order, unless otherwise agreed to by the Purchasing Entity. Since receiving hours for each Purchasing Entity will vary by facility, it will be the Contractor's responsibility to check with each facility for their specific receiving hours before delivery occurs. Contractor must notify the Purchasing Entity within 12 hours of scheduled delivery time, if delivery cannot be made within the time frame specified on the order.
3.	**Delivery from Retail Sales Establishments** Delivery of standard in-stock items to locations within five (5) miles from company's retail business establishment shall be accomplished within 45 minutes. Delivery outside the five (5) mile range will be accomplished by a scheduled delivery.

Item	Description
4.	**Security Requirements for Institutions** Deliveries may be made to locations inside secure institutional grounds (such as state prisons) that require prior clearances to be made for delivery drivers. Contractor will be responsible for contacting the secure location for security clearance procedures, hours of operation for deliveries and service, dress code, and other rules of delivery. These security clearance procedures may vary from facility to facility. Deliveries that are delayed due to drivers not being cleared to enter institutional grounds may cause the contractor to be declared in default of contract requirements.
5.	**Free on Board (F.O.B.) Destination (Shipping Terms)** All prices offered shall be F.O.B. destination, freight prepaid by the Contractor, to the Purchasing Entity's final receiving point. Responsibility and liability for loss or damage for all orders shall remain with the Contractor until final inspection and acceptance, when all responsibility shall pass to the ordering organization, except the responsibility for latent defects, fraud, and the warranty obligations. All emergency or rush deliveries that require special shipping and handling should be at the ordering entities expense, with prior approval from the Purchasing Entity. Emergency or rush shipping charges shall be added to an invoice as a separate line item. In the event an emergency or rush delivery is required as the result of a Contractor's error; all shipping cost shall be paid by the Contractor.
6.	**Manufacturer Warranty** Contractor must honor all manufacturers' warranties and guarantees on all products offered as part of the Master Agreement. If a product warranty extends beyond the term of the Master Agreement, the Contractor must agree to provide warranty services throughout the life of the warranty. These parts must be warranted to be free of defective parts and workmanship, provided they are properly installed on the vehicle for which they were intended, for the time and mileage shown in the product literature or catalog. Statement of warranty is to be provided by Contractor with items delivered under this Master Agreement. For all items ordered, warranty begins on the date of delivery.

Item	Description
7.	**Return Policy** Items purchased under this Master Agreement may be returned at no cost for a full refund if item is unused, in its original packaging and within thirty (30) calendar days of delivery. All returns shall be picked up within seven (7) business days of notification. Notification is defined as notice in writing, by facsimile or e-mail.
8.	**Credit Policy** The Contractor shall offer a full credit/refund for the following items: • Items shipped in error • Defective or freight-damaged items • Items returned within 30 calendar days of delivery In all cases, the Purchasing Entity shall have the option of taking an exchange, receiving a credit, or receiving a refund. The Contractor will be responsible for the credit/refund or replacement of all products, including those covered by manufacturer warranties as stated in Exhibit A, Section 6.F.6, Warranty. Contractor cannot require the Purchasing Entity to deal directly with the manufacturer.
9.	**Product Recall Procedures** Contractor shall provide recall notification, regardless of level, in writing to the Lead State Contract Administrator and each applicable Purchasing Entity through the most expedient method possible. The notices, at a minimum, shall include a complete product description and/or identification, contract number, delivery order number and disposition instructions. Contractor agrees to use commercially reasonable efforts in identifying the applicable manufacturer in order that the Lead State and any Participating Entities or Purchasing Entities may work with such manufacturer to handle any applicable recall issues.

G. Invoicing and Payment

Item	Description
1.	**Invoices** Invoices shall be submitted to the Purchasing Entity within seven (7) calendar days from date of delivery. Invoices should include the following at a minimum: • Agency Order Number (Purchase Order Number) • Purchasing Entity Name • Delivery address of the order • Product(s) description • Manufacturer's product(s) number(s) • Quantities of merchandise issued • Price(s) per unit(s) and extended price • Date ordered • Date delivered • Listing of returns or back ordered items • Discounts (i.e. Cash Discounts, Prompt Payment • Totals for each order. Each invoice shall have a total for all orders, a total for all credits, and amount due from each agency • Any other mutually agreed upon requirements
2.	**Payment** California state agencies and local government agencies may pay by check, electronic funds transfer, or with the State of California purchase card (CAL-Card). Payments are to be made in accordance with paragraph 30 of the Lead State's General Provisions (Exhibit C). Purchasing Entities may pay by check, electronic funds transfer, or by a State Purchasing card (P-card). The Contractor will be solely responsible for the credit card user-handling fee associated with credit card purchases. Participating States and Entities may have their own payment terms which will be identified within individual Participating Addendums.
3.	**State of California CAL-Card Invoicing** For orders paid through CAL-Card, invoices are to be processed separately from other payment methods and submitted to the CAL-Card

Item	Description
	account holder. For additional information, visit the CAL-Card Program website (https://www.dgs.ca.gov/cal-card). The total invoice amount for each order paid by CAL-Card must reflect a zero balance due or credit, if applicable, and identified as "paid by CAL-Card".

H. Reporting

Item	Description
1.	**Usage Report (Lead State)** During the term of the Master Agreement, Contractor shall submit usage reports on a quarterly basis to the Lead State Contract Administrator for all California Purchasing Entity sales using the report template provided by the Lead State Contract Administrator. Usage Report will contain the following data elements at a minimum: • Ordering Agency Name • Agency Type (State/Local) • Purchase Order Number • Order Date • Category • Manufacturer Part Number (OEM #) • Item Description • Unit of Measure • Quantity • List Price/MSRP • Unit Price • Extended Price Paid • Catalog Version Date The Lead State Contract Administrator reserves the right to modify the reporting template and require Contractor to provide additional order information during the course of this Agreement. The report shall be an Excel spreadsheet transmitted electronically to PDCooperatives@dgs.ca.gov. The report is due even when there is no activity. Any report that does not follow the required format or that excludes information will be deemed incomplete. Contractor will be responsible for submitting corrected

Item	Description
	reports within five (5) business days of the date of written notification from the State. Tax must not be included in the report, even if it is on the purchase order. Reports are due by the 30th day following a calendar quarter. Failure to meet reporting requirements and submit the reports on a timely basis shall constitute grounds for suspension of the Master Agreement. Amendment for term extensions may be approved only if all quarterly reports due have been submitted to the Lead State. The Lead State Contract Administrator will provide the reporting template upon award.
2.	**Participating State/Entity Reporting** Contractor must provide usage reporting to Participating States and Entities as defined in the individual Participating Addendum.
3.	**NASPO ValuePoint Summary and Detail Usage Reports** Contractor shall submit specific summary and detailed usage reports directly to NASPO ValuePoint as set forth in Section V of the NASPO ValuePoint Master Agreement Terms (Exhibit D). The Lead State Contract Administrator will provide the Detail Usage Report template upon award.
4.	**Ad Hoc Reporting** Contractor shall have the ability to provide ad hoc reports at no cost to the Lead State. Upon written request, Contractor shall permit and provide access to all data that pertains to any procurement action taken by a Purchasing Entity or Participating Entity as a whole. The Lead State or Purchasing Entity may make copies of procurement data in any form and the use of such data shall not be restricted. Dependent on future reporting requirements, the Lead State may ask that certain reports become standard and delivered to the Lead State on a monthly or quarterly basis.
5.	**Lead State Administrative Fee** Contractor shall remit a quarterly Lead State administrative fee of 1.25 percent of all goods purchased by California Purchasing Entities for each reporting quarter. Prices submitted shall not reflect the California administrative fee. The Lead State administrative fee shall not be

Item	Description
	invoiced or charged to the ordering agency and is specific to California only. This fee will be due to the Lead State on the 30th day following the ending of the quarterly reporting period. Payment of the Lead State administrative fee is due irrespective of payment status on orders or service contracts from a Purchasing Entity.
6.	**NASPO ValuePoint Administrative Fee** Contractor shall remit a NASPO ValuePoint administrative fee as specified in Section V of the NASPO ValuePoint Master Agreement Terms (Exhibit D).
7.	**Participating Entity Administrative Fee** If a Participating Entity requires an administrative fee, each fee will be negotiated and articulated in the individual state's Participating Addendum.

I. Management and Customer Service

Item	Description
1.	**Contractor Responsibility** Contractor shall be responsible for successful contract performance of the Master Agreement and successful performance of any and all of their subcontractors. Contractor agrees to comply with requirements under the Master Agreement, even if requirements are delegated to subcontractors. All Lead State policies, guidelines, and requirements apply to subcontractors. The prime Contractor and subcontractor(s) shall not in any way represent themselves in the name of the Lead State without prior written approval. Furthermore, the Lead State will consider the prime Contractor to be the sole point of contact with regard to contractual matters, payments, warranty issues, for the term of the Master Agreement and any extensions. Use of subcontractors will be addressed within each state's Participating Addendum.

Item	Description
2.	**Lead State Contract Administrator** The Lead State Contract Administrator will be the contact person for issues relating to the Master Agreement. Any modifications to the requirements contained in the Master Agreement may only be authorized by the State Contract Administrator or his/her designee through Master Agreement Amendment.
3.	**Contractor Contract Manager** Contractor will assign a contact person for contract management purposes. The Contractor Contract Manager must be authorized to make decisions on behalf of the Contractor.
4.	**Changes in Contract Manager** Contractor must notify the Lead State Contract Administrator of Contractor Contract Manager changes in writing within 10 calendar days of the change.
5.	**Contractor Name Change** An amendment is required to change the Contractor's name as listed on this agreement. Contractor shall notify the Lead State of any name change. Upon receipt of legal documentation of the name change the Lead State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
6.	**Customer Service Unit** Contractor will have a customer service unit that supports this Master Agreement. The customer service unit shall provide office and personnel resources for responding to inquiries, including telephone and email coverage weekdays during business hours. The customer service unit shall be staffed with individuals that: • Are trained in the requirements of this contract • Have the authority to take administrative action to correct problems that may occur • Are designated for training and general customer service follow-up Contractor shall respond to customer inquiries within one (1) business day of initial contact. Prior to Master Agreement award, Contractor shall provide customer service information to the Lead State within five (5) business days of written request.

J. Transition / End of Agreement

Item	Description
1.	**Transition Plan at End of Contract** Contractor agrees that at the end of this Master Agreement, should the Lead State conduct another procurement and award a new Master Agreement, the Contractor will work with the Lead State Contract Administrator, if requested to ensure that an efficient and effective transition takes place. Upon termination or expiration of the Master Agreement the following will occur: • All on-line offering systems and Electronic Catalog functions supported and/or available as part of the Master Agreement will cease and be removed from public viewing access without redirecting to another website. • Customer data/user accounts acquired during the term of the contract shall be destroyed or returned to the Lead State at the request of the Lead State Contract Administrator. • No references to the Master Agreement shall be made after contract end on the Contractor's commercial website without permission by the State Contract Administrator. • All invoicing disputes and/or order tracking will be conducted through the Contractor's Customer Service Unit via telephone or email.

K. Environmentally Preferable Purchasing

The following requirements are specific to the State of California and may be incorporated within Participating Addenda at the Participating Entity's discretion.

Item	Description
1.	**Environmentally Preferable Purchasing (EPP)** California Department of General Services is responsible for the implementation of EPP as mandated by the California Public Contract Code (PCC), Chapter 6, sections 12400-12404. Contractor certifies the products or services offered comply with the Federal Trade Commission's Guidelines for the Use of Environmental Marketing Terms (PCC Section 12404).
2.	**Post-Consumer Recycled Content (PCRC) Certification** California state agencies are required to report purchases made within eleven (11) product categories in the California Department of Resources Recycling and Recovery's (CalRecycle), State Agency Buy Recycled

Item	Description
	Campaign (SABRC) in accordance with Public Contract Code sections 12200-12217.In order to comply with those requirements, Contractor will be required to certify in writing the minimum percentage, if not the exact percentage, of post-consumer recycled content (PCRC) material in each of the products ordered, upon request.
3.	**Green Product Marking and Labeling** Contractor shall identify products that possess third party environmental certifications on the Electronic Catalog.
4.	**Wheel Weights** California law prohibits the manufacture, sale, or installation of wheel weights containing more than 0.1% lead. California Health and Safety Code Section 25215.6-25215.7 (https://codes.findlaw.com/ca/health-and-safety-code/hsc-sect-25215-6.html).
5.	**Mercury Containing Products** A person cannot sell or distribute for promotional purposes, in California, certain types of new or refurbished products and devices that contain mercury. This law can be found in Health and Safety Code, Division 20, Chapter 6.5; Mercury-Added Thermostats, Relays, Switches, and Measuring Devices (Sections 25214.8.1-25214.8.6). (https://codes.findlaw.com/ca/health-and-safety-code/hsc-sect-25214-8-4.html).
6.	**Consumer Products** Contractor may not sell, supply, offer for sale, or manufacture for sale in California consumer products that do not comply with the Consumer Products Regulatory Program, whose aim is to reduce the amount of volatile organic compounds (VOCs), toxic air contaminants (TACs), and greenhouse gases (GHGs) that are emitted from using chemically formulated consumer products. Background information including enforcement of the program can be found at: https://ww2.arb.ca.gov/our-work/programs/consumer-products-program/about. Regulations for the program can be found in Article 2: Regulation for Reducing Emissions from Consumer Products, commonly referred to as the General Consumer Products Regulation.
7.	**Brake Friction Material** All motor vehicle brake friction materials sold in California must meet the requirements as identified in California Health and Safety Code Section 25250.51 (Source: https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/07/Final_regulation_language_10032016.pdf).

EXHIBIT B: CATEGORY DISCOUNTS

Category	Description	Percent Discount Off MSRP
1	Air Conditioning	60%
2	Alternators and Starters	60%
3	Batteries	60%
4	Bearings, Ball and Roller	60%
5	Belts and Hoses	60%
6	Brakes	60%
7	Electrical and Ignition	60%
8	Emission, Sensors and Exhaust	60%
9	Engine and Drive Train	60%
10	Filters, Oil, Gas, Air and Transmission	60%
11	Gaskets and Seals	60%
12	Heating and Cooling (Engine)	60%
13	Lamps, Lighting and Mirrors	60%
14	Oils, Chemicals, Fluids and Lubricants	60%
15	Pumps, Fuel and Water	60%
16	Suspension, Shocks, Struts and Steering	60%
17	Wipers/Washers	60%
18	Winter Accessories	50%
19	General Automotive Parts (Aftermarket Automotive Parts not included in Categories 1-18.)	60%
20	Automotive Repair Shop Supplies and Equipment/Tools (e.g., cleaning supplies, wrenches, etc.)	35%

EXHIBIT C: LEAD STATE GENERAL PROVISIONS

Non-IT General Provisions (6/8/2010) is hereby incorporated by reference and made part of this agreement as if attached hereto. This document can be viewed at: https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Model-Contract-Language

These terms are applicable for State of California purchases only.

EXHIBIT D: NASPO VALUEPOINT MASTER AGREEMENT TERMS

I. Definitions

1.1 **Acceptance** means acceptance of goods and services as set forth in Section IX of this Master Agreement.

1.2 **Contractor** means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.

1.3 **Embedded Software** means one or more software applications which permanently reside on a computing device.

1.4 **Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

1.5 **Lead State** means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.

1.6 **Master Agreement** means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.

1.7 **NASPO ValuePoint** is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) limited liability company. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.

1.8 **Order** or **Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

1.9 **Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (*e.g.*, ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).

1.10 **Participating Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.

1.11 **Participating State** means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.

1.12 **Product** or **Products and Services** means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Product includes goods and services.

1.13 **Purchasing Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

II. Term of Master Agreement

2.1 **Initial Term.** The initial term and extension options for this Master Agreement is listed in Section 2 of Exhibit A, Scope of Work.

2.2 **Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

2.3 **Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

III. Order of Precedence

3.1 **Order.** The following order of precedence shall apply for Orders executed by Purchasing Entities:

3.1.1 A Participating Entity's Participating Addendum ("PA");

3.1.2 NASPO ValuePoint Master Agreement, including all attachments thereto;

3.1.3 A Purchase Order issued against the Master Agreement;

3.1.4 The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;

3.1.5 Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

3.2 **Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

3.3 Participating Addenda. Participating Addenda will not be construed to dimmish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement.

IV. Participants and Scope

4.1 Requirement for a Participating Addendum. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.

4.2 Applicability of Master Agreement. NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum, subject to Section III. For the purposes of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (*e.g.*, purchase order or contract) used by the Purchasing Entity to place the Order.

4.3 Authorized Use. Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities is subject to applicable state law and the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

4.4 Obligated Entities. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.

4.5 Notice of Participating Addendum. Contractor shall email a fully executed PDF copy of each Participating Addendum to pa@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.

4.6 Eligibility for a Participating Addendum. Eligible entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent of the Chief Procurement Official of the state where the entity is located. Entities should coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists; the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.

4.7 Prohibition on Resale. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

4.8 Individual Customers. Except as may otherwise be agreed to by the Purchasing Entity and Contractor, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement and as the Participating Entity has in the Participating Addendum, including but not limited to any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

4.9 Release of Information. Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.

4.10 No Representations. The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

V. NASPO ValuePoint Provisions

5.1 Applicability. NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section V are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.

5.2 Administrative Fees

5.2.1 NASPO ValuePoint Fee. Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with a vendor's response to the Lead State's solicitation.

5.2.2 State Imposed Fees. Some states may require an additional fee be paid directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee rate or amount, payment method and schedule for such reports and payments will be incorporated into the applicable Participating Addendum. Unless agreed to in writing by the state, Contractor may not adjust the Master Agreement pricing to include the state fee for purchases made by Purchasing Entities within the jurisdiction of the state. No such agreement will affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

5.3 NASPO ValuePoint Summary and Detailed Usage Reports

5.3.1 Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at http://calculator.naspovaluepoint.org. All sales made under this Master Agreement must be reported as cumulative totals by state. Contractor must submit a report for each quarter, including quarters during which a Contractor has no sales, in which case this will be indicated in the Reporting Tool. Reports must be submitted no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

5.3.2 Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, *e.g.* local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and

line item description, including product number if used. The report must be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days following the end of the calendar quarter. Reports must be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports must include sales information for all sales under Participating Addenda executed under this Master Agreement.

5.3.3 Reporting on Personal Use. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity ((state and agency, city, county, school district, etc.) under whose authority the employee is purchasing Product for personal use and the amount of sales. No personal identification numbers (*e.g.*, names, addresses, **social security numbers or any other numerical identifier)** may be submitted with any report.

5.3.4 Executive Summary. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

5.3.5 Use of Data. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports will have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

5.4 NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review

5.4.1 Staff Education. Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of

NASPO ValuePoint procurements, the master agreement and participating addendum process, and the manner in which eligible entities can participate in the Master Agreement.

5.4.2 Onboarding Plan. Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.

5.4.3 Annual Contract Performance Review. Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.

5.4.4 Use of NASPO ValuePoint Logo. The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.

5.4.5 Most Favored Customer. Contractor shall, within thirty (30) days of their effective date, notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions provided to another competing cooperative. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

5.5 Cancellation. In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Master Agreement or not exercise an option to renew, when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two (2) years after execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.

5.6 Canadian Participation. Subject to the approval of Contractor, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest Territories, Nunavut, or Yukon, including municipalities,

universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

5.7 Additional Agreement with NASPO. Upon request by NASPO ValuePoint, awarded Contractor shall enter into a direct contractual relationship with NASPO ValuePoint related to Contractor's obligations to NASPO ValuePoint under the terms of the Master Agreement, the terms of which shall be the same or similar (and not less favorable) than the terms set forth in the Master Agreement.

VI. Pricing, Payment & Leasing

6.1 Pricing. The discounts contained in this Master Agreement represent the minimum discount to any Purchasing Entity.

6.1.1 All discounts must be guaranteed for the entire term of the Master Agreement, including extension years.

6.2 Payment. Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within forty-five (45) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.

6.3 Leasing or Alternative Financing Methods. The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

VII. Ordering

7.1 Order Numbers. Master Agreement, Participating Addendum, and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.

7.2 Quotes. Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be

solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.

7.3 Applicable Rules. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

7.4 Required Documentation. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

7.5 Term of Purchase. Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.

7.5.1 Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.

7.5.2 Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.

7.5.3 Financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

7.5.4 Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement's terms.

7.5.5 Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

7.6 Order Form Requirements. All Orders pursuant to this Master Agreement, at a minimum, must include:

7.6.1 The services or supplies being delivered;

7.6.2 A shipping address and other delivery requirements, if any;

7.6.3 A billing address;

7.6.4 Purchasing Entity contact information;

7.6.5 Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;

7.6.6 A not-to-exceed total for the products or services being ordered; and

7.6.7 The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.

7.7 Communication. All communications concerning administration of Orders placed must be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

7.8 Contract Provisions for Orders Utilizing Federal Funds. Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

VIII. Shipping and Delivery

8.1 Shipping Terms. All deliveries will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor.

8.1.1 Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor's until final inspection and acceptance when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations.

8.2 Minimum Shipping. The minimum shipment amount, if any, must be contained in the Master Agreement. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered will be shipped without charge.

8.3 Inside Deliveries. To the extent applicable, all deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to a location other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Costs to repair any damage to the building interior (*e.g.*, scratched walls, damage to the freight elevator, etc.) caused by Contractor or Contractor's carrier will be the responsibility of the Contractor. Immediately upon becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.

8.4 Packaging. All products must be delivered in the manufacturer's standard package. Costs must include all packing and/or crating charges. Cases must be of durable construction, in good condition, properly labeled and suitable in every respect for storage and handling of contents. Each

shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

IX. Inspection and Acceptance

9.1 Laws and Regulations. Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.

9.2 Applicability. Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section IX will apply. This section is not intended to limit rights and remedies under the applicable commercial code.

9.3 Inspection. All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.

9.3.1 Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.

9.3.2 Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

9.4 Failure to Conform. If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect the reduced value of services performed.

9.5 Acceptance Testing. Purchasing Entity may establish a process, in keeping with industry standards, to ascertaining whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.

9.5.1 The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.

9.5.2 If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.

9.5.3 Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.

9.5.4 Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section.

9.5.5 No Product will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

X. Warranty

10.1 Applicability. Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section X will apply.

10.2 Warranty. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects.

10.3 Breach of Warranty. Upon breach of the warranty set forth above, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made.

10.4 Rights Reserved. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

10.5 Warranty Period Start Date. The warranty period will begin upon Acceptance, as set forth in Section IX.

XI. Product Title

11.1 Conveyance of Title. Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests.

11.2 Embedded Software. Transfer of title to the Product must include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

11.3 License of Pre-Existing Intellectual Property. Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third-party rights in the Pre-existing Intellectual Property.

XII. Indemnification

12.1 General Indemnification. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from any act, error, or omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement.

12.2 Intellectual Property Indemnification. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use infringes Intellectual Property rights of another person or entity ("Intellectual Property Claim").

12.2.1 The Contractor's obligations under this section will not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

12.2.1.1 provided by the Contractor or the Contractor's subsidiaries or affiliates;

12.2.1.2 specified by the Contractor to work with the Product;

12.2.1.3 reasonably required to use the Product in its intended manner, and the infringement could not have been

avoided by substituting another reasonably available product, system or method capable of performing the same function; or

12.2.1.4 reasonably expected to be used in combination with the Product.

12.2.2 The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.

12.2.3 The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.

12.2.4 Unless otherwise set forth herein, Section 12.2 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

XIII. Insurance

13.1 **Term.** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in their Participating Addendum.

13.2 **Class.** Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

13.3 **Coverage.** Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:

13.3.1 Contractor shall maintain Commercial General Liability insurance covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than $1 million per occurrence and $2 million general aggregate;

13.3.2 Contractor shall maintain motor vehicle liability with limits not less than $1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired, and non-owned motor vehicles.

13.3.3 Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

13.4 Notice of Cancellation. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

13.5 Notice of Endorsement. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.

13.6 Participating Entities. Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in Section XIII, except the endorsement is provided to the applicable Participating State or Participating Entity.

13.7 Furnishing of Certificates. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

13.8 Disclaimer. Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

XIV. General Provisions

14.1 Records Administration and Audit

14.1.1 The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as will adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right will survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Master Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

14.1.2 Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

14.1.3 The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement that requires the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

14.2 Confidentiality, Non-Disclosure, and Injunctive Relief

14.2.1 **Confidentiality.** Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients.

14.2.1.1 Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is

confidential information of Purchasing Entity ("Confidential Information").

14.2.1.2 Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information.

14.2.1.3 Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity; or (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

14.2.2 Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement.

14.2.2.1 Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.

14.2.2.2 Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.

14.2.2.3 Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.

14.2.2.4 Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of the performance of this Master Agreement.

14.2.3 **Injunctive Relief.** Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be inadequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

14.2.4 **Purchasing Entity Law.** These provisions will be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

14.2.5 **NASPO ValuePoint.** The rights granted to Purchasing Entities and Contractor's obligations under this section will also extend to NASPO ValuePoint's Confidential Information, including but not limited to Participating Addenda, Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line-item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

14.2.6 **Public Information.** This Master Agreement and all related documents are subject to disclosure pursuant to the Lead State's public information laws.

14.3 Assignment/Subcontracts

14.3.1 Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

14.3.2 The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties, to NASPO ValuePoint and other third parties.

14.4 Changes in Contractor Representation. The Contractor must, within ten (10) calendar days, notify the Lead State in writing of any changes in the Contractor's key administrative personnel managing the Master Agreement. The Lead State reserves the right to approve or reject changes in key personnel, as identified in the Contractor's proposal. The Contractor shall propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

14.5 Independent Contractor. Contractor is an independent contractor. Contractor has no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and shall not to hold itself out as agent except as expressly set forth herein or as expressly set forth in an applicable Participating Addendum or Order.

14.6 Cancellation. Unless otherwise set forth herein, this Master Agreement may be canceled by either party upon sixty (60) days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision will not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

14.7 Force Majeure. Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or acts of war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement upon determining such delay or default will reasonably prevent successful performance of the Master Agreement.

14.8 Defaults and Remedies

14.8.1 The occurrence of any of the following events will be an event of default under this Master Agreement:

14.8.1.1 Nonperformance of contractual requirements;
14.8.1.2 A material breach of any term or condition of this Master Agreement;
14.8.1.3 Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading;
14.8.1.4 Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
14.8.1.5 Any default specified in another section of this Master Agreement.

14.8.2 Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of fifteen (15) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure will not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

14.8.3 If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:
14.8.3.1 Any remedy provided by law;
14.8.3.2 Termination of this Master Agreement and any related Contracts or portions thereof;
14.8.3.3 Assessment of liquidated damages as provided in this Master Agreement;
14.8.3.4 Suspension of Contractor from being able to respond to future bid solicitations;
14.8.3.5 Suspension of Contractor's performance; and
14.8.3.6 Withholding of payment until the default is remedied.

14.8.4 Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and

remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

14.9 Waiver of Breach. Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies will not operate as a waiver under this Master Agreement, any Participating Addendum, or any Purchase Order. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order will not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, any Participating Addendum, or any Purchase Order.

14.10 Debarment. The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in public procurement or contracting by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

14.11 No Waiver of Sovereign Immunity

14.11.1 In no event will this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

14.11.2 This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of

immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

14.12 Governing Law and Venue

14.12.1 The procurement, evaluation, and award of the Master Agreement will be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award will be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement will be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's state.

14.12.2 Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the state serving as Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement will be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum will be in the Purchasing Entity's state.

14.12.3 If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

14.13 Assignment of Antitrust Rights. Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT - AMENDMENT

SCO ID: 7760-721994103-A1

STD 213A (Rev. 4/2020)

☒ CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 40 PAGES

AGREEMENT NUMBER	AMENDMENT NUMBER	Purchasing Authority Number
7-21-99-41-03	1	

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME
Department of General Services

CONTRACTOR NAME
Parts Authority, LLC

2. The term of this Agreement is:

START DATE
October 22, 2021

THROUGH END DATE
October 19, 2026

3. The maximum amount of this Agreement after this Amendment is:
$0.00

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

A. Agreement end date is extended from October 19, 2024, to October 19, 2026.

B. Exhibit A - Scope of Work is revised to update website link in Section 4.K.7 (Brake Friction Material) and add Section 4.L (Generative Artificial Intelligence (GenAI) Reporting). Exhibits A - D are hereby replaced with attached Exhibit A - D (40 pages).

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)
Parts Authority, LLC

CONTRACTOR BUSINESS ADDRESS	CITY	STATE	ZIP
3 Dakota Dr Ste 110,	New Hyde Park	NY	11042

PRINTED NAME OF PERSON SIGNING	TITLE
Dave LaBarre	Gov't Sales Manager

CONTRACTOR AUTHORIZED SIGNATURE	DATE SIGNED
Dave Labarre Digitally signed by Dave Labarre Date: 2024.08.28 08:22:18 -04'00'	8/28/2024

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME
Department of General Services, Procurement Division

CONTRACTING AGENCY ADDRESS	CITY	STATE	ZIP
707 Third Street, 2nd Floor	West Sacramento	CA	95605

PRINTED NAME OF PERSON SIGNING	TITLE
Julie Matthews	MAU2 Supervisor

CONTRACTING AGENCY AUTHORIZED SIGNATURE	DATE SIGNED
Julie Matthews Digitally signed by Julie Matthews Date: 2024.09.06 17:26:02 -07'00'	09/06/2024

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL	EXEMPTION (If Applicable)

EXHIBIT A: SCOPE OF WORK

1. AGREEMENT OVERVIEW

This Scope of Work reflects the products and supplies to be provided by Parts Authority, LLC hereinafter referred to as the "Contractor," for the State of California hereinafter referred to as the "Lead State" and all other Participating States and Entities, for the Automotive Parts Master Agreement ("Agreement" or "Master Agreement").

Contractor shall permit State of California agencies, California local governmental agencies and NASPO ValuePoint Participating States and Entities to participate under this Master Agreement. Subject to the approval of the Contractor, any Canadian provincial government or provincially funded entity in Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta, Northwest Territories, Nunavut, Yukon, and Newfoundland and Labrador, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

Contractor will provide the entire portfolio of quality Automotive Parts to the Lead State, Participating States and Entities and local governmental agencies in a timely and efficient manner. Contractor will be the primary point of contact for data collection, reporting, and distribution of Automotive Parts to the Lead State and all other Participating States and Entities.

2. AGREEMENT TERM

The term of this Agreement is for a three (3) year period from the date of Master Agreement execution with the option to extend one (1) additional two (2) year period at the discretion of the Lead State. Extensions will be made by amendment to the Agreement at the same contracted discounts, terms and conditions.

3. RESPONSIBILITIES

A. Contractor shall meet all requirements identified in this Agreement.
B. Contractor will provide a Contract Manager in accordance with Exhibit A, Section 6.I.3 that will work with the Lead State Contract Administrator to fully implement and manage the Agreement.
C. Contractor will work closely with subcontractors (if applicable) to fully implement and manage this Agreement in accordance with Exhibit A, Section 6.I.1.
D. Contractor shall make available to the Lead State, technically competent personnel to accomplish the tasks and deliverables for the implementation and management of the Agreement.

E. Contractor shall promptly notify the Lead State Contract Administrator in writing of any unresolved issues or problems related to the Agreement that have been outstanding for more than five (5) business days.

4. REQUIREMENTS

A. Available Product Categories

Contractor shall provide products for Automotive Parts categories at the discount provided in Exhibit B, Category Discounts. Products outside the scope of categories listed in Exhibit B may not be purchased from the Master Agreement.

B. Electronic Catalog

Item	Description
1.	**Automotive Parts Electronic Catalog** Contractor shall develop and maintain an electronic catalog for use by Purchasing Entities. Contractor's electronic catalog must be separate from the Contractor's commercially available (i.e., public) online catalog and shall contain only category items and pricing as specified in the awarded Master Agreement. No other items or pricing may be shown in the electronic catalog without written approval from the Lead State Contract Administrator.
2.	**Electronic Catalog/Contract Website Contents** The Lead State Contract Administrator will review and determine acceptability of the electronic catalog format and data. The Electronic Catalog shall contain the following data elements at minimum: • Item descriptions • Contractor's stock keeping number (SKU) • Unit of measure (UOM) • Quantity in the UOM • List Price/MSRP • Master Agreement price • Quote generation (if applicable) • Publicly available OEM price lists (current and archives) Within 30 calendar days of notice of award, Contractor will be required to provide the Electronic Catalog for Lead State Contract Administrator approval.
3.	**Availability** The Electronic Catalog shall be available twenty-four (24) hours per day, seven (7) days per week, except for regularly scheduled maintenance

Item	Description
	times. Contractor shall not have any catalog viewing access restrictions for Participating States or Entities.

C. Pricing

Item	Description
1.	**Category Discounts** Master Agreement employs a discount-off Manufacturer Suggested Retail Price (MSRP) structure. Category discounts outlined in Exhibit B, Category Discounts, will remain firm for the entire term of the agreement, including extension periods. However, Contractors may offer lower pricing on a per order basis to Purchasing Entities. In the event a product falls into two or more categories the highest category discount will be applied.
2.	**Promotions** Contractor may offer promotional discounts, including but not limited to statewide promotional discounts, customer location specific discounts, bulk discounts, or spot discounts. During special pricing promotions, the Contractor shall offer Participating Entities the promotional pricing or the category discount percentage off MSRP, whichever is lower. Promotional pricing shall not be cause for a permanent change in pricing. Promotional items shall come with all benefits of the Master Agreement terms and conditions and shall include all provisions such as warranty and delivery.

D. Retail Sales Establishments

Item	Description
1.	**Retail Sales Establishments** Retail Sales Establishments are defined as any facilities that the Contractor uses on a regular basis to warehouse and/or sell merchandise, and at which the Contractor conducts regular business transactions at either the retail or wholesale level. Contractor facility should provide: • Walk-in and will-call order system during regular work hours. • Customer service associate to support walk-in and will-call order system. • Itemized sales receipts for all walk-in and will-call transactions.

Item	Description
	• Availability of delivery. • Acceptance of Purchasing Card. These facilities shall be operated in accordance with state law and comply with all zoning requirements as implemented by local, county or state governments. Examples of unacceptable retail sales establishments include houses, garages, or storage rental facilities. Contractor shall provide a list of authorized retail sales establishment locations to be used on this Master Agreement to the Lead State within 15 calendar days of notice of award. If Contractor is offering Retail Sales Establishments, Contractor shall ensure state agencies, local government agencies and other Participating Entities will receive Master Agreement pricing when purchasing items through Retail Sales Establishments.

E. Ordering

Item	Description
1.	**Ordering Methods** Contractor shall accept orders through the following methods: • **Electronic (email)** – An email address to be used by Purchasing Entities for placing orders must be in place before the commencement of this Master Agreement. • **Facsimile** – A toll-free facsimile number to be used by Purchasing Entities for placing orders must be in place before the commencement of this Master Agreement. Facsimile orders must be accepted between the hours of 8:00 AM and 5:00 PM, Monday through Friday in the time zone the order is placed. • **U.S. Mail** – Contractor must have the capability to receive orders by mail in place before the commencement of this Master Agreement. • **Over-the-counter/Walk-In** – Contractor shall provide over-the-counter order and delivery at all commercial locations. See Exhibit A, Section 6.D (Retail Sales Establishments). • **Online (internet)** – Contractor's Electronic Catalog website to be used by Purchasing Entities for placing orders must be in

Item	Description
	place before the commencement of this Master Agreement. See Exhibit A, Section 6.B (Electronic Catalog). Prior to contract award, Contractor shall provide the ordering information within five (5) business days of the Lead State's request.
2.	**Purchase Execution** California state agencies must submit orders on a Purchasing Authority Purchase Order (Std. 65) or using the FI$Cal Purchase Order process in accordance with posted User Instructions. Local government agencies and other Purchasing Entities may use their own approved Purchase Order document process as addressed in their Participating Addendum. Contractor shall not accept purchase documents from Purchasing Entities that are incomplete or contain items outside the scope of the Master Agreement.
3.	**Minimum Order (M)** There is no minimum order.
4.	**Order Acknowledgement** The Contractor must provide Purchasing Entities with an order receipt acknowledgment via e-mail/facsimile within one (1) business day after receipt of an order. The acknowledgement will include: • Purchasing Entity Name • Purchase Order Number • Description of Goods / SKUs • Total Cost • Anticipated Delivery Date • Identification of any Out of Stock/Discontinued Items
5.	**Out-of-Stock Remedy** Upon receipt of order acknowledgment identifying out of stock items, the Purchasing Entity shall have the following options: • Request back order • Cancel the item from the order Upon request, Contractor shall provide updates on back ordered items to the Purchasing Entity. Contractor is not permitted to make

Item	Description
	substitutions or cancellations without authorization from the Purchasing Entity.
6.	**Core Exchange/Charges** All parts supplied which require core exchange shall be monitored by the Contractor to ensure proper cores are returned. Core credit is to be issued the same day as received. Any core that is not usable or not returned shall be billed at the core price listed in the manufacturer's price sheet for that particular part.
7.	**Remanufactured Parts** Contractor may provide remanufactured parts when new parts are not available with authorization from the Purchasing Entity. Used, previously installed or shop-worn parts shall not be accepted.

F. Delivery

Item	Description
1.	**Delivery Locations** Deliveries are to be made to the Purchasing Entities' location specified on the individual order, which may include, but not be limited to inside buildings, high-rise office buildings, and receiving docks.
2.	**Delivery Schedule** Delivery of ordered product shall be completed within two (2) business days after receipt of an order, unless otherwise agreed to by the Purchasing Entity. Since receiving hours for each Purchasing Entity will vary by facility, it will be the Contractor's responsibility to check with each facility for their specific receiving hours before delivery occurs. Contractor must notify the Purchasing Entity within 12 hours of scheduled delivery time, if delivery cannot be made within the time frame specified on the order.
3.	**Delivery from Retail Sales Establishments** Delivery of standard in-stock items to locations within five (5) miles from company's retail business establishment shall be accomplished within 45 minutes. Delivery outside the five (5) mile range will be accomplished by a scheduled delivery.

Item	Description
4.	**Security Requirements for Institutions** Deliveries may be made to locations inside secure institutional grounds (such as state prisons) that require prior clearances to be made for delivery drivers. Contractor will be responsible for contacting the secure location for security clearance procedures, hours of operation for deliveries and service, dress code, and other rules of delivery. These security clearance procedures may vary from facility to facility. Deliveries that are delayed due to drivers not being cleared to enter institutional grounds may cause the contractor to be declared in default of contract requirements.
5.	**Free on Board (F.O.B.) Destination (Shipping Terms)** All prices offered shall be F.O.B. destination, freight prepaid by the Contractor, to the Purchasing Entity's final receiving point. Responsibility and liability for loss or damage for all orders shall remain with the Contractor until final inspection and acceptance, when all responsibility shall pass to the ordering organization, except the responsibility for latent defects, fraud, and the warranty obligations. All emergency or rush deliveries that require special shipping and handling should be at the ordering entities expense, with prior approval from the Purchasing Entity. Emergency or rush shipping charges shall be added to an invoice as a separate line item. In the event an emergency or rush delivery is required as the result of a Contractor's error; all shipping cost shall be paid by the Contractor.
6.	**Manufacturer Warranty** Contractor must honor all manufacturers' warranties and guarantees on all products offered as part of the Master Agreement. If a product warranty extends beyond the term of the Master Agreement, the Contractor must agree to provide warranty services throughout the life of the warranty. These parts must be warranted to be free of defective parts and workmanship, provided they are properly installed on the vehicle for which they were intended, for the time and mileage shown in the product literature or catalog. Statement of warranty is to be provided by Contractor with items delivered under this Master Agreement. For all items ordered, warranty begins on the date of delivery.

Item	Description
7.	**Return Policy** Items purchased under this Master Agreement may be returned at no cost for a full refund if item is unused, in its original packaging and within thirty (30) calendar days of delivery. All returns shall be picked up within seven (7) business days of notification. Notification is defined as notice in writing, by facsimile or e-mail.
8.	**Credit Policy** The Contractor shall offer a full credit/refund for the following items: • Items shipped in error • Defective or freight-damaged items • Items returned within 30 calendar days of delivery In all cases, the Purchasing Entity shall have the option of taking an exchange, receiving a credit, or receiving a refund. The Contractor will be responsible for the credit/refund or replacement of all products, including those covered by manufacturer warranties as stated in Exhibit A, Section 6.F.6, Warranty. Contractor cannot require the Purchasing Entity to deal directly with the manufacturer.
9.	**Product Recall Procedures** Contractor shall provide recall notification, regardless of level, in writing to the Lead State Contract Administrator and each applicable Purchasing Entity through the most expedient method possible. The notices, at a minimum, shall include a complete product description and/or identification, contract number, delivery order number and disposition instructions. Contractor agrees to use commercially reasonable efforts in identifying the applicable manufacturer in order that the Lead State and any Participating Entities or Purchasing Entities may work with such manufacturer to handle any applicable recall issues.

G. Invoicing and Payment

Item	Description
1.	**Invoices** Invoices shall be submitted to the Purchasing Entity within seven (7) calendar days from date of delivery. Invoices should include the following at a minimum: • Agency Order Number (Purchase Order Number) • Purchasing Entity Name • Delivery address of the order • Product(s) description • Manufacturer's product(s) number(s) • Quantities of merchandise issued • Price(s) per unit(s) and extended price • Date ordered • Date delivered • Listing of returns or back ordered items • Discounts (i.e. Cash Discounts, Prompt Payment • Totals for each order. Each invoice shall have a total for all orders, a total for all credits, and amount due from each agency • Any other mutually agreed upon requirements
2.	**Payment** California state agencies and local government agencies may pay by check, electronic funds transfer, or with the State of California purchase card (CAL-Card). Payments are to be made in accordance with paragraph 30 of the Lead State's General Provisions (Exhibit C). Purchasing Entities may pay by check, electronic funds transfer, or by a State Purchasing card (P-card). The Contractor will be solely responsible for the credit card user-handling fee associated with credit card purchases. Participating States and Entities may have their own payment terms which will be identified within individual Participating Addendums.
3.	**State of California CAL-Card Invoicing** For orders paid through CAL-Card, invoices are to be processed separately from other payment methods and submitted to the CAL-Card

Item	Description
	account holder. For additional information, visit the CAL-Card Program website (https://www.dgs.ca.gov/cal-card). The total invoice amount for each order paid by CAL-Card must reflect a zero balance due or credit, if applicable, and identified as "paid by CAL-Card".

H. Reporting

Item	Description
1.	**Usage Report (Lead State)** During the term of the Master Agreement, Contractor shall submit usage reports on a quarterly basis to the Lead State Contract Administrator for all California Purchasing Entity sales using the report template provided by the Lead State Contract Administrator. Usage Report will contain the following data elements at a minimum: • Ordering Agency Name • Agency Type (State/Local) • Purchase Order Number • Order Date • Category • Manufacturer Part Number (OEM #) • Item Description • Unit of Measure • Quantity • List Price/MSRP • Unit Price • Extended Price Paid • Catalog Version Date The Lead State Contract Administrator reserves the right to modify the reporting template and require Contractor to provide additional order information during the course of this Agreement. The report shall be an Excel spreadsheet transmitted electronically to PDCooperatives@dgs.ca.gov. The report is due even when there is no activity. Any report that does not follow the required format or that excludes information will be deemed incomplete. Contractor will be responsible for submitting corrected

Item	Description
	reports within five (5) business days of the date of written notification from the State. Tax must not be included in the report, even if it is on the purchase order. Reports are due by the 30th day following a calendar quarter. Failure to meet reporting requirements and submit the reports on a timely basis shall constitute grounds for suspension of the Master Agreement. Amendment for term extensions may be approved only if all quarterly reports due have been submitted to the Lead State. The Lead State Contract Administrator will provide the reporting template upon award.
2.	**Participating State/Entity Reporting** Contractor must provide usage reporting to Participating States and Entities as defined in the individual Participating Addendum.
3.	**NASPO ValuePoint Summary and Detail Usage Reports** Contractor shall submit specific summary and detailed usage reports directly to NASPO ValuePoint as set forth in Section V of the NASPO ValuePoint Master Agreement Terms (Exhibit D). The Lead State Contract Administrator will provide the Detail Usage Report template upon award.
4.	**Ad Hoc Reporting** Contractor shall have the ability to provide ad hoc reports at no cost to the Lead State. Upon written request, Contractor shall permit and provide access to all data that pertains to any procurement action taken by a Purchasing Entity or Participating Entity as a whole. The Lead State or Purchasing Entity may make copies of procurement data in any form and the use of such data shall not be restricted. Dependent on future reporting requirements, the Lead State may ask that certain reports become standard and delivered to the Lead State on a monthly or quarterly basis.
5.	**Lead State Administrative Fee** Contractor shall remit a quarterly Lead State administrative fee of 1.25 percent of all goods purchased by California Purchasing Entities for each reporting quarter. Prices submitted shall not reflect the California administrative fee. The Lead State administrative fee shall not be

Item	Description
	invoiced or charged to the ordering agency and is specific to California only. This fee will be due to the Lead State on the 30th day following the ending of the quarterly reporting period. Payment of the Lead State administrative fee is due irrespective of payment status on orders or service contracts from a Purchasing Entity.
6.	**NASPO ValuePoint Administrative Fee** Contractor shall remit a NASPO ValuePoint administrative fee as specified in Section V of the NASPO ValuePoint Master Agreement Terms (Exhibit D).
7.	**Participating Entity Administrative Fee** If a Participating Entity requires an administrative fee, each fee will be negotiated and articulated in the individual state's Participating Addendum.

I. Management and Customer Service

Item	Description
1.	**Contractor Responsibility** Contractor shall be responsible for successful contract performance of the Master Agreement and successful performance of any and all of their subcontractors. Contractor agrees to comply with requirements under the Master Agreement, even if requirements are delegated to subcontractors. All Lead State policies, guidelines, and requirements apply to subcontractors. The prime Contractor and subcontractor(s) shall not in any way represent themselves in the name of the Lead State without prior written approval. Furthermore, the Lead State will consider the prime Contractor to be the sole point of contact with regard to contractual matters, payments, warranty issues, for the term of the Master Agreement and any extensions. Use of subcontractors will be addressed within each state's Participating Addendum.

Item	Description
2.	**Lead State Contract Administrator** The Lead State Contract Administrator will be the contact person for issues relating to the Master Agreement. Any modifications to the requirements contained in the Master Agreement may only be authorized by the State Contract Administrator or his/her designee through Master Agreement Amendment.
3.	**Contractor Contract Manager** Contractor will assign a contact person for contract management purposes. The Contractor Contract Manager must be authorized to make decisions on behalf of the Contractor.
4.	**Changes in Contract Manager** Contractor must notify the Lead State Contract Administrator of Contractor Contract Manager changes in writing within 10 calendar days of the change.
5.	**Contractor Name Change** An amendment is required to change the Contractor's name as listed on this agreement. Contractor shall notify the Lead State of any name change. Upon receipt of legal documentation of the name change the Lead State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
6.	**Customer Service Unit** Contractor will have a customer service unit that supports this Master Agreement. The customer service unit shall provide office and personnel resources for responding to inquiries, including telephone and email coverage weekdays during business hours. The customer service unit shall be staffed with individuals that: • Are trained in the requirements of this contract • Have the authority to take administrative action to correct problems that may occur • Are designated for training and general customer service follow-up Contractor shall respond to customer inquiries within one (1) business day of initial contact. Prior to Master Agreement award, Contractor shall provide customer service information to the Lead State within five (5) business days of written request.

J. Transition / End of Agreement

Item	Description
1.	**Transition Plan at End of Contract** Contractor agrees that at the end of this Master Agreement, should the Lead State conduct another procurement and award a new Master Agreement, the Contractor will work with the Lead State Contract Administrator, if requested to ensure that an efficient and effective transition takes place. Upon termination or expiration of the Master Agreement the following will occur: • All on-line offering systems and Electronic Catalog functions supported and/or available as part of the Master Agreement will cease and be removed from public viewing access without redirecting to another website. • Customer data/user accounts acquired during the term of the contract shall be destroyed or returned to the Lead State at the request of the Lead State Contract Administrator. • No references to the Master Agreement shall be made after contract end on the Contractor's commercial website without permission by the State Contract Administrator. • All invoicing disputes and/or order tracking will be conducted through the Contractor's Customer Service Unit via telephone or email.

K. Environmentally Preferable Purchasing

The following requirements are specific to the State of California and may be incorporated within Participating Addenda at the Participating Entity's discretion.

Item	Description
1.	**Environmentally Preferable Purchasing (EPP)** California Department of General Services is responsible for the implementation of EPP as mandated by the California Public Contract Code (PCC), Chapter 6, sections 12400-12404. Contractor certifies the products or services offered comply with the Federal Trade Commission's Guidelines for the Use of Environmental Marketing Terms (PCC Section 12404).
2.	**Post-Consumer Recycled Content (PCRC) Certification** California state agencies are required to report purchases made within eleven (11) product categories in the California Department of Resources Recycling and Recovery's (CalRecycle), State Agency Buy Recycled

Item	Description
	Campaign (SABRC) in accordance with Public Contract Code sections 12200-12217.In order to comply with those requirements, Contractor will be required to certify in writing the minimum percentage, if not the exact percentage, of post-consumer recycled content (PCRC) material in each of the products ordered, upon request.
3.	**Green Product Marking and Labeling** Contractor shall identify products that possess third party environmental certifications on the Electronic Catalog.
4.	**Wheel Weights** California law prohibits the manufacture, sale, or installation of wheel weights containing more than 0.1% lead. California Health and Safety Code Section 25215.6-25215.7 (https://codes.findlaw.com/ca/health-and-safety-code/hsc-sect-25215-6.html).
5.	**Mercury Containing Products** A person cannot sell or distribute for promotional purposes, in California, certain types of new or refurbished products and devices that contain mercury. This law can be found in Health and Safety Code, Division 20, Chapter 6.5; Mercury-Added Thermostats, Relays, Switches, and Measuring Devices (Sections 25214.8.1-25214.8.6). (https://codes.findlaw.com/ca/health-and-safety-code/hsc-sect-25214-8-4.html).
6.	**Consumer Products** Contractor may not sell, supply, offer for sale, or manufacture for sale in California consumer products that do not comply with the Consumer Products Regulatory Program, whose aim is to reduce the amount of volatile organic compounds (VOCs), toxic air contaminants (TACs), and greenhouse gases (GHGs) that are emitted from using chemically formulated consumer products. Background information including enforcement of the program can be found at: https://ww2.arb.ca.gov/our-work/programs/consumer-products-program/about. Regulations for the program can be found in Article 2: Regulation for Reducing Emissions from Consumer Products, commonly referred to as the General Consumer Products Regulation.
7.	**Brake Friction Material** All motor vehicle brake friction materials sold in California must meet the requirements as identified in California Health and Safety Code Section 25250.51 (Source: https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=20.&chapter=6.5.&lawCode=HSC&article=13.5

L. Generative Artificial Intelligence (GenAI) Reporting

The following requirements are specific to the State of California only.

Item	Description
1.	**Generative Artificial Intelligence (GenAI) Reporting** The State of California seeks to realize the potential benefits of GenAI, through the development and deployment of GenAI tools, while balancing the risks of these new technologies. Upon request by an ordering agency, Contractor must complete a GenAI Reporting and Fact Sheet (STD 1000) to identify if their solution or service includes, or makes available, any GenAI including, GenAI from third parties or subcontractors. During the term of the contract, Contractor must notify the State in writing if their services or any work under this contract includes, or makes available, any previously unreported GenAI technology, including GenAI from third parties or subcontractors. Contractor shall immediately complete the GenAI Reporting and Factsheet (STD 1000) to notify the State of any new or previously unreported GenAI technology. At the direction of the State, Contractor shall discontinue the use of any new or previously undisclosed GenAI technology that materially impacts functionality, risk or contract performance, until use of such GenAI technology has been approved by the State. Failure to disclose GenAI use to the State and submit the GenAI Reporting and Factsheet (STD 1000) may be considered a breach of the contract by the State at its sole discretion and the State may consider such failure to disclose GenAI and/or failure to submit the GenAI Reporting and Factsheet (STD 1000) as grounds for the immediate termination of the contract. The State is entitled to seek any and all relief to which it may be entitled to as a result of such non-disclosure. The State reserves the right to amend the contract, without additional cost, to incorporate GenAI Special Provisions into the contract at its sole discretion and/or terminate any contract that presents an unacceptable level of risk to the State. If Contractor identifies GenAI in their solution, a copy of the STD 1000 must be submitted to the State Contract Administrator.

EXHIBIT B: CATEGORY DISCOUNTS

Category	Description	Percent Discount Off MSRP
1	Air Conditioning	60%
2	Alternators and Starters	60%
3	Batteries	60%
4	Bearings, Ball and Roller	60%
5	Belts and Hoses	60%
6	Brakes	60%
7	Electrical and Ignition	60%
8	Emission, Sensors and Exhaust	60%
9	Engine and Drive Train	60%
10	Filters, Oil, Gas, Air and Transmission	60%
11	Gaskets and Seals	60%
12	Heating and Cooling (Engine)	60%
13	Lamps, Lighting and Mirrors	60%
14	Oils, Chemicals, Fluids and Lubricants	60%
15	Pumps, Fuel and Water	60%
16	Suspension, Shocks, Struts and Steering	60%
17	Wipers/Washers	60%
18	Winter Accessories	50%
19	General Automotive Parts (Aftermarket Automotive Parts not included in Categories 1-18.)	60%
20	Automotive Repair Shop Supplies and Equipment/Tools (e.g., cleaning supplies, wrenches, etc.)	35%

EXHIBIT C: LEAD STATE GENERAL PROVISIONS

Non-IT General Provisions (6/21/2022) is hereby incorporated by reference and made part of this agreement as if attached hereto. This document can be viewed at: https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Required-Language-for-Solicitations-and-Contracts?search=model%20contract

These terms are applicable for State of California purchases only.

EXHIBIT D: NASPO VALUEPOINT MASTER AGREEMENT TERMS

I. Definitions

1.1 **Acceptance** means acceptance of goods and services as set forth in Section IX of this Master Agreement.

1.2 **Contractor** means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.

1.3 **Embedded Software** means one or more software applications which permanently reside on a computing device.

1.4 **Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

1.5 **Lead State** means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.

1.6 **Master Agreement** means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.

1.7 **NASPO ValuePoint** is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) limited liability company. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.

1.8 **Order** or **Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

1.9 **Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (*e.g.*, ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).

1.10 **Participating Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.

1.11 **Participating State** means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.

1.12 **Product** or **Products and Services** means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Product includes goods and services.

1.13 **Purchasing Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

II. Term of Master Agreement

2.1 **Initial Term.** The initial term and extension options for this Master Agreement is listed in Section 2 of Exhibit A, Scope of Work.

2.2 **Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

2.3 **Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

III. Order of Precedence

3.1 **Order.** The following order of precedence shall apply for Orders executed by Purchasing Entities:

3.1.1 A Participating Entity's Participating Addendum ("PA");

3.1.2 NASPO ValuePoint Master Agreement, including all attachments thereto;

3.1.3 A Purchase Order issued against the Master Agreement;

3.1.4 The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;

3.1.5 Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

3.2 **Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

3.3 **Participating Addenda.** Participating Addenda will not be construed to dimmish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement.

IV. Participants and Scope

4.1 **Requirement for a Participating Addendum.** Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.

4.2 **Applicability of Master Agreement.** NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum, subject to Section III. For the purposes of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (*e.g.*, purchase order or contract) used by the Purchasing Entity to place the Order.

4.3 **Authorized Use.** Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities is subject to applicable state law and the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

4.4 **Obligated Entities.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.

4.5 **Notice of Participating Addendum.** Contractor shall email a fully executed PDF copy of each Participating Addendum to pa@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.

4.6 Eligibility for a Participating Addendum. Eligible entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent of the Chief Procurement Official of the state where the entity is located. Entities should coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists; the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.

4.7 Prohibition on Resale. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

4.8 Individual Customers. Except as may otherwise be agreed to by the Purchasing Entity and Contractor, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement and as the Participating Entity has in the Participating Addendum, including but not limited to any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

4.9 Release of Information. Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.

4.10 No Representations. The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

V. NASPO ValuePoint Provisions

5.1 Applicability. NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section V are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.

5.2 Administrative Fees

5.2.1 NASPO ValuePoint Fee. Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with a vendor's response to the Lead State's solicitation.

5.2.2 State Imposed Fees. Some states may require an additional fee be paid directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee rate or amount, payment method and schedule for such reports and payments will be incorporated into the applicable Participating Addendum. Unless agreed to in writing by the state, Contractor may not adjust the Master Agreement pricing to include the state fee for purchases made by Purchasing Entities within the jurisdiction of the state. No such agreement will affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

5.3 NASPO ValuePoint Summary and Detailed Usage Reports

5.3.1 Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at http://calculator.naspovaluepoint.org. All sales made under this Master Agreement must be reported as cumulative totals by state. Contractor must submit a report for each quarter, including quarters during which a Contractor has no sales, in which case this will be indicated in the Reporting Tool. Reports must be submitted no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

5.3.2 Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, *e.g.* local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and

line item description, including product number if used. The report must be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days following the end of the calendar quarter. Reports must be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports must include sales information for all sales under Participating Addenda executed under this Master Agreement.

5.3.3 Reporting on Personal Use. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity ((state and agency, city, county, school district, etc.) under whose authority the employee is purchasing Product for personal use and the amount of sales. No personal identification numbers (*e.g.*, names, addresses, **social security numbers or any other numerical identifier)** may be submitted with any report.

5.3.4 Executive Summary. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

5.3.5 Use of Data. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports will have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

5.4 NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review

5.4.1 Staff Education. Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of

NASPO ValuePoint procurements, the master agreement and participating addendum process, and the manner in which eligible entities can participate in the Master Agreement.

5.4.2 Onboarding Plan. Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.

5.4.3 Annual Contract Performance Review. Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.

5.4.4 Use of NASPO ValuePoint Logo. The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.

5.4.5 Most Favored Customer. Contractor shall, within thirty (30) days of their effective date, notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions provided to another competing cooperative. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

5.5 Cancellation. In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Master Agreement or not exercise an option to renew, when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two (2) years after execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.

5.6 Canadian Participation. Subject to the approval of Contractor, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest Territories, Nunavut, or Yukon, including municipalities,

universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

5.7 Additional Agreement with NASPO. Upon request by NASPO ValuePoint, awarded Contractor shall enter into a direct contractual relationship with NASPO ValuePoint related to Contractor's obligations to NASPO ValuePoint under the terms of the Master Agreement, the terms of which shall be the same or similar (and not less favorable) than the terms set forth in the Master Agreement.

VI. Pricing, Payment & Leasing

6.1 Pricing. The discounts contained in this Master Agreement represent the minimum discount to any Purchasing Entity.

6.1.1 All discounts must be guaranteed for the entire term of the Master Agreement, including extension years.

6.2 Payment. Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within forty-five (45) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.

6.3 Leasing or Alternative Financing Methods. The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

VII. Ordering

7.1 Order Numbers. Master Agreement, Participating Addendum, and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.

7.2 Quotes. Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be

solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.

7.3 Applicable Rules. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

7.4 Required Documentation. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

7.5 Term of Purchase. Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.

7.5.1 Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.

7.5.2 Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.

7.5.3 Financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

7.5.4 Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement's terms.

7.5.5 Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

7.6 Order Form Requirements. All Orders pursuant to this Master Agreement, at a minimum, must include:

7.6.1 The services or supplies being delivered;

7.6.2 A shipping address and other delivery requirements, if any;

7.6.3 A billing address;

7.6.4 Purchasing Entity contact information;

7.6.5 Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;

7.6.6 A not-to-exceed total for the products or services being ordered; and

7.6.7 The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.

7.7 Communication. All communications concerning administration of Orders placed must be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

7.8 Contract Provisions for Orders Utilizing Federal Funds. Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

VIII. Shipping and Delivery

8.1 Shipping Terms. All deliveries will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor.

8.1.1 Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor's until final inspection and acceptance when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations.

8.2 Minimum Shipping. The minimum shipment amount, if any, must be contained in the Master Agreement. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered will be shipped without charge.

8.3 Inside Deliveries. To the extent applicable, all deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to a location other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Costs to repair any damage to the building interior (*e.g.*, scratched walls, damage to the freight elevator, etc.) caused by Contractor or Contractor's carrier will be the responsibility of the Contractor. Immediately upon becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.

8.4 Packaging. All products must be delivered in the manufacturer's standard package. Costs must include all packing and/or crating charges. Cases must be of durable construction, in good condition, properly labeled and suitable in every respect for storage and handling of contents. Each

shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

IX. Inspection and Acceptance

9.1 Laws and Regulations. Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.

9.2 Applicability. Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section IX will apply. This section is not intended to limit rights and remedies under the applicable commercial code.

9.3 Inspection. All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.

9.3.1 Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.

9.3.2 Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

9.4 Failure to Conform. If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect the reduced value of services performed.

9.5 Acceptance Testing. Purchasing Entity may establish a process, in keeping with industry standards, to ascertaining whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.

9.5.1 The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.

9.5.2 If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.

9.5.3 Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.

9.5.4 Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section.

9.5.5 No Product will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

X. Warranty

10.1 Applicability. Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section X will apply.

10.2 Warranty. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects.

10.3 Breach of Warranty. Upon breach of the warranty set forth above, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made.

10.4 Rights Reserved. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

10.5 Warranty Period Start Date. The warranty period will begin upon Acceptance, as set forth in Section IX.

XI. Product Title

11.1 Conveyance of Title. Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests.

11.2 Embedded Software. Transfer of title to the Product must include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

11.3 License of Pre-Existing Intellectual Property. Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third-party rights in the Pre-existing Intellectual Property.

XII. Indemnification

12.1 General Indemnification. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from any act, error, or omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement.

12.2 Intellectual Property Indemnification. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use infringes Intellectual Property rights of another person or entity ("Intellectual Property Claim").

12.2.1 The Contractor's obligations under this section will not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

12.2.1.1 provided by the Contractor or the Contractor's subsidiaries or affiliates;

12.2.1.2 specified by the Contractor to work with the Product;

12.2.1.3 reasonably required to use the Product in its intended manner, and the infringement could not have been

avoided by substituting another reasonably available product, system or method capable of performing the same function; or

12.2.1.4 reasonably expected to be used in combination with the Product.

12.2.2 The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.

12.2.3 The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.

12.2.4 Unless otherwise set forth herein, Section 12.2 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

XIII. Insurance

13.1 **Term.** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in their Participating Addendum.

13.2 **Class.** Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

13.3 **Coverage.** Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:

13.3.1 Contractor shall maintain Commercial General Liability insurance covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than $1 million per occurrence and $2 million general aggregate;

13.3.2 Contractor shall maintain motor vehicle liability with limits not less than $1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired, and non-owned motor vehicles.

13.3.3 Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

13.4 Notice of Cancellation. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

13.5 Notice of Endorsement. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.

13.6 Participating Entities. Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in Section XIII, except the endorsement is provided to the applicable Participating State or Participating Entity.

13.7 Furnishing of Certificates. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

13.8 Disclaimer. Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

XIV. General Provisions

14.1 Records Administration and Audit

14.1.1 The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as will adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right will survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Master Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

14.1.2 Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

14.1.3 The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement that requires the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

14.2 Confidentiality, Non-Disclosure, and Injunctive Relief

14.2.1 **Confidentiality.** Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients.

14.2.1.1 Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is

confidential information of Purchasing Entity ("Confidential Information").

14.2.1.2 Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information.

14.2.1.3 Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity; or (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

14.2.2 Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement.

14.2.2.1 Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.

14.2.2.2 Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.

14.2.2.3 Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.

14.2.2.4 Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of the performance of this Master Agreement.

14.2.3 **Injunctive Relief.** Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be inadequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

14.2.4 **Purchasing Entity Law.** These provisions will be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

14.2.5 **NASPO ValuePoint.** The rights granted to Purchasing Entities and Contractor's obligations under this section will also extend to NASPO ValuePoint's Confidential Information, including but not limited to Participating Addenda, Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line-item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

14.2.6 **Public Information.** This Master Agreement and all related documents are subject to disclosure pursuant to the Lead State's public information laws.

14.3 Assignment/Subcontracts

14.3.1 Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

14.3.2 The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties, to NASPO ValuePoint and other third parties.

14.4 Changes in Contractor Representation. The Contractor must, within ten (10) calendar days, notify the Lead State in writing of any changes in the Contractor's key administrative personnel managing the Master Agreement. The Lead State reserves the right to approve or reject changes in key personnel, as identified in the Contractor's proposal. The Contractor shall propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

14.5 Independent Contractor. Contractor is an independent contractor. Contractor has no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and shall not to hold itself out as agent except as expressly set forth herein or as expressly set forth in an applicable Participating Addendum or Order.

14.6 Cancellation. Unless otherwise set forth herein, this Master Agreement may be canceled by either party upon sixty (60) days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision will not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

14.7 Force Majeure. Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or acts of war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement upon determining such delay or default will reasonably prevent successful performance of the Master Agreement.

14.8 Defaults and Remedies

14.8.1 The occurrence of any of the following events will be an event of default under this Master Agreement:

14.8.1.1 Nonperformance of contractual requirements;
14.8.1.2 A material breach of any term or condition of this Master Agreement;
14.8.1.3 Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading;
14.8.1.4 Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
14.8.1.5 Any default specified in another section of this Master Agreement.

14.8.2 Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of fifteen (15) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure will not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

14.8.3 If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:
14.8.3.1 Any remedy provided by law;
14.8.3.2 Termination of this Master Agreement and any related Contracts or portions thereof;
14.8.3.3 Assessment of liquidated damages as provided in this Master Agreement;
14.8.3.4 Suspension of Contractor from being able to respond to future bid solicitations;
14.8.3.5 Suspension of Contractor's performance; and
14.8.3.6 Withholding of payment until the default is remedied.

14.8.4 Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and

remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

14.9 Waiver of Breach. Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies will not operate as a waiver under this Master Agreement, any Participating Addendum, or any Purchase Order. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order will not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, any Participating Addendum, or any Purchase Order.

14.10 Debarment. The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in public procurement or contracting by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

14.11 No Waiver of Sovereign Immunity

14.11.1 In no event will this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

14.11.2 This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of

immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

14.12 Governing Law and Venue

14.12.1 The procurement, evaluation, and award of the Master Agreement will be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award will be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement will be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's state.

14.12.2 Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the state serving as Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement will be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum will be in the Purchasing Entity's state.

14.12.3 If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

14.13 Assignment of Antitrust Rights. Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

CITY OF ONTARIO *Agenda Report* **February 18, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Broadband Operations Prepared By: Judy Witrago Staff Member Presenting: Jimmy Chang, Broadband General Manager Reviewed By: Jimmy Chang Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 7

SUBJECT: ACCEPTANCE OF BROADBAND PROGRAM BENEFICIARIES FROM SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS (SCAG)

RECOMMENDATION: That the City Council approve a Memorandum of Understanding with Southern California Association of Governments (SCAG) of Los Angeles, California, for broadband program beneficiaries relating to the Local Agency Technical Assistance Program.

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

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

BACKGROUND & ANALYSIS: In 2022, the City of Ontario applied for the Local Agency Technical Assistance (LATA) Grant Program, designed to assist local government agencies authorized to provide broadband access. This program supports pre-construction planning and technical assistance costs. Although the City of Ontario did not receive the grant, the Southern California Association of Governments (SCAG) was awarded the LATA grant to support their member cities. Under the LATA program guidelines, SCAG is authorized to provide technical assistance to local agencies preparing to deliver broadband services within their jurisdictions. After a thorough review and consideration, SCAG selected the City of Ontario as a program beneficiary of SCAG's grant award. Through SCAG's support, the City of Ontario will benefit up to $333,000 in technical research and market analysis of a proposed geographic area within Ontario and support the development of construction designs to prepare future infrastructure buildout for residents and businesses. The proposed project area encompasses 400+ parcels with an estimated population of 1,100. Ultimately, the goal is to utilize the designs produced to expand OntarioNet's footprint to underserved project areas and continue bridging the digital divide.

City Staff recommends that the City Council approve the receipt of LATA-funded technical assistance provided by SCAG to advance broadband planning and development in Ontario.

MEMORANDUM OF UNDERSTANDING
No. M-013-25

BETWEEN THE
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS
AND THE CITY OF ONTARIO
FOR TECHNICAL ASSISTANCE RELATING TO THE SCAG'S LOCAL AGENCY TECHNICAL ASSISTANCE (LATA) PROGRAM

(SCAG Project/OWP No. 100.4901.02)

This Memorandum of Understanding (MOU) is entered into by and between the **Southern California Association of Governments** (SCAG) and the **City of Ontario, a California municipal corporation (**Partner Agency), for technical assistance under the California Public Utilities Commission's Local Agency Technical Assistance Program to support the expansion of OntarioNet's fiber infrastructure. SCAG and the Partner Agency may be individually referred to as "Party" and collectively as "Parties."

RECITALS

WHEREAS, the California Public Utilities Commission (CPUC) established the Local Agency Technical Assistance (LATA) program, pursuant to Senate Bill 156 (Government Code §§ 6547.7 as amended, 11549.50 *et seq*., 26231, and 53167 as amended; Public Resource Code § 21080.51; Public Utilities Code §§ 281 as amended, 281.2, 912.2 as amended, and 914.7 as amended);

WHEREAS, the CPUC issued a Decision 22-02-026 Establishing Local Agency Technical Assistance Grant Program (Decision), issued Guidance to Staff on Local Agency Technical Assistance Rules and Application (Guidelines), and issued a Grantee Administrative Manual To all Local Agency Technical Assistance Applicants and Grant Recipients (Manual);

WHEREAS, the LATA program provides grant funds to reimburse local agencies and Tribal governments for eligible pre-construction expenses facilitating broadband network projects to unserved and underserved areas in California;

WHEREAS, SCAG is the federally designated MPO for Southern California, primarily responsible for the development of a Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS also known as Connect SoCal) for the counties of Imperial, Los Angeles, Orange, San Bernardino, Riverside, and Ventura;

WHEREAS, the CPUC awarded $996,058 in LATA program grant funds to SCAG;

WHEREAS, SCAG procured Burns & McDonnell as a consultant (Consultant) in accordance with SCAG's Procurement Policies and Procedures and consistent with the Decision, Guidelines, and Manual;

WHEREAS, Partner Agency was identified as an eligible jurisdiction and selected for technical assistance;

WHEREAS, SCAG and Consultant have developed a "Scope of Work" for the technical assistance to be provided to Partner Agency for purposes of supporting the expansion of Partner Agency's local fiber infrastructure (Project);

WHEREAS, the value of Scope of Work provided by SCAG to the Partner Agency is approximately $330,000;

WHEREAS, SCAG and the Consultant shall be responsible for project management and technical analysis as outlined in the Scope of Work;

WHEREAS, Partner Agency will support, cooperate, and provide guidance as needed to complete the Project; and

WHEREAS, the purpose of this MOU is to describe the responsibilities of the Parties.

NOW THEREFORE, IT IS MUTUALLY AGREED THAT:

1. MOU Contents

The Recitals and all Exhibits, if any, are incorporated by this reference.

2. Term

The Term of this MOU shall begin on the Effective Date and end on 12/31/25, (Completion Date), unless terminated earlier as provided herein. Time is of the essence in the performance of this MOU.

3. Responsibilities of the Parties:

a. SCAG will:

i. Contribute funding for the Project in accordance with Section 5, Funding, below.

ii. Provide technical assistance to Partner Agency by:

1. Procuring a Consultant.

2. Collaborating with Consultant to develop a Scope of Work; a copy of the contract with the Consultant along with the Scope of Work is attached to Exhibit "A" and incorporated herein.

3. Overseeing and managing the Consultant's activities in performing the Scope of Work.

4. Review, approve, and pay Consultant's invoices.

5. Review and approve Consultant's deliverables in consultation with Partner Agency.

iii. Complete the Project.

b. Partner Agency will:

i. Fulfill any obligations in compliance with this MOU, the LATA Program, the Decision, Guidelines, Manual, and all federal, state and local laws, rules and regulations.

ii. Commit to supporting the Project to completion by:

1. Cooperating with SCAG and the Consultant;

2. Providing technical guidance and decisions without delay;

3. Respond to requests for information and records as requested by SCAG or the Consultant without delay; and

4. Providing access to Partner Agency's facilities, as needed and upon reasonable, advance notice.

5. Consult with SCAG in the review and approval of Consultant's deliverables.

4. Program Management

a. All work under this MOU shall be coordinated with SCAG and Partner Agency through the Project Managers.

b. For purposes of this MOU, SCAG designates the following individual as its Project Manager:

Roland Ok
Planning Supervisor
213-236-1819
Ok@scag.ca.gov

c. For purposes of this MOU, Partner Agency designates the following individual as its Project Manager:

Jimmy Chang
Broadband General Manager
(909) 395-2033
JChang@ontarioca.gov

Either Party may change the designation upon written notice to the other Party.

5. Funding

SCAG's contribution to the Project is funded wholly with LATA funds. SCAG shall contribute a maximum, not to exceed $332,019 (Grant Funds) towards the Project. No Grant Funds will be provided to Partner Agency. SCAG reserves the right, in its sole discretion, to discontinue funding the Project and terminate this MOU.

6. Work Products

a. For purposes of this MOU, "Work Products" shall mean all deliverables created or produced under this MOU including, but not limited to, all deliverables conceived or made either solely or jointly with others during the term of this MOU and for six months after, which relates to the Project. Work Products shall not include real property or capital improvements. Work Products includes all inventions, innovations, improvements, or other works of authorship Partner Agency or Consultant may conceive of or develop during the term of this MOU and for six months after, whether or not they are eligible for patent, copyright, trademark, trade secret or other legal protection.

b. SCAG shall own all Work Products and shall grant to the Partner Agency a perpetual, royalty-free, and non-exclusive license to use the Work Products. Any reproduction, publishing, or reuse of the Work Products by Partner Agency will be at the Partner Agency's sole risk and without liability or legal exposure to SCAG.

7. Amendments

No amendment or variation of the terms of this MOU shall be valid unless made in writing, signed by the Parties and approved as required.

8. Notices

Any notice(s) to be given may be personally served or served by certified mail, return receipt requested, to the following addresses:

To SCAG:
Cindy Giraldo
Chief Financial Officer
Southern California Association of Governments
900 Wilshire Blvd., Suite 1700
Los Angeles, CA 90017
(213) 630-1413
giraldo@scag.ca.gov

To Partner Agency:
Jimmy Chang
Broadband General Manager
City of Ontario d/b/a OntarioNet
303 E. B Street
Ontario, CA 91764
(909) 395-2033
JChang@ontarioca.gov

Either Party may change the designation upon written notice to the other Party.

9. Indemnification and Release

a. Partner Agency shall fully defend, indemnify and hold harmless SCAG, its members, officers, employees, and agents from any and all claims, losses, liabilities, damages, expenses, suits or actions including attorneys' fees, brought forth or arising under any theories or assertions of liability, occurring by or resulting from or otherwise related to any act or omission by Partner Agency, its members, officers, employees, or agents. Such obligations shall not, however, extend to any claims, losses, liabilities, damages, expenses, suits, or actions that arise from SCAG's gross negligence or willful misconduct.

b. Partner Agency acknowledges that SCAG in no way whatsoever insures or guarantees the Work Product or the Project, and that Partner Agency is accepting the Work Product and Project from SCAG and its Consultant "AS IS" without warranty of any kind, either express or implied, including without limitation any warranties of merchantability or fitness for a particular purpose.

10. Disputes

a. The Parties shall make their best efforts to resolve disputes that occur under this MOU by good faith negotiations whenever possible. Both Parties shall meet and confer in good faith in order to foster a spirit of cooperation and efficiency in the administration and monitoring of performance and compliance by each other with the terms, provisions and conditions of this MOU.

11. Termination of MOU

a. Termination for Cancellation or Reduction in Funding. In the event SCAG's funding source cancels funding to SCAG, this MOU is deemed to be immediately terminated and SCAG shall be relieved of any and all obligations under this MOU as of the effective date of the cancellation of funding. In the event funding is reduced, SCAG shall have the unilateral right to immediately stop work, reduce funding or terminate this MOU.

b. Termination for Cause. If either Party fails to timely and adequately fulfill its obligations under this MOU, or violates any of the covenants, terms, or stipulations of this MOU, the non-breaching Party shall have the right to terminate the MOU by giving ten (10) calendar days written notice to the breaching Party of the intent to terminate and specifying the reason(s) and the effective date of termination. The non-breaching Party shall provide a reasonable opportunity for the breaching Party to cure prior to termination. In no event shall such opportunity to cure extend beyond the term of the MOU. In the event that SCAG invokes this termination for cause provision, Partner Agency shall provide any finished or unfinished Work Products to SCAG upon request.

12. Records Retention, Monitoring, and Audits

a. Partner Agency shall maintain its source documents, books and records connected with the Project for a minimum of five (5) years after the termination or expiration of this MOU. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.

b. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of the required record retention period, all records shall be retained by Partner Agency for five (5) years after: (a) the conclusion or resolution of the matter; (b) the date an audit resolution is achieved for each annual SCAG OWP; or (c) the termination or expiration of this MOU, whichever is later.

c. SCAG may monitor activities of Partner Agency as SCAG deems necessary.

d. Partner Agency agrees that SCAG, or any authorized agency, or their designated representatives shall have the right to review, obtain, and copy all records and supporting documentation related to the performance of this MOU. Partner Agency agrees to provide any relevant information requested. Copies shall be made and furnished to SCAG upon request at no cost to SCAG.

e. Partner Agency agrees to permit SCAG, or any authorized agency, or their designated representatives access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees who might reasonably have information related to such records and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation.

13. <u>Compliance with Laws, Rules and Regulations</u>

a. Partner Agency agrees to comply with all federal, state and local laws, rules and regulations.

b. Non-Discrimination/Equal Employment Opportunity

i. During the performance of this MOU, Partner Agency assures that no person shall be denied the MOU's benefits, be excluded from participation or employment, be denied Project benefits, or be subjected to discrimination based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, under the Project or any program or activity funded by this MOU, as required by Title VI of the Civil Rights Act of 1964, the Fair Housing Act (42 U.S.C. §§ 3601-20) and all implementing regulations, the Americans with Disabilities Act ("ADA") of 1990 (42 U.S.C. §§ 12101 *et seq.*) and all applicable regulations and guidelines issued pursuant to the ADA, and the Age Discrimination Act of 1975 and all implementing regulations. Partner Agency shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

ii. Partner Agency shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code § 12900 *et seq.*), the regulations promulgated thereunder (Cal. Code Regs. tit. 2, § 11000 *et seq.*), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§ 11135-11139.5), and the regulations or standards adopted to implement such article.

14. Conflict of Interest

The Parties shall comply with all applicable federal and state conflict of interest laws, regulations, and policies.

15. Independent Contractor

The Partner Agency and its officers, employees, and agents shall be independent contractors in the performance of this MOU, and not officers, employees, contractors or agents of SCAG.

16. Assignment

Neither Party shall assign any rights or interests in this MOU, or any part thereof, without the written consent of each Party to this MOU, which consent may be granted, withheld or conditioned in the consenting Party's sole and absolute discretion. Any assignment without such written consent shall be void and unenforceable. The covenants and agreement of this MOU shall inure to the benefit of and shall be binding upon each of the Parties and their respective successors and assignees.

17. Severability

If any provision of this MOU is held to be illegal, invalid, or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid, and enforceable, and the legality, validity, and enforceability of the remaining provisions shall not be affected thereby.

18. Survival

The following sections survive expiration or termination of this MOU:

Section 6 (Work Products)
Section 9 (Indemnification and Release)
Section 10 (Disputes)
Section 12 (Records Retention, Monitoring, and Audits)
Section 13 (Compliance with Laws, Rules, and Regulations)
Section 14 (Conflict of Interest)
Section 19 (Jurisdiction and Venue)
Section 20 (Waiver)

19. Jurisdiction and Venue

This MOU shall be deemed an agreement under the laws of the State of California and for all purposes shall be interpreted in accordance with such laws. The Parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that the venue of any action brought thereunder shall be Los Angeles County, California.

20. Waiver

No delay or failure by either Party to exercise or enforce at any time any right or provision of this

MOU shall be considered a waiver thereof of such Party's right thereafter to exercise or enforce each and every right and provision of this MOU. A Waiver to be valid shall be in writing but need not be supported by consideration. No single waiver shall constitute a continuing or subsequent waiver.

21. Entire MOU

This MOU is intended by the Parties to be the full and final expression of their agreement and shall not be contradicted by any prior written or oral agreement and supersedes any and all prior negotiations, discussions, and agreements.

22. Execution

This MOU, or any amendments related thereto, may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement. The signature page of this MOU or any amendments may be executed by way of a manual or authorized digital signature. Delivery of an executed counterpart of a signature page to this MOU or an amendment by electronic transmission scanned pages shall be deemed effective as a delivery of a manually or digitally executed counterpart to this MOU or any amendment.

23. Effective Date

This MOU shall be effective as of the last date in which the document is executed by both Parties.

24. Authority

The person(s) executing this MOU on behalf of the Parties warrant that they are duly authorized to execute this agreement on behalf of said Parties, and that by doing so the Parties are formally bound to the provisions of this Agreement.

MEMORANDUM OF UNDERSTANDING
NO. M-013-25

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by their duly authorized representatives as of the dates indicated below:

SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS (SCAG)

By: _____ _____
Cindy Giraldo Date
Chief Financial Officer

APPROVED AS TO FORM:

By: _____ _____
Richard Lam Date
Senior Deputy Legal Counsel

CITY OF ONTARIO (PARTNER AGENCY)

By: _____ _____
Scott Ochoa Date
City Manager

Scope of Work

Last Mile Project Assessment for the SCAG Region

Background and Intent

On June 29, 2023, the California Public Utilities Commission (CPUC) approved SCAG's application for the Local Agency Technical Assistance (LATA) grant funding to conduct a Last Mile Project Assessment for the SCAG Region (Project) (See Appendix A- SCAG LATA Award). The LATA grant will help SCAG assist local jurisdictions who lack the technical, staff and financial capacity to identify and analyze opportunity areas and develop conceptual design for last mile services. Unfortunately, it is these local jurisdictions that are in dire need of better connectivity, as they have a high-concentration rate of low-income households (often communities of color), many of whom face affordability and accessibility issues.

To fill in this gap, SCAG is requesting proposals to determine and design three (3) projects located within the SCAG region. This project will result in conceptual designs and technology deployment strategy to lay the foundation for three (3) projects that meet or exceed 100/100 or 100/20 Mbps for unserved and/or underserved communities, ideally within proximity to California Department of Technology (CDT's) proposed 18 middle-mile projects.

SCAG is aware of many local jurisdictions who have been awarded the LATA grant, and planning to develop, or have already developed implementation/ plans. As such, this project will not supersede a local jurisdiction's effort, nor will the work product result in an unnecessary/redundant network. Work efforts will only engage local jurisdictions who need last mile services but were not able to apply and/or have the capacity to procure a consultant and take on project management roles. Further, this project is not intended to be a strictly planning exercise. While planning is part of this project scope, the product will integrate conceptual, high-level design with planning analysis to develop projects and support last mile expansion for each priority area.

The consultant shall complete the following tasks:

Task 1: Project Administration and Management

Task 1.1: Project Management Plan

A Project Management Plan will be developed to guide aspects of the work tasks, schedule, and budget within the grant agreement. The Project Management Plan will identify a system for project control, including necessary procedures for conducting the work, managing resources, communications, budget, schedule, monitoring and reporting project status and progress, document control, and quality assurance and control. Further, the Project Management Plan will be designed to guide the flow of the overall project effort. Special attention shall be given to the project schedule to address any critical administrative dates (such as Regional Council dates) and internal review needs.

Task 1.2: Project Schedule

A detailed Project Schedule will be developed for CPUC's review and as defined by the project scope. The Schedule shall identify work tasks, start dates, activity durations, project development team meeting dates, external partner meeting key dates, project submittal dates, key project milestones, schedules for internal review on deliverables, and relationships among work tasks, including critical path items.

Task 1.3: Project Management Meetings

The Consultant will participate in Project Management meetings. Meetings will include SCAG's Project Manager, and other SCAG staff, consultant project manager, consultant team members as necessary to review project status/progress, as well as to resolve key issues. Each meeting will have an agenda, a summary of minutes and an action item matrix. Consultant shall participate in approximately two (2) meetings per month on a bi-weekly basis, for an estimated total of 24 meetings up to (1) hour each. The Consultant will be responsible for developing agendas, meeting notes, and action item matrices, as required.

Task 1.4: Special Meetings with External Stakeholders or Working Group Meetings

At the direction of the SCAG Project Manager, the Consultant will participate in meetings with external stakeholders or project teams that are working on similar efforts to support intra-agency coordination, provide status updates and input as needed, and avoid duplicative work among regional projects. Consultant will be expected to participate in approximately two (2) meetings per month, for a total of 24 meetings up to (1) hour each. This may include but are not limited to:

- Meetings with City Staff
- City Council Meetings
- Meetings with State Agencies and County Transportation Commissions (CTCs)
- SoCal Transformation Working Group
- SCAG's Emerging Technology Committee (ETC)
- SCAG's Transportation Committee (TC)
- SCAG's Regional Council (RC)

Task 1.5: Grant Reporting Assistance

The Consultant shall assist SCAG with the LATA grant administration and periodic reporting per the requirements of the CPUC, which are available at https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/broadband-implementation-for-california/local-agency-technical-assistance.

A sample of the reporting requirements is available at: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/broadband-implementation-for-california/lata-reporting-requirements-dec-22.pdf.

Consultant shall provide SCAG with required documentation with sufficient time for review prior to CPUC reporting deadlines.

Burns & McDonnell Engineering Company shall work with SCAG, and appropriate stakeholders to provide up to (16) monthly, (5) quarterly and (1) completion reports during the duration of the project as required, by Decision (D.) 22-02-026.

Task 1 Deliverables:

Task	Deliverables
1.1	Project Management Plan
1.2	Project Schedule
1.3	Project Management Meetings, Agenda, Minutes, and Action Item Matrices
1.4	Meeting Minutes
1.5	Grant Reporting Materials and Attachments

Task 2: Broadband Infrastructure Existing Conditions Analysis[1]

Task 2.1: Regional Infrastructure Assessment of the SCAG Region

The Consultant shall perform research and evaluation of broadband usage and an inventory analysis of technologies that are currently delivering internet service in the six-county SCAG region. This includes, and is not limited to, fiber optic, wireless, DSL, cable, and satellite services.[2] The assessment will characterize existing infrastructure conditions which may consider:

- Type of technology (e.g., fiber, wireless, DSL, etc.)
- Location (using longitudinal coordinates)
- Length and transmission radius (i.e., square miles)
    - Capacity & availability of asset
    - Access points to the public
    - Owner
    - Exchange points
    - Number of internet providers
    - Current pricing for the network based on advertised rates.
    - Subsidy subscriptions for the Federal Communications Commission Affordable Connectivity Program
    - Overall digital adoption in the region

[1] Please note that numerous local jurisdictions have conveyed their interest to collaborate with SCAG. SCAG (assisted by the Consultant) will contemplate the possibility of choosing three (3) local jurisdictions through the assessment of meetings, interviews, and a comprehensive analysis of their requirements, including the manual selection of three opportunity zones. SCAG asks respondents to this proposal to provide a Technical Approach tailored to this particular scenario.

[2] Infrastructure assessment subject to available data. Proposal responses should indicate estimated costs associated with assumed data collection, sources, and availability.

Burns & McDonnell Engineering Company shall request, use existing (SCAG or local jurisdictions), or work with SCAG and/or local jurisdictions to find data sources, such as the following, as applicable and feasible, to inform assessments and findings:

- Aerial and Underground Electrical Plant Maps,
- Right of Way (ROW) / Easement Maps,
- Microwave/Wireless/LTE Coverage and Asset Maps,
- Fiber Optic Plant Maps,
- Fiber Optic Splice Schematics,
- Communication Network Access Point Schematics,
- Existing Customers Served by municipalities in SCAG's region, e.g.:
- Public Entities,
- Municipalities & Rural Electric Co-Ops,
- Host Communities,
- Business & Industry,
- Healthcare, Educational & Cultural Institutions, and
- Electric Providers (Generators).

Burns & McDonnell Engineering Company shall utilize public data sources, such as the following, to inform assessments:

- U.S. Census Bureau Data
- National Telecommunications and Information Administration (NTIA) Broadband Need Indicators
- California Interactive Broadband Map (CIBM) for California Advanced Services Fund (CASF)
- Federal Communications Commission (FCC) Data
- U.S. Energy Information Administration (EIA) Data
- Rural Digital Opportunity Fund (RDOF) Data

Burns & McDonnell Engineering Company shall request updated and relevant data regarding existing infrastructure (transport, fiber, etc.). We assume this information shall be provided by SCAG. We prefer this data be provided in GIS format, where appropriate. While SCAG may not possess the data directly, we operate under the assumption that SCAG has knowledge of the data owner (Municipalities and Rural Electric Co-Ops in the SCAG's region) and can facilitate an introduction to the relevant stakeholders. The Burns & McDonnell Engineering Company team will gather any additional data required that is not available after those engagements.

Task 2.2: Infrastructure Assessment ArcGIS File Geodatabase

Based on work efforts referenced under Tasks 2.1 an ArcGIS File Geodatabase will be constructed for any GIS datasets gathered or generated. This information will be collected by

utilizing other databases, third-party research, information obtained from providers, and research from engineering or policy partners. Consultant shall develop the file geodatabase following SCAG's Spatial Data/Metadata Requirements (See Appendix B) including documentation and review/agreement by SCAG during the project. Additionally, GIS deliverables produced for SCAG as a part of this project will be hosted by SCAG and published using services on ArcGIS server. Technical design should indicate the type of services to be used and relevant access/permissions required.

Burns & McDonnell Engineering Company shall create a GIS dataset which includes the following:

- Technology Classifications (fiber, wireless, xDSL, terrestrial)
- Location of services
- Length and transmission radius
- Capacity and availability of asset, where data is publicly available
- Access points to the public, where data is publicly available
- Owner
- Exchange points
- Number of internet providers
- Current Pricing based on advertised rates
- Subsidy subscriptions for the Federal Communications Commission Affordable Connectivity Program
- Digital Adoption in the region

GIS Data shall be collected and presented at the census tract level, as defined by the United States Census Bureau. Affordable Connectivity Program GIS data shall be collected and presented by zip code as defined by the Federal Information Processing Standards (FPIS). GIS data shall only be provided for census tracts/zip codes within SCAG's areas. Burns & McDonnell Engineering Company shall partner with SCAG on aligning the spatial/metadata requirements.

Task 2 Deliverables:

Task	Deliverables
2.1	Regional Infrastructure Assessment
2.2	Regional Infrastructure Assessment ArcGIS File Geodatabase

Task 3: Needs and Market Assessment, Priority Area Identification, and Route Determination

Task 3.1: Needs Assessment Methodology and Determination of Priority Areas

Using the findings from Task 2 and publicly available data, the Consultant will develop a needs assessment to prioritize three (3) areas for further analysis as a part of the project's defined study

areas for Tasks 3-5. The assessment will focus on several variables to identify the hardest-to-reach unserved and underserved households, including, but not limited to:

- Disadvantaged Communities
- Continuum of Care (CoC) groups
- Low rates of internet adoption by residents
- Low rates of internet accessibility
- Existing infrastructure and middle mile segments

Further, special attention will be given to select priority areas in a range of developed contexts, including rural, suburban, urban, and Tribal communities. Upon determination, based on findings from the consultant and SCAG's assessment, SCAG will engage with three (3) local jurisdictions to develop an implementation plan for last mile services.

Task 3.2: Public Outreach

The Consultant will conduct public outreach in the identified priority areas to research and better understand each community's needs. Specific attention will be given to address connectivity needs. Outreach will involve but are not limited to:

- Conducting interviews, surveys, and/or focus group sessions with community agencies, educational institutions, healthcare clinics, key stakeholder groups, and other relevant groups in the Priority Areas to:
    - Understand barriers that prevent study area communities from accessing reliable internet service. These can include barriers not limited to:
        - Internet adoption
        - Service affordability
        - Access to infrastructure and devices
        - Workforce, educational, social services need

Survey outcomes will inform, at minimum:

- The level of service needed in the area and the workforce required to deliver such service.
- Connectivity preferences (e.g., where are they most likely to connect, how often do they rely on community institutions for these services, etc.)

Consultant shall prepare and lead the following:

- Two (2) focus group or outreach sessions per Priority Area
- Three (3) community surveys per Priority Area
- Five (5) interviews (virtual) per Priority Area

To ensure consistency of public information originating from SCAG, all public-facing informational materials must be reviewed and approved by SCAG's Manager of Media and Public Affairs or a specified designee before release, distribution or presentation. This process for facilitating this review and approval will be discussed during the project kick-off meeting and as part of Task 3.1.

Task 3.3: Gap Analysis and Public Asset Inventory for Priority Areas

Upon completion of the Needs Assessment and outreach exercises, the Consultant will assist SCAG and inventory the public assets that may support broadband deployment in the priority areas. Public areas may be along public-right-of ways for the installation of Conduit, Fiber, Antennas, Poles, Towers, Active or abandoned facilities, and other applicable infrastructure. The consultant will evaluate general, economic development, capital plan and/or transportation plans that impact the priority areas and will assist in the identification of strategic and cost-effective methods of deploying broadband expansion in an organized and/or phased approach.

Task 3.4: Market Assessment Report

The consultant will develop a market assessment which will include a granular set of data with respect to the telecommunications environment detailing the location of facilities, types of services, pricing, availability, and limitations. Assessment of potential construction and operational relationships with public, private, and membership owned companies in the service area and with publicly and privately funded networks as suitable for interconnection. The assessment will determine what economic and community impact broadband issues are having within each selected area and will include an evaluation of key issues limiting broadband expansion and a phased, prioritized approach to broadband expansion.

- Burns & McDonnell Engineering Company shall collaborate with SCAG to define the agreed services, such as wholesale, retail, community access.
- Burns & McDonnell Engineering Company shall facilitate up to (2) 1-hour discussions of business and technical requirements and validate the understanding of existing infrastructure and the technology roadmap envisioned.
- Host up to (2) 1-hour review meetings to validate inputs and data collected.
- Confirm any gaps in information that may prevent benefits.
- Host up to (2) 1-hour meetings with SCAG to review regulatory environment and risk posture (what they are willing to provide) to align the service hierarchy.
- Define the estimation model (benchmark, cost plus, cost recovery)
- Identify gaps in the implementation plan that may require further investigation.
- Summary of Findings Slide Deck Deliverable (PowerPoint)
- Burns & McDonnell Engineering Company shall provide a report in executive slide deck format (PowerPoint) outlining the key findings and assumptions from the analysis. The primary sections covered in the report shall be:

- Executive Summary (1-2 slides),
- Market Segment Overview (4-6 slides)
    - Summary of Markets
    - Summary of Models
    - Summary of Operating Models
    - Summary of Revenue Models
- Key Market Opportunity (8-10 slides),

    - One (1) slide per agreed market opportunity with up to six (6) market opportunities considered.
- Other Notable Findings (2-4 slides),
- Conclusions & Next Steps (1 slide), and
- Appendices & Assumptions (as required).

Data collected from Tasks 2-3 will be translated into findings regarding infrastructure gaps, services issues, average cost of plans, cost of materials, labor associated with construction and cost of operation, and other barriers to broadband access (such as permitting).

Task 3.5: Route Determination Report

Based on the findings under Tasks 3.1 to 3.4, routes will be determined, evaluating the feasibility of the route and documentation of any roadblocks and hurdles which may delay the construction of these routes. Evaluations may consist of the following, but not limited to:

- Fiber to the Premises (FTTP) Networks
    - Identify hut and/or Fiber Distribution Hub (FDH) locations per priority area
    - Identify the extent to which new underground (conduit) or aerial (poles) infrastructure will need to be installed
- Fixed Wireless Networks
    - Location of wireless equipment sites needed per priority area
    - Identify extent to which new underground (conduit) or aerial (poles) infrastructure will need to be installed, when fiber optic backhaul is required rather than fixed wireless backhaul
- Identify any permitting or construction challenges while conducting surveys to support development of design alternatives
- Identify Right of Way, Access Control and Temporary Construction Easement requirements
- Identify any Multiple Dwelling Units (MDU), Multiple Tenant Units (MTU), and commercial properties
- Consider design implications of approved buildable land parcels. Most current data will be provided in consultation with local jurisdictions
- Verify fiber egress points to support single and redundant connections to existing and proposed CDT middle-mile network
- This report shall be up to (10) pages.

Task 3 Deliverables:

Task	Deliverables
3.1	Needs Assessment Methodology Report, Partnership agreement (Local Jurisdiction/SCAG)
3.2	Public Outreach (including agenda, presentation materials, etc.)
3.3	Gap Analysis and Public Asset Inventory Report
3.4	Market Assessment Report

3.5	Route Determination Report

Task 4: Last Mile Design for Local Jurisdictions

Based on the findings from Task 1-3, the Consultant will assist SCAG and selected jurisdictions in setting the foundation for last mile services in the three (3) priority areas. Work efforts will include specifics regarding the financing and implementation strategies, short-term and long-term actions needed to prepare the area for broadband implementation and include conceptual design and specifications to create a project ready for the next stages of project development.

Task 4.1: Internet Service Provider (ISP) Outreach

Based on the findings listed under Task 2-3, and at the request of the local jurisdiction, SCAG may ask the consultant to conduct interviews and focus group sessions with Internet Service Providers that operate in the Priority Areas. Outreach exercises will identify potential areas for partnership between the respective local jurisdictions and incumbent providers. Potential topics to discuss may include but not be limited to:

- Retail services & pricing to a range of customer segments, which may include residential and/or commercial
- Retail services & pricing to government, education, healthcare and anchor organizations
- Retail services that leverage other utilities for outsourced content and services
- Fiber leasing arrangements
- Revenue sharing agreements
- Open Access Model compliance
- Phased roll-out of lit services to customers
- Milestones & performance schedules for delivery of services.
- Potential partnership arrangements with third-party asset owners (County, other private telecoms)
- Others to be determined throughout the course of the project.

Burns & McDonnell Engineering Company shall analyze Priority Areas and conduct (3) 2-hour interviews and focus group sessions with corresponding Internet Service Providers. Throughout this process, Burns & McDonnell Engineering Company shall identify prospective areas for partnership between the respective local jurisdictions and incumbent providers. SCAG and Burns & McDonnell Engineering Company shall agree upon the topics for the ISP outreach in up to (1) 1-hour discussion. SCAG may inquire Burns & McDonnell Engineering Company to lead interviews and focus group sessions with Internet Service Providers that operate in Priority Areas depending upon findings listed under Task 2-3 and at the request of the local jurisdiction.

Task 4.2: 10-Year Technology Last Mile Roadmap

The Consultant shall develop a (10) year last mile roadmap of up to (20) pages. The roadmap will identify a list of recommended solutions for each opportunity areas. The roadmap will

identify the differences between active Ethernet, passive optical, and fixed wireless networks from selection, design, impacts, and cost comparisons. Inventory of vendor products may include key features of each platform consisting, but not limited to, the following:

- Hardware capacities
- Software specifications
- Environmental and management capabilities
- Equipment management software functionality for service configuration, surveillance, performance, and administration.

The roadmap will include the limitations of each technology (e.g., insufficient capacity to or inability to support real-time traffic such as voice over IP or Broadcast video), elements that would affect consumer and/or carrier adoption, and the extent to which these limitations can be mitigated. The roadmap will convey the market availability of next generation technologies (e.g., technologies that are in production by multiple manufacturers), and any market constraints that would affect their adoption. If applicable the roadmap will include forecasts (if any) of when the technology will reach 'end of life' within the next 10 years.

SCAG or partnering local jurisdictions key stakeholders and decision-makers will actively participate in the data gathering sessions to validate our comprehension of their expectations for the 10-year roadmap. They will play a pivotal role in establishing the vision for the roadmap and can provide insights on the bullet points outlined in section 4.2 if guidance is required.

Task 4.3: Financing and Implementation Assessments

The Consultant will develop strategies and recommendations for financing and implementation which may include but are not limited to:

- Include order of magnitude cost estimations for network implementation, construction, specifications, operations, and maintenance, over a 10-year period timeframe.
- Identify potential funding sources and provide strong justification for funding to serve as the basis for a grant/loan application to support project implementation.
- Provide strategic guidance in the planning of a broadband connectivity project that can be implemented as cost-effectively and quickly as possible for the purpose of enabling economic development and citizen connectivity.
- Scenarios of potential construction and operational relationships with public, private, and membership owned companies in the service area and with publicly and privately funded networks as suitable interconnection.
- Recommendations for legal and operational changes, including regional roles and responsibilities, to address the gap analysis and market assessment findings.
- Burns & McDonnell Engineering Company in conjunction with SCAG would create a list of up to (10) potential partners, supporting entities and stakeholders for ongoing engagement. This list of qualified entities would be in alignment with the long-term SCAG broadband grant strategy and for solicitation of support documents as required for successful submittal of grant applications.

Task 4.4: Last Mile Conceptual Design Drawings

Burns & McDonnell Engineering Company shall produce and provide three preliminary conceptual drawings that illustrate potential routes and access points for potential customers to be served by the proposed network. These proposed access points shall consist of either a fiber to the premise (FTTP) option or a fixed wireless option based on the unique requirements of the area being served., which local agencies can use towards last mile expansion for each priority area, and will also factor:

- Estimated unit count (households or businesses consisting of one or more people living or working together that occupy all or part of a standalone building)
    - These preliminary counts shall be pulled from existing county parcel data and preliminarily verified with a desktop review of the data.
- Estimated number of telephone poles
    - These vertical assets shall be pulled from SCAG provided data or publicly available data of the existing distribution assets within the priority areas being served and preliminarily verified with a desktop review of the data.
- Estimated route miles
    - These preliminary counts shall be identified from the preliminary conceptual maps that Burns & McDonnell Engineering Company would produce, and the data behind them would be from SCAG provided data, publicly available data, third party data, or Burns & McDonnell Engineering Company produced data for the purpose of this project and preliminarily verified with a desktop review of the data.
- Square miles
- Proposed technology to be deployed.

These route designs will identify the roads to be included in each build-out scenario. Further this task will also require the identification of installation types for the fiber optic cables (e.g., new/existing aerial, new/existing underground, and dark fiber).

Task 4.5: Technology Deployment Strategy

Building upon the last mile conceptual design drawings, the Consultant will develop high-level design schematics for each of the determined routes.[3] Last mile schematics will be designed to accommodate a minimum of 100/20 speeds. Consultant team shall indicate the level of information feasible within the available budget range in their proposal response. Designs may include, but are not limited to, the following:

- General Requirements
    - Network technology
    - Premise location maps
    - Percentage existing/new aerial/underground

[3] This task requires a minimal level of engineering work and is not intended to advance to preliminary engineering (PE), which would be performed by an agency other than SCAG and after the conclusion of this project.

    - Design Layer 1 (physical), Layer 2 (switching) and Layer 3 (routing) architecture that may utilize network equipment with considerations around remote management.
    - Project budget spreadsheets (e.g., material and labor construction estimates including prevailing wage requirements)
    - Growth, redundancy, and owner-specified service level projections
    - Network capacity plans that demonstrate support for the required data speeds
    - Opportunities to leverage the existing broadband infrastructure such as dark fiber or planned infrastructure such as CDTs proposed middle mile segments.
- FTPP Networks
    - Physical topology
    - Potential hut location
    - Splitter placements
    - Driveway lengths
    - Cable management recommendations
- Fixed Wireless networks
    - Potential fixed wireless equipment sites
    - Fixed wireless propagation maps

Task 4 Deliverables:

Task	Deliverables
4.1	Internet Service Provider Outreach (including agenda, presentation materials, survey data, etc.).
4.2	10-Year Technology Last Mile Roadmap
4.3	Financing and Implementation Report
4.4	Last Mile Design Drawings
4.5	High-Level Design Schematics and Report

Deliverables shall be provided in accordance with Exhibit B, Schedule. Copies of all required Deliverables for each Task as noted above shall be provided to the SCAG's Project Manager.

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CONTRACT NUMBER 24-024-C01

AGREEMENT BETWEEN THE SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS AND BURNS & MCDONNELL ENGINEERING COMPANY, INC.

THIS AGREEMENT ("Agreement"), is made and entered into, by and between the Southern California Association of Governments, hereinafter referred to as "SCAG", and Burns & McDonnell Engineering Company, Inc., hereinafter referred to as "Consultant," each of which is sometimes individually referred to as "Party" and collectively referred to as "Parties."

RECITALS

WHEREAS, SCAG is a Joint Powers Agency and a federally designated Metropolitan Planning Organization for Southern California. SCAG is primarily responsible for developing the regional transportation plan and transportation improvement program for the counties of Los Angeles, Orange, San Bernardino, Riverside, Ventura, and Imperial;

WHEREAS, pursuant to SCAG's annual Comprehensive Budget, SCAG will be engaged in many activities and projects that will require certain technical, professional, or support services from time to time;

WHEREAS, all obligations of SCAG under this Agreement are subject to the availability of funding from SCAG's funding source;

WHEREAS, SCAG's Fiscal Year is from July 1 through June 30;

WHEREAS, this Agreement is funded through the California Public Utilities Commission Local Agency Technical Assistance (LATA) Grant Program, and is subject to all the requirements in the most current version(s) of the LATA Grant Program Decision (D.22-02-026), Guidelines, and Attachments which are incorporated herein by this reference, and is subject to applicable Caltrans requirements for architectural and engineering (A&E) projects;

WHEREAS, SCAG seeks to retain the Services of Consultant to provide Last Mile Project Assessment for the SCAG Region ("Project"); and

WHEREAS, Consultant agrees to perform the Services required by SCAG on the terms and conditions set forth below.

TERMS OF AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. Agreement Contents

   This Agreement is comprised of these terms and conditions and any attached exhibits. Such terms and conditions are subject to change pursuant to Section 9 in the event requirements are changed by SCAG's funding agencies and/or sources. The Recitals to this Agreement are also incorporated herein by this reference.

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2. Scope of Work

Consultant shall be responsible for the complete performance of all tasks, obligations, and responsibilities described in the "Scope of Work," Exhibit A ("Services"), attached hereto and incorporated herein by this reference. Consultant shall furnish all technical and professional services, including labor, transportation, supervision and experience, and incidental and customary work necessary to fully and adequately supply the Services.

3. Term

a. The Term of this Agreement shall begin on the Effective Date (Section 47) of the Agreement and continue until June 30, 2025, hereinafter referred to as the "Completion Date," unless terminated earlier as provided herein.

b. Services performed under this Agreement shall commence only upon issuance by SCAG to Consultant of a Notice to Proceed.

c. Consultant Services and reimbursements beyond June 30th of each Fiscal Year are subject to the inclusion and funding agency approval of this Project in the Comprehensive Budget for each Fiscal Year. Therefore, on June 30th of each Fiscal Year, the Consultant must suspend all work under this Agreement until the Consultant receives an executed Unilateral Amendment, as described in Sections 5.e. and 9.c. of this Agreement, allowing the work to continue and including the Available Funding Schedule. Consultant shall not be liable for delays to the project caused by any such suspension. See "Unilateral Amendment Form," Exhibit E, attached hereto and incorporated herein by this reference. In the event this Project is not approved in the Comprehensive Budget for each Fiscal Year this Agreement shall terminate effective June 30th of the Fiscal Year funding was provided, as specified in the "Available Funding Schedule," Exhibit D-1, attached hereto and incorporated herein by this reference.

d. Time is of importance in the performance of Services under this Agreement.

4. Schedule and Staffing

a. Consultant shall be responsible to SCAG for performing all Services described in the Scope of Work in a timely manner as set forth in the "Schedule," Exhibit B, attached hereto and incorporated herein by this reference.

b. Services described in the Scope of Work shall be performed by Consultant's staff, subcontractors or other members of the project team, hereinafter referred to as "Subconsultant(s)," listed in the "Line Item Budget/Price Sheet," Exhibit C, attached hereto and incorporated by this reference. **There shall be no change in the designation of Consultant staff, Subconsultant(s), or any other information as identified in the Line Item Budget/Price Sheet without the prior written approval of the SCAG Chief Financial Officer.** No portion of the work included in this Agreement shall be subcontracted, except as provided herein, without the prior, written authorization of the SCAG Chief Financial Officer.

c. Nothing contained in this Agreement or otherwise, shall create any contractual relation between SCAG and any Subconsultants, and no sub agreement shall relieve the Consultant of its responsibilities and obligations hereunder. The Consultant agrees to be as fully responsible to SCAG for the acts and omissions of its Subconsultants and of persons either directly or indirectly

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employed by any of them as it is for the acts and omissions of persons directly employed by the Consultant. The Consultant's obligation to pay its Subconsultants is an independent obligation from SCAG's obligation to make payments to the Consultant.

5. Compensation

   a. The method of payment for this Agreement shall be based on lump sum with progress payments. The total lump sum price paid to Consultant shall include compensation for all work and deliverables, including travel and equipment described in the attached Scope of Work. No additional compensation shall be paid to Consultant, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation shall be negotiated between Consultant and SCAG. Adjustment in the total lump sum compensation shall not be effective until authorized by Agreement amendment and approved by SCAG.

   b. The maximum amount payable under this Agreement, including all expenses, shall not exceed $838,708.24, subject to Sections 3 (Term) and 6 (Funding Requirements) of this Agreement.

   c. Consultant shall be paid upon percent of completion in accordance with the Price Sheet, Exhibit C.

   d. This is a multi-fiscal year contract. Unexpended funds are not automatically carried over into the next Fiscal Year.

   e. Subject to Section 3.c. (Term), for Services rendered, Consultant shall receive funding in accordance with the "Available Funding Schedule," Exhibit D-1, and Services shall be invoiced in accordance with the Price Sheet, Exhibit C, subject to Section 3(c). Consultant shall not invoice SCAG in excess of the Available Funding Schedule or in advance or after the Funding Period as identified in the Available Funding Schedule or subsequent Amendments to the Available Funding Schedule.

   f. Invoices for payment shall refer to the Project Number(s) as specified in the "Available Funding Schedule," Exhibit D-1.

6. Funding Requirements

   a. It is mutually understood between the Parties that this Agreement may have been written before ascertaining the availability of funds for the total value of this Agreement, in order to avoid program and fiscal delays that may occur if the Agreement were executed after that determination was made.

   b. It is mutually agreed between the parties that SCAG reserves the option to terminate this Agreement in accordance with the provisions of Section 19, Termination or to amend this Agreement to reflect any reduction or changes in fundings.

7. Project Manager

   a. Consultant shall coordinate all work pursuant to this Agreement with SCAG through the Project Manager. For purposes of this Agreement, SCAG designates the following Project Manager:

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Roland Ok
SCAG Project Manager
(213) 236-1819
ok@scag.ca.gov

b. SCAG reserves the right to change the above designation upon written notice to Consultant. The SCAG Project Manager shall review progress reports, approve invoices and determine whether the Consultant's performance under the Scope of Work has been satisfactorily completed.

c. The Consultant designates the following Consultant Project Manager:

Neelou Sattarin
Consultant Project Manager
(913) 221-6094
npsattarin@burnsmcd.com

d. The Consultant shall not change the designation of the Consultant Project Manager or other key personnel stated above without the prior written approval of the SCAG Project Manager.

8. Assignment and Change in Ownership or Control

a. Neither Consultant nor SCAG shall assign any interest in this Agreement, and shall not transfer the same, without written notification to and the prior written consent of the other party in a form approved by the SCAG Chief Financial Officer.

b. In the event of any change in ownership or control of Consultant's firm or Subconsultant's firm, Consultant shall provide written notification to SCAG and SCAG shall determine the impact on this Agreement, if any, of such change, and provide its response to Consultant within thirty (30) days from the date notification is received by SCAG.

9. Agreement Changes

a. No alteration or deviation of the terms of this Agreement shall be valid unless made in writing in the form of a contract Amendment and fully executed by the Parties, or in the form of a unilateral Amendment signed by SCAG only under the circumstances and process set forth in Section 9.c. of this Agreement. The Consultant Project Manager or SCAG Project Manager shall initiate a standard contract Amendment via the "Contract Amendment Request Form" (Request), Exhibit J, attached hereto and incorporated herein by this reference. A Request only initiates the contract amendment process. SCAG must still approve the actual Contract Amendment (Amendment). Such Amendment shall not become effective without the full execution by the Parties. The Effective Date of such Amendment shall be set forth in the Amendment, and shall be no earlier than the date that SCAG received the Request. **SCAG shall disallow any and all costs incurred by the Consultant or Subconsultant(s) prior to the Effective Date of an Amendment resulting from a Request**.

b. SCAG may request, at any time, Amendments to this Agreement and will notify the Consultant regarding such changes. Within ten (10) business days from the date of the written notice, Consultant shall notify SCAG of the impact of such changes on the Scope of Work, Schedule and Budget. Upon agreement between the Parties as to the requested changes, an Amendment to this Agreement shall be prepared regarding the same**.**

c. SCAG may additionally unilaterally amend the Agreement if such Amendment relates solely to an administrative revision by SCAG of the Available Funding Schedule under Section 5.e, as set forth in Exhibit D-1. This type of Amendment is administrative in nature and allows SCAG to make adjustments to the funding of the Agreement without materially impacting the Scope of Work, Schedule or Budget. SCAG shall notify Consultant of this unilateral Amendment to the Agreement within ten (10) days from the date of the unilateral Amendment. SCAG will not use the unilateral Amendment to reduce funding.

10. Invoicing for Payment

a. SCAG shall reimburse the Consultant as promptly as its fiscal procedures permit, upon receipt of invoices submitted in accordance with this Agreement. Consultant agrees to be paid using SCAG's ACH Vendor Payment Authorization Form (available at: scag.ca.gov/opportunities/Pages/BusinessWithSCAG.aspx. The Consultant shall complete the ACH Form and email it to ACHpayment@scag.ca.gov, prior to executing this Agreement. The Consultant shall email all invoices to AccountsPayable@scag.ca.gov.

b. In the event Consultant performs work after the Notice to Proceed but before the State Budget is approved, Consultant agrees that SCAG shall have no obligation to make payment for such work until after the State Budget is approved. No interest or other penalty shall be paid by SCAG.

c. Invoices for payment shall be submitted monthly for the previous month's work. All Invoices shall be accompanied by one (1) original of the written narrative of the work ("Progress Reports") The Progress Reports shall describe the percentage and status of work completed, as identified in the Scope of Work, technical papers, draft documentation, and any completed products. The purpose of the Progress Reports is to allow SCAG to determine if the Consultant is completing the activities identified in the Scope of Work, in accordance with the agreed upon Schedule, and to provide opportunity to describe difficulties or special problems encountered so solutions can be developed. If Consultant fails to submit the required deliverable items according to the schedule set forth in Exhibit B, SCAG shall have the right to terminate this Agreement in accordance with the provisions of Section 19, Termination.

d. Invoices for payment shall be submitted by the last day of each month ("Invoice Due Date") for the previous month's work. Invoices not received by SCAG within thirty (30) calendar days of the Invoice Due Date may be assessed a $1,000 penalty per invoice, which shall be deducted by SCAG in the payment of the invoice.

e. Invoices for payment for Services rendered through June 30th of each Fiscal Year, in which the funding was provided, as specified in the "Available Funding Schedule," Exhibit D-1, must be received by SCAG on or before July 21 of each fiscal year. SCAG shall not be obligated for payment of invoices received after such date. The format and content of all such invoices shall comply with Sections 11 (Invoicing Format and Content) and 37 (Cost Principles) of this Agreement.

f. The final invoice must contain the final cost and all credits due SCAG under the provisions of this Agreement. If the final invoice is not submitted within sixty (60) calendar days after completion of Consultant's work, unless a later date is approved by SCAG, it may be ineligible for payment.

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g. Prompt Payment to Subconsultants: A Consultant or Subconsultant shall pay any sub-tier consultant for satisfactorily completed work no later than fifteen (15) days of receipt of each payment from SCAG. The fifteen (15) calendar days period is applicable unless a longer period is agreed to in writing. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from Consultant or Subconsultant to a subconsultant, Consultant or Subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the Consultant or Subconsultant, as applicable, to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made.

The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.

11. Invoicing Format and Content

a. All invoices submitted to SCAG for payment shall be e-mailed to accountspayable@scag.ca.gov (file cannot exceed 10MB).

b. The invoice shall be entitled "Invoice" or otherwise clearly identify that the document is an Invoice, and shall contain the following information:
(1) SCAG's "Bill To" information as stated in the above paragraph "a." of this section;
(2) Invoice number and/or billing number specified by Consultant. The invoice number must be unique for each invoice submitted;
(3) Invoice date;
(4) Billing period specified with beginning and ending dates. The beginning date must not be sooner than the Notice to Proceed date of the Agreement, or within any previous billing dates;
(5) Total amount due for the billing period;
(6) Contract Number, Purchase Order Number, Project/Task Number, and Vendor Number (as identified in Exhibit D-1 or Notice to Proceed letter)
(7) Total Contract Value (as identified in Exhibit D-1); and
(8) SCAG Project Manager.

c. All invoices shall specify the tasks/deliverables completed in accordance with the tasks/deliverables set forth in the Scope of Work and Price Sheet, using the format specified in Exhibit C.

d. Consultant shall invoice SCAG in United States currency and SCAG shall only reimburse Consultant in United States currency. If Consultant provides receipts in any currency other than United States currency to support its invoices, Consultant must convert each receipt to United States currency and document how the Consultant made the conversion or SCAG shall not reimburse the Consultant for such invoices.

12. Agreement Completion Retainer

No retainage will be held by SCAG from progress payments due to Consultant. Consultant is prohibited from holding retainage from subconsultants. Any delay or postponement of payment may take place only for good cause and with SCAG's prior written approval. Consultant shall include the same requirement in any Subconsultant contract. Any violation of these provisions shall subject the violating Consultant or Subconsultant to the penalties, sanctions, and other remedies specified in

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Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the Consultant or Subconsultant in the event of a dispute involving late payment or nonpayment by the Consultant, deficient Subconsultant performance, and/or noncompliance by a Subconsultant. This clause applies to both DBE and non-DBE Subconsultants.

13. Satisfactory Performance; Preliminary Review of Work

a. Payment for Services under this Agreement is contingent upon SCAG's determination that the performance of the Consultant has been satisfactory, in accordance with the Scope of Work and Section 46 (Standard of Care).

b. All reports, working papers, and similar work products prepared for submission in the course of providing Services under this Agreement shall be submitted to the SCAG Project Manager in draft form, and SCAG may require revisions of such drafts prior to formal submission and approval. In the event that SCAG Project Manager determines the formally submitted work product to be not in accordance with the standard of care established under this contract, SCAG Project Manager may require Consultant to revise and resubmit the work at no cost to SCAG pursuant to the limitations of Section 46.

14. Penalty

a. A ten percent (10%) penalty shall be imposed for each thirty (30) day calendar period beyond the Agreement completion date, as specified in Section 3 (Term) of this Agreement, if the complete product, as described in the Scope of Work, is not received and approved by SCAG by the completion date. Such penalty shall be based on the total value of the Agreement, and shall not be imposed if the delay is caused by SCAG, a third party, or is subject to Section 48 (Force Majeure) of this Agreement. Such penalty payment and termination under section 19 will be the sole and exclusive remedies of SCAG for Consultant's delayed performance, provided, however, SCAG retains all rights and remedies specified under Section 19 of this Agreement.

b. Notwithstanding the above paragraph, the Consultant may request an extension in writing, outlining the reasons for the delay and the new expected completion date. All such requests shall be submitted to the SCAG Chief Financial Officer, and if approved, shall require a written Amendment to this Agreement fully executed by the Parties.

15. Quarterly Progress Reports

a. The Consultant shall submit a Quarterly Progress Report to the SCAG Project Manager no later than five (5) days after the close of each quarter (i.e., for the first quarter, ending September 30, the deadline is October 5), describing progress toward completion of all tasks, Services, and products, conformance with schedules, and reporting of all costs incurred for the Project Number(s) as specified in the "Available Funding Schedule," Exhibit D-1. In the submittal of Quarterly Progress Reports, the Consultant shall include all completed products, in a form determined by the SCAG Project Manager.

b. SCAG reserves the right to deem incomplete any Quarterly Progress Report that does not sufficiently document the above-required information and may withhold payment of invoices submitted pending the submission of required documentation by the Consultant.

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c. The Consultant Project Manager shall meet with the SCAG Project Manager, as needed to discuss work progress.

16. Inspection of Work; Safety

The Consultant and any Subconsultants shall permit Caltrans, SCAG and any designee of SCAG the opportunity to review and inspect the Service activities at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by any SCAG safety officer and other SCAG representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the project site, as applicable.

Pursuant to the authority contained in Vehicle Code §591, SCAG has determined that the limits of the Project are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of Consultant's vehicles.

17. Written and Electronic Versions of Work Products and Related Work Materials

a. For purposes of this Agreement, "Work Products" shall mean all deliverables created or produced from Services under this Agreement including, but not limited to, all Work Products conceived or made, either solely or jointly with others during the term of this Agreement, which relates to the Services commissioned or performed under this Agreement. Work Product includes all deliverables, innovations, improvements, or other works of authorship Consultant and/or Subconsultant may conceive of or develop in the course of this Agreement, whether or not they are eligible for patent, copyright, trademark, trade secret or other legal protection.

b. For purposes of this Agreement, "Related Work Materials" shall mean all materials obtained, created by or provided to Consultant pursuant to this Agreement. Such materials shall include but are not limited to ideas, notes, written documents, memoranda specifications, plans, procedures, drawing descriptions, computer program data, input record data, databases, software, and source codes. Related Work Materials shall include "Intellectual Property," including but not limited to copyrights, test data, trade secrets, and confidential information.

c. For purposes of this Agreement, "Inventions," shall mean any ideas, methodologies, designs, concept, technique, invention, discovery, improvement or development regardless of patentability made solely by the Consultant or Subconsultant during the term of this Agreement and in performance of any Services under this Agreement, provided that either the conception or reduction to practice thereof occurs during the term of this Agreement and in performance of any Services under this Agreement.

d. During or upon completion of the Scope of Work, Consultant shall deliver to the SCAG Project Manager all Work Products and Related Work Materials. Such materials shall be provided in electronic PDF format as follows:

(1) One (1) electronic PDF copy in a medium pre-approved in writing by the SCAG Project Manager;
(2) Two (2) electronic copies of all software (including source code, User's Manual and full

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documentation in printed and electronic form), databases, and web materials;
(3) Two (2) double-sided hard copies and two (2) electronic copies of all material prepared for and used in presentations, including overhead, power point and hard copy presentations;
(4) Copies of all photographs taken at meetings, conferences, or Project sites in conjunction with the work performed pursuant to this Agreement. High-resolution tiff or jpeg files from digital cameras are preferred. Files may be sent on ZIP disk or CD-ROM. Traditional photographic prints are also acceptable; and,
(5) Other Related Work Materials, as requested by the SCAG Project Manager.

e. The electronic versions of all written materials and accompanying graphic images shall, when printed or otherwise displayed, appear in the identical format, location, quality, and state of replicating in which they appear in the hard copy versions. Similarly, any graphic images accompanying the text of these written materials shall be included, in digitized form, in the electronic version in the same places in which they appear in the hard copy version.

f. Reserved.

g. The title pages of all written Work Products produced under this Agreement shall include the following:

"The preparation of this report has been financed in part through grant[s] from the Federal Highway Administration and Federal Transit Administration, U.S. Department of Transportation (DOT). The contents of this report do not necessarily reflect the official views or policy of the U.S. Department of Transportation."

h. All written Work Products produced under this Agreement shall further contain the following disclaimer in a separate section preceding the main body of the document:

"The contents of this document reflect the views of the author who is responsible for the facts and accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of SCAG or DOT. This report does not constitute a standard, specification or regulation."

i. Geographic Information System ("GIS"), spatial data, and databases provided to SCAG pursuant to this Agreement shall be accompanied by metadata conforming to the requirements specified in Exhibit F, "Spatial Data/Metadata Requirements," attached hereto and incorporated herein by this reference.

j. Graphics products must conform to the requirements specified in Exhibit G, "Graphics Requirements for Consultants", attached hereto and incorporated herein by this reference.

k. Web material prepared or acquired under this Agreement shall conform to the requirements specified in Exhibit H, "Web Policies and Guidelines for Consultants", attached hereto and incorporated herein by this reference.

l. Mapping prepared or acquired under this Agreement shall conform to the requirements specified in Exhibit I, "Mapping Guidelines for Consultants", attached hereto and incorporated herein by this reference.

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18. Ownership, Confidentiality, and Use of Work Products

a. All Work Products and Related Work Materials including Intellectual Property, as defined in Section 17, of this Agreement, shall become the property of SCAG, and all publication rights are reserved to SCAG. The Consultant shall not copyright Work Products or Related Work Materials.

b. Related Work Materials including Intellectual Property obtained by Consultant pursuant to a third party agreement and related to the Services provided by Consultant pursuant to this Agreement, shall become the property of SCAG.

c. Consultant shall cooperate in the execution of all documents necessary to protect SCAG's rights to such materials. Consultant shall notify SCAG in writing of all Intellectual Property developed or conceived in the course of its performance under this Agreement.

d. Consultant shall assign and does hereby assign to SCAG all rights, title and interest to Intellectual Property conceived or developed by Consultant in the course of Consultant work pursuant to this Agreement. Consultant shall cooperate in the execution of all documents necessary to protect SCAG's rights to the Intellectual Property.

e. Subject to the California Public Records Act, all Work Products and Related Work Materials including Intellectual Property shall be held confidential by Consultant. Nothing furnished to Consultant, which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential.

f. The Consultant shall not use, release, reproduce, distribute, publish, adapt for future use or otherwise use Work Products and Related Work Materials for purposes other than the performance of the Scope of Work, nor authorize others to do so, without prior written permission of SCAG Legal Counsel; nor shall such materials be disclosed to any person or entity not connected with the performance of the Services. Consultant shall also safeguard such confidential materials from unauthorized disclosure, using the same standard of care to avoid disclosure, as the Consultant treats its confidential information, but in no case less than reasonable care.

g. Upon termination of this Agreement or when requested to do so by SCAG, Consultant shall erase all copies of Work Products and Related Work Materials from its computers provided that Consultant may retain one (1) copy of the Confidential Information for its own archival and legal purposes, including any Confidential Information found in electronic backup systems routinely overwritten in the ordinary course of business where the obligations under this Agreement will terminate.

h. Reserved.

i. SCAG may utilize any Work Products or Related Work Materials provided by Consultant pursuant to this Agreement, in any manner which SCAG deems appropriate without additional compensation to Consultant.

19. Termination

a. Termination Resulting from Lack of Approval in the Comprehensive Budget

In the event that the Services provided for under this Agreement is not approved in the next

Comprehensive Budget, the subsequent Comprehensive Budget, or Comprehensive Budget Amendments, this Agreement, as provided in Section 3 (Term), is deemed to be terminated effective June 30th of the applicable Fiscal Year.

b. Termination for Convenience by SCAG

SCAG may terminate this Agreement at any time for any reason or for no reason by giving notice to the Consultant of such termination (including the effective termination date) at least thirty (30) calendar days before the effective date of such termination.

In such event, all finished or unfinished documents and other materials as described in this Agreement, at the option of SCAG, become SCAG's property. If this Agreement is terminated by SCAG, as provided herein, SCAG's only obligation shall be the payment of fees and expenses incurred prior to the termination date, in accordance with the cost provisions of this Agreement.

c. Termination for Cause

If through any cause, the Consultant shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant violates any of the covenants, terms, or stipulations of this Agreement, SCAG shall thereupon have the right to terminate the Agreement by giving not less than ten (10) working days written notice to the Consultant of the intent to terminate and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the Consultant under this Agreement shall, at the option of SCAG, become SCAG's property.

Notwithstanding any provisions of this Agreement, Consultant shall not be relieved of liability to SCAG for damages sustained by SCAG by virtue of any breach of this Agreement by Consultant, and SCAG may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due SCAG from Consultant is determined.

20. Compliance with Laws, Rules, and Regulations

Consultant shall perform all Services under this Agreement in accordance and in full compliance with all applicable Federal, State and local statutes, rules, regulations, and policies and procedures and shall secure and maintain all licenses or permits required by law.

21. Independent Contractor

The Consultant agrees to provide the Services set forth in this Agreement in the capacity of an independent contractor and neither the Consultant nor any Subconsultants or any of their employees or agents shall be considered to be an employee or agent of SCAG.

SCAG is not required to make any deductions or withholdings from the compensation payable to Consultant under the provisions of the Agreement, and is not required to issue W-2 Forms for income and employment tax purposes for any of Consultant's assigned personnel. Consultant, in the performance of its obligation hereunder, is only subject to the control or direction of SCAG as to the designation of tasks to be performed and the results to be accomplished.

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22. Conflict of Interest

a. During the term of this Agreement, Consultant shall disclose any financial, business, or other relationship with SCAG that may have an impact upon the outcome of this Agreement or any ensuing SCAG construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing SCAG construction project which will follow.

b. Consultant and any Subconsultants (regardless of the sub-tier) agrees to abide by the SCAG Conflict of Interest Policy as it applies to "consultants," as defined under the SCAG Conflict of Interest Policy, posted at: https://scag.ca.gov/get-involved-contract-vendor-opportunities

c. Consultant further agrees that during the term of this Agreement, it shall not accept employment from any other person, firm or corporation where such is a conflict of interest or where it is likely to lead to a conflict of interest between SCAG's interest and the interest of such person, firm or corporation or any other third party.

23. Contingency Fees or other Unlawful Consideration

a. The Consultant represents, by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingency fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Consultant for the purpose of securing business. For breach or violation of this representation, SCAG has the right in its sole discretion to terminate this Agreement with its only obligation to pay for the value of the work actually performed, or to deduct from the Agreement price, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingency fee.

b. The Consultant further warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any SCAG employee. For breach or violation of this warranty, SCAG shall have the right, in its sole discretion, to terminate the Agreement without liability, to pay only for the value of work performed, or to deduct from the Agreement price or otherwise recover the full amount of each rebate, kickback or other unlawful consideration.

24. Release of Information

Consultant shall not release any information to a third party or otherwise publish or utilize any information obtained or produced by it as a result of or in connection with the performance of Services under this Agreement without the prior written authorization of the SCAG Chief Financial Officer.

25. Disputes

Prior to either party commencing any legal action under this Agreement, the Parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then the provision below shall apply.

Except as otherwise provided in this Agreement, any dispute arising under this Agreement which is not resolved by mutual agreement shall be decided through binding arbitration by a three (3) member

panel in accordance with the rules of the American Arbitration Association and as provided in this provision; if this provision differs from the rules of the American Arbitration Association, then this provision shall control. Consultant shall continue with the responsibilities under this Agreement during any dispute until the dispute is resolved. A judgment upon the award rendered by arbitration may be entered into any court having jurisdiction thereof. The arbitration panel shall have the authority to grant any remedy or relief that would have been available to the parties had the matter been heard in a court of law. Following arbitration, the arbitration panel shall prepare a written decision containing the essential findings and conclusions on which the award is based so as to ensure meaningful judicial review of the decision. All expenses and fees for the arbitrator and expenses for hearing facilities and other expenses of arbitration shall be borne equally by both parties unless they agree otherwise or unless the arbitrator in the award assesses such expenses against one of the parties or allocates such expenses other than equally between the parties. Either party may bring an action in court to compel arbitration under this agreement and to enforce an arbitration award.

26. Indemnity

a. Consultant is responsible for all its employees and contractors.

b. When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless the Cities, SCAG, and their members, officers, Regional Council Board members, City Council members, and employees from and against any and all losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs to the extent caused in whole or in part by any negligent act, error or omission of Consultant, its employees, or subconsultants arising out of the performance of professional Services under the Scope of Work in this Agreement. If Consultant's obligation to defend indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims to the extent caused by the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

c. For all other Services performed by Consultant pursuant to this Agreement, the Consultant shall indemnify, protect, defend and hold harmless the Cities, SCAG, and their members, officers, Regional Council members, City Council members, and employees from and against any and all losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs to the extent caused by in whole or in part, the negligent performance of the Scope of Work in this Agreement by the Consultant, its employees or subconsultants.

d. Consultant shall defend indemnify, and hold harmless the Cities, SCAG, and their members, officers, Regional Council Board Members, City Council members, and employees against any and all claims against SCAG based upon allegations that Consultant has wrongfully utilized Intellectual Property of others in performing work pursuant to this Agreement or that SCAG or the Cities have wrongfully used Intellectual Property developed by Consultant pursuant to this Agreement, provided, however, the indemnity obligation set forth in this Section 26(e) will not apply to the extent that the right that is a subject of any alleged infringement claim was supplied in accordance with SCAG's design or the infringing Services or reports and programs was modified by SCAG or was combined by SCAG with items not furnished pursuant to the Agreement.

27. Claims by Construction Contractor.

a. If claims are filed by the construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant may but is in no way obligated to make its personnel available for consultation and for fact testimony, if necessary, at depositions and at trial or arbitration proceedings.

b. Consultant's personnel that SCAG considers essential to assist in defending against construction contractor claims may but is in no way obligated to be made available on reasonable notice from SCAG. Only when requested by SCAG, Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this Agreement.

c. Services of Consultant's personnel in connection with any construction contractor claims may, but is no way obligated to be performed pursuant to a separate written contract.

28. Non-Discrimination/Equal Employment Opportunity

a. The Consultant's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the Consultant has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.

b. Consultant and its Subconsultants shall not deny the Agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Consultant and Subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

c. Consultant and its Subconsultants shall not unlawfully deny family, medical care leave, or pregnancy disability leave.

d. Consultant shall ensure, and shall require that its Subconsultant(s) ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

e. Consultant shall comply and require that its Subconsultant(s) comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

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f. Subject to Section 29 of this Agreement, Consultant shall permit access by representatives of the Department of Fair Employment and Housing and SCAG upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) business hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or SCAG shall require to ascertain compliance with this clause.

g. Consultant and its Subconsultant(s) shall give written notice of its obligations under this clause to labor organizations with which they have collective bargaining or other labor agreements.

h. The Consultant and its Subconsultant(s) shall comply with Title VI of the Civil Rights Act of 1964, as amended, and with the regulations relative to Title VI, (nondiscrimination in federally-assisted programs of the United States Department of Transportation (DOT), 49 C.F.R Part 21 and 23 C.F.R. Part 200; hereinafter referred to as "DOT regulations,") and 49 C.F.R Part 26, which are herein incorporated by reference and made a part of this Agreement. Wherever the term "Contractor" appears therein, it shall mean Consultant.

i. Consultant shall permit and shall require its Subconsultant(s) to permit access to all records of employment, employment advertisements, application forms, and other pertinent data and records required by the State Fair Employment Practices and Housing Commission or any other agency of the State of California designated by the State to investigate compliance with this Section.

j. Solicitations for Subconsultant(s), Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by the Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential Subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the DOT regulations relative to nondiscrimination.

k. Sanctions for Noncompliance: Failure by the Consultant to carry out the requirements above is a material breach of this Agreement, which may result in sanctions as SCAG may determine to be appropriate, including, but not limited to:

(1) Withholding of payments to the Consultant under this Agreement until the Consultant complies, and/or
(2) Cancellation, termination or suspension of the Agreement, in whole or in part.

l. Incorporation of Provisions: Any subcontract entered into in relation to this Agreement shall contain all of the provisions of this section. The Consultant shall take such action with respect to any subcontract or procurement as SCAG may direct as a means of enforcing such provisions including sanctions for noncompliance.

29. Records Retention and Audits

The Consultant agree to the following:

a. Maintaining all source documents, books, and records directly connected with their performance of this Agreement for a minimum of three (3) years from the date that SCAG makes final payment to the Consultant or, if applicable based on the funding source, until audit resolution is achieved for each annual Comprehensive Budget Agreement (between SCAG and Caltrans), whichever is later, and all other related, pending matters are closed. Notwithstanding the foregoing, records relating to any and

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all audits or litigation relevant to this Agreement shall be retained for five (5) years by Consultant or Subconsultant after the conclusion or resolution of the matter or the date an audit resolution is achieved, whichever is later, and shall make all supporting information available upon request for inspection and audit by representatives of SCAG, Caltrans the California State Auditor, or other authorized government agency. Copies shall be made and furnished to SCAG upon request at no cost to Consultant.

b. Establishing and maintaining an accounting system and reports conforming to Generally Accepted Accounting Principles (GAAP) to support invoices which segregate and accumulate incurred costs of the applicable Project Number(s) by line item and produce Quarterly Reports which clearly identify reimbursable costs and other expenditures related to such Project Number(s). Further, Consultant agrees to include a similar right of SCAG to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896). Consultant shall maintain documentation of its competitive bid process with respect to any procurement of sub-consultants pursuant to Section 4.b.

c. Upon request, at any time during normal business hours and as often as SCAG, and upon SCAG's expense, State of California Department of Transportation (Caltrans), Bureau of State Audits, or other State and Federal agencies or any duly authorized representative may deem necessary, Consultant shall make available for examination all of its records with respect to all matters directly covered by this Agreement for purposes of audit, examination, or to make copies or transcripts of such records, including, but not limited to, contracts, invoices, payrolls (including time sheets or timecards), , compliance with this Agreement or requirements of state funding sources and other records relating to all matters directly covered by this Agreement. Such records and access to the facilities and premises of the Consultant shall be made available during the period of performance of this Agreement, and for three (3) years from the date that SCAG makes final payment to the Consultant or until audit resolution is achieved for each annual Comprehensive Budget Agreement (between SCAG and Caltrans), whichever is later, and all other related, pending matters are closed.

d. Reserved

e. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, all records must be retained by the Consultant its staff and Subconsultant(s), if any, until completion of the action and resolution of all issues which arise from it. Records relating to any and all audits or litigation relevant to this Agreement shall be retained for five (5) years after the conclusion or resolution of the matter.

f. Notwithstanding anything to the contrary herein, in no event shall SCAG be entitled to audit the composition of any agreed upon fixed rates or percentage multipliers nor shall it be entitled to audit any rates, charges, costs, hours worked or expenses related to work performed on a lump sum or fixed price basis.

g. The Consultant agrees and shall require that all agreements with Subconsultant(s) contain provisions requiring adherence to this section in its entirety.

30. Audit Review Procedures

a. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by SCAG'S Chief Financial Officer.

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b. Not later than thirty (30) calendar days after issuance of the final audit report, Consultant may request a review by SCAG'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

c. Neither the pendency of a dispute nor its consideration by SCAG will excuse Consultant from full and timely performance, in accordance with the terms of this Agreement.

d. Consultant and subconsultant agreements, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an Agreement audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the Agreement, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure Caltrans or SCAG officials are allowed full access to the CPA's work papers including making copies as necessary. The Agreement, cost proposal, and ICR shall be adjusted by Consultant and approved by SCAG Contract Administrator to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if directed by SCAG at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the Caltrans or SCAG have access to CPA work papers, will be considered a breach of Agreement terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.

e. Consultant's Price Sheet may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Price Sheet shall be adjusted by the Consultant and approved by the SCAG Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the Consultant to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the Agreement terms and cause for termination of the Agreement.

1. During IOAI's review of the ICR audit work papers created by the Consultant's independent CPA, IOAI will work with the CPA and/or Consultant toward a resolution of issues that arise during the review. Each party agrees to use its reasonable efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, SCAG will reimburse the Consultant at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines}is received and approved by IOAI.

Accepted rates will be as follows:

a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.

b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.

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c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.

2. If IOAI is unable to issue a cognizant letter, IOAI may require Consultant to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the Consultant's and/or the independent CPA's revisions.

3. If the Consultant fails to comply with the provisions of this paragraph, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this Agreement.

4. Consultant may submit to SCAG final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this Agreement has been completed to the satisfaction of SCAG; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO SCAG no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this Agreement and all other agreements executed between SCAG and the Consultant, either as a prime or subconsultant, with the same fiscal period ICR.

31. Reserved

32. Labor Code Requirements.

32.1 Prevailing Wages.

a. Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the Services.

b. Any subcontract entered into as a result of this Agreement, if for more than $25,000 for public works construction or more than $15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Section.

c. When prevailing wages apply to the Services described in the Scope of Services, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See http://www.dir.ca.gov.

d. Copies of the prevailing rate of per diem wages in effect at commencement of this Agreement are on file at the SCAG's offices. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the SCAG, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties

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or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

32.2 DIR Registration. If the Services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

32.3 Eight-Hour Law. Pursuant to the provisions of the California Labor Code, eight hours of labor shall constitute a legal day's work, and the time of service of any worker employed on the work shall be limited and restricted to eight hours during any one calendar day, and forty hours in any one calendar week, except when payment for overtime is made at not less than one and one-half the basic rate for all hours worked in excess of eight hours per day ("Eight-Hour Law"), unless Consultant or the Services are not subject to the Eight-Hour Law. Consultant shall forfeit to SCAG as a penalty, $50.00 for each worker employed in the execution of this Agreement by him, or by any sub-consultant under him, for each calendar day during which such workman is required or permitted to work more than eight hours in any calendar day and forty hours in any one calendar week without such compensation for overtime violation of the provisions of the California Labor Code, unless Consultant or the Services are not subject to the Eight-Hour Law.

32.4 Employment of Apprentices. This Agreement shall not prevent the employment of properly indentured apprentices in accordance with the California Labor Code, and no employer or labor union shall refuse to accept otherwise qualified employees as indentured apprentices on the work performed hereunder solely on the ground of race, creed, national origin, ancestry, color or sex. Every qualified apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade in which he or she is employed and shall be employed only in the craft or trade to which he or she is registered.

If California Labor Code Section 1777.5 applies to the Services, Consultant and any subcontractor hereunder who employs workers in any apprenticeable craft or trade shall apply to the joint apprenticeship council administering applicable standards for a certificate approving Consultant or any sub-consultant for the employment and training of apprentices. Upon issuance of this certificate, Consultant and any sub-consultant shall employ the number of apprentices provided for therein, as well as contribute to the fund to administer the apprenticeship program in each craft or trade in the area of the work hereunder.

The parties expressly understand that the responsibility for compliance with provisions of this Section and with Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code in regard to all apprenticeable occupations lies with Consultant.

33. National Labor Relations Board.

In accordance with Public Contract Code §10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

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34. Federal and State Lobbying Activities Certification

The provisions of this shall only apply if Federal funds are to be provided under this Agreement.

a. By signing this Agreement, the Consultant certifies, to the best of its knowledge and belief, that no State or Federal funds have been paid or will be paid, by or on behalf of SCAG, to any person for influencing or attempting to influence an officer or employee of any State or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any State or Federal contract, the making of any State or Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, Amendment, or modification of any State or Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than State or Federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Consultant shall complete and submit Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with those form instructions.

c. This certification is a material representation of fact, upon which reliance was placed when this Agreement was entered into. If any federal funds are provided under this Agreement or if state funding sources otherwise require, the Consultant agrees that submission of this certification is a prerequisite for making or entering into this Agreement pursuant to 31 U.S.C. 1352.

d. The Consultant also agrees by signing this Agreement that it will require that the language of this certification be included in all subcontracts funded wholly or in part by any funds provided herein and which exceed $100,000 and that all such Subconsultants shall certify and disclose accordingly.

35. Certifications and Assurances, Other Federal Requirements

The provisions of this Section 31 shall only apply if Federal funds are to be provided under this Agreement, or if state funding sources require such assurances to be given.

a. Consultant shall adhere to the requirements contained in SCAG's annual Certification and Assurances (FHWA and FTA "Metropolitan Transportation Planning Process Certification") submitted as part of SCAG's Comprehensive Budget, pursuant to 23 CFR 450.334 and 23 U.S.C. 134. This Certification shall be published annually in SCAG's Comprehensive Budget. Such requirements shall apply to Consultant to the same extent as SCAG and may include, but are not limited to:

(1) Title VI of the Civil Rights Act of 1964 and Title VI Assurance executed by California under 23 U.S.C. 324 and 29 U.S.C. 794;
(2) Pub. Law 105-178, 112 Stat. 107 and any successor thereto, regarding the involvement of disadvantaged business enterprises in FHWA and FTA funded projects (Sec. 105(f), Pub. L. 970424, 96 Stat. 2100, 49 CFR part 26); and
(3) The Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, as amended)

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and the United States Department of Transportation (US DOT) implementing regulations (49 CFR 27, 37, and 38).

b. Consultant shall additionally comply with the requirements contained in the annual FTA "Certifications and Assurances for FTA Assistance," including "Certifications and Assurances Required of Each Applicant" and the "Lobbying Certification" in compliance with 49 U.S.C. Chapter 53; published annually in SCAG's Comprehensive Budget. Such assurances shall apply to Consultant to the same extent as SCAG, and include but are not limited to the following areas:

(1) Standard Assurances
(2) Debarment, Suspension, and Other Responsibility Matters for Primary Covered Transactions
(3) Drug Free Work Place Agreement
(4) Intergovernmental Review Assurance
(5) Nondiscrimination Assurance
(6) DBE Assurance
(7) Nondiscrimination on the Basis of Disability
(8) Certification and Assurances required by the U.S. Office of Management and Budget

c. The Consultant shall require its Subconsultant(s) to comply with these Certifications, and agrees to furnish documentation at no cost to SCAG to support this requirement that all of its agreements with Subconsultant(s) contain provisions requiring adherence to this section in its entirety.

d. Clean Air; Clean Water Act. Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to: (1) the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq*., and (2) the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq*. Consultant agrees to report each violation of either of the foregoing to SCAG and understands and agrees that SCAG will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office. Consultant agrees to include these requirements in each subcontract exceeding $150,000.

36. Contract Award

In accordance with "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 200, *et seq*., and successors thereto and applicable state law and procedures, all Subconsultant contracts containing funds provided under this Agreement are required to be competitively procured and awarded consistent with Local Program Procedures 00-05 (Pre-award Audit Requirements and Consultant Procurement) or successors thereto.

37. Cost Principles

a. Consultant agrees to comply with the following if Federal funds are to be provided under this Agreement, or if expressly required by the Federal or State funding source:

(1) the Contract Cost Principles and Procedures, 48 Code of Federal Regulations, Federal Acquisition Regulations System, Chapter 1, Part 31, *et seq*., 2 CFR Part 225 (Office of Management and Budget Circular A-87), "Cost Principles for State, Local, and Indian Tribal Governments," and successors thereto, shall be used to determine the allowability of individual project cost items, and

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(2) the Federal administrative procedures in accordance with "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 200, *et seq*., and successors thereto.

b. Any costs for which Consultant receives payment or credit that is determined by a subsequent audit or other review by either SCAG, Caltrans or other State or Federal authorities to be unallowable under, but not limited to, 2 CFR Part 225 (OMB Circular A-87); 48 CFR, Chapter 1, Part 31; or 2 CFR Part 200, *et seq*., and successors thereto, are to be repaid by Consultant within thirty (30) days of Consultant receiving notice of audit findings. Should Consultant fail to reimburse moneys due SCAG within thirty (30) days of demand, or within such other period as may be agreed between Parties hereto, SCAG is authorized to withhold future payments due Consultant.

c. Consultant agrees to furnish documentation to SCAG to support this requirement that all of its agreements with Subconsultants contain provisions requiring adherence to this section in its entirety.

38. Stop Work

a. SCAG may, at any time, by written Stop Work Order to the Consultant, require the Consultant to stop all, or any part, of the work called for by this Agreement for a period up to ninety (90) days after the Stop Work Order is delivered to the Consultant, and for any further period to which SCAG authorizes. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Consultant shall immediately comply with its terms and take reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Consultant shall not be liable for delays to the project not caused by Consultant. Within ninety (90) days after a Stop Work Order is delivered to the Consultant, or within any extension of that period by SCAG, SCAG shall either:

(1) Cancel the Stop Work Order; or

(2) Terminate the work covered by the Stop Work Order as provided for in the termination for convenience clause of this Agreement.

b. If a Stop Work Order is issued under this section, SCAG shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the Agreement shall be modified, in writing, accordingly.

39. Flow-Down Provisions

Any subcontract, of any tier entered into by the prime consultant as a result of this Agreement shall be written, executed subsequent to the prime consultant executing its contract with SCAG within a reasonable time, and shall contain the following provisions of this Agreement:

Section 6 (Funding Requirements);
Section 10 (Invoicing for Payment);
Section 11 (Invoicing Format and Content);
Section 13 (Satisfactory Performance; Preliminary Review of Work)

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Section 15 (Quarterly Progress Reports);
Section 16 (Inspection of Work; Safety);
Section 17 (Written and Electronic Version of Work Products and Related Work Materials);
Section 18 (Ownership, Confidentiality, and Use of Work Products);
Section 19 (Termination);
Section 20 (Compliance with Laws, Rules, and Regulations);
Section 21 (Independent Contractor);
Section 22 (Conflict of Interest);
Section 23 (Contingency Fees or other Unlawful Consideration);
Section 24 (Release of Information);
Section 25 (Disputes);
Section 26 (Indemnity);
Section 27 (Claims by Construction Contractor);
Section 28 (Non-Discrimination/Equal Employment Opportunity);
Section 29 (Records Retention and Audits);
Section 30 (Audit Review Procedures, if applicable);
Section 32 (Labor Code Requirements);
Section 33 (National Labor Relations Board);
Section 34 (Federal and State Lobbying Activities Certification);
Section 35 (Certifications and Assurances);
Section 36 (Contract Award);
Section 37 (Cost Principles); and
Section 42 (Survival)

Upon SCAG's request, the consultant shall provide SCAG a copy of the portion of the Subconsultant agreement which contains the above provisions to verify compliance.

40. Notice

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, return receipt requested, to the following addresses:

Cindy Giraldo
Chief Financial Officer
Southern California Association of Governments
900 Wilshire Blvd. Suite 1700
Los Angeles, California 90017-3435

Phone: (213) 630-1413
Email: giraldo@scag.ca.gov

Matthew Olson
Chief Innovation Officer
Burns & McDonnell Engineering Company, Inc.
617 W 7th St., Suite 700
Los Angeles, California 90017
Phone: (816) 349-6608
Email: molson@burnsmcd.com

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41. Severability

If any provision of this Agreement is held to be illegal, invalid, or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid, and enforceable, and the legality, validity, and enforceability of the remaining provisions shall not be affected thereby.

42. Survival

The following sections survive expiration or termination of this Agreement:

Section 13 (Satisfactory Performance; Preliminary Review of Work)
Section 17 (Written and Electronic Versions of Work Products and Related Work Materials)
Section 18 (Ownership, Confidentiality, and Use of Work Products)
Section 24 (Release of Information)
Section 25 (Disputes)
Section 26 (Indemnity)
Section 29 (Records Retention and Audits)
Section 44 (Jurisdiction and Venue)
Section 46 (Standard of Care)
Section 53 (No Third Party Beneficiaries)
Section 54 (Use of Name)

43. Order of Precedence

In the event of any conflict between the terms of this Agreement and the terms of any Exhibit, the terms of the Agreement shall control. In the event of any conflict between the following documents, the order of precedence shall be as follows:

- Amendment(s) to Contract No. 24-024-C01
- Contract No. 24-024-C01
- Exhibits

44. Jurisdiction and Venue

This Agreement shall be deemed an Agreement under the laws of the State of California, and for all purposes shall be interpreted in accordance with such laws. Subject to the arbitration requirements in Section 25 (Disputes) requiring that all disputes arising under this Agreement be addressed in arbitration, both Parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that the venue of any action brought thereunder shall be Los Angeles County, California.

45. Waiver

No delay or failure by either Party to exercise or enforce at any time any right or provision of this Agreement shall be considered a waiver thereof of such Party's right thereafter to exercise or enforce each and every right and provision of this Agreement. A waiver to be valid shall be in writing but need not be supported by consideration. No single waiver shall constitute a continuing or subsequent waiver.

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46. Standard of Care

Consultant represents and maintains that it is skilled in the professional calling necessary to perform all Services, duties and obligations required by this Agreement to fully and adequately complete the Project. Consultant shall perform the Services under this Agreement in accordance with generally accepted industry standards, practices, and principles in the State of California applicable to such Services ("Standard of Care"). Consultant represents that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Without waiver of SCAG's other rights or remedies, upon written notification to Consultant within one year from the discovery of defects in the Standard of Care, SCAG may require Consultant to re-perform any of said Services which were not performed in accordance with the Standard of Care at no cost to SCAG. This obligation to re-perform the Services is Consultant's sole obligation and SCAG's sole and exclusive remedy with respect to defects in the quality of the Services. Other than expressly stated, this section is not intended to limit SCAG's expressly stated remedies.

47. Insurance

Consultant shall procure and maintain throughout the Term of this Agreement the required insurance, as set for below, against claims for injuries to persons, or damages to property, which may be caused by the performance of the work hereunder by Consultant or employees. Consultant shall use commercially reasonable efforts to contractually require subconsultants to maintain the insurance required herein.

a. Scope of Insurance – Coverage shall be:

(1) Commercial General Liability coverage in an Occurrence form.

(2) Insurance Services Office form number CA0001 covering Automobile Liability, code 1 (any auto) or its equivalent.

(3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(4) Professional Liability (Errors and Omissions) insurance appropriate to the Consultant's profession.

b. Required Limits of Insurance – Consultant shall maintain limits equal to:

(1) General Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit. The products completed operations aggregate shall be $2,000,000.

(2) Automobile Liability: Including contractual liability insuring owned, non-owned, hired and all vehicles by Consultant with a combined single limit of $1,000,000 applicable to bodily injury, or death, and loss of or damage to property in any one accident.

(3) Workers' Compensation Liability: Including Occupational Diseases in accordance with California Law and Employers' Liability Insurance with a limit of $1,000,000 each accident /

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each employee by disease / policy limit by disease.

(4) Professional Liability Insurance: With limits of $1,000,000 per claim and aggregate. In addition, it shall be required that the professional liability insurance policy remain in effect for six (6) months after the Completion Date of this Agreement.

c. Other Insurance Provisions – The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(1) SCAG, the Cities, and their subsidiaries, officials and employees are to be covered as additional insureds, as respects to liability caused by the activities performed by or on behalf of Consultant, products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned leased, hired or borrowed by Consultant. . The additional insured coverage afforded by the general liability policy shall be provided on the ISO endorsements CG 2010 0704 and CG 2037 0704 or their equivalent.

(2) Not Used.

(3) Not Used.

(4) Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(5) Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of $1,000,000 per accident / each employee by disease / policy limit by disease) including a Waiver of Subrogation in favor of SCAG, its officers, and employees.

d. Not Used.

e. Acceptability of Insurers – Insurance is to be placed with California admitted, authorized, or approved insurers with a current A.M. Best's rating of no less than A-, unless otherwise approved by SCAG.

f. Verification of Coverage – Consultant shall furnish SCAG with relevant endorsements and certificates of insurance evidencing coverage required by this clause. The certificate is to be signed by a person authorized by the insurers to evidence coverage on its behalf. All documents are to be received and reasonably approved by SCAG before work commences.

g. SCAG and Consultant release each other and waive all rights of recovery and subrogation against each other and their officers, directors, agents, or employees for damage covered by property insurance (including deductibles and self insured retentions) during and after the completion of Consultant's Services.

48. Force Majeure

Neither SCAG nor Consultant shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, pandemics or any other similar cause beyond the reasonable control or cause of SCAG or Consultant; provided, however,

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that the party seeking to avail itself of the provisions of this Section 48 shall notify the other party in writing not later than ten (10) business days from the first instance of the event that the party claims excuses or delays its performance and, if timely notice is not provided, then such party's performance or failure shall not be deemed excused or delayed. Any delay or excuse of performance shall only continue on a day-for-day basis for the length of the noticed event.

49. Entire Agreement

This writing contains the entire agreement of the Parties relating to the subject matter hereof, and the Parties have made no agreements, representations or warranties relating to the subject matter hereof which are not set forth herein. Except as provided herein, this Agreement may not be modified or altered without formal written Amendment thereto.

50. Execution of Agreement or Amendment

This Agreement, or any Amendment related thereto, may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement. The signature page of this Agreement or any Amendment may be executed by way of a manual or authorized digital signature. Delivery of an executed counterpart of a signature page to this Agreement or an Amendment by electronic transmission scanned pages shall be deemed effective as a delivery of a manually or digitally executed counterpart to this Agreement or any Amendment.

51. Effective Date

The Effective Date of this Agreement shall mean the date (meaning the last date indicated below) that the Parties have fully executed this Agreement.

52. Notice of Performance Evaluation

In accordance with Public Contract Code section 10367, each consultant under contracts value at $5,000 or more shall be advised in writing on a standard contract form that his or her performance, or the firm's performance under the contract will be evaluated.

53. No Third Party Beneficiaries. Except as may be expressly specified herein, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

54. Use of Name

Neither party shall use the name, trade name, or trademark or other designation of the other party or its affiliates in connection with any products, promotions, or advertising without the prior written permission of the other party.

IN WITNESS WHEREOF, the Southern California Association of Governments and Burns & McDonnell Engineering Company, Inc. have caused this Agreement to be executed by their duly authorized representatives.

Southern California Association of Governments ("SCAG")

DocuSigned by:
Cindy Giraldo
00E46B3E0E8E43F...

Cindy Giraldo
Chief Financial Officer

4/19/2024
Date

Burns & McDonnell Engineering Company, Inc. ("Consultant")

DocuSigned by:
Matthew Olson
D53C574D47C64EA...

Matthew Olson
Chief Innovation Officer

4/19/2024
Date

Approved as to Legal Form:

DocuSigned by:
Richard Lam
D5866DAB132A453...

Richard Lam
Senior Deputy Legal Counsel

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EXHIBIT A
Scope of Work

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Scope of Work

Last Mile Project Assessment for the SCAG Region

Background and Intent

On June 29, 2023, the California Public Utilities Commission (CPUC) approved SCAG's application for the Local Agency Technical Assistance (LATA) grant funding to conduct a Last Mile Project Assessment for the SCAG Region (Project) (See Appendix A- SCAG LATA Award). The LATA grant will help SCAG assist local jurisdictions who lack the technical, staff and financial capacity to identify and analyze opportunity areas and develop conceptual design for last mile services. Unfortunately, it is these local jurisdictions that are in dire need of better connectivity, as they have a high-concentration rate of low-income households (often communities of color), many of whom face affordability and accessibility issues.

To fill in this gap, SCAG is requesting proposals to determine and design three (3) projects located within the SCAG region. This project will result in conceptual designs and technology deployment strategy to lay the foundation for three (3) projects that meet or exceed 100/100 or 100/20 Mbps for unserved and/or underserved communities, ideally within proximity to California Department of Technology (CDT's) proposed 18 middle-mile projects.

SCAG is aware of many local jurisdictions who have been awarded the LATA grant, and planning to develop, or have already developed implementation/ plans. As such, this project will not supersede a local jurisdiction's effort, nor will the work product result in an unnecessary/redundant network. Work efforts will only engage local jurisdictions who need last mile services but were not able to apply and/or have the capacity to procure a consultant and take on project management roles. Further, this project is not intended to be a strictly planning exercise. While planning is part of this project scope, the product will integrate conceptual, high-level design with planning analysis to develop projects and support last mile expansion for each priority area.

The consultant shall complete the following tasks:

Task 1: Project Administration and Management

Task 1.1: Project Management Plan

A Project Management Plan will be developed to guide aspects of the work tasks, schedule, and budget within the grant agreement. The Project Management Plan will identify a system for project control, including necessary procedures for conducting the work, managing resources, communications, budget, schedule, monitoring and reporting project status and progress, document control, and quality assurance and control. Further, the Project Management Plan will be designed to guide the flow of the overall project effort. Special attention shall be given to the project schedule to address any critical administrative dates (such as Regional Council dates) and internal review needs.

Task 1.2: Project Schedule

A detailed Project Schedule will be developed for CPUC's review and as defined by the project scope. The Schedule shall identify work tasks, start dates, activity durations, project development team meeting dates, external partner meeting key dates, project submittal dates, key project milestones, schedules for internal review on deliverables, and relationships among work tasks, including critical path items.

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Task 1.3: Project Management Meetings

The Consultant will participate in Project Management meetings. Meetings will include SCAG's Project Manager, and other SCAG staff, consultant project manager, consultant team members as necessary to review project status/progress, as well as to resolve key issues. Each meeting will have an agenda, a summary of minutes and an action item matrix. Consultant shall participate in approximately two (2) meetings per month on a bi-weekly basis, for an estimated total of 24 meetings up to (1) hour each. The Consultant will be responsible for developing agendas, meeting notes, and action item matrices, as required.

Task 1.4: Special Meetings with External Stakeholders or Working Group Meetings

At the direction of the SCAG Project Manager, the Consultant will participate in meetings with external stakeholders or project teams that are working on similar efforts to support intra-agency coordination, provide status updates and input as needed, and avoid duplicative work among regional projects. Consultant will be expected to participate in approximately two (2) meetings per month, for a total of 24 meetings up to (1) hour each. This may include but are not limited to:

- Meetings with City Staff
- City Council Meetings
- Meetings with State Agencies and County Transportation Commissions (CTCs)
- SoCal Transformation Working Group
- SCAG's Emerging Technology Committee (ETC)
- SCAG's Transportation Committee (TC)
- SCAG's Regional Council (RC)

Task 1.5: Grant Reporting Assistance

The Consultant shall assist SCAG with the LATA grant administration and periodic reporting per the requirements of the CPUC, which are available at https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/broadband-implementation-for-california/local-agency-technical-assistance.

A sample of the reporting requirements is available at: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/broadband-implementation-for-california/lata-reporting-requirements-dec-22.pdf.

Consultant shall provide SCAG with required documentation with sufficient time for review prior to CPUC reporting deadlines.

Burns & McDonnell Engineering Company shall work with SCAG, and appropriate stakeholders to provide up to (16) monthly, (5) quarterly and (1) completion reports during the duration of the project as required, by Decision (D.) 22-02-026.

Task 1 Deliverables:

Task	Deliverables
1.1	Project Management Plan
1.2	Project Schedule
1.3	Project Management Meetings, Agenda, Minutes, and Action Item Matrices
1.4	Meeting Minutes
1.5	Grant Reporting Materials and Attachments

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Task 2: Broadband Infrastructure Existing Conditions Analysis[1]

Task 2.1: Regional Infrastructure Assessment of the SCAG Region

The Consultant shall perform research and evaluation of broadband usage and an inventory analysis of technologies that are currently delivering internet service in the six-county SCAG region. This includes, and is not limited to, fiber optic, wireless, DSL, cable, and satellite services[2]. The assessment will characterize existing infrastructure conditions which may consider:

- Type of technology (e.g., fiber, wireless, DSL, etc.)
- Location (using longitudinal coordinates)
- Length and transmission radius (i.e., square miles)
    - Capacity & availability of asset
    - Access points to the public
    - Owner
    - Exchange points
    - Number of internet providers
    - Current pricing for the network based on advertised rates.
    - Subsidy subscriptions for the Federal Communications Commission Affordable Connectivity Program
    - Overall digital adoption in the region

Burns & McDonnell Engineering Company shall request, use existing (SCAG or local jurisdictions), or work with SCAG and/or local jurisdictions to find data sources, such as the following, as applicable and feasible, to inform assessments and findings:

- Aerial and Underground Electrical Plant Maps,
- Right of Way (ROW) / Easement Maps,
- Microwave/Wireless/LTE Coverage and Asset Maps,
- Fiber Optic Plant Maps,
- Fiber Optic Splice Schematics,
- Communication Network Access Point Schematics,
- Existing Customers Served by municipalities in SCAG's region, e.g.:
- Public Entities,
- Municipalities & Rural Electric Co-Ops,
- Host Communities,
- Business & Industry,
- Healthcare, Educational & Cultural Institutions, and
- Electric Providers (Generators).

[1] Please note that numerous local jurisdictions have conveyed their interest to collaborate with SCAG. SCAG (assisted by the Consultant) will contemplate the possibility of choosing three (3) local jurisdictions through the assessment of meetings, interviews, and a comprehensive analysis of their requirements, including the manual selection of three opportunity zones. SCAG asks respondents to this proposal to provide a Technical Approach tailored to this particular scenario.

[2] Infrastructure assessment subject to available data. Proposal responses should indicate estimated costs associated with assumed data collection, sources, and availability.

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Burns & McDonnell Engineering Company shall utilize public data sources, such as the following, to inform assessments:

- U.S. Census Bureau Data
- National Telecommunications and Information Administration (NTIA) Broadband Need Indicators
- California Interactive Broadband Map (CIBM) for California Advanced Services Fund (CASF)
- Federal Communications Commission (FCC) Data
- U.S. Energy Information Administration (EIA) Data
- Rural Digital Opportunity Fund (RDOF) Data

Burns & McDonnell Engineering Company shall request updated and relevant data regarding existing infrastructure (transport, fiber, etc.). We assume this information shall be provided by SCAG. We prefer this data be provided in GIS format, where appropriate. While SCAG may not possess the data directly, we operate under the assumption that SCAG has knowledge of the data owner (Municipalities and Rural Electric Co-Ops in the SCAG's region) and can facilitate an introduction to the relevant stakeholders. The Burns & McDonnell Engineering Company team will gather any additional data required that is not available after those engagements.

Task 2.2: Infrastructure Assessment ArcGIS File Geodatabase

Based on work efforts referenced under Tasks 2.1 an ArcGIS File Geodatabase will be constructed for any GIS datasets gathered or generated. This information will be collected by utilizing other databases, third-party research, information obtained from providers, and research from engineering or policy partners. Consultant shall develop the file geodatabase following SCAG's Spatial Data/Metadata Requirements (See Appendix B) including documentation and review/agreement by SCAG during the project. Additionally, GIS deliverables produced for SCAG as a part of this project will be hosted by SCAG and published using services on ArcGIS server. Technical design should indicate the type of services to be used and relevant access/permissions required.

Burns & McDonnell Engineering Company shall create a GIS dataset which includes the following:

- Technology Classifications (fiber, wireless, xDSL, terrestrial)
- Location of services
- Length and transmission radius
- Capacity and availability of asset, where data is publicly available
- Access points to the public, where data is publicly available
- Owner
- Exchange points
- Number of internet providers
- Current Pricing based on advertised rates
- Subsidy subscriptions for the Federal Communications Commission Affordable Connectivity Program
- Digital Adoption in the region

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GIS Data shall be collected and presented at the census tract level, as defined by the United States Census Bureau. Affordable Connectivity Program GIS data shall be collected and presented by zip code as defined by the Federal Information Processing Standards (FPIS). GIS data shall only be provided for census tracts/zip codes within SCAG's areas. Burns & McDonnell Engineering Company shall partner with SCAG on aligning the spatial/metadata requirements.

Task 2 Deliverables:

Task	Deliverables
2.1	Regional Infrastructure Assessment
2.2	Regional Infrastructure Assessment ArcGIS File Geodatabase

Task 3: Needs and Market Assessment, Priority Area Identification, and Route Determination

Task 3.1: Needs Assessment Methodology and Determination of Priority Areas

Using the findings from Task 2 and publicly available data, the Consultant will develop a needs assessment to prioritize three (3) areas for further analysis as a part of the project's defined study areas for Tasks 3-5. The assessment will focus on several variables to identify the hardest-to-reach unserved and underserved households, including, but not limited to:

- Disadvantaged Communities
- Continuum of Care (CoC) groups
- Low rates of internet adoption by residents
- Low rates of internet accessibility
- Existing infrastructure and middle mile segments

Further, special attention will be given to select priority areas in a range of developed contexts, including rural, suburban, urban, and Tribal communities. Upon determination, based on findings from the consultant and SCAG's assessment, SCAG will engage with three (3) local jurisdictions to develop an implementation plan for last mile services.

Task 3.2: Public Outreach

The Consultant will conduct public outreach in the identified priority areas to research and better understand each community's needs. Specific attention will be given to address connectivity needs. Outreach will involve but are not limited to:

- Conducting interviews, surveys, and/or focus group sessions with community agencies, educational institutions, healthcare clinics, key stakeholder groups, and other relevant groups in the Priority Areas to:
    - Understand barriers that prevent study area communities from accessing reliable internet service. These can include barriers not limited to:
        - Internet adoption
        - Service affordability
        - Access to infrastructure and devices
        - Workforce, educational, social services need

Survey outcomes will inform, at minimum:

- The level of service needed in the area and the workforce required to deliver such service.

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Connectivity preferences (e.g., where are they most likely to connect, how often do they rely on community institutions for these services, etc.)

Consultant shall prepare and lead the following:

- Two (2) focus group or outreach sessions per Priority Area
- Three (3) community surveys per Priority Area
- Five (5) interviews (virtual) per Priority Area

To ensure consistency of public information originating from SCAG, all public-facing informational materials must be reviewed and approved by SCAG's Manager of Media and Public Affairs or a specified designee before release, distribution or presentation. This process for facilitating this review and approval will be discussed during the project kick-off meeting and as part of Task 3.1.

Task 3.3: Gap Analysis and Public Asset Inventory for Priority Areas

Upon completion of the Needs Assessment and outreach exercises, the Consultant will assist SCAG and inventory the public assets that may support broadband deployment in the priority areas. Public areas may be along public-right-of ways for the installation of Conduit, Fiber, Antennas, Poles, Towers, Active or abandoned facilities, and other applicable infrastructure. The consultant will evaluate general, economic development, capital plan and/or transportation plans that impact the priority areas and will assist in the identification of strategic and cost-effective methods of deploying broadband expansion in an organized and/or phased approach.

Task 3.4: Market Assessment Report

The consultant will develop a market assessment which will include a granular set of data with respect to the telecommunications environment detailing the location of facilities, types of services, pricing, availability, and limitations. Assessment of potential construction and operational relationships with public, private, and membership owned companies in the service area and with publicly and privately funded networks as suitable for interconnection. The assessment will determine what economic and community impact broadband issues are having within each selected area and will include an evaluation of key issues limiting broadband expansion and a phased, prioritized approach to broadband expansion.

- Burns & McDonnell Engineering Company shall collaborate with SCAG to define the agreed services, such as wholesale, retail, community access.
- Burns & McDonnell Engineering Company shall facilitate up to (2) 1-hour discussions of business and technical requirements and validate the understanding of existing infrastructure and the technology roadmap envisioned.
- Host up to (2) 1-hour review meetings to validate inputs and data collected.
- Confirm any gaps in information that may prevent benefits.
- Host up to (2) 1-hour meetings with SCAG to review regulatory environment and risk posture (what they are willing to provide) to align the service hierarchy.
- Define the estimation model (benchmark, cost plus, cost recovery)
- Identify gaps in the implementation plan that may require further investigation.

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- Summary of Findings Slide Deck Deliverable (PowerPoint)
- Burns & McDonnell Engineering Company shall provide a report in executive slide deck format (PowerPoint) outlining the key findings and assumptions from the analysis. The primary sections covered in the report shall be:

- Executive Summary (1-2 slides),
- Market Segment Overview (4-6 slides)
    - Summary of Markets
    - Summary of Models
    - Summary of Operating Models
    - Summary of Revenue Models
- Key Market Opportunity (8-10 slides),
    - One (1) slide per agreed market opportunity with up to six (6) market opportunities considered.
- Other Notable Findings (2-4 slides),
- Conclusions & Next Steps (1 slide), and
- Appendices & Assumptions (as required).

Data collected from Tasks 2-3 will be translated into findings regarding infrastructure gaps, services issues, average cost of plans, cost of materials, labor associated with construction and cost of operation, and other barriers to broadband access (such as permitting).

Task 3.5: Route Determination Report

Based on the findings under Tasks 3.1 to 3.4, routes will be determined, evaluating the feasibility of the route and documentation of any roadblocks and hurdles which may delay the construction of these routes. Evaluations may consist of the following, but not limited to:

- Fiber to the Premises (FTTP) Networks
    - Identify hut and/or Fiber Distribution Hub (FDH) locations per priority area
    - Identify the extent to which new underground (conduit) or aerial (poles) infrastructure will need to be installed
- Fixed Wireless Networks
    - Location of wireless equipment sites needed per priority area
    - Identify extent to which new underground (conduit) or aerial (poles) infrastructure will need to be installed, when fiber optic backhaul is required rather than fixed wireless backhaul
- Identify any permitting or construction challenges while conducting surveys to support development of design alternatives
- Identify Right of Way, Access Control and Temporary Construction Easement requirements
- Identify any Multiple Dwelling Units (MDU), Multiple Tenant Units (MTU), and commercial properties
- Consider design implications of approved buildable land parcels. Most current data will be provided in consultation with local jurisdictions

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- Verify fiber egress points to support single and redundant connections to existing and proposed CDT middle-mile network
- This report shall be up to (10) pages.

Task 3 Deliverables:

Task	Deliverables
3.1	Needs Assessment Methodology Report, Partnership agreement (Local Jurisdiction/SCAG)
3.2	Public Outreach (including agenda, presentation materials, etc.)
3.3	Gap Analysis and Public Asset Inventory Report
3.4	Market Assessment Report
3.5	Route Determination Report

Task 4: Last Mile Design for Local Jurisdictions

Based on the findings from Task 1-3, the Consultant will assist SCAG and selected jurisdictions in setting the foundation for last mile services in the three (3) priority areas. Work efforts will include specifics regarding the financing and implementation strategies, short-term and long-term actions needed to prepare the area for broadband implementation and include conceptual design and specifications to create a project ready for the next stages of project development.

Task 4.1: Internet Service Provider (ISP) Outreach

Based on the findings listed under Task 2-3, and at the request of the local jurisdiction, SCAG may ask the consultant to conduct interviews and focus group sessions with Internet Service Providers that operate in the Priority Areas. Outreach exercises will identify potential areas for partnership between the respective local jurisdictions and incumbent providers. Potential topics to discuss may include but not be limited to:

- Retail services & pricing to a range of customer segments, which may include residential and/or commercial
- Retail services & pricing to government, education, healthcare and anchor organizations
- Retail services that leverage other utilities for outsourced content and services
- Fiber leasing arrangements
- Revenue sharing agreements
- Open Access Model compliance
- Phased roll-out of lit services to customers
- Milestones & performance schedules for delivery of services.
- Potential partnership arrangements with third-party asset owners (County, other private telecoms)
- Others to be determined throughout the course of the project.

Burns & McDonnell Engineering Company shall analyze Priority Areas and conduct (3) 2-hour interviews and focus group sessions with corresponding Internet Service Providers. Throughout this process, Burns & McDonnell Engineering Company shall identify prospective areas for partnership between the respective local jurisdictions and incumbent providers. SCAG and Burns & McDonnell Engineering Company shall agree upon the topics for the ISP outreach in up to (1) 1-hour discussion. SCAG may inquire Burns & McDonnell Engineering Company to lead interviews and focus group sessions with Internet Service Providers that operate in Priority Areas depending upon findings listed under Task 2-3 and at the request of the local jurisdiction.

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Task 4.2: 10-Year Technology Last Mile Roadmap

The Consultant shall develop a (10) year last mile roadmap of up to (20) pages. The roadmap will identify a list of recommended solutions for each opportunity areas. The roadmap will identify the differences between active Ethernet, passive optical, and fixed wireless networks from selection, design, impacts, and cost comparisons. Inventory of vendor products may include key features of each platform consisting, but not limited to, the following:

- Hardware capacities
- Software specifications
- Environmental and management capabilities
- Equipment management software functionality for service configuration, surveillance, performance, and administration.

The roadmap will include the limitations of each technology (e.g., insufficient capacity to or inability to support real-time traffic such as voice over IP or Broadcast video), elements that would affect consumer and/or carrier adoption, and the extent to which these limitations can be mitigated. The roadmap will convey the market availability of next generation technologies (e.g., technologies that are in production by multiple manufacturers), and any market constraints that would affect their adoption. If applicable the roadmap will include forecasts (if any) of when the technology will reach 'end of life' within the next 10 years.

SCAG or partnering local jurisdictions key stakeholders and decision-makers will actively participate in the data gathering sessions to validate our comprehension of their expectations for the 10-year roadmap. They will play a pivotal role in establishing the vision for the roadmap and can provide insights on the bullet points outlined in section 4.2 if guidance is required.

Task 4.3: Financing and Implementation Assessments

The Consultant will develop strategies and recommendations for financing and implementation which may include but are not limited to:

- Include order of magnitude cost estimations for network implementation, construction, specifications, operations, and maintenance, over a 10-year period timeframe.
- Identify potential funding sources and provide strong justification for funding to serve as the basis for a grant/loan application to support project implementation.
- Provide strategic guidance in the planning of a broadband connectivity project that can be implemented as cost-effectively and quickly as possible for the purpose of enabling economic development and citizen connectivity.
- Scenarios of potential construction and operational relationships with public, private, and membership owned companies in the service area and with publicly and privately funded networks as suitable interconnection.
- Recommendations for legal and operational changes, including regional roles and responsibilities, to address the gap analysis and market assessment findings.
- Burns & McDonnell Engineering Company in conjunction with SCAG would create a list of up to (10) potential partners, supporting entities and stakeholders for ongoing engagement. This list of qualified entities would be in alignment with the long-term SCAG broadband grant strategy and for solicitation of support documents as required for successful submittal of grant applications.

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Task 4.4: Last Mile Conceptual Design Drawings

Burns & McDonnell Engineering Company shall produce and provide three preliminary conceptual drawings that illustrate potential routes and access points for potential customers to be served by the proposed network. These proposed access points shall consist of either a fiber to the premise (FTTP) option or a fixed wireless option based on the unique requirements of the area being served., which local agencies can use towards last mile expansion for each priority area, and will also factor:

- Estimated unit count (households or businesses consisting of one or more people living or working together that occupy all or part of a standalone building)
    - These preliminary counts shall be pulled from existing county parcel data and preliminarily verified with a desktop review of the data.
- Estimated number of telephone poles
    - These vertical assets shall be pulled from SCAG provided data or publicly available data of the existing distribution assets within the priority areas being served and preliminarily verified with a desktop review of the data.
- Estimated route miles
    - These preliminary counts shall be identified from the preliminary conceptual maps that Burns & McDonnell Engineering Company would produce, and the data behind them would be from SCAG provided data, publicly available data, third party data, or Burns & McDonnell Engineering Company produced data for the purpose of this project and preliminarily verified with a desktop review of the data.
- Square miles
- Proposed technology to be deployed.

These route designs will identify the roads to be included in each build-out scenario. Further this task will also require the identification of installation types for the fiber optic cables (e.g., new/existing aerial, new/existing underground, and dark fiber).

Task 4.5: Technology Deployment Strategy

Building upon the last mile conceptual design drawings, the Consultant will develop high-level design schematics for each of the determined routes.[3] Last mile schematics will be designed to accommodate a minimum of 100/20 speeds. Consultant team shall indicate the level of information feasible within the available budget range in their proposal response. Designs may include, but are not limited to, the following:

- General Requirements
    - Network technology.
    - Premise location maps
    - Percentage existing/new aerial/underground
    - Design Layer 1 (physical), Layer 2 (switching) and Layer 3 (routing) architecture that may utilize network equipment with considerations around remote management.

[3] This task requires a minimal level of engineering work and is not intended to advance to preliminary engineering (PE), which would be performed by an agency other than SCAG and after the conclusion of this project.

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  - Project budget spreadsheets (e.g., material and labor construction estimates including prevailing wage requirements)
  - Growth, redundancy, and owner-specified service level projections
  - Network capacity plans that demonstrate support for the required data speeds
  - Opportunities to leverage the existing broadband infrastructure such as dark fiber or planned infrastructure such as CDTs proposed middle mile segments.
- FTPP Networks
  - Physical topology
  - Potential hut location
  - Splitter placements
  - Driveway lengths
  - Cable management recommendations
- Fixed wireless networks
  - Potential fixed wireless equipment sites
  - Fixed wireless propagation maps

Task 4 Deliverables

Task	Deliverables
4.1	Internet Service Provider Outreach (including agenda, presentation materials, survey data, etc.).
4.2	10-Year Technology Last Mile Roadmap
4.3	Financing and Implementation Report
4.4	Last Mile Design Drawings
4.5	High-Level Design Schematics and Report

Deliverables shall be provided in accordance with Exhibit B, Schedule. Copies of all required Deliverables for each Task as noted above shall be provided to the SCAG's Project Manager.

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ASSUMPTIONS AND EXCEPTIONS

- Requested information shall be returned promptly and must be completed no later than the durations in the schedule. All information shall be returned as the information is gathered and not held until complete. In the initial review of the data request, all information shall be agreed upon by both SCAG and Burns & McDonnell Engineering Company. Suppose there are substantial delays in SCAG providing Burns & McDonnell Engineering Company the requested data. In that case, Burns & McDonnell Engineering Company shall notify SCAG of this impact on the budget from rework or acceleration of additional resources or schedule.
- SCAG shall provide access to key project stakeholders to collect the necessary data to complete the scope of work.
- SCAG shall provide timely access to the data necessary to complete the scope of work.
- Burns & McDonnell Engineering Company shall use industry data, judgment, and historical figures in the modeling process.
- Burns & McDonnell Engineering Company has not planned or priced any site visits or travel to perform this scope of work. This shall be a desktop exercise that is performed from Burns & McDonnell Engineering Company approved locations. Meetings shall be conducted via the Microsoft Teams videoconferencing system (or similar).
- The solutions analyzed herein are not engineered solutions. This is a desktop review of the inputs and analysis of a solution's technical and financial efficacy.
- It is assumed that Burns & McDonnell Engineering Company shall not run a procurement process or get competitive/market pricing from vendors or construction partners for this scope of work. At this phase of a project and for this scope of work, rough order of magnitude estimates using comparable and historical data from previous projects shall be used to inform the assessment.
- One review cycle of Burns & McDonnell Engineering Company deliverables by SCAG is assumed. SCAG shall provide review comments in a single document.
- SCAG shall answer project related questions from Burns & McDonnell Engineering Company within 2 business days.
- Written acceptance of the deliverables shall be provided by SCAG. Any dispute regarding SCAG non-acceptance of a deliverable shall be made within 10 business days after SCAG's notice of non-acceptance.
- Data Gathering Workshops: Burns & McDonnell Engineering Company shall participate in up to six (6), 1-hour data gathering and collection workshops to review and collate the data required to complete this scope of work. These meetings shall be conducted remotely via Microsoft Teams.
- If the funding amount changes, Burns & McDonnell Engineering Company would like the opportunity to discuss the impact of funding changes to the scope of work of the Last Mile Assessment proposal.
- SCAG has confirmed that the funding for this proposal is not federal. If the funding source changes to federal, Burns & McDonnell Engineering Company would like to request new modifications to the sample contract.

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Task 1 Project Admin and Management

- Schedule is based on SCAG responding to inquiries according to the agreed upon schedule.
- Estimated schedule to be defined further after information is gathered.
- Project duration is limited based on the agreed upon schedule.

Task 2 Broadband Infrastructure Existing Condition Analysis

- SCAG shall provide required network and facility information including diagrams, contracts, documents, and GIS shapefile exports.
- We have not included time in the schedule nor budget in the proposal to map your existing infrastructure in GIS. It is an owner obligation to provide this. We have assumed that their locations shall be provided in KMZ or a similar GIS format for the purposes of completing the Scope of Work.
- As part of this SOW, Burns & McDonnell Engineering Company (Licensee) may utilize 3rd party data from GeoTelCommunications, LLC to inform the location of fiber, internet exchange points, and points-of-presence (POPs) ("Third-Party Licensed Material"). This Third-Party Licensed Material enables Burns & McDonnell Engineering Company to provide more accurate market demand and opportunity information as part of our Scope of Work. If SCAG desires to directly review or interact with the Third-Party Licensed Material, both SCAG and Burns & McDonnell Engineering Company shall cooperate to provide such review or interaction.
- Following the level of details of SCAG's Spatial Data/Metadata requirement is subject to schedule and budget restrictions.

Task 3 Needs and Market Assessment, Priority Area Identification, and Route Determination

- Size of priority areas is subject to budget and schedule and must be agreed upon by SCAG and Burns & McDonnell Engineering Company prior to proceeding to next steps. Not to exceed 200 square miles.
- Fiber routing within GIS shall cover high level routing. Splice points, strand counts, service entrances.

Task 4 Last Mile Design for Local Jurisdictions

- ISP public outreach is limited to reaching out to (3) ISPs.

Estimates

Estimates and projections prepared by Burns & McDonnell Engineering Company relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on Burns & McDonnell Engineering Company's experience, qualifications, and judgment as a design professional. Since Burns & McDonnell Engineering Company has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction contractors' procedures and methods, unavoidable delays, construction contractors' methods of determining prices, economic conditions, competitive bidding or market conditions, and other factors affecting such cost opinions or projections, Burns & McDonnell Engineering Company does not guarantee that actual rates, costs, performance, schedules, and related items shall not vary from cost estimates and projections prepared by Burns & McDonnell Engineering Company. If Burns & McDonnell

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Engineering Company's assumptions or estimates are later determined to be inaccurate or modified, Burns & McDonnell Engineering Company shall be entitled to an appropriate change in compensation and schedule subject to SCAG's reasonable review of the same.

Rely

Burns & McDonnell Engineering Company has relied upon the information provided by SCAG in the preparation of the proposal and shall rely on the information provided by or through Client during the execution of this project as complete and accurate without independent verification.

Means and Methods

Burns & McDonnell Engineering Company shall not be responsible for, to include any site visits by Burns & McDonnell Engineering Company (during investigation, observation, construction or equipment installation, or the furnishing of project representatives): (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with work related to the Services; (b) the failure of any of SCAG's other contractors or Burns & McDonnell Engineering Companys or their respective employees, subcontractors, vendors, or other project participants, not under contract to Burns & McDonnell Engineering Company, to fulfill contractual responsibilities to SCAG or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction. Burns & McDonnell Engineering Company shall not have the authority to direct, control of or stop the work of SCAG's contractors or Burns & McDonnell Engineering Companys or their respective employees, subcontractors or vendors.

Hazardous Materials

SCAG represents that it has disclosed knowledge and information to Burns & McDonnell Engineering Company regarding hazardous substances known or suspected at the site to the extent necessary for Burns & McDonnell Engineering Company to perform services. Burns & McDonnell Engineering Company is relying on such representations made herein through the execution of this Agreement and the services performed hereunder. Burns & McDonnell Engineering Company is not responsible for any conditions existing at or near the work sites prior to performance of the services by Burns & McDonnell Engineering Company's employees or subcontractors and is not responsible for the transportation or disposal of, or title to, or the risk of loss associated with, the hazardous substances or other waste. If any hazardous materials not identified by SCAG are discovered after a project is undertaken, Burns & McDonnell Engineering Company and SCAG agree that the scope of services, schedule, and compensation shall be adjusted accordingly. SCAG agrees to release, indemnify, and defend Burns & McDonnell Engineering Company from and against all damages and claims related in any way to any pre-existing pollutant, contaminant, toxic, or hazardous substance at the site.

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DISCLAIMER FOR PROFESSIONAL SERVICES

Burns & McDonnell Engineering Company Engineering Company, Inc. & Co. does not provide legal, accounting, or tax advice. The reader is responsible for obtaining independent advice concerning these matters. That advice should be considered by reader, as it may affect the content, opinions, advice, or guidance given by Burns & McDonnell Engineering Company. Further, Burns & McDonnell Engineering Company has no obligation and has made no undertaking to update these materials after the date hereof, notwithstanding that such information may become outdated or inaccurate. These materials serve only as the focus for consideration or discussion; they are incomplete without the accompanying oral commentary or explanation and may not be relied on as a stand-alone document.

The information, analysis, and opinions contained in this material are based on publicly available sources, secondary market research, and financial or operational information, or otherwise information provided by or through Burns & McDonnell Engineering Company clients whom have represented to Burns & McDonnell Engineering Company they have received appropriate permissions to provide to Burns & McDonnell Engineering Company, and as directed by such clients, that Burns & McDonnell Engineering Company is to rely on such client provided information as current, accurate, and complete. Burns & McDonnell Engineering Company has not conducted complete or exhaustive research, or independently verified any such information utilized herein, and makes no representation or warranty, express or implied, that such information is current, accurate, or complete. Projected data and conclusions contained herein are based (unless sourced otherwise) on the information described above and are the opinions of Burns & McDonnell Engineering Company which should not be construed as definitive forecasts and are not guaranteed. Current and future conditions may vary greatly from those utilized or assumed by Burns & McDonnell Engineering Company.

Burns & McDonnell Engineering Company has no control over weather; cost and availability of labor, material, and equipment; labor productivity; energy or commodity pricing; demand or usage; population demographics; market conditions; changes in technology, and other economic or political factors affecting such estimates, analyses, and recommendations. To the fullest extent permitted by law, Burns & McDonnell Engineering Company shall have no liability whatsoever to any reader or any other third party, and any third party hereby waives and releases any rights and claims it may have at any time against Burns & McDonnell Engineering Company Engineering Company, Inc., and any Burns & McDonnell Engineering Company affiliated company, with regard to this material, including but not limited to the accuracy or completeness thereof.

Any entity in possession of, or that reads or otherwise utilizes information herein, is assumed to have executed or otherwise be responsible and obligated to comply with the contents of any Confidentiality Agreement and shall hold and protect its contents, information, forecasts, and opinions contained herein in confidence and not share with others without prior written authorization.

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CONTRACT DELIVERABLES SUMMARY

Task 1 Deliverables:

Task	Deliverables
1.1	Project Management Plan
1.2	Project Schedule
1.3	Project Management Meetings, Agenda, Minutes, and Action Item Matrices
1.4	Meeting Minutes
1.5	Grant Reporting Materials and Attachments

Task 2 Deliverables:

Task	Deliverables
2.1	Regional Infrastructure Assessment
2.2	Regional Infrastructure Assessment ArcGIS File Geodatabase

Task 3 Deliverables:

Task	Deliverables
3.1	Needs Assessment Methodology Report, Partnership agreement (Local Jurisdiction/SCAG)
3.2	Public Outreach (including agenda, presentation materials, etc.)
3.3	Gap Analysis and Public Asset Inventory Report
3.4	Market Assessment Report
3.5	Route Determination Report

Task 4 Deliverables:

Task	Deliverables
4.1	Internet Service Provider Outreach (including agenda, presentation materials, survey data, etc.).
4.2	10-Year Technology Last Mile Roadmap
4.3	Financing and Implementation Report
4.4	Last Mile Design Drawings
4.5	High-Level Design Schematics and Report

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EXHIBIT B
Schedule

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Exhibit B – Schedule

Task Name	Month
Task 1 Project Management and Initiation	1-2
PO Received	TBD
Kick Off	1
Develop Project Management Plan and Schedule	1-2
Task 2 Broadband Infrastructure Existing Conditions Analysis	3-8
Existing Infrastructure Assessment	3-8
Create ArcGIS File	3-8
Task 3 Needs and Market Assessment, Priority Area Identification, and Route Determination	9-16
Create Priority Areas Report Based on Summary of Findings from Task 2	9
Create Public Outreach Engagement Plan	10-11
Create Public Outreach Report	12-14
Create Gap Analysis and Public Asset Inventory for Priority Areas	15-16
Create Market Assessment Report	15-16
Create Route Determination Report	15-16
Task 4 Last Mile Design for Local Jurisdictions	10-16
Create ISP Outreach Report	10-11
Create 10-Year Technology Last Mile Roadmap	12-16
Create Financing and Implementation Summary of Findings	12-16
Create Last Mile Conceptual Design Drawings	12-16
Create Technology Deployment Strategy	12-16

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EXHIBIT C
Price Sheet

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Prime Consultant: Burns & McDonnell Engineering Company, Inc.

Sub-Consultants: The Robert Group

Tasks No.	Task Description	Deliverable(s)	%Compensation	Cost	Percentage of Completion for Current Period	Current Period Billing Amount	Percentage of Completion to Date	Total Amount Billed to Date (includes column I)	Remaining Balance
Task 1 - Project Administration and Management				**125,806.24**					
1.0		Kick Off	5%	41,935.41					
1.1 and 1.2	Project Management Plan and Schedule	Draft Project Management Plan and Schedule	8%	67,096.66					
1.1 and 1.2	Project Management Plan and Schedule	Final Project Management Plan and Schedule	2%	16,774.16					
		TOTAL Task 1		**125,806.24**					
Task 2 - Broadband Infrastructure Existing Conditions Analysis				**100,644.99**					
2.1 and 2.2	Regional Infrastructure Assessment of the SCAG Region and Infrastructure Assessment ArcGIS File Geodatabase	Draft ArcGIS File	10%	83,870.82					
2.1 and 2.2	Regional Infrastructure Assessment of the SCAG Region and Infrastructure Assessment ArcGIS File Geodatabase	Final ArcGIS File	2%	16,774.16					
		TOTAL Task 2		**100,644.99**					
Task 3 - Needs and Market Assessment, Priority Area Identification, and Route Determination				**427,741.20**					
3.1	Needs Assessment Methodology and Determination of Priority Areas	Draft Priority Areas Report	3%	25,161.25					
3.1	Needs Assessment Methodology and Determination of Priority Areas	Final Priority Areas Report	1%	8,387.08					
3.2	Public Outreach	Draft Public Outreach Engagement Plan	10%	83,870.82					
3.2	Public Outreach	Final Public Outreach Engagement Plan	5%	41,935.41					
3.2	Public Outreach	Draft Public Outreach Report	8%	67,096.66					
3.2	Public Outreach	Final Public Outreach Report	2%	16,774.16					
3.3	Gap Analysis and Public Asset Inventory for Priority Areas	Draft Gap Analysis and Public Asset Inventory	4%	33,548.33					
3.3	Gap Analysis and Public Asset Inventory for Priority Areas	Final Gap Analysis and Public Asset Inventory	1%	8,387.08					
3.4	Market Assessment Report	Draft Market Assessment Report	10%	83,870.82					
3.4	Market Assessment Report	Final Market Assessment Report	2%	16,774.16					
3.5	Route Determination Report	Draft Route Determination Report	4%	33,548.33					
3.5	Route Determination Report	Final Route Determination Report	1%	8,387.08					
		TOTAL Task 3		**427,741.20**					
Task 4 - Last Mile Design for Local Jurisdictions				**184,515.81**					
4.1	Internet Service Provider (ISP) Outreach	Draft ISP Outreach Plan	2%	16,774.16					
4.1	Internet Service Provider (ISP) Outreach	Final ISP Outreach Plan	1%	8,387.08					
4.1	Internet Service Provider (ISP) Outreach	Draft ISP Outreach Report	2%	16,774.16					
4.1	Internet Service Provider (ISP) Outreach	Final ISP Outreach Report	1%	8,387.08					
4.2	10-Year Technology Last Mile Roadmap	Draft 10-Year Technology Last Mile Roadmap	5%	41,935.41					
4.2	10-Year Technology Last Mile Roadmap	Final 10-Year Technology Last Mile Roadmap	1%	8,387.08					
4.3	Financing and Implementation Recommendations	Draft Financing and Implementation Summary of Findings	3%	25,161.25					
4.3	Financing and Implementation Recommendations	Final Financing and Implementation Summary of Findings	1%	8,387.08					
4.4	Last Mile Conceptual Design Drawings	Draft Last Mile Conceptual Maps	2%	16,774.16					
4.4	Last Mile Conceptual Design Drawings	Final Last Mile Conceptual Maps	1%	8,387.08					
4.5	Technology Deployment Strategy	Draft Technology Deployment Strategy	2%	16,774.16					
4.5	Technology Deployment Strategy	Final Technology Deployment Strategy	1%	8,387.08					
		TOTAL Task 4	**100%**	**184,515.81**					
		TOTAL		**838,708.24**					
		TOTAL CONTRACT		**838,708.24**					

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EXHIBIT D -1
Available Funding Schedule

Exhibit D -1

Available Funding Schedule						
Total funding available for payment under this Agreement is subject to Section 3 c. (Term):						$838,708.24
Initial Funding						
Project Number	**Contract Tasks**	**Funding Period From**	**Funding Period To**	**Funding Source**	**Funding %**	**Funding Amount**
100-4901W6.02	1 - 4	NTP	06/30/24	California Public Utility Commission Grant	100.00%	$427,111.00
				Total	Funding:	$427,111.00
		Contract Value:	**$838,708.24**	Unfunded Contract	Balance:	$411,597.24

PO-010189
Purchase Order No.

V004584
Vendor #

Rev 01/19/23

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EXHIBIT E
UNILATERAL AMENDMENT FORM

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AMENDMENT NO. [INSERT NUMBER]

TO THE CONTRACT NO. [INSERT NUMBER]
[INSERT TITLE OF AGREEMENT] ("Agreement")

1. Parties and Date.

This Unilateral Amendment No. [__] to the Agreement is effective as of this ___ day of _____, 2022, by and between the Southern California Association of Governments ("SCAG") and [INSERT CONSULTANT NAME] ("Consultant").

2. Recitals.

2.1 Unilateral Amendment Authority. Section 9.c. of the Agreement provides that SCAG may unilaterally amend the Agreement if such Amendment relates solely to an administrative revision by SCAG of the Available Funding Schedule set forth in Exhibit D-1.

2.2 Amendment Purpose. SCAG desires to unilaterally amend the Agreement to update the Available Funding Schedule set forth in Exhibit D-[__].

3. Terms.

3.1 Amendment. Exhibit D-[__] is superseded and replaced in its entirety with Exhibit D-[__], attached hereto and incorporated herein by this reference.

Consultant shall not invoice SCAG in excess of the total available funding or in advance or after the Funding Period as shown in the Available Funding Schedule.

3.2 Continuing Effect of Agreement. Except as amended by this Amendment No. [__], all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. [___].

_____
Cindy Giraldo
Chief Financial Officer

_____
Date

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EXHIBIT F
Spatial Data/Metadata Requirements

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Exhibit F - Spatial Data/Metadata Requirements

The following are fields required for documentation of data received by SCAG. The metadata documentation follows that presented in FGDC-STD-001-1998 "Content Standard for Digital Geospatial Metadata," commonly referred to as the FGDC standard. http://www.fgdc.gov/metadata

A number of these metadata fields require prior consideration between SCAG and contractors before data acquisition or collection begins. These are:

1. **Progress**
   SCAG requires that a contractor indicate the anticipated progress of all datasets upon Project completion. Explanations should be prepared for any datasets that are not complete at the close of the contract.

2. **Access Constraints**
   Any anticipated constraints on access to datasets need to be documented and agreed to by SCAG before data collection or acquisition begins. Any licensing requirements should be spelled out here.

3. **Use Constraints**
   Any anticipated constraints on use of data sets need to be documented and agreed to by SCAG before data collection or acquisition begins. Any licensing requirements should be spelled out here.

4. **Security Classification**
   Any anticipated sensitivities of the data set or security implications of the dataset need to be documented and agreed to by SCAG before data collection or acquisition begins. This applies to general sensitivity issues and not strictly national security classification systems. For example, SCAG needs to know that the data being collected is sensitive to the extent that it should not be displayed at large scales on the Internet.

5. **Native Data Set Environment**
   The data set format needs to be documented and agreed to by SCAG before data collection or acquisition begins. SCAG works primarily with standard ESRI formats like shapes and coverages.

6. **Attribute Accuracy Value**
   The accuracy of attributes needs to be documented and agreed to by SCAG before data collection or acquisition begins. For example, if elevations are being collected SCAG needs to be informed that they will be plus or minus 50 feet.

7. **Horizontal Positional Accuracy Value**
   The horizontal positional accuracy needs to be documented and agreed to by SCAG before data collection or acquisition begins. For example, if point locations are being recorded from a GPS receiver, SCAG needs to be aware that 90% of the points are within 30 meters of true ground position.

8. **Source Currentness Reference**
   SCAG needs to be informed if the currentness reference is not ground condition. The currentness reference is the basis on which the time period content is determined. The date of the data set can be based on a number of things such as publication date, release date, or delivery date. An example would be the 2000 Thomas Brothers centerline file. The date usually associated with this file is the

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year indicated on the "Thomas Guide" that the digital data was used to create. It is much more likely that the data actually represents some time in 1999, since the books came out in time for Christmas 1999. The currentness reference in this case could be Thomas Guide title date.

9. Horizontal Coordinate System Definition

SCAG needs to know and agree to the data projection. It would be very unusual to accept a projection that does not have standard parameters. Data will most often be required in North American Datum 1983 UTM zone 11. The parameters for this projection are:

Projection: Transverse Mercator
Parameters
- False Easting 500000.0000000
- False Northing: 0.0000000
- Central Meridian: -117.0000000
- Scale_Factor: 0.999600000
- Latitude of Origin: 0

Linear Unit: Meter (1.000)
Geographic Coordinate System:
- Name: GCS_North_American_1983
- Angular Unit: Degree (0.017453292519943295)
- Prime Meridian: Greenwich (0.000000000000)
- Datum: D_North_American_1983
- Spheroid: GRS_1980
- Semimajor Axis: 6378137.000000000000
- Semiminor Axis: 6356752.314140356100
- Inverse Flattening: 298.2572221010000200

SCAG also requires all codes used in any spatial data set to be provided in an agreed upon electronic format.

The FGDC standard for data documentation is a very complete standard covering every kind of spatial data. What follows are the items for metadata documentation in datasets typically received at SCAG. Generally SCAG receives data pertaining to phenomena on the earth's surface in a vector form of points, lines, or polygons. Other types of data, which might include such forms as raster data and imagery data or some theme as subsurface water depth, would require reconsideration of some of the specific items required. The types of metadata information outlined at the first and second levels below are required of all data.

The outline numbers are from FGDC-STD-001-1998 "Content Standard for Digital Geospatial Metadata." The actual fields that require input are underlined

1. Identification Information

1.1 Citation

1.2 Description

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1.2.1 Abstract – Brief narrative summary of the dataset (Required)

1.2.2 Purpose - Intentions for which the dataset was acquired/developed (Required)

1.2.3 Supplemental Information – Any information not elsewhere documented that will give insight into the dataset. (Optional)

1.3 Time Period of Content

1.4 Status

1.4.1 Progress – The state of the data set. An explanation is required if the final progress for a dataset received due to a contract is not "Complete." (Required).

1.4.2 Update Frequency – The frequency with which changes to the dataset are made (Required).

1.5 Spatial Domain

1.5.1 Bounding Coordinates

1.5.1.1 West - Most Western boundary (Required – SCAG will accept in Projection Units if a standard projection is used).

1.5.1.2 East - Most Eastern boundary (Required – SCAG will accept in Projection Units if a standard projection is used).

1.5.1.3 North – Most Northern boundary (Required – SCAG will accept in Projection Units if a standard projection is used).

1.5.1.4 South – Most Southern boundary (Required - – SCAG will accept in Projection Units if a standard projection used).

1.6 Keywords

1.6.1 Theme

1.6.1.2 Theme keyword/s – Keyword or words describing theme (Required)

1.6.2 Place

1.6.2.1 Place keyword/s – Keyword or words describing location (Required)

1.7 Access Constraints – Restrictions and legal prerequisites for accessing the dataset (Required)

1.8 Use Constraints – Restrictions and legal prerequisites for using the data after access is granted

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(Required).

1.9 Point of Contact

1.12 Security Information

1.12.2 Security Classification – Any restrictions imposed by national security concerns. Must be agreed upon before data acquisition. SCAG will accept non-traditional evaluations of confidentiality that a contractor may deem appropriate. A dataset for example may be classified "may be inappropriate for display on Internet at large scales." These evaluations are for security concerns not data quality concerns. (Required)

1.13 Native Data Set Environment – Software and format in the producers processing environment. The contractor is considered the producer even if data has been acquired form another source. (Required)

2. Data Quality Information

2.1 Attribute Accuracy

2.1.1 Attribute Accuracy Report – an explanation of the accuracy of assigned values in the data set (if applicable)

2.1.2 Quantitative Attribute Accuracy Assessment

2.1.2.1 Attribute Accuracy Value – an estimate of the accuracy assigned values in the data set (if applicable)

2.1.2.2 Attribute Accuracy Explanation – and identification of the test that produced the Attribute Accuracy Value (if applicable)

2.4 Positional Accuracy

2.4.1 Horizontal Positional Accuracy

2.4.1.1 Horizontal Positional Accuracy Report – an explanation of the accuracy of the horizontal coordinate measurements (if applicable)

2.4.1.2 Quantitative Horizontal Positional Accuracy Assessment

2.4.1.2.1 Horizontal Positional Accuracy Value – numeric value assigned to summarize the accuracy of the horizontal coordinate measurements (Required)

2.4.1.2.2 Horizontal Positional Accuracy Explanation – the test that produced the Horizontal Positional Accuracy Value (if applicable)

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2.5 Lineage

2.5.1 Source Information

2.5.1.1 Source Citation

2.5.1.2 Source Scale Denominator – the denominator of the representative fraction of the source map or the scale representative of the accuracy of the digital product (e.g. a scale of 1:24,000 is 24000) (Required)

2.5.1.3 Type of Source Media – media of the source dataset (if applicable - digitized data would have the Type of Source Media reported as "paper")

2.5.1.4 Source Time Period of Content

2.5.1.4.1 Source Currentness Reference – The basis on which the time period content (9.1.1 Calendar Data, or 9.3.1 Beginning Date/9.3.3 Ending Date) is determined. Most acceptable is "ground condition." This feature/condition exited on the ground in the time period specified. Other currentness references (publication date, date acquired from agency,) need to be discussed with SCAG. (Required).

3. Spatial Data Organization Information

3.1 Indirect Spatial Reference – name of means through which locations are referenced in the dataset. Pertains to mechanisms like geocoding addresses or linear referencing systems. (if applicable)

3.2 Direct Spatial Reference – type of object used to represent space in the data set (e.g. Point, Line, Polygon) (Required)

4. Spatial Reference Information

4.1 Horizontal Coordinate System Definition

4.1.1 Geographic

4.1.1.1 Geographic Coordinate Units (Required if geographic)

4.1.2 Planar

4.1.2.1 Map projection

4.1.2.1.1 Map Projection Name (Required if planar system, if standard projection is used place it here. Most acceptable is NAD_1983_UTM_Zone_11N.)

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4.1.2.2 Grid Coordinate System (Required if planar system and not standard)

4.1.2.3 Planar Coordinate Information

4.1.2.3.1 Planar Distance Units (Required if planar system and not standard)

4.1.4 Geodetic Model

4.1.4.1 Horizontal Datum Name (Required if not standard)

4.1.4.2 Ellipsoid Name (Required if not standard)

5. Entity and Attribute Information

5.1 Detailed Description

5.1.1 Entity Type (for each)

5.1.1.1 Entity Type Label – the name of the entity type (e.g. integer, text)(Required)

5.1.1.2 Entity Type Definition – the definition of the entity type (if necessary)

5.1.1.3 Entity Type Definition Source – the source of the definition (if necessary)

5.1.2 Attribute (for each)

5.1.2.1 Attribute Label – Name in file (Required for non-standard attributes. Standard attributes are those produced by software. For example, a polygon coverage produced by ESRI software will have such fields as perimeter and area that are created and maintained by the system)

5.1.2.2 Attribute Definition – What the attribute represents (Required for non-standard attributes)

5.1.2.3 Attribute Definition Source – Authority of the field definition. This could be a citation to a document or the group responsible for the field. (e.g. The U.S. Census Bureau is the authority for the definition of the field P1 which is Population) (Required for non-standard attributes)

5.1.2.4 Attribute Domain Values

5.1.2.4.1 Range Domain

5.1.2.4.1.1 Attribute Units of Measure – the standard of measurement (Required if range)

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5.1.2.4.1.2 Attribute Measurement Resolution – the smallest unit to which an attribute value is measured (if applicable)

5.1.2.4.2 Codeset Domain Codes – must be supplied in a digital file

5.1.2.4.2.1 Codeset Name (Required if codeset)

5.1.2.4.2.2 Codeset Source (Required if codeset)

5.1.2.5 Attribute Value Accuracy Information

5.1.2.5.1 Attribute Value Accuracy – an estimate of the accuracy of attribute values (Required if applicable)

5.1.2.5.2 Attribute Value Accuracy Explanation – how the Attribute Value Accuracy was derived (Required if applicable)

5.1.2.6 Attribute Measurement Frequency – the frequency that the measurements are added (Required if applicable)

6. Metadata Reference Information

6.1 Metadata Date – the date the metadata was created or last updated (Required)

6.2 Metadata Contact – the party responsible for the metadata information. (Required)

7. Citation Information

7.1 Originator – name of organization or individual that developed the dataset (Required).

7.2 Publication Date – the date the data was published or made available for release (Required).

7.3 Other Citation Details (Optional)

8. Time Period of Content

8.1 Single Date/Time – the year or portion of year (e.g. month) for which the data corresponds to the Currentness Reference. SCAG does not anticipate that time will be a factor in metadata for information typically collected for this agency.

8.1.1 Calendar Date – the year and optionally month (Required if not reported within 9.3 Range of Dates/Times)

8.2 Range of Dates/Times – the range of years or portion of years (e.g. month) for which the data corresponds to the Currentness Reference. SCAG does not anticipate that time will be a factor in metadata for information typically collected for this agency.

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8.2.1 Beginning Date – the first year and optionally month (Required if not reported as 9.1.1 Calendar Date)

8.2.2 Ending Date – the last year and optionally month (Required if not reported as 9.1.1 Calendar Date)

9. Contact Information

9.1 Contact person primary

9.1.1 Contact Person (Required if person is best mechanism to report contact)

9.1.2 Contact Organization (Required if person is best mechanism to report contact)

9.2 Contact Organization (Required if not reported as 10.1 Contact person primary)

9.3 Contact Voice Phone (Required)

9.4 Contact Fax Phone (Optional)

9.5 Contact E-mail (If available)

9.6 Contact Instructions – supplemental information, which might include web sites and other mechanisms for contact (Optional).

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EXHIBIT G
Graphics Requirements for Consultants

DocuSign Envelope ID: D0384D38-B426-47F2-848C-255FFC479E36

Exhibit G - Graphics Requirements for Consultants

1. Web Projects

   Web Deliverables: Please provide all files required to launch a live site.
   - All HTML documents/templates and supporting CSS, JavaScript, jQuery etc.
   - All linked document files e.g. PDF, Word, Excel, PowerPoint.
   - Graphics in JPEG format, 72 dpi, RGB mode for photos.
   - Logos GIF, PNG or SVG format for use on the web.
   - Include all fonts, original high-resolution photos and native files for all graphics (including PSD with layers if applicable) used to create the web page or layout.

2. Print Projects

   Native File: Please provide a packaged InDesign file (currently running InDesign CC).
   - Be sure to include IDML, all fonts and linked JPEG, TIFF, PSD, AI and/or EPS files.
   - Provide a PDF of the final document layout.
   - Provide a hard copy of the document if Project has gone to press.
   - Linked documents requirements:
     - *Images*
       - All images must be 300 dpi or higher.
       - Scanned images should be CMYK in TIFF or JPEG format for color; greyscale for B&W.
       - Include all composited collages or graphics in native format such as layered Photoshop (PSD) and/or Illustrator (AI); **don't forget to include fonts!**
       - Photo credits should be complete with photographer name, location/name of photo and any appropriate captions.
     - *Charts/Graphs*
       - Be sure to include all linked files when providing Microsoft Excel files.
       - Native files with fonts.
     - *Logos & Other Graphics*
       - EPS files are preferred. When EPS is unavailable, high-resolution image files may also be used (TIFF, PNG, JPEG, PSD).
   - Whenever applicable, please provide preferred print specifications including size, paper stock (weight and color), colors (Pantone, CMYK, B/W), one or two–sided printing, varnish, bleed, trim, and binding details.

3. Photography

   Photos of Meetings/Events/Location Shot: SCAG requests that consultants provide copies of all photos taken at meetings, conferences and/or project sites.
   - RAW or original resolution JPEG files from DSLR cameras are preferred.
   - Files may be sent via file hosting service (eg. Dropbox), flash drive, external hard drive.
   - Traditional photo prints will only be acceptable if a high resolution scan is enclosed.
   - Photo credits should be complete with photographer's name, location/name of photo and required captions.
4. Documentation
   - Be sure to include your contact information (name, telephone and e-mail address). SCAG wants to be able to contact you in the case we have specific questions and/or if there is missing information.

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5. Media Preference
   - Dropbox or other file hosting service; best to upload a compressed zipped file.
   - Flash drive or external hard drive.

6. Your SCAG Contacts
   - Ludlow Brown, Sr. Graphic Designer
     brown@scag.ca.gov
     (213) 236-1976
   - Diana Chamberlain, Sr. Graphic Designer
     chamberlain@scag.ca.gov
     (213) 236-1815

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EXHIBIT H
Web Policies & Guidelines for Consultants

DocuSign Envelope ID: D0384D38-B426-47F2-848C-255FFC479E36

Exhibit H - Web Policies & Guidelines for Consultants

1. Tools and Requirements

Web staff uses these tools and applications for development and maintenance of SCAG's site:

- Microsoft Sharepoint 2010 and 2016
- Adobe Dreamweaver
- Adobe Photoshop
- JavaScript, AJAX
- jQuery
- ASP.Net
- Cascading Style Sheets
- SCAG uses IIS7, IIS8, and IIS10

2. Web Development Process

Information Gathering : Purpose, Main Goals, and Target Audience

- Set goals for the website
- Define website's target audience

Planning: Sitemap and Wireframe Creation

- Create a sitemap sketch
- Create a wireframe/mock-up
- Select technology stack (programming language, frameworks, CMS)

Design: Page Layouts, Review, and Approval Cycle

- Create page layouts
- Review the layouts
- Get feedback on the layouts
- Change the layout when required

Content Writing and Assembly

- Create new content
- Get content ready for migration

Coding

- Build and deploy Website
- Add special features and interactivity

Accessibility for Disabled Users

- Web accessibility means that people with disabilities can perceive, understand, navigate, contribute to and interact with the web. Web accessibility also benefits others, including people with changing abilities due to aging. SCAG strives to make all of its web resources accessible to persons with disabilities in accordance with Federal law (Section 508). There are various types of physical disabilities that impact user interaction on the web. Vision loss, hearing loss, limited manual dexterity and cognitive disabilities are examples, with each having different means by which to access electronic information effectively. SCAG's goal is to provide a good Web experience for all visitors to the SCAG suite of websites.

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Testing, Review and Launch

- Test the created website
- Upload the website to server
- Final (regression) testing and launch

Maintenance: Opinion Monitoring and Regular Updating

- Add user report system
- Fix bugs as soon as possible
- Keep website up-to-date

3. Web Design Technical Standards
   - **Straightforward Design**: The SCAG suite of websites uses simple information architecture, organized navigation and reliable heading throughout. By utilizing headings, lists and consistent structure, SCAG is able to achieve an esthetic and engaging site that encourages participation by all.
   - **Color**: SCAG ensures that foreground and background color combinations provide sufficient contrast when viewed by someone having color deficits or when viewed on a black and white screen. Color alone is never used as a communication device.
   - **Text**: Normal text on a web page ensures the widest compatibility and fastest download. It also assists search engines in indexing information on the website. Be sure to allow sufficient white space for good readability. Avoid italicized fonts, as they are difficult to read. Avoid excessive use of graphic elements. Keep amount of text and graphics to a minimum for easy viewing and shorter download time. Break very long text documents into multiple pages.
   - **Sitemap**: SCAG prefers a text-only sitemap for each of its sites as an index to that site. Text-only sitemaps work well with screen readers.
   - **Style Sheets**: Cascading Style Sheets (CSS) centralize the style information for the website. Using CSS allows for greater flexibility when a style change is needed to accommodate a specific disability. It also keeps the code clean and is faster to download.
   - **Navigation**: SCAG's sites include both textual as well as graphical navigation aids.
   - **Layout**: The design was built to accommodate the vast majority of visitors. SCAG's websites are best viewed at 1024 x 768 resolution, per W3C.org, "a screen resolution of 1024 x 768 is predominant in the US," however the sites are navigable using screens that utilize other resolutions.
   - **Graphics**: All graphics must be approved by the Graphics department and conform to SCAG's standard layout and design. Graphics must be in JPEG format, 72 dpi, and RGB mode for photos. All logos must be in GIF, PNG or SVG format. Requests for new graphics should be coordinated directly with Ludlow Brown and meet these requirements
   - **Templates**: Standardized layout design must be used to maintain a consistent look and feel of the website.
   - **Link to SCAG's Site**: All newly designed sites must include SCAG's logo and URL, www.scag.ca.gov on the main page for easy navigation. SCAG's logo and URL should be prominently displayed at the top of each page.
   - **Images with Alternative Text**: This text provides further detail for an image or destination of a hyperlinked image. It is commonly called an ALT tag, and they are accessible to screen readers, and visible when the mouse is placed over the image. They also provide a description of graphics for people who have images turned off on their browser.

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- **Dynamic Content**: SCAG ensures that dynamic content is accessible or provides an alternative presentation or page.
- **Browser Portability**: SCAG tests its websites with a variety of web technologies including, but not limited to, graphical browsers with the images turned off, browsers with JavaScript disabled and a text-based browser that can be used with an assistive technology. SCAG avoids the use of tags or extensions that are supported by only one browser.
- **Keyboard Commands**: Navigate through SCAG's Web pages without the use of a mouse. (Note: Some commands may not work with every web browser version.) For example:

If you want to...	**Select...**
Increase text size	Ctrl + +
Decrease text size	Ctrl - -
Move forward from link to link	Tab
Move backward from link to link	Shift + Tab
Move from box to box	Tab
Go to top of page	Ctrl + Home
Go to bottom of page	Ctrl + End
Close window	Ctrl + W
Go back a page	Alt + Left Arrow
Go forward a page	Alt + Right Arrow
Go to search box	Alt + S

- **Scripts and AJAX**: Alternative methods for searching or alternative content are provided in case active features are inaccessible or unsupported by a user's browser.

4. Quality Assurance Testing
   - **Conduct testing against specifications.** Ensure that new development works as planned. Fix bugs and limit changes here to bugs, unless absolutely important.
   - **Web browser compatibility testing.** Check to make sure that content is fully compatible with major web browsers which include Internet Explorer 7+, Firefox, Safari, Chrome and Lynx (text based browser).
   - **Spell check.** Make sure there are no spelling errors on the new content.
   - **Check for usability.** Is the newly developed content understandable and intuitive?
   - **Accessibility check.** Check the Website content against the Accessibility (https://www.section508.gov/test.)

5. Production Process

   Final Testing and Migration
   - Once the site has been approved, it will be transferred to SCAG's web server. Web material will be posted/accepted only upon final review and approval by SCAG staff.
   - A copy of the website source code must be provided.
   - Provide the final PSD file (with layers if applicable) of the website layout design. Also include all original higher resolution graphics and fonts that were used to create the website layout.
   - Be sure to include all HTML files, and all linked document files e.g. PDF, Word, Excel, PowerPoint.

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EXHIBIT I
Mapping Guidelines for Consultants

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This document sets out some basic guidelines and "rules of thumb" that should always be considered whenever consultant creates maps for SCAG-related projects. The guidelines cover three major areas: procedural or process, physical presentation, and data presentation.

The main points of the procedural guidelines can be summarized as the need to work, early on, with other key staff and stakeholders. GIS, Web, and graphic staff can offer valuable information. Key members of the intended audience can often provide important issues that the map(s) should address.

Physical presentation covers basic required map elements, e.g., SCAG logo, titles, aesthetics, geographical extents and use of insets.

The guidelines for data presentation provide strategies for bringing out the "story" embedded in the data. They cover such things as proper geographical scale, using the correct statistic, and how to summarize the data into meaningful groups.

QUICK SUMMARY OF GUIDELINES

The following guidelines apply to maps that are being created to represent the SCAG region. However, many of these principles are applicable to non-regional maps.

Procedures

1. Talk to stakeholders about their issues to make sure the map adequately addresses them.
2. Work with the Web staff and graphics if the map is going to be posted on SCAG web site or published by an outside printer.

Physical Presentation

3. Always include the basic map elements (e.g., titles, scale bar, legend, etc.) – Map templates are available upon request.
4. The map should visually extend beyond the SCAG boundaries in order to show the surrounding geographies (e.g., Arizona, Mexico, etc.)
5. If using insets, try to use consistent legends for the insets and the main map.
6. Maps about regional data need to show, even if only as an inset, the complete region.

Data Presentation

7. Data distributions should determine how the map should look. Do not automatically use the same map layout for all data. Sometimes different data need to be displayed differently to make an effective presentation.
8. Design the map to "show off" the data. Make obvious relationships apparent do not use statistics that hide them.
9. Take the time to determine how to group the data for displaying.
10. Choose a level of geographic detail that best shows the data and takes into consideration the actual size of the map that will be viewed.
11. Make the map easy to understand.
12. Try not to create too many categories for thematic maps (e.g., 30 land use categories)

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DISCUSSION OF GUIDELINES

1. Communicate with stakeholders

Communicate with stakeholders throughout the region to determine what issues they may have that are related to the report the maps will be a part of. Maps that provide information about these issues should be sensitive to the stakeholder's geographic area. For that area, make sure the data is adequately displayed. This may solve more problems than any cartographic solution.

Imperial County, for example, may have an issue with the non-English speaking population. If this is displayed as a density, i.e., non-English speaking population per square mile, Imperial County concentrations will not show up. This is because of their low overall population density compared to the rest of the region. The data may better be displayed as the percentage of the total population who are non-English speaking. Then, even in parts of the region that have little population, high percentage areas will be apparent on the map.

2. Make maps Web and publication friendly.

Many SCAG maps will eventually be displayed on the SCAG Website. Work with the Web staff and Graphics early on to make sure that maps are prepared with Web display in mind. Check with Graphics if the maps need to be inserted into a document for publication, especially by an outside printing agency.

3. Basic elements that every map should contain:

- Title
- Legend
- SCAG logo
- Date
- North arrow
- Scale bar
- Source of data

4. SCAG region maps should include areas immediately outside of the region

Maps need not include all the data for areas outside the SCAG region but major features such as highways should be included. When practical, the surrounding counties should be labeled. There should be enough differentiation in color schemes and shadings to make it obvious to the viewer that these are peripheral areas and not the focus of the map.

5. Try to use consistent legends for the main map and any insets

In general, a consistent classification scheme needs to be used for both the main map and any insets in the map. If they use different legends, great care needs to be taken to include readable legends for both the main map and any insets. For example, color gradations can be created that show distributions on the low end of the range, used for the main map, and the high end of the range, used for the inset.

6. The map needs to show the complete region

If the map is about regional data then the map needs to show the complete region. If the data is highly concentrated in a small area of the region then one should show the region as an inset with an indication of what part of the region is being displayed on the main map.

The main map can show the concentration with an inset showing the regional context or the main map can show the region with concentrations in insets. It all depends on the nature of the distribution and the information the author wants the map to convey. An example would be a map of textile employment. Textile employment has a large concentration in downtown Los Angeles. The main map could focus on downtown with an inset showing where that map is in relation to the region. Then again, the main map may be the entire region with an inset showing the central business district. Both should be looked at to see which best conveys the message.

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If a map is illustrating a report that applies to only a part of the region, say a corridor study, than the map should not be shown as a regional map. Although, an inset should be included to show where the "corridor" is in relation to the region.

7. Data distributions should dictate how the map is presented

In other words, do not use the same map over and over again, just changing the title and the variable mapped. That does not mean a consistent look and feel for the maps should not be developed, but that has more to do with using standard color schemes, fonts, logos, highway shields, etc. The area covered and the geographic distribution highlighted needs to be driven by the data rather than the convenience of mapping everything the same way. The maps for "Prime Agricultural Land" and "Density of Manufacturing Employment" should not emphasize the same areas. Prime agricultural land is obviously rural and decentralized while the density of manufacturing employment is urban and fairly concentrated.

8. Make obvious relationships apparent

Be careful not to display data in a manner such that obvious relationships are hidden. An example of this would be to display Hispanic population using a density per square mile rather than as a percentage of the total population. The percentage of Hispanics in many of the rural areas is quite high but this disappears when displayed as a density because the rural population density, in relation to the urban area, is very low.

Here is an example where using percentages may be inappropriate: The map is trying to show concentrations of potentially hazardous waste producing industries. One could show these as a percentage of total industries. In that case, areas that have a "dangerously high" number of these factories, but are in an area of extremely heavy concentrations of all types of manufacturing, would not stand out on the map. Here, it is the actual number of dangerous factories that matter, not their proportion; therefore, a simple count would be better than either a percentage or density.

9. Take the time to determine how to group the data

Do not just automatically group it into quartiles or quintiles (groups of four and five with equal numbers in each class). Think about the theoretical or practical reasons to classify the data a particular way. For example, if one is mapping housing density, 2.5 units per acre is a rule of thumb for urbanization, or 8 units per acre is a rule of thumb for multiple housing; these may be more meaningful cutoffs than just breaking the data into four equal groups. Another example: it may be more useful to display income data as above or below the poverty line or as a certain percentages above or below the regional average.

Often times the data will offer "natural breaks" that may have some underlying meaning. Looking at a simple frequency distribution will often show that the data is distributed in two or three major groups; this may be telling a story that would be buried by using groups of equal numbers.

10. Choose an appropriate level of geography

Put some thought into what is the most appropriate mapping unit. What level of geographic detail will best demonstrate the relationships the map is trying to show? If the map is trying to compare levels of economic growth among cities, it would be unsuitable to display data at the block level. Conversely, changes in land use displayed at the city level will not make much sense.

Also bear in mind the size of the map most likely to be viewed; a map that is going into a report cannot support the level of geographic detail that a full size 33 by 44 inch wall map can.

11. Always try to make the map easy to understand

Unless there is good reason for it, one should keep the number of groups to six or less. Six is about the maximum "differentiations" most people can carry in their head without having to keep jumping back and forth

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between the map and the legend. If more than six categories are being used, try to work with color schemes that are graduations or intuitive.

Color graduations are usually effective for handling a high number of groups. Color graduations are where one uses the same basic color, but it increases from light to dark as the value increases. These only work if the data being mapped is numeric, like quantities, densities, or percentages.

If the groups represent different classes of things (apples and oranges), not just more or less of the same thing, color graduations will not work. In this case, try to use colors that have an intuitive or everyday link with the item displayed. For example, if one is mapping land use, green would make sense for agriculture, blue for water.

SCAG has a set of standard colors for different types of land uses. It is suggested that these be used when mapping common land use classifications, e.g., low density residential, agriculture, etc. Contact the GIS staff at 213-236-1800 for a GIS layer file.

If some of the groups are related, use similar colors for them. An example would be a map showing high and low density residential and three types of industrial land uses. In this case, it would be a good idea to show the residential land in different shades of one color and the industrial land in gradations of another color.

Avoid making the map busier than it has to be. Do not add items to the map that are not necessary for the "story" it's telling just to "jazz it up". These generally end up being more of a distraction than useful. Examples of these would be making things 3-D when the third dimension does not represent any additional information, complicated textured fill patterns, e.g., cross-hatching, when simple fills would work, lots of different colors and texture combinations, and excessive labeling.

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EXHIBIT J
Contract Amendment Request Form

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Contract Amendment Request Form (Request)

Instructions: Requestor to complete section ○ (if Requestor is the SCAG Project Manager, complete section ○ and○) and email this Request to the SCAG Contract Administrator, who will confirm receipt via email and provide further instructions. This Request only initiates the amendment process. SCAG must still approve an actual Contract Amendment (Amendment) that shall not become effective without the full execution by the Parties. **Such Amendment shall become effective no earlier than the date that SCAG received this Request. SCAG shall disallow any and all costs incurred by the Consultant prior to the effective date of an Amendment resulting from this Request.**

SCAG Contract No.: _____ **Consultant:** _____

○

Item(s) Requested to be Changed:
(check all that apply and provide justification):

☐ Contract Term	☐ Price Sheet	☐ Project Manager	☐ Scope of Work	☐ Other
From: _____ To: _____	(Price Sheet/Rate Structure) For changes to: D/L, ODCs or Subs	New Name: _____ Phone #: _____ Email: _____		(Specify - in Justification)

Justification (attach additional sheet, if necessary):

○

☐ **Contract Amount** $ _____ From $ _____ To
(Only SCAG PM can request this)

Justification - attach any supporting documentation, if applicable, with this Form, (i.e., correspondences between Consultant and SCAG PM)**:**

☐ **Funding:**

Project Number(s)	Cost Category	Funding Source (FHWA/FTA/TDA)	%	Fiscal Year	Amount

☐ **SCAG Project Manager:** From: To:

☐ **Other** (specify and also provide justification)**:**

For SCAG Use Only

Request Approval:
(Only required if the "Effective Date" is requested to be earlier than the date that the Contract Administrator received this Request)

Title	Print Name	Signature	Date
Project Manager			
Manager			
Director			
CFO	Cindy Giraldo		

CITY OF ONTARIO *Agenda Report* **February 18, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Information Technology Prepared By: Samantha Robles Staff Member Presenting: Colin Fernandes, Executive Director Information Technology Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 8

SUBJECT: PURCHASE ADDITIONAL MICROSOFT 365 SUBSCRIPTIONS WITH SOFTWAREONE INC.

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute the purchase of additional Microsoft 365 subscriptions with SoftwareONE Inc., of Milwaukee, Wisconsin, for $65,805 plus $100,000 in contingency, revising not-to-exceed amount on the agreement to $1,774,456.

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

FISCAL IMPACT: The Fiscal Year 2024-25 Adopted Budget includes appropriations from the Information Technology Fund for an annual subscription and support service of Microsoft 365 products. The proposed purchase of 450 Microsoft 365 subscriptions is $65,805, plus a contingency amount of $100,000 for additional licenses to accommodate future staffing needs, for a revised not-to-exceed amount of $1,774,456. If approved, appropriations will be added to the future years' budgets consistent with the annual adoption process.

BACKGROUND & ANALYSIS: On January 17, 2023, the City Council approved a three-year Agreement with SoftwareOne Inc. for Microsoft 365 licenses. Microsoft 365 services play a significant role in the operations of the City by allowing document creation, communication, and collaboration. These services include the City's Office Productivity Suite, which consists of services such as Microsoft Outlook/Exchange email, Microsoft Teams, Microsoft Word, Microsoft Excel, and Microsoft PowerPoint.

This Agreement was procured through a cooperative purchasing program which is authorized pursuant to state law. In general conformation with the provisions of Government Code Section 54201 through 54204,Ontario Municipal Code Section 2-6.29 allows for the purchase of supplies and equipment through cooperative purchasing programs, pursuant to California Government Code Section 6502 and City of Ontario Resolution No. 91-141. Cooperative purchasing allows the City to pool its procurement power with other public agencies to obtain lower pricing than otherwise might be possible. The City leveraged the Riverside County Microsoft Enterprise Agreement (#8084445) to secure discounted pricing.

The City purchased licenses to support 205 additional users in year two of the Agreement. As the City's digital communication and collaboration with staff, consultants, partners, and members of the public continues to increase, the need to quickly add and assign additional licenses arises.

Staff requests City Council approval for a not-to-exceed contract amount of $1,774,456 to cover the additional licenses from year two of the Agreement and allow for a contingency for licenses that could be purchased in year three of the Agreement.

City of Ontario
303 East B Street
ONTARIO, CA 91764

Date	01/13/2025
Your Reference	Reservations (OG)
Account Manager	Monte Hunter
Your Contact Person	Gov Us
E-Mail	GOV.US@softwareone.com

Quote US-QUO-1206420

Invoice Address

City of Ontario
303 East B Street
ONTARIO, CA 91764

Shipping Address

City of Ontario
303 East B Street
ONTARIO, CA 91764

License Address

City of Ontario
303 East B Street
ONTARIO, CA 91764

Pos.	No.	Description / Manufacturer	Disc-Lev.	Format	Start Date / End Date / Lic. Model	Version / OS / Lic. Metrics	Qty.	Unit Price	Sales Tax	Amount (USD)
		EA 57995968								
		Reservation 2443600379961								
		Coverage 03.01.2024 - 02.28.2026								
10	4ES-00001	ExchOnlnArchGCC ShrdSvr ALNG SubsVL MVL PerUsr			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription Add Prod				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		10	56.85	0.00	568.50
20	AAD-34704	M365 G3 Unified FUSL GCC Sub Per User			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription Add Prod				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		10	758.89	0.00	7,588.90
30	AAD-63092	M365 F3 Unified GCC Sub Per User				NON-SPEC/AL				
		Government Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		10	168.10	0.00	1,681.00
40	NYH-00001	Teams AC with Dial Out US/CA GCC Sub Add-on			01/13/2025	NON-SPEC/AL				
		Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA		20	0.00	0.00	0.00
		Reservation 2466381281041								

Quote US-QUO-1206420

Pos.	No.	Description / Manufacturer	Disc-Lev.	Format	Start Date / End Date / Lic. Model	Version / OS / Lic. Metrics	Qty.	Unit Price	Sales Tax	Amount (USD)
		Coverage 04.01.2024 - 02.28.2026								
50	4ES-00001	ExchOnlnArchGCC ShrdSvr ALNG SubsVL MVL PerUsr			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription Add Prod				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		10	54.48	0.00	544.80
60	AAD-63092	M365 F3 Unified GCC Sub Per User				NON-SPEC/AL				
		Government Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		10	160.39	0.00	1,603.90
		Reservation 2474618406790								
		Coverage 04.01.2024 - 02.28.2026								
70	4ES-00001	ExchOnlnArchGCC ShrdSvr ALNG SubsVL MVL PerUsr			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription Add Prod				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		5	54.48	0.00	272.40
80	AAD-34704	M365 G3 Unified FUSL GCC Sub Per User			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription Add Prod				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		10	727.27	0.00	7,272.70
90	AAD-63092	M365 F3 Unified GCC Sub Per User				NON-SPEC/AL				
		Government Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		5	160.39	0.00	801.95
100	NYH-00001	Teams AC with Dial Out US/CA GCC Sub Add-on			01/13/2025	NON-SPEC/AL				
		Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA		15	0.00	0.00	0.00
		Reservations 24123263975658								
		06.01.2024 - 02.28.2026								
110	4ES-00001	ExchOnlnArchGCC ShrdSvr ALNG SubsVL MVL PerUsr			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription Add Prod				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		10	49.74	0.00	497.40
120	AAD-34704	M365 G3 Unified FUSL GCC Sub Per User			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription Add Prod				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		10	664.03	0.00	6,640.30
130	AAD-63092	M365 F3 Unified GCC Sub Per User				NON-SPEC/AL				
		Government Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		10	146.44	0.00	1,464.40
140	NYH-00001	Teams AC with Dial Out US/CA GCC Sub Add-on			01/13/2025	NON-SPEC/AL				
		Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA		10	0.00	0.00	0.00

SoftwareOne, Inc.

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Milwaukee, WI 53202
USA

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Web: www.softwareone.com

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Quote US-QUO-1206420

Pos.	No.	Description / Manufacturer	Disc-Lev.	Format	Start Date / End Date / Lic. Model	Version / OS / Lic. Metrics	Qty.	Unit Price	Sales Tax	Amount (USD)
		Reservation 24137774411842								
		06.01.2024 - 02.28.2026								
150	4ES-00001	ExchOnlnArchGCC ShrdSvr ALNG SubsVL MVL PerUsr			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription Add Prod				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		5	49.74	0.00	248.70
160	AAD-34704	M365 G3 Unified FUSL GCC Sub Per User			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription Add Prod				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		5	664.03	0.00	3,320.15
170	AAD-63092	M365 F3 Unified GCC Sub Per User				NON-SPEC/AL				
		Government Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		5	146.44	0.00	732.20
180	NYH-00001	Teams AC with Dial Out US/CA GCC Sub Add-on			01/13/2025	NON-SPEC/AL				
		Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA		5	0.00	0.00	0.00
		Reservation 24151793655033								
		06.01.2024 - 02.28.2026								
190	4ES-00001	ExchOnlnArchGCC ShrdSvr ALNG SubsVL MVL PerUsr			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription Add Prod				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		20	49.74	0.00	994.80
200	AAD-63092	M365 F3 Unified GCC Sub Per User				NON-SPEC/AL				
		Government Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		20	146.44	0.00	2,928.80
		Reservation 24151105494019								
		06.01.2024 - 02.28.2026								
210	AAD-34704	M365 G3 Unified FUSL GCC Sub Per User			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription Add Prod				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		5	664.03	0.00	3,320.15
220	NYH-00001	Teams AC with Dial Out US/CA GCC Sub Add-on			01/13/2025	NON-SPEC/AL				
		Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA		5	0.00	0.00	0.00
		Reservation 24158869561593								
		Coverage 07.01.2024 - 02.28.2026								
230	4ES-00001	ExchOnlnArchGCC ShrdSvr ALNG SubsVL MVL PerUsr			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription Add Prod				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		30	47.37	0.00	1,421.10

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Web: www.softwareone.com

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Pos.	No.	Description / Manufacturer	Disc-Lev.	Format	Start Date / End Date / Lic. Model	Version / OS / Lic. Metrics	Qty.	Unit Price	Sales Tax	Amount (USD)
240	AAD-63092	M365 F3 Unified GCC Sub Per User				NON-SPEC/AL				
		Government Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		30	139.47	0.00	4,184.10
		Reservation 24177534151676								
		Coverage 07.01.2024 - 02.28.2026								
250	4ES-00001	ExchOnlnArchGCC ShrdSvr ALNG SubsVL MVL PerUsr			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription Add Prod				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		30	47.37	0.00	1,421.10
260	AAD-63092	M365 F3 Unified GCC Sub Per User				NON-SPEC/AL				
		Government Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		30	139.47	0.00	4,184.10
		Reservation 24191527838139								
		Coverage 08.01.2024 - 02.28.2026								
270	4ES-00001	ExchOnlnArchGCC ShrdSvr ALNG SubsVL MVL PerUsr			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription Add Prod				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		5	45.01	0.00	225.05
280	AAD-34704	M365 G3 Unified FUSL GCC Sub Per User			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription Add Prod				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		5	600.79	0.00	3,003.95
290	AAD-63092	M365 F3 Unified GCC Sub Per User				NON-SPEC/AL				
		Government Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		5	132.50	0.00	662.50
300	NYH-00001	Teams AC with Dial Out US/CA GCC Sub Add-on			01/13/2025	NON-SPEC/AL				
		Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA		5	0.00	0.00	0.00
		Reservation 24201937734621								
		Coverage 08.01.2024 - 02.28.2026								
310	4ES-00001	ExchOnlnArchGCC ShrdSvr ALNG SubsVL MVL PerUsr			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription Add Prod				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		5	45.01	0.00	225.05
320	AAD-63092	M365 F3 Unified GCC Sub Per User				NON-SPEC/AL				
		Government Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		5	132.50	0.00	662.50
330	NYH-00001	Teams AC with Dial Out US/CA GCC Sub Add-on			01/13/2025	NON-SPEC/AL				
		Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA		5	0.00	0.00	0.00

Quote US-QUO-1206420

Pos.	No.	Description / Manufacturer	Disc-Lev.	Format	Start Date / End Date / Lic. Model	Version / OS / Lic. Metrics	Qty.	Unit Price	Sales Tax	Amount (USD)
		Reservation 24232218035116								
		Coverage 09.01.2024 - 02.28.2026								
340	7VX-00001	Project P5 GCC Sub Per User			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA GOV		1	756.07	0.00	756.07
		Reservation 24248769480875								
		Coverage 10.01.2024 - 02.28.2026								
350	4ES-00001	ExchOnlnArchGCC ShrdSvr ALNG SubsVL MVL PerUsr			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription Add Prod				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		10	40.27	0.00	402.70
360	AAD-63092	M365 F3 Unified GCC Sub Per User				NON-SPEC/AL				
		Government Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		10	118.55	0.00	1,185.50
370	NYH-00001	Teams AC with Dial Out US/CA GCC Sub Add-on			01/13/2025	NON-SPEC/AL				
		Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA		10	0.00	0.00	0.00
		Reservation 24256970244920								
		Coverage 10.01.2024 - 02.28.2026								
380	VA1-00001	Teams Rooms Pro GCC			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription Add Prod				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		1	610.97	0.00	610.97
		Reservation 24283139450770								
		Coverage 11.01.2024 - 02.28.2026								
390	7VX-00001	Project P5 GCC Sub Per User			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA GOV		3	672.06	0.00	2,016.18
		Reservation 24304475034043								
		Coverage 11.01.2024 - 02.28.2026								
400	4ES-00001	ExchOnlnArchGCC ShrdSvr ALNG SubsVL MVL PerUsr			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription Add Prod				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		10	37.90	0.00	379.00
410	AAD-63092	M365 F3 Unified GCC Sub Per User				NON-SPEC/AL				
		Government Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		10	111.57	0.00	1,115.70
420	NYH-00001	Teams AC with Dial Out US/CA GCC Sub Add-on			01/13/2025	NON-SPEC/AL				
		Monthly Subscription				Non-Specific				

Quote US-QUO-1206420

Pos.	No.	Description / Manufacturer	Disc-Lev.	Format	Start Date / End Date / Lic. Model	Version / OS / Lic. Metrics	Qty.	Unit Price	Sales Tax	Amount (USD)
		Microsoft	LEVEL D	SUB	IEA		10	0.00	0.00	0.00
		Reservation 24346286163185								
		Coverage 01.01.2025 - 02.28.2026								
430	4ES-00001	ExchOnlnArchGCC ShrdSvr ALNG SubsVL MVL PerUsr			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription Add Prod				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		5	33.16	0.00	165.80
440	AAD-34704	M365 G3 Unified FUSL GCC Sub Per User			01/13/2025	NON-SPEC/AL				
		Government Monthly Subscription Add Prod				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		5	442.69	0.00	2,213.45
450	AAD-63092	M365 F3 Unified GCC Sub Per User				NON-SPEC/AL				
		Government Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA ADD G		5	97.63	0.00	488.15
460	NYH-00001	Teams AC with Dial Out US/CA GCC Sub Add-on			01/13/2025	NON-SPEC/AL				
		Monthly Subscription				Non-Specific				
		Microsoft	LEVEL D	SUB	IEA		10	0.00	0.00	0.00

Total USD excl. Tax	**65,804.02**
Tax	0.00
Total USD incl. Tax	**65,804.02**

Thank you for your request for quote.

This offer is non-binding. Prices are subject to change if supplier prices or currency values fluctuate.

Unless customer & SoftwareONE have executed a reseller agreement, customer hereby agrees that by placing an order with SoftwareONE customer will be bound by SoftwareONE's terms & conditions, located at www.softwareone.com, and the placement of your order represents your agreement thereto. If Customer is required by law to withhold any tax from amount payable, the amount payable will be increased so that after making all required withholdings, SoftwareONE receives equal to the amount it would have received had no such withholdings been made.

Payment Terms	30 Days net
Shipping Method	Electronic Software Delivery
Quote valid until	01/31/2025

Prices are based on 30 Days net, FOB SoftwareONE. Shipping and Handling and applicable Sales Tax are additional. Once SoftwareONE places an order is placed with a Licensor, Customer's order will be binding and non-cancelable, except as otherwise provided by the Licensor's Return Policies.

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CITY OF ONTARIO *Agenda Report* **February 18, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Information Technology Prepared By: Samantha Robles Staff Member Presenting: Colin Fernandes, Executive Director Information Technology Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 9

SUBJECT: **AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH CALTEK TECHNOLOGIES, INC., FOR LOW-VOLTAGE CABLING AND EQUIPMENT INSTALLATION**

RECOMMENDATION: That the City Council take the following actions:

A. Authorize the City Manager, or designee, to execute Amendment No. 7 to the Professional Services with Caltek Technologies, Inc., of Ontario, CA, for low-voltage cabling, extending the terms for three years and increase the authorized amount by $300,000 for a total contract not-to-exceed amount of $475,957.
B. Authorize the City Manager, or designee, to execute Amendment No. 7 to the Professional Services with Caltek Technologies, Inc., of Ontario, CA, for low-voltage cabling for the Animal Resource Center of the Inland Empire's (ARC) temporary animal shelter, increasing the authorized amount by $71,276 for a total contract not-to-exceed amount of $547,233.

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

FISCAL IMPACT: The Fiscal Year 2024-25 Adopted Budget includes appropriations from the Information Technology Fund for low-voltage cabling and device installation. The Fiscal Year 2024-25 Adopted Budget also includes appropriations from the ARC fund. The proposed Amendment No. 7 to the Professional Services Agreement increases the authorized contract amount by $371,276, which includes $300,000 for low-voltage cabling, $61,979 for the ARC project, and a 15% contingency of $9,297, for a total contract amount not to exceed $547,233, and an additional three-year term. The fixed billing rates specified in the current Agreement will determine the amount charged for service and reflect the actual service provided. If approved, additional appropriations will be included in future year budgets consistent with the annual adoption process.

BACKGROUND & ANALYSIS: On December 5, 2023, the City Council approved an Agreement with CalTek Technologies Inc. for low-voltage cabling and related services. Low voltage cabling is wiring used for technology such as computer networks, phone lines, security cameras, and TV connections, carrying less power than regular electrical wires. CalTek Technologies, Inc. has

completed many projects for various City departments, including the Museum secure storage project, the Conservation Park re-cabling project, and the Ontario Municipal Utilities Company modular trailer project, and is familiar with the cabling infrastructure, standards utilized, and secure area access protocols across the City. This experience ensures work is completed effectively and efficiently to meet the City's needs.

Given the time-sensitive nature of ARC's development, leveraging CalTek's expertise ensures seamless integration with existing systems and minimizes delays. Their proven ability to complete critical City projects—including secure storage, re-cabling efforts, and modular installations—demonstrates their capacity to efficiently support ARC's operational needs while maintaining consistency with broader City infrastructure. Costs related to the ARC will be funded by the Joint Powers Authority.

The continuous growth and expansion throughout the City often require low-voltage cabling work to be completed. Additionally, the ability to have existing low voltage cable repairs completed in a timely manner is crucial to the operations of the City. Staff requests City Council approval for a not-to-exceed amount of $547,233 and an additional three-year term, for a total contract of six years.

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

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 7 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND CALTEK TECHNOLOGIES, INC.

1. Parties and Date.

This Amendment No. 7 to the Agreement (as defined herein) is made and entered as of _____, by and between the City of Ontario ("City") and CalTek Technologies, Inc., a CORPORATION. City and "Consultant" are sometimes individually referred to as "Party" and collectively as "Parties."

2. Recitals.

2.1 Agreement. The City and Consultant have entered into an agreement entitled "Professional Services Agreement" dated March 2, 2022 ("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement to extend the terms for an additional three years and increase compensation by Three Hundred Seventy-One Thousand Two Hundred Seventy-Six Dollars ($371,276). The Parties have heretofore entered into that Amendment No. 1 dated April 4, 2023, Amendment No. 2 dated July 18, 2023, Amendment No. 3 Dated December 5, 2023, Amendment No. 4 dated January 16, 2024, Amendment No. 5 dated May 17, 2024, and Amendment No. 6 dated October 1, 2024.

2.3 Amendment Authority. This Amendment No. 7 is authorized pursuant to Section 3.1.2 Term and section 3.2.1 Compensation of the Agreement.

3. Terms.

3.1 Amendment. Section 3.1.2 Terms of the Agreement is hereby amended in its entirety to read as follows:

"The term of this Agreement shall be from March 2, 2022 to March 2, 2028, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services."

Section 3.2.1 Compensation of the Agreement is hereby amended in its entirety to read as follows:

"Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Attachment "A" and Attachment "B" attached hereto and incorporated herein by reference. The total compensation shall not exceed Five Hundred Forty-Seven Thousand Two Hundred Thirty-Three Dollars ($547,233) without the written approval of the City Council or City Manager, as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement."

3.2 Continuing Effect of Agreement. Except as amended by this Amendment No. 7, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 7. From and after the date of this Amendment No. 7, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 7.

3.3 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 7.

3.4 Severability. If any portion of this Amendment No. 7 is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5 Integration. This Amendment represents the entirety of the Parties' understanding relating to the subject of this Amendment, including written or verbal communications between the Parties, which shall have no relevance unless expressly incorporated herein. This is an integrated amendment.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR AMENDMENT NO. 7 TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND CALTEK TECHNOLOGIES, INC

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 7 as of the day and year first above written.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

CALTEK TECHNOLOGIES, INC

By:_____

Its:_____

Printed Name:_____

By:_____

Its:_____

Printed Name:_____

Compensation Sheet

CLIENT: CITY OF ONTARIO

HOURLY RATES		
TYPE	**RATE**	**Descriptions/Conditions**
Normal Service Hours:	$107.00 per hour	6am to 5pm
After Hours:	$128.40 per hour	5pm to 6am
Double-Time Hours:	$175.50 per hour	Sunday After 12 hours in a day
Holiday Hours:	$175.50 per hour	
Splice 1-24 Optical Fiber:	$107.00 per hour	
MISC CONDITIONS		
Minimum Hours Billed Per Service Call:		4 hours
Response Time (Non-Emergency):		24 hours
Response Time (Emergency):		4 hours
Materials Mark-Up Rate:		15%

TECHNOLOGIES SYSTEM PROPOSAL

CalTek Technologies, Inc.
1939 S Lake PL
Ontario, CA 91761
LIC #1090616 and Bonded
www.caltekcomm.com

Telephone: (909) 295-3400
Fax: (909) 203-7404
Email: projects@caltekcomm.com
Prepared By: Patrick Fallesgon

Customer Name	CITY OF ONTARIO	**Proposal Date**	01/29/25
Project Name	CITY OF ONTARIO ANIMAL SHELTER CAMERA PROJECT	**Quote Number**	7750
Requested By	DAVID VELASQUEZ	**Site Address**	1630 SHEARWATER ST, ONTARIO, CA 91764
Telephone	(909) 395-2056		
Address	303 EAST B STREET, ONTARIO, CA 91764	**Customer PO**	

PROPOSED SCOPE OF SERVICES
CALTEK TECHNOLOGIES proposes to furnish all parts and labor to install the following:

SCOPE OF WORK:

CAT6 Cables

- **Provide and install (26) Berk-Tek LANmark 6 CAT6 Blue cables from the TR to the locations provided by City of Ontario ITS for IP Cameras.**
  - Provide and terminate (26) RJ-45 CAT6 Mod plugs for the camera locations.
  - Provide and terminate (01) Leviton CAT6 48-port Patch Panel.
  - Provide labor to Label and Certify CAT6 cables per Customer's Standards.

Axis Cameras

- **Provide and install (26) Axis Cameras per the locations provided by City of Ontario ITS**
  - Provide and install (14) AXIS 5MP Outdoor Network Dome Camera with Night Vision and 3-8mm Lens per the locations provided by City of Ontario ITS
  - Provide and install (07) AXIS Panoramic Camera 180° coverage per the locations provided by City of Ontario ITS.
  - Provide and install (02) AXIS Dual-sensor with 360° IR and deep learning cameras per the locations provided by Ontario ITS.

- Provide and install (03) AXIS AI-powered 4x2 MP multidirectional Panoramic Camera per the locations provided by Ontario ITS.
- Provide and install (03) AXIS T94N01D Pendant Kit per the locations provided by City of Ontario ITS.
- Provide and install (03) AXIS T91D61 Wall Mount 1.5" NPS per the locations provided by City of Ontario ITS.
- Provide and install (01) AXIS T91E61 Wall Mount for the outdoor camera location provided by City of Ontario ITS.
- Provide and install (01) AXIS Pendant kit TP3103-E per the location provided by City of Ontario ITS.
- Provide and install (01) AXIS T91A64 Corner Bracket per the location provided by City of Ontario ITS.

Coring

- **Provide labor to core (06) 1" holes for the Outdoor Camera locations.**

NOTES OF IMPORTANCE:

- Caltek will be shown the locations of the drops on the wall prior to starting the work.
- Any work outside of the Scope of Work is subject to a change order.
- All camera locations will have a home run conduit from the camera locations to the TR.

ASSUMPTIONS/QUALIFICATIONS

- Scope of Work is based on a provided floor plan with detailed outlet locations.
- It is assumed the building has drop ceiling with lift out tiles to allow the space above to be used as a pathway to route cables and that ceiling height does not exceed 9 ft. from floor to ceiling or 15 ft. from slab to slab. Must be fishable sheet rock wall construction and hollow.
- Labor is based on regular hours work.
- Pricing does not include horizontal or vertical surface raceway.
- Cost for low voltage permits are not included in this proposal if required shall be considered a change order and billed to the customer.
- Space within all ceilings and walls will be free and clear for the cable pathway at the time of installation.
- Conduits and pull boxes required for cable pathway will be the responsibility of OTHERS and are suitable for the installation of the new proposed cabling.
- Any core holes required for cable pathway or access will be the responsibility of OTHERS. Pricing does include boring or drilling through concrete or firewalls.
- A ground bar exists in each Telecommunications room and will have connectivity to the main building ground.
- Equipment Room has sufficient space for installation of equipment rack, and all required termination hardware and equipment.
- Unless noted, data and voice patching and switch ports will be the responsibility of others.
- A pathway will be provided for cable access to all modular furniture station outlets.
- No man-lift is included and if required shall be considered a change order and billed to the customer.
- All phone switch programming, connectivity, and related work will be the responsibility of others.
- The proposed pricing is valid for a period of 30-days.
- For Wire Removal – Caltek Technologies will remove all ceiling tiles. All building and security alarms, pay phone wiring, and door-strike controls will be identified by the Customer, as well as any other wiring that is not included in the removal.
- Where required, the Customer will supply and install 3/4" plywood backboards of sufficient size to accommodate the proposed cables, blocks or electronic equipment.
- Proposal does include state or federal prevailing wages.
- No other work unless specifically noted is included in this proposal.

PROPOSED FEE SCHEDULE

CALTEK TECHNOLOGIES hereby proposes to provide and install the proposed Cabling System (described above) for the following:

MATERIAL: $42,527.81
LABOR: $13,010.29
TAX: $4,040.14
LIFT RENTAL: $2,400.00
GRAND TOTAL LUMP SUM: $61,978.24

CITY OF ONTARIO ANIMAL SHELTER CAMERA PROJECT

GENERAL CONDITIONS

1. The Customer will provide prompt access to work areas when required. Any additional time resulting from lack of access will be billed to the Customer at standard or premium rates as applicable and is not included in this quotation.
2. Both Caltek Technologies and the Customer will adhere to compliance to all applicable codes.
3. Asbestos Contamination - It is the Customer's responsibility to provide Caltek Technologies employees and subcontractors with an environment free from hazardous pollutants, including Asbestos. In the event pollutants are encountered, the Customer shall remove the pollutant and bear any additional construction and installation charges, which may result.
4. Changes in the work described herein may result in extra charges and will be performed only upon execution of a change order, which will reflect additional cost.
5. Sub structure to be provided by the Customer and is not included in this quotation are the following; core drilling, raceway, molding, tele/power poles, sleeves, floor receptacle housings, etc. unless stated in the scope of work section.
6. Removal of left in, existing, or abandoned wire and cable are not included in this proposal unless stated in the Scope of Work section.
7. **Payment terms:**
   - **Initial Billing 35% upon commencement of project / PO Release – due upon receipt.**
   - **Progress Payment #1 30% of total due upon 50% Completion of Scope of Work – Net30.**
   - **Progress Payment #2 25% of total due upon 75% Completion of Scope of Work – Net30.**
   - **Final Payment #3 10% of total due upon 100% Completion of Scope of Work– Net30.**
8. **Past Due Invoices Service Charge**
   - **Invoices 45 days past due are subject to a 1.2% service charge per month.**
   - **Invoices 60 days past due are subject to a 3% service charge per month.**
   - **Invoices 90 days past due are subject to a 5% service charge per month.**
9. The cost to expedite shipping is not included in this proposal and if required shall be considered a change order and billed to the customer.
10. Alterations or deviations, if any from the scope of work, or any delays or postponements of the work by the Customer or his agents which result in additional materials or labor costs, will become an extra charge which will be billed as an addition to this proposal amount.
11. Change Management for additions to proposed SOW will be submitted by the Caltek Technologies Project Manager and approved by the customer before work is approved or additional material is ordered.
12. Any extra move on or off the job site due to circumstances beyond our control will be billed as an extra at

PROPOSAL AUTHORIZATION AND ACCEPTANCE:

ON BEHALF OF CALTEK TECHNOLOGIES	Date	**ON BEHALF OF CUSTOMER**	Date

CITY OF ONTARIO ANIMAL SHELTER CAMERA PROJECT

CITY OF ONTARIO *Agenda Report* **February 18, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Police Department Prepared By: Lizceth Zazueta Department: Prepared By: Michael Gracia Staff Member Presenting: Mike Lorenz, Chief of Police Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 10

SUBJECT: **AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH AXON ENTERPRISE, INC. FOR THE ACQUISITION OF POLICE DEPARTMENT FRONTLINE EQUIPMENT**

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute Amendment No. 6 to the Professional Services Agreement with Axon Enterprise, Inc. of Scottsdale, Arizona, for the purchase of twelve (12) Axon Skydio police unmanned aircraft systems (drones) in the amount of $1,812,703 and Axon Standards, an Early Intervention System (EIS), in the amount of $65,000 for a new total not-to-exceed contract amount of $11,658,373.

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

FISCAL IMPACT: Amendment No. 6 to the Agreement with Axon Enterprise, Inc. increases the authorized contract by $1,877,703 for a total not-to-exceed contract amount of $11,658,373. If approved by the City Council, appropriations will be requested in the Capital Project Fund (Measure Q) for the purchase of Axon Skydio and appropriations will be requested in the General Fund for the purchase of Axon Standards on the next quarterly budget for Fiscal Year 2024-25 as needed. Appropriations for future fiscal years in the Information Technology budget for Axon Skydio will be included in the respective fiscal year budgets for the City Council consideration and approval.

BACKGROUND & ANALYSIS: The Police Department currently has an agreement with Axon Enterprise, Inc. (formerly TASER International, Inc.) that is set to expire on June 30, 2029. This agreement encompasses multiple products under the Axon platform, known as the Officer Safety Plan 7 Plus (OSP), which includes support for Body Worn Cameras, Fleet 3 Advanced (vehicle cameras), the Drone Program, Fusus Program, and Interview Room monitoring systems.

One of the key components of this agreement is the integration of Axon Skydio with the existing Drone Program, which will enhance the department's Real-Time Crime Center's (RTIC) mission. The Drone as First Responder (DFR) program enables a rapid police drone response to emergency calls,

offering live aerial video streaming capabilities. This functionality supports the identification and assessment of immediate threats to public and officer safety, while also aiding in the resolution of criminal cases. The Police Department intends for this DFR system to serve all City departments, allowing drones to provide real-time assessments across a range of situations. This capability will streamline the response process, ensuring that appropriate resources are deployed following the initial drone assessment. It is a crucial step forward in equipping frontline personnel with cutting-edge technology and ensuring a high level of public safety.

In addition, Axon Standards platform includes Use of Force Analytics, an Early Intervention System (EIS), and Internal Affairs software designed to monitor and document critical events involving officers. This data provides supervisors with the necessary tools to ensure officers receive the appropriate training, counseling, and disciplinary measures required to uphold the high standards of performance expected by the Police Department and the public.

Given the satisfactory services and indispensable equipment provided by Axon to support the continued excellence of public safety operations, City Staff recommends entering into Amendment No. 6 with Axon Enterprise, Inc.

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

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 6 TO THE PROFESSIONAL SERVICES AND EQUIPMENT PURCHASE BETWEEN THE CITY OF ONTARIO AND AXON ENTERPRISE, INC

1. Parties and Date.

This **Amendment No. 6** to the Agreement (as defined herein) is made and entered as of _____, by and between the City of Ontario ("City") and **Axon Enterprise, Inc.**, a Delaware Corporation ("Consultant") City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

2. Recitals.

2.1 Agreement. The City and Consultant have entered into an agreement entitled **"Professional Services and Equipment Purchase Agreement"** dated **April 3,2019** ("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement to provide **additional compensation, update insurance minimums to City standards, and increase scope of services for the purchase of Axon Skydio and Axon Standards**. The parties have heretofore entered Amendment No. 1 dated April 19th, 2022, Amendment No. 2 dated December 20th, 2022, Amendment No. 3 dated April 12th, 2023, Amendment No. 4 dated July 18th, 2023, and Amendment No. 5 dated June 4th, 2024.

2.3 Amendment Authority. This Amendment No. 6 is authorized pursuant to Section 3.7.18 of the Agreement.

3. Scope of Services and Terms.

3.1 Amendment.

A. Section 3.1.1.1 Equipment and Hardware of the Agreement is hereby amended in its entirety to read as follows:

3.1.1.1 Equipment and Hardware. Consultant shall sell and City shall purchase all equipment and hardware identified in **Q-642380-45687.789LG** dated January 30th, 2025 and **Q-535130-45685.716JC** dated January 28th, 2025 attached hereto and incorporated herein as Exhibit "A".

B. Section 3.1.2 Services. of the Agreement is hereby amended in its entirety to read as follows:

3.1.2 Services. Consultant shall furnish to the City additional Services identified in Exhibit "B" necessary to fully and adequately supply the professional hardware and software for all Axon Products purchased with this agreement. The services are more particularly described in the Exhibits attached hereto and refenced above.

C. Section 3.3.1 Compensation of the agreement is hereby amended in its entirety to read as follows:

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Eleven Million, Six Hundred Fifty-Eight Thousand, Three Hundred Seventy-Three Dollars and Zero Cents ($11,658,373.00**) without written approval of the City Council or City Manager, as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

D. Section 3.2.10.7 Minimum Policy Limits Required of the agreement is hereby amended in its entirety to read as follows:

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

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

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 00 01 covering "Any Auto" (Symbol 1), or the exact equivalent,

covering bodily injury and property damage for all activities with limits of not less than $2,000,000 combined limit for each occurrence.

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

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

(E) Cyber Liability: Cyber Liability Insurance, with limits not less than $3,000,000 per occurrence or claim. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

3.2 Continuing Effect of Agreement. Except as amended by this Amendment No. 5, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 5. From and after the date of this Amendment No. 5, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No 5.

3.3 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 5.

3.4 Severability. If any portion of this Amendment No. 5 is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5 Integration. This Amendment represents the entirety of the Parties' understanding relating to the subject of this Amendment, including written or verbal communications between the Parties, which shall have no relevance unless expressly incorporated herein. This is an integrated amendment.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR AMENDMENT NO. 6 TO THE PROFESSIONAL SERVICES AND EQUIPMENT PURCHASE BETWEEN THE CITY OF ONTARIO AND AXON ENTERPRISE, INC

IN WITNESS WHEREOF, the Parties have entered into this Amendment No 5 as of the day and year first above written.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

AXON ENTERPRISE, INC.

(If Corporation, Two Signatures, President Or Vice President And Secretary Or Treasurer Required)

By:_____

Its:_____

Printed Name:_____

By:_____

Its:_____

Printed Name:_____

EXHIBIT "A"
Compensation
AXON STANDARDS

Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
VAT: 86-0741227
Domestic: (800) 978-2737
International: +1 800.978.2737

Q-535130-45685.716JC
Issued: 01/28/2025
Quote Expiration: 10/01/2025
Estimated Contract Start Date: 12/01/2025
Account Number: 106509
Payment Terms: N30
Delivery Method:

SHIP TO	BILL TO	SALES REPRESENTATIVE	PRIMARY CONTACT
Ontario Police Dept. - CA 2500 S Archibald Ave Ontario, CA 91761-6503 USA	Ontario Police Dept. - CA 2500 S Archibald Ave Ontario CA 91761-6503 USA Email:	Chris Morton Phone: +1 2063106165 Email: cmorton@axon.com Fax:	Liz Zazueta Phone: (909) 395-2001 Email: lzazueta@ontarioca.gov Fax: (909) 395-2709

Quote Summary

Program Length	12 Months
TOTAL COST	$65,000.00
ESTIMATED TOTAL W/ TAX	$65,000.00

Discount Summary

Average Savings Per Year	$0.00
TOTAL SAVINGS	$0.00

Payment Summary

Date	Subtotal	Tax	Total
Nov 2025	$65,000.00	$0.00	$65,000.00
Total	**$65,000.00**	**$0.00**	**$65,000.00**

Quote Unbundled Price:	**$65,000.00**
Quote List Price:	**$65,000.00**
Quote Subtotal:	**$65,000.00**

Pricing

All deliverables are detailed in Delivery Schedules section lower in proposal

Item	Description	Qty	Term	Unbundled	List Price	Net Price	Subtotal	Tax	Total
A la Carte Services									
73896	AXON STANDARDS - IMPLEMENTATION SERVICE	1			$30,000.00	$30,000.00	$30,000.00	$0.00	$30,000.00
100560	AXON EVIDENCE - PSO - DATA CONVERSION/MIGRATION	1			$35,000.00	$35,000.00	$35,000.00	$0.00	$35,000.00
Total							**$65,000.00**	**$0.00**	**$65,000.00**

Delivery Schedule

Services

Bundle	Item	Description	QTY
A la Carte	100560	AXON EVIDENCE - PSO - DATA CONVERSION/MIGRATION	1
A la Carte	73896	AXON STANDARDS - IMPLEMENTATION SERVICE	1

Shipping Locations

Location Number	Street	City	State	Zip	Country
	2500 S Archibald Ave	Ontario	CA	91761-6503	USA

Payment Details

Nov 2025

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Annual Payment 1	100560	AXON EVIDENCE - PSO - DATA CONVERSION/MIGRATION	1	$35,000.00	$0.00	$35,000.00
Annual Payment 1	73896	AXON STANDARDS - IMPLEMENTATION SERVICE	1	$30,000.00	$0.00	$30,000.00
Total				**$65,000.00**	**$0.00**	**$65,000.00**

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

Standard Terms and Conditions

Axon Enterprise Inc. Sales Terms and Conditions

Axon Master Services and Purchasing Agreement:

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at https://www.axon.com/sales-terms-and-conditions), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. In the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern to the extent it includes the products and services being purchased and does not conflict with the Axon Customer Experience Improvement Program Appendix as described below.

ACEIP:

The Axon Customer Experience Improvement Program Appendix, which includes the sharing of de-identified segments of Agency Content with Axon to develop new products and improve your product experience (posted at www.axon.com/legal/sales-terms-and-conditions), is incorporated herein by reference. By signing below, you agree to the terms of the Axon Customer Experience Improvement Program.

Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

EXHIBIT "A"
Compensation Continued…
AXON SKYDIO

Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
VAT: 86-0741227
Domestic: (800) 978-2737
International: +1.800.978.2737

Q-642380-45687.789LG
Issued: 01/30/2025
Quote Expiration: 01/31/2025
Estimated Contract Start Date: 08/15/2025
Account Number: 106509
Payment Terms: N30
Delivery Method:

SHIP TO	BILL TO
Ontario Police Dept. - CA 2500 S Archibald Ave Ontario, CA 91761-6503 USA	Ontario Police Dept. - CA 2500 S Archibald Ave Ontario CA 91761-6503 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Lauren Gauer Phone: 480-580-3639 Email: lgauer@axon.com Fax:	Clayton Carson Phone: Email: ccarson@ontariopolice.org Fax:

Quote Summary

Program Length	48 Months
TOTAL COST	$1,752,706.80
ESTIMATED TOTAL W/ TAX	$1,812,702.02

Discount Summary

Average Savings Per Year	$48,686.30
TOTAL SAVINGS	$194,745.20

Payment Summary

Date	Subtotal	Tax	Total
Jul 2025	$233,574.79	$7,995.29	$241,570.08
Jul 2026	$497,241.87	$17,020.59	$514,262.46
Jul 2027	$510,945.07	$17,489.66	$528,434.73
Jul 2028	$510,945.07	$17,489.68	$528,434.75
Total	**$1,752,706.80**	**$59,995.22**	**$1,812,702.02**

Quote Unbundled Price:	**$1,947,452.00**
Quote List Price:	**$1,947,452.00**
Quote Subtotal:	**$1,752,706.80**

Pricing

All deliverables are detailed in Delivery Schedules section lower in proposal

Item	Description	Qty	Term	Unbundled	List Price	Net Price	Subtotal	Tax	Total
A la Carte Hardware									
101229	AXON AIR - SKYDIO SPOTLIGHT FOR X10	6			$265.00	$238.50	$1,431.00	$125.22	$1,556.22
101229	AXON AIR - SKYDIO SPOTLIGHT FOR X10	6			$265.00	$238.50	$1,431.00	$125.22	$1,556.22
101211	AXON AIR - SKYDIO SPEAKER/MIC FOR X10	6			$320.00	$288.00	$1,728.00	$151.20	$1,879.20
101211	AXON AIR - SKYDIO SPEAKER/MIC FOR X10	6			$320.00	$288.00	$1,728.00	$151.20	$1,879.20
101261	AXON AIR - SKYDIO NIGHTSENSE IR FILTER FOR X10	6			$2,800.00	$2,520.00	$15,120.00	$1,323.00	$16,443.00
101261	AXON AIR - SKYDIO NIGHTSENSE IR FILTER FOR X10	6			$2,800.00	$2,520.00	$15,120.00	$1,323.00	$16,443.00
101204	AXON AIR - SKYDIO X10 SAFE VT300Z REFRESH	12			$5,743.00	$5,168.70	$62,024.40	$5,427.12	$67,451.52
101561	AXON AIR - SKYDIO X10 DOCK BUN 2.4/5 GHZ CELL IR NA VT300-Z	6			$54,359.00	$48,923.10	$293,538.60	$25,684.63	$319,223.23
101561	AXON AIR - SKYDIO X10 DOCK BUN 2.4/5 GHZ CELL IR NA VT300-Z	6			$54,359.00	$48,923.10	$293,538.60	$25,684.63	$319,223.23
A la Carte Software									
101199	AXON AIR - SKYDIO DFR COMMAND (T-MOBILE)	6	36		$830.00	$747.00	$161,352.00	$0.00	$161,352.00
101199	AXON AIR - SKYDIO DFR COMMAND (T-MOBILE)	6	48		$830.00	$747.00	$215,136.00	$0.00	$215,136.00
A la Carte Services									
101513	AXON AIR - SKYDIO - DOCK INSTRUCTOR TRAINING	1			$5,000.00	$4,500.00	$4,500.00	$0.00	$4,500.00
101498	AXON AIR - SKYDIO - IN-PERSON TRAINING - DOCK FOR X10	2			$11,000.00	$9,900.00	$19,800.00	$0.00	$19,800.00
100969	AXON AIR - SKYDIO WAIVER APPLICATION - REMOTE OPS EXPANSION	1			$50,000.00	$45,000.00	$45,000.00	$0.00	$45,000.00
101620	AXON AIR - SKYDIO - MAINTENANCE AND REPAIR FOR X10 DOCK	6	36		$825.00	$742.50	$160,380.00	$0.00	$160,380.00
101499	AXON AIR - SKYDIO - DEPLOYMENT - DOCK FOR X10	6			$35,250.00	$31,725.00	$190,350.00	$0.00	$190,350.00
101620	AXON AIR - SKYDIO - MAINTENANCE AND REPAIR FOR X10 DOCK	6	48		$825.00	$742.50	$213,840.00	$0.00	$213,840.00
A la Carte Warranties									
101508	AXON AIR - SKYDIO - CARE FOR X10 CELLULAR 5G + VT300-Z 3YR	6			$5,249.00	$4,724.10	$28,344.60	$0.00	$28,344.60
101508	AXON AIR - SKYDIO - CARE FOR X10 CELLULAR 5G + VT300-Z 3YR	6			$5,249.00	$4,724.10	$28,344.60	$0.00	$28,344.60
Total							**$1,752,706.80**	**$59,995.22**	**$1,812,702.02**

Delivery Schedule

Hardware

Bundle	Item	Description	QTY	Shipping Location	Estimated Delivery Date
A la Carte	101211	AXON AIR - SKYDIO SPEAKER/MIC FOR X10	6	1	07/15/2025

Hardware

Bundle	Item	Description	QTY	Shipping Location	Estimated Delivery Date
A la Carte	101229	AXON AIR - SKYDIO SPOTLIGHT FOR X10	6	1	07/15/2025
A la Carte	101261	AXON AIR - SKYDIO NIGHTSENSE IR FILTER FOR X10	6	1	07/15/2025
A la Carte	101561	AXON AIR - SKYDIO X10 DOCK BUN 2.4/5 GHZ CELL IR NA VT300-Z	6	1	07/15/2025
A la Carte	101211	AXON AIR - SKYDIO SPEAKER/MIC FOR X10	6	1	07/15/2026
A la Carte	101229	AXON AIR - SKYDIO SPOTLIGHT FOR X10	6	1	07/15/2026
A la Carte	101261	AXON AIR - SKYDIO NIGHTSENSE IR FILTER FOR X10	6	1	07/15/2026
A la Carte	101561	AXON AIR - SKYDIO X10 DOCK BUN 2.4/5 GHZ CELL IR NA VT300-Z	6	1	07/15/2026
A la Carte	101204	AXON AIR - SKYDIO X10 SAFE VT300Z REFRESH	12	1	07/15/2027

Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
A la Carte	101199	AXON AIR - SKYDIO DFR COMMAND (T-MOBILE)	6	08/15/2025	08/14/2029
A la Carte	101199	AXON AIR - SKYDIO DFR COMMAND (T-MOBILE)	6	08/15/2026	08/14/2029

Services

Bundle	Item	Description	QTY
A la Carte	100969	AXON AIR - SKYDIO WAIVER APPLICATION - REMOTE OPS EXPANSION	1
A la Carte	101498	AXON AIR - SKYDIO - IN-PERSON TRAINING - DOCK FOR X10	2
A la Carte	101499	AXON AIR - SKYDIO - DEPLOYMENT - DOCK FOR X10	6
A la Carte	101513	AXON AIR - SKYDIO - DOCK INSTRUCTOR TRAINING	1
A la Carte	101620	AXON AIR - SKYDIO - MAINTENANCE AND REPAIR FOR X10 DOCK	6
A la Carte	101620	AXON AIR - SKYDIO - MAINTENANCE AND REPAIR FOR X10 DOCK	6

Warranties

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
A la Carte	101508	AXON AIR - SKYDIO - CARE FOR X10 CELLULAR 5G + VT300-Z 3YR	6		
A la Carte	101508	AXON AIR - SKYDIO - CARE FOR X10 CELLULAR 5G + VT300-Z 3YR	6		

Location Number	Street	City	State	Zip	Country
1	2500 S Archibald Ave	Ontario	CA	91761-6503	USA

Payment Details

Jul 2025

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Air - Year 1	100969	AXON AIR - SKYDIO WAIVER APPLICATION - REMOTE OPS EXPANSION	1	$5,996.93	$0.00	$5,996.93
Air - Year 1	101199	AXON AIR - SKYDIO DFR COMMAND (T-MOBILE)	6	$21,502.60	$0.00	$21,502.60
Air - Year 1	101199	AXON AIR - SKYDIO DFR COMMAND (T-MOBILE)	6	$28,670.14	$0.00	$28,670.14
Air - Year 1	101204	AXON AIR - SKYDIO X10 SAFE VT300Z REFRESH	12	$8,265.69	$723.25	$8,988.94
Air - Year 1	101211	AXON AIR - SKYDIO SPEAKER/MIC FOR X10	6	$230.28	$20.15	$250.43
Air - Year 1	101211	AXON AIR - SKYDIO SPEAKER/MIC FOR X10	6	$230.28	$20.15	$250.43
Air - Year 1	101229	AXON AIR - SKYDIO SPOTLIGHT FOR X10	6	$190.70	$16.69	$207.39
Air - Year 1	101229	AXON AIR - SKYDIO SPOTLIGHT FOR X10	6	$190.70	$16.69	$207.39
Air - Year 1	101261	AXON AIR - SKYDIO NIGHTSENSE IR FILTER FOR X10	6	$2,014.97	$176.31	$2,191.28
Air - Year 1	101261	AXON AIR - SKYDIO NIGHTSENSE IR FILTER FOR X10	6	$2,014.97	$176.31	$2,191.28
Air - Year 1	101498	AXON AIR - SKYDIO - IN-PERSON TRAINING - DOCK FOR X10	2	$2,638.65	$0.00	$2,638.65
Air - Year 1	101499	AXON AIR - SKYDIO - DEPLOYMENT - DOCK FOR X10	6	$25,367.03	$0.00	$25,367.03
Air - Year 1	101508	AXON AIR - SKYDIO - CARE FOR X10 CELLULAR 5G + VT300-Z 3YR	6	$3,777.35	$0.00	$3,777.35
Air - Year 1	101508	AXON AIR - SKYDIO - CARE FOR X10 CELLULAR 5G + VT300-Z 3YR	6	$3,777.35	$0.00	$3,777.35
Air - Year 1	101513	AXON AIR - SKYDIO - DOCK INSTRUCTOR TRAINING	1	$599.69	$0.00	$599.69
Air - Year 1	101561	AXON AIR - SKYDIO X10 DOCK BUN 2.4/5 GHZ CELL IR NA VT300-Z	6	$39,118.49	$3,422.87	$42,541.36
Air - Year 1	101561	AXON AIR - SKYDIO X10 DOCK BUN 2.4/5 GHZ CELL IR NA VT300-Z	6	$39,118.47	$3,422.87	$42,541.34
Air - Year 1	101620	AXON AIR - SKYDIO - MAINTENANCE AND REPAIR FOR X10 DOCK	6	$28,497.43	$0.00	$28,497.43
Air - Year 1	101620	AXON AIR - SKYDIO - MAINTENANCE AND REPAIR FOR X10 DOCK	6	$21,373.07	$0.00	$21,373.07
Total				**$233,574.79**	**$7,995.29**	**$241,570.08**

Jul 2026

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Air - Year 2	100969	AXON AIR - SKYDIO WAIVER APPLICATION - REMOTE OPS EXPANSION	1	$12,766.47	$0.00	$12,766.47
Air - Year 2	101199	AXON AIR - SKYDIO DFR COMMAND (T-MOBILE)	6	$45,775.47	$0.00	$45,775.47
Air - Year 2	101199	AXON AIR - SKYDIO DFR COMMAND (T-MOBILE)	6	$61,033.95	$0.00	$61,033.95
Air - Year 2	101204	AXON AIR - SKYDIO X10 SAFE VT300Z REFRESH	12	$17,596.29	$1,539.67	$19,135.96
Air - Year 2	101211	AXON AIR - SKYDIO SPEAKER/MIC FOR X10	6	$490.23	$42.90	$533.13
Air - Year 2	101211	AXON AIR - SKYDIO SPEAKER/MIC FOR X10	6	$490.23	$42.90	$533.13
Air - Year 2	101229	AXON AIR - SKYDIO SPOTLIGHT FOR X10	6	$405.97	$35.52	$441.49
Air - Year 2	101229	AXON AIR - SKYDIO SPOTLIGHT FOR X10	6	$405.97	$35.52	$441.49
Air - Year 2	101261	AXON AIR - SKYDIO NIGHTSENSE IR FILTER FOR X10	6	$4,289.53	$375.33	$4,664.86
Air - Year 2	101261	AXON AIR - SKYDIO NIGHTSENSE IR FILTER FOR X10	6	$4,289.53	$375.33	$4,664.86
Air - Year 2	101498	AXON AIR - SKYDIO - IN-PERSON TRAINING - DOCK FOR X10	2	$5,617.25	$0.00	$5,617.25
Air - Year 2	101499	AXON AIR - SKYDIO - DEPLOYMENT - DOCK FOR X10	6	$54,002.18	$0.00	$54,002.18
Air - Year 2	101508	AXON AIR - SKYDIO - CARE FOR X10 CELLULAR 5G + VT300-Z 3YR	6	$8,041.35	$0.00	$8,041.35
Air - Year 2	101508	AXON AIR - SKYDIO - CARE FOR X10 CELLULAR 5G + VT300-Z 3YR	6	$8,041.35	$0.00	$8,041.35
Air - Year 2	101513	AXON AIR - SKYDIO - DOCK INSTRUCTOR TRAINING	1	$1,276.65	$0.00	$1,276.65
Air - Year 2	101561	AXON AIR - SKYDIO X10 DOCK BUN 2.4/5 GHZ CELL IR NA VT300-Z	6	$83,276.72	$7,286.71	$90,563.43
Air - Year 2	101561	AXON AIR - SKYDIO X10 DOCK BUN 2.4/5 GHZ CELL IR NA VT300-Z	6	$83,276.74	$7,286.71	$90,563.45

Jul 2026						
Invoice Plan	**Item**	**Description**	**Qty**	**Subtotal**	**Tax**	**Total**
Air - Year 2	101620	AXON AIR - SKYDIO - MAINTENANCE AND REPAIR FOR X10 DOCK	6	$60,666.28	$0.00	$60,666.28
Air - Year 2	101620	AXON AIR - SKYDIO - MAINTENANCE AND REPAIR FOR X10 DOCK	6	$45,499.71	$0.00	$45,499.71
Total				**$497,241.87**	**$17,020.59**	**$514,262.46**

Jul 2027						
Invoice Plan	**Item**	**Description**	**Qty**	**Subtotal**	**Tax**	**Total**
Air - Year 3	100969	AXON AIR - SKYDIO WAIVER APPLICATION - REMOTE OPS EXPANSION	1	$13,118.30	$0.00	$13,118.30
Air - Year 3	101199	AXON AIR - SKYDIO DFR COMMAND (T-MOBILE)	6	$62,715.95	$0.00	$62,715.95
Air - Year 3	101199	AXON AIR - SKYDIO DFR COMMAND (T-MOBILE)	6	$47,036.97	$0.00	$47,036.97
Air - Year 3	101204	AXON AIR - SKYDIO X10 SAFE VT300Z REFRESH	12	$18,081.21	$1,582.10	$19,663.31
Air - Year 3	101211	AXON AIR - SKYDIO SPEAKER/MIC FOR X10	6	$503.74	$44.08	$547.82
Air - Year 3	101211	AXON AIR - SKYDIO SPEAKER/MIC FOR X10	6	$503.74	$44.08	$547.82
Air - Year 3	101229	AXON AIR - SKYDIO SPOTLIGHT FOR X10	6	$417.16	$36.50	$453.66
Air - Year 3	101229	AXON AIR - SKYDIO SPOTLIGHT FOR X10	6	$417.16	$36.50	$453.66
Air - Year 3	101261	AXON AIR - SKYDIO NIGHTSENSE IR FILTER FOR X10	6	$4,407.75	$385.68	$4,793.43
Air - Year 3	101261	AXON AIR - SKYDIO NIGHTSENSE IR FILTER FOR X10	6	$4,407.75	$385.68	$4,793.43
Air - Year 3	101498	AXON AIR - SKYDIO - IN-PERSON TRAINING - DOCK FOR X10	2	$5,772.05	$0.00	$5,772.05
Air - Year 3	101499	AXON AIR - SKYDIO - DEPLOYMENT - DOCK FOR X10	6	$55,490.40	$0.00	$55,490.40
Air - Year 3	101508	AXON AIR - SKYDIO - CARE FOR X10 CELLULAR 5G + VT300-Z 3YR	6	$8,262.95	$0.00	$8,262.95
Air - Year 3	101508	AXON AIR - SKYDIO - CARE FOR X10 CELLULAR 5G + VT300-Z 3YR	6	$8,262.95	$0.00	$8,262.95
Air - Year 3	101513	AXON AIR - SKYDIO - DOCK INSTRUCTOR TRAINING	1	$1,311.83	$0.00	$1,311.83
Air - Year 3	101561	AXON AIR - SKYDIO X10 DOCK BUN 2.4/5 GHZ CELL IR NA VT300-Z	6	$85,571.70	$7,487.52	$93,059.22
Air - Year 3	101561	AXON AIR - SKYDIO X10 DOCK BUN 2.4/5 GHZ CELL IR NA VT300-Z	6	$85,571.70	$7,487.52	$93,059.22
Air - Year 3	101620	AXON AIR - SKYDIO - MAINTENANCE AND REPAIR FOR X10 DOCK	6	$62,338.15	$0.00	$62,338.15
Air - Year 3	101620	AXON AIR - SKYDIO - MAINTENANCE AND REPAIR FOR X10 DOCK	6	$46,753.61	$0.00	$46,753.61
Total				**$510,945.07**	**$17,489.66**	**$528,434.73**

Jul 2028						
Invoice Plan	**Item**	**Description**	**Qty**	**Subtotal**	**Tax**	**Total**
Air - Year 4	100969	AXON AIR - SKYDIO WAIVER APPLICATION - REMOTE OPS EXPANSION	1	$13,118.30	$0.00	$13,118.30
Air - Year 4	101199	AXON AIR - SKYDIO DFR COMMAND (T-MOBILE)	6	$62,715.95	$0.00	$62,715.95
Air - Year 4	101199	AXON AIR - SKYDIO DFR COMMAND (T-MOBILE)	6	$47,036.97	$0.00	$47,036.97
Air - Year 4	101204	AXON AIR - SKYDIO X10 SAFE VT300Z REFRESH	12	$18,081.21	$1,582.10	$19,663.31
Air - Year 4	101211	AXON AIR - SKYDIO SPEAKER/MIC FOR X10	6	$503.74	$44.07	$547.81
Air - Year 4	101211	AXON AIR - SKYDIO SPEAKER/MIC FOR X10	6	$503.74	$44.07	$547.81
Air - Year 4	101229	AXON AIR - SKYDIO SPOTLIGHT FOR X10	6	$417.16	$36.51	$453.67
Air - Year 4	101229	AXON AIR - SKYDIO SPOTLIGHT FOR X10	6	$417.16	$36.51	$453.67
Air - Year 4	101261	AXON AIR - SKYDIO NIGHTSENSE IR FILTER FOR X10	6	$4,407.75	$385.68	$4,793.43
Air - Year 4	101261	AXON AIR - SKYDIO NIGHTSENSE IR FILTER FOR X10	6	$4,407.75	$385.68	$4,793.43
Air - Year 4	101498	AXON AIR - SKYDIO - IN-PERSON TRAINING - DOCK FOR X10	2	$5,772.05	$0.00	$5,772.05
Air - Year 4	101499	AXON AIR - SKYDIO - DEPLOYMENT - DOCK FOR X10	6	$55,490.40	$0.00	$55,490.40
Air - Year 4	101508	AXON AIR - SKYDIO - CARE FOR X10 CELLULAR 5G + VT300-Z 3YR	6	$8,262.95	$0.00	$8,262.95
Air - Year 4	101508	AXON AIR - SKYDIO - CARE FOR X10 CELLULAR 5G + VT300-Z 3YR	6	$8,262.95	$0.00	$8,262.95
Air - Year 4	101513	AXON AIR - SKYDIO - DOCK INSTRUCTOR TRAINING	1	$1,311.83	$0.00	$1,311.83
Air - Year 4	101561	AXON AIR - SKYDIO X10 DOCK BUN 2.4/5 GHZ CELL IR NA VT300-Z	6	$85,571.70	$7,487.53	$93,059.23
Air - Year 4	101561	AXON AIR - SKYDIO X10 DOCK BUN 2.4/5 GHZ CELL IR NA VT300-Z	6	$85,571.70	$7,487.53	$93,059.23
Air - Year 4	101620	AXON AIR - SKYDIO - MAINTENANCE AND REPAIR FOR X10 DOCK	6	$46,753.61	$0.00	$46,753.61
Air - Year 4	101620	AXON AIR - SKYDIO - MAINTENANCE AND REPAIR FOR X10 DOCK	6	$62,338.15	$0.00	$62,338.15
Total				**$510,945.07**	**$17,489.68**	**$528,434.75**

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

Standard Terms and Conditions

Axon Enterprise Inc. Sales Terms and Conditions

Axon Master Services and Purchasing Agreement:

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at https://www.axon.com/sales-terms-and-conditions), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. In the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern to the extent it includes the products and services being purchased and does not conflict with the Axon Customer Experience Improvement Program Appendix as described below.

ACEIP:

The Axon Customer Experience Improvement Program Appendix, which includes the sharing of de-identified segments of Agency Content with Axon to develop new products and improve your product experience (posted at www.axon.com/legal/sales-terms-and-conditions), is incorporated herein by reference. By signing below, you agree to the terms of the Axon Customer Experience Improvement Program.

Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

STATEMENT OF WORK FOR THE IMPLEMENTATION OF AXON STANDARDS FOR ONTARIO, CA PD ("SOW")

Submitted By:
Axon Enterprise, Inc. (Axon)
17800 North 85th Street
Scottsdale, AZ 85255

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1. PROJECT OVERVIEW

Axon Standards is a cloud-native software solution provided as a SaaS subscription.

1.1 SOFTWARE

The software detailed in this SOW includes, but is not limited to, the listed functionality:

AXON STANDARDS	▸ Attachments ▸ Citizen Compliant ▸ Configurable Forms and Fields ▸ Early Intervention (EIS) ▸ Early Intervention (EIS) Analytics ▸ Internal Affairs Investigative Case Management	▸ Internal Complaint ▸ Redaction ▸ Restrictions ▸ Use of Force ▸ Use of Force Analytics ▸ Vehicle Collision ▸ Vehicle Pursuit

1.2 DEFINITIONS

TERM	DEFINITION
PARTIES	
Agency	Ontario, CA PD who is identified within this SOW
End-Users	Specific agency groups using the system
Professional Services	The services that Axon provides within the scope of this SOW
SYSTEMS	
Axon Systems	Software solutions and agency-specific integrations developed by Axon
CJIS	The Federal Bureau of Investigation's criminal justice information system
MDC	Mobile data computer – a device associated within a vehicle or other mobile unit
DataStore	The database Axon provides allowing the agency to query data

Product	The software solution being implemented as part of this SOW
Production Environment	The operational environment where the product is accessed
Training Environment	The pre-production environment where all Axon-specific development, configuration, functional acceptance testing, user acceptance testing, and training take place
Service Portal	An online portal provided by Axon where issues identified are entered and triaged
PROJECT & MILESTONES	
Project	Scope of this SOW as defined by the work to be completed described herein
Project Change Order (PCO)	Change order form outlined in Attachment B to be executed between Axon and the agency if a material change in scope is required for this SOW
Milestone	Event that constitutes completion of work as listed in Attachment A
Milestone Completion Report	The report outlined in Attachment A to be executed at key milestones between agency and Axon to approve completion of project phases
Discovery Phase	Requirements gathering and confirmation occurs during this phase. Confirmed requirements feed the sprint phase, and sprints are designed around what can and cannot be accomplished given time and resource constraints on both Axon and the agency's sides.
Design|Build Phase	Project phase encompassing iterative development through sprints. Integrations and workflows are developed and deployed during this phase. The agency forms are also configured during this phase.
Sprint	A period during the configuration phase of the project (typically 2-3 weeks) where specific pieces of functionality are built, configured, and delivered.
Sprint Review	Signifies the end of the sprint where Axon showcases what was built, configured, and delivered. These items are then deemed ready for functional acceptance testing and user acceptance testing.

Go-Live	End-users are activated, and the agency is actively using the product
Cutover	Successful implementation of interfaces, data conversion, and NIBRS state and federal certification
Third-Party Products and Services	Software, hardware, and services that are not owned by Axon but are being provided by Axon for this project as listed in Attachment C
ACCEPTANCE	
Blocker	Issue impacting 50% or more users
Functional Acceptance Testing (FAT)	Testing the functionality of the system as configured for the agency
Integration Acceptance Testing	Scheduled events for testing of each integration point and associated functionality in collaboration with the agency and the agency's vendors
User Acceptance Testing (UAT)	Testing the functionality of the system as configured for the agency from an end-user's perspective

1.3 OUT OF PROJECT SCOPE

Axon is only responsible for performing the professional services described within this SOW. Any additional professional services that are not defined explicitly by this SOW shall be done so through a Project Change Order. The following are considered outside the scope of this project:

- Administration, management, or support of any internal city, county, state, federal, or agency IT network or infrastructure
- Changes made by the agency or the agency's vendors after the Interface Requirements Documentation has been accepted
- Third-party products and services costs related to the vendors or agency's side of the integration
- Changes made by the agency after configuration is complete

2. PROFESSIONAL SERVICES

2.1 GENERAL

The agency provides a master charge table that Axon loads. Axon provides the appropriate structure to the agency.

2.2 REPORTING AND DATASTORE

The access to the DataStore includes read-only access to prescribed views of data which are made available from the entry of data using the Axon Records User Interface.

- Axon provides the agency with a data dictionary and/or other appropriate documentation.
- Axon provides the following analytics reports as part of the Standards system: Use of Force, Early Intervention (EIS)
- If Axon provides reports for specific purposes as indicated, it is the responsibility of the agency to maintain them after Go-Live.

2.3 READINESS

Axon works in partnership with the agency to determine readiness by conducting functional testing and an end-to-end system review. The Axon program manager and the agency project manager work closely together to plan and execute readiness scenarios.

- Axon conducts functional acceptance testing via use cases approved by Axon and the agency.
- All issues discovered during and after training are entered into the service portal for triage and follow-up.

2.4 TRAINING

Axon works with the agency to identify the agency trainers receiving instruction on the Axon Records, Standards, and/or Dispatch products. Axon provides a training guide that outlines the covered topics, intended audience, facility needs, and duration of the training.

FORMAT

Axon provides the agency with all the necessary training materials and digital assets to facilitate any of the training formats listed below. Training sessions are conducted in an environment containing necessary configurations, forms, and workflows. Any additional training beyond the method described below is subject to adjustments in pricing. Contact your sales representative for more information.

It is the responsibility of the agency to deliver and update the training materials to include agency policies and procedures.

TRAIN THE TRAINER

Axon trains the agency's recommended users (no more than 12 depending on the size of the agency) in full system functionality. This is typically the agency's trainers, or training academy/FTO staff. The agency's trainers are responsible for training all agency end users. Axon provides all training materials for successful training and assists the agency's trainers in creating the course and training schedule.

SCHEDULE:

The training plan contains an agreed-upon schedule that makes efficient use of time and resources to avoid undue staffing impacts on the agency. Training sessions occur after the User Acceptance Testing has been successfully completed and documented.

Training sessions provided by Axon are conducted on consecutive weekdays (Tuesday-Friday) during normal business hours (9am-6pm with an hour break in between sessions).

Training sessions required past the agreed-upon schedule in the training plan, regardless of delivery method, are the responsibility of the agency, unless agreed upon previously by the project team and training team management.

2.5 GO-LIVE

Axon works in partnership with the agency to build, coordinate, and execute a Go-Live plan to ensure successful system acceptance. Axon coordinates the Go-Live event.

3. DATA CONVERSION

Axon implements a structured methodology for converting data from the agency's legacy system to the product. The agency is responsible for providing Axon with extracted data in a format that can be used by Axon for import. The preferred method for delivering legacy data to Axon is by using the Microsoft Data Migration Assistant. The next best method is for the agency to send the data in .bacpac file format to Axon. If neither method is available, a direct query through the Microsoft Self Hosted Integration Runtime (SHIRt) can be used.

Axon queries the data to identify completeness, missing values, and other measures of data integrity across records and provides the agency with detailed findings. The agency may or may not elect to process the data further to address completeness or may have Axon move forward with the conversion process.

The data and operational expertise of the agency's staff are necessary for questions that arise. Thus, it is critical that a member of the agency's team be available to support the data conversion portion of the project.

This process is considered complete once the last set of data has been converted and available within the product and the agency has confirmed validation of the converted data. Axon does not provide ongoing maintenance of the converted data.

3.1 DESCRIPTION OF ROLES AND RESPONSIBILITES BETWEEN THE AGENCY AND AXON:

The agency should be prepared to:

- Provide a subject-matter expert (SME) and provide availability for consultation throughout the project.
- Facilitate meetings with all third-party system vendors where data conversion is necessary, as required by Axon.
- Extract and provide the data to Axon in an agreed-upon format.
- Address data quality by the agency prior to provisioning to Axon.
- Minimize the amount of business logic and file processing prior to conversion where possible.
- Provide a data dictionary to define all elements of the legacy data.
- Provide an entity relationship diagram of the legacy database, if available.

- Collaborate with Axon to map the data from the legacy data structures and formats into the product.

Data conversion and data conversion reviews are critical to success. Throughout the data conversion, requirements planning, and review process, the agency project team and Axon data conversion project resource work closely together to ensure success.

3.2 AGENCY DATA CONVERSIONS

3.2.1 **Seamless Docs Repository| Standards Data Conversion:** Axon will convert legacy data from Seamless Docs Repository into Axon Standards as read only PDF documents or similar.

The conversion process imports master index records as part of the incidents, supplements, or use of force reports that are being converted into the Axon system.

3.3 LEGACY SOFTWARE UPDATES

During the data conversion process, Axon builds rules to govern the mapping of data from your legacy database into the Axon Standards database. If your legacy vendor changes your legacy database structure during the data conversion project, the accuracy of the data conversion could be compromised.

3.4 GO-LIVE CONTINGENCY

The agency may Go-Live before the data conversion is complete. This does not relieve Axon from completing the data conversion, but the agency is charged upon using the software.

4. GIS

4.1 OVERVIEW

Axon incorporates a multi-tenant, Axon-hosted ArcGIS Enterprise instance for certain GIS functions along with our existing ArcGIS Online solution. This new infrastructure meets our customers' stringent requirements for high availability GIS data in mission-critical uses.

4.2 GIS TERMINOLOGY

- **Feature Layer:** A single map layer that can be created from a Map Service or Feature Service, ArcGIS Online or ArcGIS Enterprise portal items, or from an array of client-side features. The layer can be either a spatial (has geographic features) or non-spatial (table).

GIS FUNCTIONS	ARCHITECTURE	RATIONALE
VECTOR TILE MAPS	ArcGIS Online (Uses Axon-hosted as backup)	ArcGIS Online's AWS CloudFront architecture is fast and reliable
SATELLITE IMAGERY	ArcGIS Online	ArcGIS Online's AWS CloudFront architecture is fast and reliable
ROUTING SERVICE	Axon ArcGIS Enterprise	Axon routing service has higher availability and offers an SLA
ADDRESS SUGGESTION SERVICE	Axon ArcGIS Enterprise	Axon routing service has lower latency, higher availability, and offers an SLA
GEOLOCATION SERVICES	Axon ArcGIS Enterprise	Axon routing service has lower latency, higher availability, and offers an SLA
CUSTOMER FEATURE LAYERS	Axon's ArcGIS Online account	For customers without ArcGIS Online account, customer provides layer files to Axon, and Axon hosts in Axon's ArcGIS Online account, and owns and manages layer URL

	Customer ArcGIS Online account	Customer hosts (and controls) layer content in their own ArcGIS Online account, and provides layer URL and an Access Key to Axon
	Axon ArcGIS Enterprise (not supported yet)	Customers provides layer files to Axon, and Axon hosts layers in Axon's ArcGIS Enterprise deployment, and owns and manages layer URLs. Axon validates that the feature layer is safe to publish and optimized. See the guide on this feature for more details.
	Customer web server (not supported yet)	Customer hosts (and controls) layer content on their own web server, provides layer URL to Axon. Axon monitors customer web server to assess availability and make recommendation to customer about its suitability for hosting layers in mission critical applications like CAD and RMS.

- Geocoding: Also called address geocoding, this is the process of taking a text-based description of a location, such as an address or the name of a place, and returning geographic coordinates, frequently latitude/longitude pair, to identify a location on the Earth's surface.
- Reverse Geocoding: A process that converts geographic coordinates to a description of a location, usually the name of a place or an addressable location. Geocoding relies on a computer representation of address points, the street / road network, together with postal and administrative boundaries.
- Routing: Routing services allow you to perform several types of spatial analysis on transportation networks, such as finding the best route across a city, finding the closest emergency vehicle or facility, identifying a service area around a location, or servicing a set of orders with a fleet of vehicles.
- Basemaps: Serves as a reference map on which you overlay data from layers and visualize geographic information. An individual basemap can be made of multiple feature, raster, or web layers.

- **Geocoder:** A web service which provides geocoding information. Customers can define their own and expose them as APIs.

4.3 AXON GIS COMPONENTS AND ARCHITECTURE

The ArcGIS Online service does not offer an SLA for many of their components. Because ArcGIS Online does not offer an SLA, Axon cannot ensure consistent performance if an agency opts to use ArcGIS Online for any of its GIS services.

The exception to this is the ArcGIS Online Map Tiles and Satellite Imagery, which are static assets hosted on reliable modern Content Delivery Networks (CDN) by ESRI. By leveraging their CDN-hosted assets, map render time and performance are dramatically improved. However, in the unlikely event that ArcGIS Online map tiles become unavailable, Axon has the ability to switch to a backup copy running on Axon's servers. Due to the massive size of satellite imagery, Axon currently does not offer a backup copy of the satellite imagery at this time but may consider this for future requests.

When accessing Map Tiles and Satellite Imagery, no customer data (such as addresses or GPS coordinates) are sent to 3rd party services.

4.4 GIS REQUEST FLOW

For Axon to host your feature layers in our ArcGIS Online account, we require two key items:

- A complete set of layer configuration files for each layer as enumerated below, with all files for all layers bundled into a single .zip file
- The numbered list describing the stacking order in which the layers should be applied when selected by end users file requirements for Layer Configuration
- Agencies requiring Axon to host their feature layers must send layer files to their Axon representative in a single .zip file with optional internal folder structure. For each layer, agencies should include files as follows:

4.5 GIS REQUIRED LAYERS

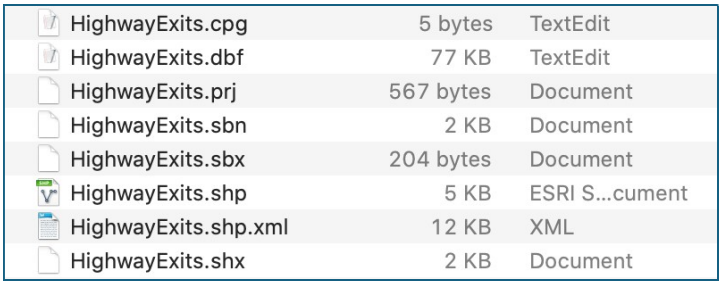
- Shapefile (.shp extension) to represent spatial vector data, including points, lines, and polygons in a map
- Index File (.shx extension) to represent shape index position

- dBASE File (.dbf extension) to store attribute data and object IDs

4.6 GIS OPTIONAL LAYERS

- Projection File (.prj extension) to specify the metadata associated with the shapefiles coordinate and projection system
- XML Metadata File (.xml extension) to represent the metadata associated with the shapefile
- Spatial Index File (.sbn extension) to optimize and speed up spatial queries, used with .sbx files
- Spatial Index File (.sbx extension) to optimize and speed up spatial queries, used with .sbn files
- Code Page File (.cpg extension) to describe the encoding applied to create the shapefile

4.7 GIS LAYER EXAMPLES



HighwayExits.cpg	5 bytes	TextEdit
HighwayExits.dbf	77 KB	TextEdit
HighwayExits.prj	567 bytes	Document
HighwayExits.sbn	2 KB	Document
HighwayExits.sbx	204 bytes	Document
HighwayExits.shp	5 KB	ESRI S...cument
HighwayExits.shp.xml	12 KB	XML
HighwayExits.shx	2 KB	Document

5. PROJECT MANAGEMENT

5.1 MANAGEMENT RESOURCES

Both parties assign a project manager to ensure completion of deliverables.

Axon's project manager ensures all team members from Axon and the agency are continually updated on the status of the project.

5.2 REQUIREMENTS PLANNING

All project requirements are documented during the kick-off and discovery phases of the project.

Once the agency and Axon agree on all requirements, Axon's project manager works with the agency's project manager to develop a project plan for Axon's implementation.

5.3 CHANGE CONTROL

If any changes in the project cause a material increase or decrease in fees, as determined by Axon, an adjustment in the fees will be agreed upon between the agency and Axon. All PCO forms must be approved and signed by the agency authority (Attachment B).

The agency acknowledges a proposed change request might have an impact on both scheduling and cost for the project that will be outlined in the PCO form.

5.4 PROJECT METHODOLOGY

Axon utilizes a hybrid approach to project management, utilizing aspects of both Agile and Waterfall methodologies. We use Waterfall for the overall project, with respect to major milestones. We utilize Agile during the configuration and build phases of the project.

5.5 MILESTONE COMPLETION REPORT (MCR)

Axon will submit an MCR to the agency for approval upon completion of a milestone. Milestone Completion Report included (Attachment A).

Upon receiving an MCR, the agency has 7 calendar days to approve the milestone completion. If the agency reasonably believes Axon did not complete the milestone in substantial conformance with this SoW, the

agency must notify Axon in writing of the specific reasons for rejection within seven (7) calendar days from delivery of the MCR. Axon will address the issues and re-present the MCR for signature. If Axon does not receive the signed MCR or written notification of reasons for rejection within seven (7) calendar days of delivery of the MCR, Axon will deem the agency to have accepted the milestone.

6. AGENCY COMMITMENTS

- Ensure the reasonable availability for meetings, phone or email of knowledgeable staff and personnel to provide timely and accurate documentation and information to Axon.
- Identify holidays, non-workdays, or major events that may impact the project.
- Ensure agency desktop, mobile systems, and devices can access the product.
- Make available relevant systems if needed for assessment by Axon (including making these systems available to Axon via remote access, if possible).
- Provide Axon with remote access to the agency's Axon Evidence account when required.
- Provide Axon with all CJIS background check requirements at project initiation.
- The agency agrees to pay for licenses upon completion of Go-Live.

7. SUPPORT

- Axon provides updates and enhancements to the product, which the agency automatically receives. Some features require thr agency to notify support, so please review our monthly release notes.
- Axon provides the agency's end users with access to the help.axon.com support portal for self-service support.
- Following final acceptance, the agency utilizes Axon support via my.axon.com and the support portal for any further modifications to the product.
- For urgent technical support assistance, the agency may contact a technical support representative at 800-978-2737. Phone support is available 24/7.

ATTACHMENT A – MILESTONE COMPLETION REPORT (MCR)

By signing for the items in this Milestone Completion Report, I agree that Axon's Professional Services Organization has reached the following milestone(s) for the project agreed upon in the SOW between Axon and Ontario, CA PD:

- ☐ Project kick-off
- ☐ Requirements completion
- ☐ Functional review and completion of configuration
- ☐ User acceptance testing
- ☐ Integrations completion
- ☐ Data conversions completion
- ☐ Completion of agency training
- ☐ Go-Live
- ☐ Final acceptance

Date services were completed on: _____ day of _____, 20___

Signature: _____

Signature Date: _____

Printed Name: _____

Title: _____

Email: _____

Agency Name: _____Attachment B – Project Change Order

SAMPLE

Date:
Description of change to Axon product or service:
Justification for change:
Effects on schedule:
Effect on project pricing (attach quote for reduction or increase in costs):

AXON ENTERPRISE, INC.	AGENCY
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____
	Agency Name: _____

SAMPLE

2/3/2025

Ontario Police Department

Improving Outcomes with Drone as First Responder

Presented To:

Chief Mike Lorenz

Presented By

Danny Palumbo
Account Manager

daniel.palumbo@skydio.com

03 Executive Summary

04 DFR Deployment Overview

05 Implementation Milestones

06 Path to Deployment

07 Product Summary

Executive Summary

The Ontario Police Department (OPD) is embarking on an innovative initiative to enhance community safety and optimize police response times. This program utilizes Drone as First Responder (DFR) technology to provide rapid, real-time aerial support, transforming how law enforcement serves and protects the community.

By integrating Skydio's advanced autonomous drones into daily operations, OPD aims to significantly improve response times by delivering critical, real-

time intelligence to officers before they arrive on the scene. This capability enables more informed decision-making, reducing risks for both officers and civilians, and ensuring a more efficient use of resources.

This DFR initiative aligns with The Ontario Plan 2050, a dynamic framework for sustained, comprehensive leadership in building the community. The Ontario Plan integrates various components of city governance to guide growth and development, aiming to achieve optimum results from the city's physical, economic, environmental, and human resources.

The DFR program will scale and stratify into a city wide initiatives including fire response services, public works support, code violations, GIS mapping, utilities inspections, and much more. By embracing innovative solutions, OPD demonstrates its commitment to professionalism, integrity, and accountability, ensuring that the department serves the community with the highest standards.

This partnership positions Ontario as a leader in the use of drone technology in policing, setting new standards for safety, transparency, and operational efficiency.

The attached proposal outlines Skydio's Statement of Work (SOW) for OPD's path to DFR with Skydio hardware, software, and services support.. Included you'll find a summary of the partnership as it relates to hardware delivery, project kick-off and timeline, and deliverables associated the DFR rollout and beyond.

We would be honored to partner with the OPD team and look forward to discussing the next steps. Thank you for your time and consideration.

DFR Roadmap - Deployment Overview

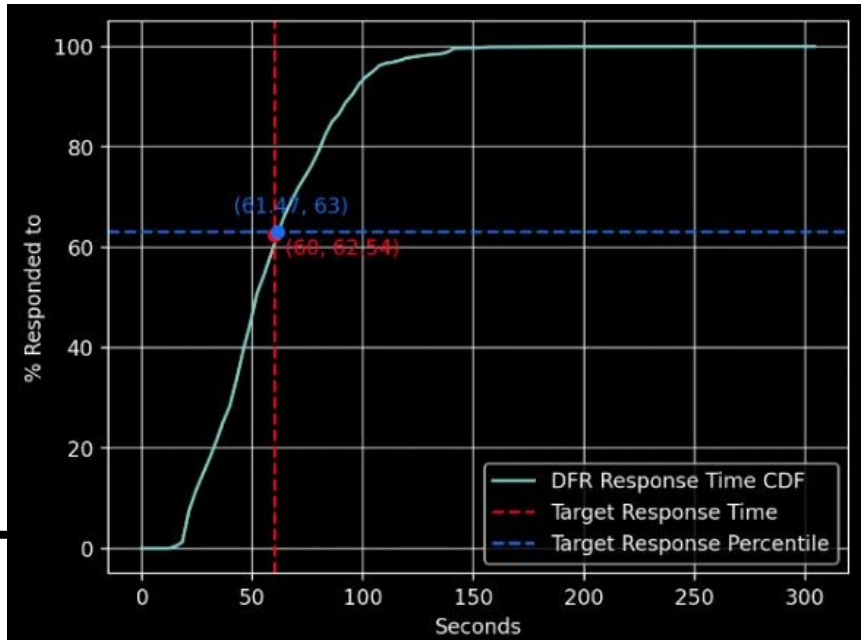
Full scale deployment with 12 docks across Ontario over a two year deployment timeline:

For 2024, data indicates potential for over 132k CFS across OPD.

Data reflects serviceable area, removal of 50ft grid zones

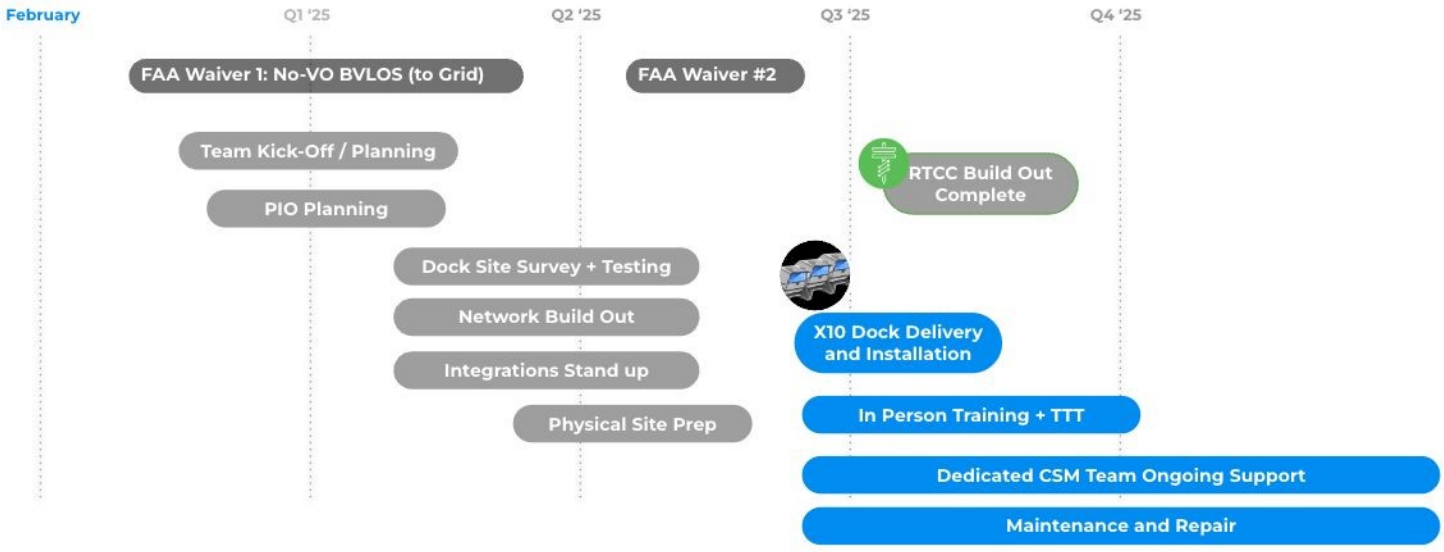


12 Docks in 6 Hives could respond to 54K calls, getting to 63% of them in under one minute.



Implementation Milestones

Proposed implementation timeline for waiver services, onsite prep + range testing, dock delivery + installation, and training. The schedule is subject to adjustments based on delivery and project readiness.



Phase 1 - Waivers + Site Prep

- Upon completion of the Axon contract, Skydio will kickstart discussions with OPD around submission of no-vo BVLOS COA. This will take 5-7 days for submission, and 3-5 months for the FAA to provide formal approval.
- Skydio will begin standing bi-weekly meetings with OPD to discuss onsite visits, deployment logistics, and technical roadmapping.
- Onsite prep visits will include 2- 3 deployment engineers from Skydio who will assess locations, perform grid testing with an X10 drone, and also provide a post visit recommendation for consideration. We will being with the following locations as placeholders and open to adjustments. See page 6-7 for details.

Phase 2 - Installation + Kick-Off

- Delivery and Installation of 6 Docks will take place in Q3 2025 (or earlier), and subsequent delivery of additional 6 Docks will take place in 2026. In year 2026, we will install an additional 6 docks at the same locations (hives).

2500 South Archibald Ave Ontario CA 91761	OPD HQ
1 Mills Circle Ontario CA 91764	Ontario Mills
1530 East 4th St Ontario CA 91764	OFD Station 5
303 East B Street Ontario CA 91764	Ontario City Hall
544 West Francis Street Ontario CA 91762	OFD Station 2
2661 East Grand Park Street Ontario CA 91762	OFD Station 9

- We will perform a 3 day onsite training for up to 4 students per 1 Skydio trainer in Ontario or a place of your choosing. See page 6 - 7 for details on training.
- Maintenance and Repair will occur upon the completion of installation of the first 6 docks. Frequency of onsite support is proactively scheduled and re-assessed based on the frequency of flight operations. Maintenance and Repair will occur on the first 6 Docks for 48 months, and upon delivery of the 6 Docks in 2026 - services will begin and extend for 36 months. See page 7 for additional details.

Path to Deployment

Next Steps: Skydio and OPD will accomplish the following steps to ensure a timely deployment of 6 X10 Docks in 2025 and 6 X10 Docks in 2026. Program readiness is dependent on site selection, access to appropriate power/internet, and FAA waiver approvals. Each of these items are not required but highly recommended for

program success and scalability.

- ☑ Program outcomes defined
  - First mission requirements
  - Mission Requirements by site
- ☑ Potential locations chosen
  - Exact Location
  - Power and Internet
- ☑ Staffing model defined
  - Program Manager, Pilot, Maintenance, etc.
- ☑ Regulatory compliance achieved
  - BVLOS waiver submission, approval, etc.
- ☑ Remote Operations Center live ● Location for flight ● Desk, Operations Center, etc.
- ☑ Timeline
  - Agreed Dock installation date





Product Descriptions Summary

Product Name	Description
Skydio Dock for X10 - Maintenance and Repair	Skydio will provide Dock repair and preventative maintenance services to maintain operational value in customer operational areas. Skydio will plan preventative maintenance based on recommended schedule (time based on usage based). Parts for the Dock are included in maintenance and repair fee. Repair response for non-operational impacting repair will conform to the standard response. Customer is responsible for the replacement of wearable drone parts (propellers and batteries). Skydio will attempt to conduct these swaps on behalf of the customer when on site for routine maintenance or repair, however, if time frames do not align, the customer is responsible for the safe operation of their aircraft in the airspace and changing these parts. Price is annual.
Skydio X10 Dock Bundle (2.4/5 GHz with Cellular, IR) NA + VT300-Z	Includes one (1) Skydio Dock for X10, one (1) External Radio (2.4/5 GHz), one (1) Skydio X10 Vehicle with Sensor Package (2.4/5 GHz with Cellular, IR) NA + VT300-Z [includes Skydio Autonomy, which allows the drone to see, understand, and act upon the world. License is perpetual and non-transferable.], two (2) Skydio Dock Battery for X10, one (1) Skydio 100W Wall Adapter, NA, one (1) Skydio Spare Propellers for X10.
Waiver Application - Remote Ops Expansion	FAA request for multiple sites/locations with a similar aviation risk profile. No-VO BVLOS waiver request package includes written Concept of Operations, Safety Case, Skydio Technical Supplement, and Risk Mitigation Technology Strategy. Skydio will provide documentation package to customer within four months of customer onboarding.
Skydio Dock for X10 - Deployment	Includes a pre-site survey that delivers a report on optimal Dock for X10 and C93 install location and any additional action items required before installation, Skydio deployment and set up services for one (1) site. Includes Remote and in-person support, on-site for up to 5 days. Skydio will assist with deployment strategy, connecting Skydio Dock & customer network infrastructure and troubleshooting. Skydio will assist with mission planning and data management, support, and troubleshooting. If an engineer is not present on site, an on-call engineer will support the on site representatives. Docks must be deployed and operated in compliance with Skydio's Dock Safety Guidelines, Dock Technical Package, and Dock Operator Manual to remain eligible for support.
Skydio Dock for X10 - In-Person Training	Includes three (3) day in-person training on the operation of Skydio Dock for X10, consisting of a ground school in the classroom and live flight training in the field. Covers hardware overview, subsequent setup, flight, mission planning & execution, best practices, environmental factors, and maintenance. For up to four (4) students. Participants receive a course completion certificate upon the successful completion of this training. Travel and lodging costs for Skydio are included in this price. Training is conducted in Ontario or a location of your choosing.
Skydio Assured Future Equipment - VT300-Z Sensor Package Refresh	Kit includes one "like system" to VT300-Z Sensor Package to be delivered three years following the delivery of the associated Sensor Package. Does not include vehicle airframe or attachments.

Product Descriptions Summary

Product Name	Description
Skydio Assured Future Equipment - VT300-Z Sensor Package Refresh	Kit includes one "like system" to VT300-Z Sensor Package to be delivered three years following the delivery of the associated Sensor Package. Does not include vehicle airframe or attachments.
Skydio Care for X10 with Cellular 5G + VT300-Z, 3-year	Skydio Care for X10 with Cellular 5G + VT300-Z, 3-year includes bundled Care for the Skydio X10 with Cellular 5G and the VT300-Z Sensor Package. Skydio Care for X10 with Cellular 5G (3yr plan) includes: (a) three (3) Damage Replacement with advance shipment and up to one (1) Lost Drone Replacement with advance shipment. Skydio Care for VT300-Z (3yr plan) includes: (a) three (3) Damage Replacement with advance shipment and up to one (1) Lost Sensor Package Replacement with advance shipment. In either event, Customer will be charged the full cost of the replacement sensor package if Skydio fails to receive payment of associated replacement fees (covered in T&C) within thirty (30) days of the shipment.
Skydio NightSense with IR Attachment for X10	Skydio NightSense for X10 includes access to advanced autonomy functionality in no and low light situations. Includes one (1) perpetual license and one (1) infrared light spectrum active illumination attachment that can be carried by Skydio X10.
Skydio Speaker/Mic for X10	One (1) speaker and microphone attachment that can be carried by the Skydio X10.
Skydio Spotlight for X10	One (1) spotlight attachment that can be carried by the Skydio X10.
Skydio Dock Instructor Training	Students will learn how to instruct the use and operation of Skydio Dock and Remote Ops. Training will consist of a classroom portion, covering instructional techniques and Skydio Dock ground school teach backs of classroom material, and a field portion covering the instruction of flight cards. The prerequisite for this training is the Skydio Dock In-Person Training. For up to two (2) students. Participants will receive a course completion certificate upon the successful completion of this training. Travel and lodging costs are included in this price.
Skydio DFR Command (T-Mobile)	Skydio DFR Command enables public safety agencies to operate Drone as First Responder programs, including the ability to fly over a browser, DFR ops management, live streaming, and unlimited T-Mobile data. In addition, this license includes access to all Skydio Extend APIs, Axon Integrations, and Extend Partner Integrations.

CITY OF ONTARIO *Agenda Report* **February 18, 2025**	**SECTION:** **PUBLIC HEARINGS**
Department: Planning Prepared By: Thomas Grahn Department: Prepared By: Thomas Grahn Staff Member Presenting: Rudy Zeledon, Executive Director Community Development Reviewed By: Kimberly Ruddins, Henry Noh, Rudy Zeledon Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 11

SUBJECT: **A PUBLIC HEARING TO CONSIDER AN URGENCY ORDINANCE APPROVING A DEVELOPMENT CODE AMENDMENT, FILE NO PDCA24-004, REGARDING ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS**

RECOMMENDATION: That the City Council consider, waive further reading, and adopt an Urgency Ordinance approving File No. PDCA24-004, to amend Division 5.03 - Supplemental Land Use Regulations, Section 5.03.010 (Accessory Dwelling Units) of the City's Development Code to comply with recent changes to state law that impose new limits on local authority to regulate Accessory Dwelling Units ("ADUs") and Junior Accessory Dwelling Units ("JADUs"), which took effect on January 1, 2025.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Operate in a Businesslike Manner

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

BACKGROUND & ANALYSIS: In recent years, the California Legislature has approved, and the Governor has signed into law, a number of bills that impose new limits on local authority to regulate ADUs and JADUs. In 2024, the California Legislature approved, and the Governor signed into law, two new bills — AB 2533 and SB 1211 — that further amend state ADU law as summarized below.

EXECUTIVE SUMMARY: The proposed Urgency Ordinance will amend Division 5.03 - Supplemental Land Use Regulations, Section 5.03.010 (Accessory Dwelling Units) of the City's Development Code to comply with recent changes to state law that impose new limits on local authority to regulate Accessory Dwelling Units ("ADUs") and Junior Accessory Dwelling Units ("JADUs"), which took effect on January 1, 2025.

AB 2533 – Unpermitted ADUs and JADUs

Subject to limited exceptions, existing state law prohibits a city from denying a permit to legalize an unpermitted ADU that was constructed before January 1, 2018, if the denial is based on the ADU not complying with applicable building, state or local ADU standards. One exception allows a city to deny a permit to legalize if the city makes a written finding that correcting the violation is necessary to protect the health and safety of the public or the occupants of the structure.

AB 2533 changes this by: (1) expanding the above prohibition to also include JADUs; (2) moving the construction-cutoff date from January 1, 2018, to January 1, 2020; and (3) replacing the above exception with a requirement that local agencies find that correcting the violation is necessary to comply with the standards specified in Health and Safety Code section 17920.3 (Substandard Buildings). (See amended Gov. Code, § 66332(a)–(f).)

SB 1211 – Replacement Parking Requirements; Multifamily ADUs

Replacement Parking

Existing state law prohibits the City from requiring off-street parking spaces to be replaced when a garage, carport or covered parking structure is demolished in conjunction with the construction of, or conversion to, an ADU.

SB 1211 amends this prohibition to now also prohibit a city from requiring replacement parking when an uncovered parking space is demolished for or replaced with an ADU. (See amended Gov. Code, § 66314(d)(11).)

Multifamily ADUs

SB 1211 further defines *livable space* in connection with converted ADUs inside a multifamily dwelling structure. Existing state law requires the City to ministerially approve qualifying building-permit applications for ADUs within "portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages ...." The term "livable space" is not defined by existing state ADU law.

SB 1211 changes this by adding a new definition: "'Livable space' means a space in a dwelling intended for human habitation, including living, sleeping, eating, cooking, or sanitation." (See amended Gov. Code, § 66313(e).)

SB 1211 also increases the number of detached ADUs that lots with an existing multifamily dwelling can have. Existing state law allows a lot with an existing or proposed multifamily dwelling to have up to two detached ADUs.

Under SB 1211, a lot with an *existing* multifamily dwelling can have up to eight detached ADUs, or as many detached ADUs as there are primary dwelling units on the lot, whichever is less. (See amended Gov. Code, § 66323(a)(4)(A)(ii).) SB 1211 does not alter the number of ADUs that a lot with a *proposed* multifamily dwelling can have — the limit remains at two. (See amended Gov. Code,

§ 66323(a)(4).)

NEXT STEPS & RECOMMENDATION: Both AB 2533 and SB 1211 took effect January 1, 2025. If the City's ADU Ordinance does not comply with requirements of both bills by that date, the City's entire existing ADU Ordinance becomes null and void as a matter of law, and the City will have to allow ADUs with no regulation except for the few requirements in the state ADU law itself. The approval of ADUs and JADUs based solely on these default statutory standards, without local regulations governing height, setback, landscape, and architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety.

The proposed Ordinance is an urgency measure, which means it will take immediate effect upon adoption. Typically, an Ordinance affecting planning and zoning is approved by the Council after a planning commission recommendation, a first reading and introduction before the Council and then a second reading at a regular Council meeting — with the Ordinance taking effect 30 days following adoption. But here it is necessary for the City Council to adopt this Ordinance as an urgency measure because AB 2533 and SB 1211 took effect on January 1, 2025, before a non-urgency adoption would take effect. The Urgency Ordinance will be followed at the earliest possible time by a Non-Urgency Ordinance subject to all normal procedures.

For the above reasons, staff recommends that the City Council adopt the proposed Urgency Ordinance, which will ensure that the City's ADU Ordinance remains valid after AB 2533 and SB 1211 took effect on January 1, 2025.

ENVIRONMENTAL REVIEW: Under California Public Resources Code section 21080.17, CEQA does not apply to the adoption of an Ordinance by a city or county implementing the provisions of Article 2 of Chapter 13 of Division 1 of Title 7 of the California Government Code, which is California's ADU law and which also regulates JADUs, as defined by section 66313. Therefore, the adoption of the proposed Urgency Ordinance is statutorily exempt from CEQA in that it implements state ADU law.

ORDINANCE NO. _____

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT CODE AMENDMENT, FILE NO. PDCA24-004, AMENDING DIVISION 5.03 – SUPPLEMENTAL LAND USE REGULATIONS, SECTION 5.03.010 OF THE CITY'S DEVELOPMENT CODE RELATING TO ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS AND FINDING THE ACTION TO BE STATUTORILY EXEMPT FROM CEQA UNDER PUBLIC RESOUCES CODE SECTION 21080.17.

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

WHEREAS, state law authorizes cities to act by ordinance to provide for the creation and regulation of accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs"); and

WHEREAS, in recent years, the California Legislature has approved, and the Governor has signed into law, numerous bills that, among other things, amend various sections of the Government Code to impose new limits on local authority to regulate ADUs and JADUs; and

WHEREAS, in 2024, the California Legislature approved, and the Governor signed into law, Assembly Bill 2533 ("AB 2533") and Senate Bill 1211 ("SB 1211"), which further amend state ADU law; and

WHEREAS, AB 2533 and SB 1211 take effect January 1, 2025, and if the City's ADU ordinance does not comply with the requirements imposed by those bills by that date, the City's entire existing ADU ordinance becomes null and void as a matter of law; and

WHEREAS, the City desires to amend its local regulatory scheme for the construction of ADUs and JADUs to reflect AB 2533's and SB 1211's changes to state law; and

WHEREAS, there is a current and immediate threat to the public health, safety, or welfare based on the passage of AB 2533 and SB 1211 because if the City's ordinance does not comply with this legislation by January 1, 2025 — and the City's ADU ordinance becomes null and void — the City would thereafter be required to approve ADUs and JADUs in accordance with the few default standards that are provided in Chapter 13 of Division 1 of Title 7 of the California Government Code, which is the state ADU law; and

WHEREAS, the approval of ADUs and JADUs based solely on the default statutory standards, without local regulations governing height, setback, landscape, and architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety. These threats to public safety, health, and welfare justify adoption of this Ordinance as an urgency ordinance to be effective immediately upon adoption by a four-fifths vote of the City Council; and

WHEREAS, to protect the public safety, health, and welfare, the City Council may adopt this Ordinance as an urgency measure in accordance with Government Code section 36937, subdivision (b); and

WHEREAS, on February 4, 2025, the City Council of the City of Ontario conducted a hearing to consider the Project, and continued said hearing to the February 18, 2025 City Council meeting; and

WHEREAS, on February 18, 2025, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1: ***Incorporation of Recitals.*** The recitals above are each incorporated by reference and adopted as findings by the City Council.

SECTION 2: ***Environmental Determination and Findings.*** Under California Public Resources Code section 21080.17, the California Environmental Quality Act ("CEQA") does not apply to the adoption of an ordinance by a city or county implementing the provisions of Article 2 of Chapter 13 of Division 1 of Title 7 of the California Government Code, which is California's ADU law and which also regulates JADUs, as defined by section 66313. Therefore, adoption of the Ordinance is statutorily exempt from CEQA in that it implements state ADU law.

SECTION 3: ***General Plan Consistency.*** This ordinance is, as a matter of law, consistent with the City's General Plan under 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

(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) Policy Plan (General Plan)

Housing Element:

- Goal H-2 Housing Supply & Diversity. 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.

  - H-2.5 Housing Design. We require architectural excellence through adherence to City design guidelines, thoughtful site planning, environmentally sustainable practices, and other best practices.

  - H-2.6 Infill Development. We support the revitalization of neighborhoods through the construction of higher-density residential developments on underutilized residential and commercial sites.

Community Economics Element:

- Goal CE-1 Complete Community: A complete community that provides for all incomes and stages of life.

  - CE-1.6 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 encourage the development of housing supportive of our efforts to attract business in growing sectors of the community while being respectful of existing viable uses.

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-2.1 Quality Building Design and Architecture. We encourage all development projects to convey visual interest and character through:

    - Building volume, massing, and height to provide context-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 articulated, high quality, durable, and appropriate for the architectural style.

SECTION 4: ***Code Amendment.*** Section 5.03.010 of Division 5.03 of Chapter 5 of the Ontario Development Code is hereby amended and restated to read in its entirety ad provided in Exhibit "A," attached hereto and incorporated herein by reference.

SECTION 5: ***Effective Date.*** This ordinance takes effect immediately upon its adoption.

SECTION 6: ***Publication.*** The City Clerk shall either: (a) have this ordinance published in a newspaper of general circulation within 15 days after its adoption or (b) have a summary of this ordinance published twice in a newspaper of general circulation, within 15 days after its adoption.

SECTION 7: ***Submittal to HCD.*** In accordance with Government Code section 66326, the City Clerk is directed to submit a copy of this Ordinance to the California Department of Housing and Community Development within 60 days after adoption.

SECTION 8: ***Severability.*** If any provision of this ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this ordinance are severable. The City Council declares that it would have adopted this ordinance irrespective of the invalidity of any portion thereof.

SECTION 9: ***Publication and Posting.*** The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least twice, 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 18th day of February 2025.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Urgency Ordinance No. was duly introduced and adopted at the regular meeting of the City Council of the City of Ontario held on the 18th day of February 2025, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Urgency Ordinance No. duly passed and adopted by the Ontario City Council at their regular meeting held February 18, 2025 and the summaries of the Ordinance were published on _____, 2025 and _____, 2025 in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

Exhibit "A"

Amended ADU Regulations

Following this page

A. Purpose. The purpose of this Section is to allow and regulate accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) in compliance with Article 2 of Chapter 13 of Division 1 of Title 7 of the California Government Code.

B. Effect of Conforming. An ADU or JADU that conforms to the standards in this Section will not be:

1. Deemed to be inconsistent with the City's general plan and zoning designation for the lot on which the ADU or JADU is located.

2. Deemed to exceed the allowable density for the lot on which the ADU or JADU is located.

3. Considered in the application of any local ordinance, policy, or program to limit residential growth.

4. Required to correct a nonconforming zoning condition, as defined in Subsection C.7, below. This does not prevent the City from enforcing compliance with applicable building standards in accordance with Health and Safety Code Section 17980.12.

C. Definitions. As used in this Section, the words or phrases listed below shall have the meanings thereafter specified:

1. Accessory Dwelling Unit (ADU). An attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. An accessory dwelling unit also includes the following:

a. An efficiency unit, as defined by HSC Section 17958.1; and

b. A manufactured home, as defined by HSC Section 18007.

2. Accessory Structure. A structure that is accessory and incidental to a dwelling located on the same lot.

3. Complete Independent Living Facilities. Permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multiple-family dwelling is or will be situated.

4. Efficiency Kitchen. A kitchen that includes each of the following:

a. A cooking facility with appliances.

b. A food preparation counter and storage cabinets that are of a reasonable size in relation to the JADU.

5. Junior Accessory Dwelling Unit (JADU). A residential unit that:

a. Is no more than 500 SF in size;

b. Is contained entirely within an existing or proposed single-family structure. An enclosed use within the residence, such as an attached garage, is considered to be a part of and contained within the single-family structure;

c. Includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure;

d. If the unit does not include its own separate bathroom, then it contains an interior entrance to the main living area of the existing or proposed single-family structure in addition to an exterior entrance that is separate from the main entrance to the primary dwelling; and

e. It includes an efficiency kitchen, as defined in Subsection C.4, above.

6. Livable Space. A space in a dwelling intended for human habitation, including living, sleeping, eating, cooking, or sanitation.

7. Living Area. The interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

8. Nonconforming Zoning Condition. A physical improvement on a property that does not conform with current zoning standards.

9. Passageway. A pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.

10. Proposed Dwelling. A dwelling that is the subject of a permit application and that meets the requirements for permitting.

11. Public Transit. A location, including but not limited to a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

12. Tandem Parking. Two or more automobiles parked on a driveway or on any other location on a lot, lined up one behind the other.

D. Approvals. The following approvals apply to ADUs and JADUs under this Section:

1. Building Permit Only. If an ADU or JADU complies with each of the general requirements in subsection E below, it is allowed with only a building permit in the following scenarios:

a. *Converted on Single-Family Lot.* One ADU as described in this Subsection D.1.a and one JADU on a lot with a proposed or existing single-family dwelling on it, where the ADU or JADU:

(1) Is either: within the space of a proposed single-family dwelling; within the existing space of an existing single-family dwelling; or (in the case of and ADU only) within the existing space of an accessory structure, plus up to 150 additional SF if the expansion is limited to accommodating ingress and egress; and

(2) Has exterior access that is independent of that for the single-family dwelling; and

(3) Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building and fire codes; and

(4) The JADU complies with the requirements of Government Code Sections 66333 through 66339.

b. *Limited Detached on Single-Family Lot.* One detached, new-construction ADU on a lot with a proposed or existing single-family dwelling (in addition to any JADU that might otherwise be established on the lot under Subsection D.1.a, above), if the detached ADU satisfies each of the following limitations:

(1) The side- and rear-yard setbacks are at least 4 FT; and

(2) The total floor area is 800 SF or smaller; and

(3) The peak height above grade does not exceed the applicable height limit provided in Subsection E.2, below.

c. *Converted on Multiple-Family Lot.* One or more ADUs within portions of existing multiple-family dwelling structures that are not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages, if each converted ADU complies with state building standards for dwellings. Under this Subsection D.1.c, at least one converted ADU is allowed within an existing multiple-family dwelling, up to a quantity equal to 25 percent of the existing multiple-family dwelling units.

d. *Limited Detached on Multiple-Family Lot.* No more than two detached ADUs on a lot that has an existing or proposed multiple-family dwelling, or up to 8 detached ADUs on a lot with and existing multiple-family dwelling, if each detached ADU satisfies all of the following:

(1) The side- and rear-yard setbacks are at least 4 FT. If the existing multiple-family dwelling has a rear or side yard setback of less than 4 FT, the City shall not require any modification to the multiple-family dwelling as a condition of approving the ADU; and

(2) The peak height above grade does not exceed the applicable height limit provided in Subsection E.2, below.

(3) If the lot has an existing multiple-family dwelling, the quantity of detached ADUs does not exceed the number of primary dwelling units on the lot.

2. Process and Timing.

a. An ADU permit is considered and approved ministerially, without discretionary review or a hearing.

b. The City must approve or deny an application to create an ADU or JADU within 60 days from the date that the City receives a completed application. If the City has not

approved or denied the completed application within 60 days, the application is deemed approved unless either:

(1) The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay, or

(2) When an application to create an ADU or JADU is submitted with a permit application to create a new single-family or multiple-family dwelling on the lot, the City may delay acting on the permit application for the ADU or JADU until the City acts on the permit application to create the new single-family or multiple-family dwelling, but the application to create the ADU or JADU will still be considered ministerially, without discretionary review or a hearing.

c. If the City denies application to create an ADU or JADU, the City must provide the applicant with comments that include, among other things, a list of all the defective or deficient items and a description of how the application may be remedied by the applicant. Notice of the denial and corresponding comments must be provided to the applicant within the 60-day time period established by Subsection D.3.b, above.

d. A demolition permit for a detached garage that is to be replaced with an ADU is reviewed with the application for the ADU and issued at the same time.

E. General ADU and JADU Requirements. The following requirements apply to all ADUs and JADUs that are approved under Subsections D.1 or D.2, above:

1. Zoning.

a. An ADU subject only to a building permit under Subsection D.1, above, may be created on a lot in a residential or mixed-use zoning district.

b. An ADU subject to an ADU permit under Subsection D.2, above, may be created on a lot that is zoned to allow single-family dwelling residential use or multiple-family dwelling residential use.

c. In accordance with Government Code section 66333(a), a JADU may only be created on a lot zoned for single-family residences.

2. Height.

a. Except as otherwise provided by Subsections E.2.b and E.2.c, below, a detached ADU created on a lot with an existing or proposed single-family or multiple-family dwelling unit may not exceed 16 FT in height.

b. A detached ADU may be up to 18 FT in height if it is created on a lot with an existing or proposed single-family or multiple-family dwelling unit that is located within one-half mile walking distance of a major transit stop or a high quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code, and the ADU may be up to two additional feet in height (for a maximum of 20 FT) if necessary to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.

c. A detached ADU created on a lot with an existing or proposed multiple-family dwelling that has more than one story may not exceed 18 FT in height.

d. An ADU that is attached to the primary dwelling may not exceed 25 FT in height or the height limitation imposed by the underlying zone that applies to the primary dwelling, whichever is lower. Notwithstanding the foregoing, ADUs subject to this Subsection E.2.d may not exceed two stories.

e. For purposes of this subsection E.2, height is measured from existing legal grade or the level of the lowest floor, whichever is lower, to the peak of the structure.

3. Fire Sprinklers.

a. Fire sprinklers are required in an ADU if sprinklers are required in the primary residence.

b. The construction of an ADU does not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

4. Rental Term. No ADU or JADU may be rented for a term that is shorter than 30 days. This prohibition applies regardless of when the ADU or JADU was created.

5. No Separate Sale or Conveyance. An ADU or JADU may be rented, but, except as provided in Government Code section 66341, no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all of the dwellings (in the case of a multiple-family lot).

6. Septic System. If the ADU or JADU will connect to an onsite wastewater-treatment system, the owner must include with the application a percolation test completed within the last 5 years or, if the percolation test has been recertified, within the last 10 years.

7. Owner Occupancy.

a. An ADU created under this section on or after January 1, 2020 are not subject to an owner-occupancy requirement.

b. As required by state law, all JADUs are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property, in either the primary dwelling or JADU, as the person's legal domicile and permanent residence. However, the owner-occupancy requirement in this Subsection E.7.b does not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.

8. "Rent Reporting. In order to facilitate the City's obligation to identify adequate sites for housing in accordance with Government Code Sections 65583.1 and 66330, the following requirements must be satisfied:

a. With the building-permit application, the applicant must provide the City with an estimate of the projected annualized rent that will be charged for the ADU or JADU.

b. Within 90 days after each January 1following issuance of the building permit, the owner must report the actual rent charged for the ADU or JADU during the prior year. If the City does not receive the report within the 90-day period, the owner is in violation of this Code, and the City may send the owner a notice of violation and allow the owner another 30

days to submit the report. If the owner fails to submit the report within the 30-day period, the City may enforce this provision in accordance with applicable law.

9. Building and Safety.

a. *Must Comply with Building Code.* Subject to Subsection E.10.b, below, all ADUs and JADUs must comply with all local building code requirements.

b. *No Change of Occupancy.* Construction of an ADU does not constitute a Group R occupancy change under the local building code, as described in Section 310 of the California Building Code, unless the building official or Community Improvement Division officer makes a written finding based on substantial evidence in the record that the construction of the ADU could have a specific, adverse impact on public health and safety. Nothing in this Subsection E.10.b prevents the City from changing the occupancy code of a space that was uninhabitable space or that was only permitted for nonresidential use and was subsequently converted for residential use in accordance with this Section.

F. Specific ADU Requirements. The following requirements apply only to ADUs that require an ADU permit under Subsection D.2, above.

1. Maximum Size.

a. The maximum size of a detached or attached ADU subject to this Subsection F is 850 SF for a studio or one-bedroom unit and 1,000 SF for a unit with two or more bedrooms.

b. An attached ADU that is created on a lot with an existing primary dwelling is further limited to 50 percent of the floor area of the existing primary dwelling.

c. Application of other development standards in this Subsection F, such as lot coverage, might further limit the size of the ADU, but no application of the percent-based size limit in Subsection F.1.b, above, or front setback, lot coverage limit, or open-space requirement may require the ADU to be less than 800 SF.

2. Building Setbacks.

a. Subject to Subsection F.1.c, above, an ADU that is subject to this Subsection F shall maintain a minimum front yard setback of 30 FT from arterial street rights-of-way and 20 FT from all collector and local street rights-of-way.

b. An ADU that is subject to this Subsection F must conform to 4-FT side yard and rear yard setbacks.

c. No setback is required for an ADU that is subject to this Subsection F if the ADU is constructed in the same location and to the same dimensions as an existing structure.

3. Lot Coverage. No ADU subject to this Subsection F may cause the total lot coverage of the lot to exceed the maximum lot coverages shown in the Tables below, subject to Subsection F.1.c, above.

Traditional Single-Family Residential Development Standards

Requirements	*Residential Zoning Districts*				
	AR-2	*RE-2*	*RE-4*	*LDR-5*	*MDR-11, MDR-18, MDR-25 & HDR-45*
Maximum Lot Coverage	30%	40%		50%	60%

Small Lot Traditional and Alley-Loaded Single-Family Residential Development Standards

Requirements	*Residential Zoning Districts*		
	LDR-5	*MDR-11*	*MDR-18, MDR-25 & HDR-45*
Maximum Lot Coverage	55%	60%	70%

Multiple-Family Residential Development Standards

Requirements	*Residential Zoning Districts*			
	MDR-11	*MDR-18*	*MDR-25*	*HDR- 45*
Maximum Project Coverage	60%			100%

4. Minimum Open Space. No ADU subject to this Subsection F may cause the total percentage of open space of the lot to fall below the minimum requirements specified below, subject to Subsection F.1.c, above.

a. *Small Lot Traditional and Alley-Loaded Development Projects, and Cluster Single-Family Development Projects.* Small lot traditional, small lot alley-loaded, and cluster single-family development projects that consist of more than 3 dwellings, shall devote a minimum of 20 percent of the project site to open space.

b. *Multiple-Family and Mixed-Use Development Projects.* Multiple-family development projects and the multiple-family residential portion of mixed-use development projects that consist of more than 3 dwellings, shall provide open space as follows:

Minimum Open Space Requirements for Multiple-Family and Mixed-Use Development Projects

Open Space Type	*Zoning Districts*		
	MDR-11 & MDR-18	*MDR-25*	*HDR-45*
Private Open Space	200 SF (40%)	150 SF (37.5%)	60 SF (20%)
Common Open Space	300 SF (60%)	250 SF (62.5%)	250 SF (80%)
Total Open Space	500 SF (100%)	400 SF (100%)	310 SF (100%)

5. Passageway. No passageway, as defined by Subsection C.9, above, is required for an ADU.

6. Off-Street Parking.

a. *Generally.* One off-street parking space is required for each ADU. The parking space may be provided in setback areas or as tandem parking, as defined by Subsection C.12, above.

b. *Exceptions.* No parking under Subsection F.7.a, above, is required in the following situations:

(1) The ADU is located within one-half mile walking distance of public transit, as defined in Subsection C.11, above.

(2) The ADU is located within an architecturally and historically significant historic district.

(3) The ADU is part of the proposed or existing primary residence, or an accessory structure under Subsection D.1.a, above.

(4) When on-street parking permits are required but not offered to the occupant of the ADU.

(5) When there is an established car share vehicle stop located within one block of the ADU.

(6) When the permit application to create an ADU is submitted with an application to create a new single-family or multiple-family dwelling on the same lot, provided that the ADU or the lot satisfies any other criteria listed in Subsections F.6.b(1) through F.6.b(5), above.

c. *No Replacement.* When a garage, carport, covered parking structure or uncovered parking space is demolished in conjunction with the construction of an ADU or converted to an ADU, those off-street parking spaces are not required to be replaced.

7. Architectural Requirements.

a. The materials and colors of the exterior walls, roof, and windows and doors must match the appearance and architectural design of those of the primary dwelling.

b. The roof slope must match that of the dominant roof slope of the primary dwelling. The dominant roof slope is the slope shared by the largest portion of the roof.

c. The exterior lighting must be limited to down-lights or as otherwise required by the City's Building or Fire Code.

d. The ADU must have an independent exterior entrance, apart from that of the primary dwelling.

e. The interior horizontal dimensions of an ADU must be at least 10 FT wide in every direction, with a minimum interior wall height of 7 FT.

f. Windows and doors of the ADU may not have a direct line of sight to an adjoining residential property. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line-of-sight.

g. All windows and doors in an ADU are less than 30 FT from a property line that is not a public right-of-way line must either be (for windows) clerestory with the bottom of the glass at least 6 FT above the finished floor, or (for windows and for doors) utilize frosted or obscure glass.

8. Landscape Requirements. A Landscape Plan shall be submitted to the City, which provides for evergreen landscape screening, to include trees, shrubs, and groundcovers that shall be planted, permanently irrigated, and fully maintained, and which is located between an ADU and adjacent parcels, and where an ADU impacts a front yard and/or is subject to public views from a public or private street. Evergreen landscape screening shall be provided as follows:

a. Minimum 15-gallon size screening shrubs shall be installed at every 5 linear feet of exterior building wall. Alternatively, a 6-FT high decorative masonry block wall may be constructed.

b. ADUs created by garage conversion, which results in the removal of the garage door, shall provide a minimum 3-FT wide foundation landscape planter for the full length of the wall wherein the garage door was removed, which shall be fully landscaped and irrigated, and permanently maintained.

c. All landscaping must be drought tolerant and California friendly.

d. Landscape and irrigation plans shall be prepared and submitted to the City for review and approval.

9. Historical Protections. An ADU that is on or within 600 feet of real property that is listed in the California Register of Historic Resources must be located so as to not be visible from any public right-of-way.

G. Fees. The following requirements apply to all ADUs and JADUs that are approved under Subsections D.1 or D.2, above.

1. Impact Fees.

a. No impact fee is required for an ADU that is less than 750 SF in size. For the purposes of this Subsection G.1, the term "impact fee" means a "fee" under the Mitigation Fee Act (Government Code Section 66000(b)) and a fee under the Quimby Act (Government Code Section 66477). "Impact fee" as used in this Section, does not include any connection fee or capacity charge for water or sewer service.

b. Any impact fee that is required for an ADU that is 750 SF or larger in size must be charged proportionately in relation to the square footage of the primary dwelling unit (e.g., the floor area of the ADU, divided by the floor area of the primary dwelling, times the typical fee amount charged for a new dwelling.)

2. Utility Fees.

a. If an ADU is constructed with a new single-family home, a separate utility connection directly between the ADU and the utility and payment of the normal connection fee and capacity charge for a new dwelling are required.

b. Except as described in subsection Error! Reference source not found., converted ADUs on a single-family lot that are created under subsection D.1.a above are not required to have a new or separate utility connection directly between the ADU and the utility. Nor is a connection fee or capacity charge required.

c. Except as described in subsection Error! Reference source not found., all ADUs that are not covered by subsection G.2.b require a new, separate utility connection directly between the ADU and the utility for any utility that is provided by the city. All utilities that are not provided by the city are subject to the connection and fee requirements of the utility provider.

(1) The connection is subject to a connection fee or capacity charge that is proportionate to the burden created by the ADU based on either the floor area or the number of drainage-fixture units (DFU) values, as defined by the Uniform Plumbing Code, upon the water or sewer system.

(2) The portion of the fee or charge that is charged by the city may not exceed the reasonable cost of providing this service.

H. Nonconforming Zoning Code Conditions, Building Code Violations, and Unpermitted Structures.

1. Generally. The City will not deny an ADU or JADU application due to a nonconforming zoning condition, building code violation, or unpermitted structure on the lot that does not present a threat to the public health and safety and that is not affected by the construction of the ADU or JADU.

2. Unpermitted ADUs constructed before 2020.

a. *Permit to Legalize.* As required by state law, the City may not deny a permit to legalize an existing, but unpermitted ADU or JADU that was constructed before January 1, 2020, if denial is based on either of the following grounds:

(1) The ADU or JADU violates applicable building standards; or

(2) The ADU or JADU does not comply with state ADU or JADU law or this ADU ordinance (Section 5.03.010).

b. *Exceptions.*

(1) Notwithstanding Subsection H.2.a, above the City may deny a permit to legalize an existing but unpermitted ADU or JADU that was constructed before January 1, 2020, if the City makes a finding that correcting a violation is necessary to comply with the standards specified in California Health and Safety Code section 17920.3.

(2) Subsection H.2.a, above does not apply to a building that is deemed to be substandard in accordance with California Health and Safety Code Section 17920.3.

I. Nonconforming ADUs and Discretionary Approval. Any proposed ADU or JADU that would otherwise be allowed under this section but that does not conform to the objective design or development standards set forth in Subsections A through H of this Section may be allowed by the City, subject to a Conditional Use Permit issued in accordance with the other provisions of this Development Code.

5.03.000: Purpose

The purpose of this Division is to provide operating, site planning and/or development standards for certain land uses allowed by Division 5.02 (Land Use) of this Development Code, and for activities and facilities that require special standards to mitigate their potential adverse impacts, thereby assuring a land use, activity, and/or facility of stable and desirable character, which is compatible with existing and future development and land uses in the vicinity, and protects the use and enjoyment of neighboring properties consistent with goals and policies of The Ontario Plan.

5.03.005: Applicability

A. The land uses, activities and facilities addressed by this Division shall be located in compliance with Division 5.02 (Land Use) of this Development Code.

B. The standards for specific uses, activities and facilities established by this Division shall supplement, and are required in addition to, the applicable development and subdivision regulations contained in Chapter 6.0 (Development and Subdivision Regulations) of this Development Code.

C. Each and every physical improvement required to be installed or constructed in conjunction with the establishment of a land use, activity or facility addressed by this Division, shall be completed prior to the commencement of the land use.

5.03.010: Accessory Dwelling Units

A. **Purpose.** The purpose of this Section is to allow and regulate accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) in compliance with Article 2 of Chapter 13 of Division 1 of Title 7 of the California Government Code ~~Sections 65852.2 and 65852.22~~.

B. **Effect of Conforming.** An ADU or JADU that conforms to the standards in this Section will not be:

1. Deemed to be inconsistent with the City's general plan and zoning designation for the lot on which the ADU or JADU is located.

2. Deemed to exceed the allowable density for the lot on which the ADU or JADU is located.

3. Considered in the application of any local ordinance, policy, or program to limit residential growth.

4. Required to correct a nonconforming zoning condition, as defined in Subsection C.7, below. This does not prevent the City from enforcing compliance with applicable building standards in accordance with Health and Safety Code Section 17980.12.

C. **Definitions.** As used in this Section, the words or phrases listed below shall have the meanings thereafter specified:

1. Accessory Dwelling Unit (ADU). An attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. An accessory dwelling unit also includes the following:

a. An efficiency unit, as defined by HSC Section 17958.1; and

b. A manufactured home, as defined by HSC Section 18007.

2. Accessory Structure. A structure that is accessory and incidental to a dwelling located on the same lot.

3. Complete Independent Living Facilities. Permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multiple-family dwelling is or will be situated.

4. Efficiency Kitchen. A kitchen that includes each of the following:

a. A cooking facility with appliances.

b. A food preparation counter and storage cabinets that are of a reasonable size in relation to the JADU.

5. Junior Accessory Dwelling Unit (JADU). A residential unit that:

a. Is no more than 500 SF in size;

b. Is contained entirely within an existing or proposed single-family structure. An enclosed use within the residence, such as an attached garage, is considered to be a part of and contained within the single-family structure;

c. Includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure;

d. If the unit does not include its own separate bathroom, then it contains an interior entrance to the main living area of the existing or proposed single-family structure in addition to an exterior entrance that is separate from the main entrance to the primary dwelling; and

e. It includes an efficiency kitchen, as defined in Subsection C.4, above.

6. Livable Space. A space in a dwelling intended for human habitation, including living, sleeping, eating, cooking, or sanitation.

~~6.~~7. Living Area. The interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

~~7.~~8. Nonconforming Zoning Condition. A physical improvement on a property that does not conform with current zoning standards.

~~8.~~9. Passageway. A pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.

~~9.~~10. Proposed Dwelling. A dwelling that is the subject of a permit application and that meets the requirements for permitting.

~~10.~~11. Public Transit. A location, including but not limited to a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

~~11.~~12. Tandem Parking. Two or more automobiles parked on a driveway or on any other location on a lot, lined up one behind the other.

D. Approvals. The following approvals apply to ADUs and JADUs under this Section:

1. Building Permit Only. If an ADU or JADU complies with each of the general requirements in subsection E below, it is allowed with only a building permit in the following scenarios:

a. *Converted on Single-Family Lot.* One ADU as described in this Subsection D.1.a and one JADU on a lot with a proposed or existing single-family dwelling on it, where the ADU or JADU:

(1) Is either: within the space of a proposed single-family dwelling; within the existing space of an existing single-family dwelling; or (in the case of and ADU only) within the existing space of an accessory structure, plus up to 150 additional SF if the expansion is limited to accommodating ingress and egress; and

(2) Has exterior access that is independent of that for the single-family dwelling; and

(3) Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building and fire codes; and

(4) The JADU complies with the requirements of Government Code Sections ~~65852.22~~66333 through 66339.

b. *Limited Detached on Single-Family Lot.* One detached, new-construction ADU on a lot with a proposed or existing single-family dwelling (in addition to any JADU that might otherwise be established on the lot under Subsection D.1.a, above), if the detached ADU satisfies each of the following limitations:

(1) The side- and rear-yard setbacks are at least 4 FT; and

(2) The total floor area is 800 SF or smaller; and

(3) The peak height above grade does not exceed the applicable height limit provided in Subsection E.2, below.

c. *Converted on Multiple-Family Lot.* One or more ADUs within portions of existing multiple-family dwelling structures that are not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages, if each converted ADU complies with state building standards for dwellings. Under this Subsection D.1.c,

at least one converted ADU is allowed within an existing multiple-family dwelling, up to a quantity equal to 25 percent of the existing multiple-family dwelling units.

d. *Limited Detached on Multiple-Family Lot.* No more than two detached ADUs on a lot that has an existing or proposed multiple-family dwelling, or up to 8 detached ADUs on a lot with and existing multiple-family dwelling, if each detached ADU satisfies ~~both~~all of the following ~~limitations~~:

(1) The side- and rear-yard setbacks are at least 4 FT. If the existing multiple-family dwelling has a rear or side yard setback of less than 4 FT, the City shall not require any modification to the multiple-family dwelling as a condition of approving the ADU; and

(2) The peak height above grade does not exceed the applicable height limit provided in Subsection E.2, below.

~~**(2)**~~**(3)** If the lot has an existing multiple-family dwelling, the quantity of detached ADUs does not exceed the number of primary dwelling units on the lot.

2. Process and Timing.

a. The City must approve or deny an application to create an ADU or JADU within 60 days from the date that the City receives a completed application. If the City has not approved or denied the completed application within 60 days, the application is deemed approved unless either:

(1) The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay, or

(2) When an application to create an ADU or JADU is submitted with a permit application to create a new single-family or multiple-family dwelling on the lot, the City may delay acting on the permit application for the ADU or JADU until the City acts on the permit application to create the new single-family or multiple-family dwelling, but the application to create the ADU or JADU will still be considered ministerially, without discretionary review or a hearing.

b. If the City denies application to create an ADU or JADU, the City must provide the applicant with comments that include, among other things, a list of all the defective or deficient items and a description of how the application may be remedied by the applicant. Notice of the denial and corresponding comments must be provided to the applicant within the 60-day time period established by Subsection D.3.b, above.

c. A demolition permit for a detached garage that is to be replaced with an ADU is reviewed with the application for the ADU and issued at the same time.

E. General ADU and JADU Requirements. The following requirements apply to all ADUs and JADUs that are approved under Subsections D.1 or D.2, above:

1. Zoning.

a. An ADU ~~or JADU~~ subject only to a building permit under Subsection D.1, above, may be created on a lot in a residential or mixed-use zoning district.

b. An ADU ~~or JADU~~ subject to an ADU permit under Subsection D.2, above, may be created on a lot that is zoned to allow single-family dwelling residential use or multiple-family dwelling residential use.

~~b.~~c. In accordance with Government Code section 66333(a), a JADU may only be created on a lot zoned for single-family residences.

2. Height.

a. Except as otherwise provided by Subsections E.2.b and E.2.c, below, a detached ADU created on a lot with an existing or proposed single-family or multiple-family dwelling unit may not exceed 16 FT in height.

b. A detached ADU may be up to 18 FT in height if it is created on a lot with an existing or proposed single-family or multiple-family dwelling unit that is located within one-half mile walking distance of a major transit stop or a high quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code, and the ADU may be up to two additional feet in height (for a maximum of 20 FT) if necessary to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.

c. A detached ADU created on a lot with an existing or proposed multiple-family dwelling that has more than one story may not exceed 18 FT in height.

d. An ADU that is attached to the primary dwelling may not exceed 25 FT in height or the height limitation imposed by the underlying zone that applies to the primary dwelling, whichever is lower. Notwithstanding the foregoing, ADUs subject to this Subsection E.2.d may not exceed two stories.

e. For purposes of this subsection E.2, height is measured from existing legal grade or the level of the lowest floor, whichever is lower, to the peak of the structure.

3. Fire Sprinklers.

a. Fire sprinklers are required in an ADU if sprinklers are required in the primary residence.

b. The construction of an ADU does not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

4. Rental Term. No ADU or JADU may be rented for a term that is shorter than 30 days. This prohibition applies regardless of when the ADU or JADU was created.

5. No Separate Sale or Conveyance. An ADU or JADU may be rented~~; however~~ but, except as provided in Government Code section 66341, no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all of the dwellings (in the case of a multiple-family lot)~~, except as otherwise provided in Government Code Section 65852.26~~.

6. Septic System. If the ADU or JADU will connect to an onsite wastewater-treatment system, the owner must include with the application a percolation test completed within the last 5 years or, if the percolation test has been recertified, within the last 10 years.

7. Owner Occupancy.

a. An ADU created under this section on or~~permitted~~ after January 1, 2020~~, but before January 1, 2025, is~~ are not subject to an~~the~~ owner-occupancy requirement ~~that was in place when the ADU was created~~.

~~**b.** Unless applicable law requires otherwise, all ADUs that are permitted on or after January 1, 2025 are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property as the person's legal domicile and permanent residence.~~

~~**c.**~~**b.** As required by state law, all JADUs are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property, in either the primary dwelling or JADU, as the person's legal domicile and permanent residence. However, the owner-occupancy requirement in this Subsection E.7.b~~c~~ does not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.

8. "Rent~~Income~~ Reporting. In order to facilitate the City's obligation to identify adequate sites for housing in accordance with Government Code Sections 65583.1 and 66330~~65852.2~~, the following requirements must be satisfied:

a. With the building-permit application, the applicant must provide the City with an estimate of the projected annualized rent that will be charged for the ADU or JADU.

b. Within 90 days after each January 1~~yearly anniversary of the~~following issuance of the building permit, the owner must report the actual rent charged for the ADU or JADU during the prior year. If the City does not receive the report within the 90-day period, the owner is in violation of this Code, and the City may send the owner a notice of violation and allow the owner another 30 days to submit the report. If the owner fails to submit the report within the 30-day period, the City may enforce this provision in accordance with applicable law.

9. Building and Safety.

a. *Must Comply with Building Code.* Subject to Subsection E.10.b, below, all ADUs and JADUs must comply with all local building code requirements.

b. *No Change of Occupancy.* Construction of an ADU does not constitute a Group R occupancy change under the local building code, as described in Section 310 of the California Building Code, unless the building official or Community Improvement~~Code Enforcement~~ Division officer makes a written finding based on substantial evidence in the record that the construction of the ADU could have a specific, adverse impact on public health and safety. Nothing in this Subsection E.10.b prevents the City from changing the occupancy code of a space that was uninhabitable space or that was only permitted for nonresidential use and was subsequently converted for residential use in accordance with this Section.

F. Specific ADU Requirements. The following requirements apply only to ADUs that require an ADU permit under Subsection D.2, above.

1. Maximum Size.

a. The maximum size of a detached or attached ADU subject to this Subsection F is 850 SF for a studio or one-bedroom unit and 1,000 SF for a unit with two or more bedrooms.

b. An attached ADU that is created on a lot with an existing primary dwelling is further limited to 50 percent of the floor area of the existing primary dwelling.

c. Application of other development standards in this Subsection F, such as lot coverage, might further limit the size of the ADU, but~~; nevertheless,~~ no application of the percent-based size limit in Subsection F.1.b, above, or front setback, lot coverage limit, or open-space requirement may require the ADU to be less than 800 SF.

2. Building Setbacks.

a. Subject to Subsection F.1.c, above, an ADU that is subject to this Subsection F shall maintain a minimum front yard setback of 30 FT from arterial street rights-of-way and 20 FT from all collector and local street rights-of-way.

b. An ADU that is subject to this Subsection F must conform to 4-FT side yard and rear yard setbacks.

c. No setback is required for an ADU that is subject to this Subsection F if the ADU is constructed in the same location and to the same dimensions as an existing structure.

3. Lot Coverage. No ADU subject to this Subsection F may cause the total lot coverage of the lot to exceed the maximum lot coverages shown in the Tables below, subject to Subsection F.1.c, above.

Traditional Single-Family Residential Development Standards

Requirements	*Residential Zoning Districts*				
	AR-2	*RE-2*	*RE-4*	*LDR-5*	*MDR-11, MDR-18, MDR-25 & HDR-45*
Maximum Lot Coverage	30%	40%		50%	60%

Small Lot Traditional and Alley-Loaded Single-Family Residential Development Standards

Requirements	*Residential Zoning Districts*		
	LDR-5	*MDR-11*	*MDR-18, MDR-25 & HDR-45*
Maximum Lot Coverage	55%	60%	70%

Multiple-Family Residential Development Standards

Requirements	*Residential Zoning Districts*			
	MDR-11	*MDR-18*	*MDR-25*	*HDR- 45*
Maximum Project Coverage	60%			100%

4. Minimum Open Space. No ADU subject to this Subsection F may cause the total percentage of open space of the lot to fall below the minimum requirements specified below, subject to Subsection F.1.c, above.

a. *Small Lot Traditional and Alley-Loaded Development Projects, and Cluster Single-Family Development Projects.* Small lot traditional, small lot alley-loaded, and cluster single-family development projects that consist of more than 3 dwellings, shall devote a minimum of 20 percent of the project site to open space.

b. *Multiple-Family and Mixed-Use Development Projects.* Multiple-family development projects and the multiple-family residential portion of mixed-use development projects that consist of more than 3 dwellings, shall provide open space as follows:

Minimum Open Space Requirements for Multiple-Family and Mixed-Use Development Projects

Open Space Type	Zoning Districts		
	MDR-11 & MDR-18	MDR-25	HDR-45
Private Open Space	200 SF (40%)	150 SF (37.5%)	60 SF (20%)
Common Open Space	300 SF (60%)	250 SF (62.5%)	250 SF (80%)
Total Open Space	500 SF (100%)	400 SF (100%)	310 SF (100%)

5. Passageway. No passageway, as defined by Subsection C.~~8~~9, above, is required for an ADU.

6. Off-Street Parking.

a. *Generally.* One off-street parking space is required for each ADU. The parking space may be provided in setback areas or as tandem parking, as defined by Subsection C.~~11~~12, above.

b. *Exceptions.* No parking under Subsection F.7.a, above, is required in the following situations:

(1) The ADU is located within one-half mile walking distance of public transit, as defined in Subsection C.~~10~~11, above.

(2) The ADU is located within an architecturally and historically significant historic district.

(3) The ADU is part of the proposed or existing primary residence, or an accessory structure under Subsection D.1.a, above.

(4) When on-street parking permits are required but not offered to the occupant of the ADU.

(5) When there is an established car share vehicle stop located within one block of the ADU.

(6) When the permit application to create an ADU is submitted with an application to create a new single-family or multiple-family dwelling on the same lot, provided that the ADU or the lot satisfies any other criteria listed in Subsections F.6.b(1) through F.6.b(5), above.

c. *No Replacement.* When a garage, carport, ~~or~~ covered parking structure or uncovered parking space is demolished in conjunction with the construction of an ADU or converted to an ADU, those off-street parking spaces are not required to be replaced.

7. Architectural Requirements.

a. The materials and colors of the exterior walls, roof, and windows and doors must match the appearance and architectural design of those of the primary dwelling.

b. The roof slope must match that of the dominant roof slope of the primary dwelling. The dominant roof slope is the slope shared by the largest portion of the roof.

c. The exterior lighting must be limited to down-lights or as otherwise required by the City's Building or Fire Code.

d. The ADU must have an independent exterior entrance, apart from that of the primary dwelling.

e. The interior horizontal dimensions of an ADU must be at least 10 FT wide in every direction, with a minimum interior wall height of 7 FT.

f. Windows and doors of the ADU may not have a direct line of sight to an adjoining residential property. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line-of-sight.

g. All windows and doors in an ADU are less than 30 FT from a property line that is not a public right-of-way line must either be (for windows) clerestory with the bottom of the glass at least 6 FT above the finished floor, or (for windows and for doors) utilize frosted or obscure glass.

8. Landscape Requirements. A Landscape Plan shall be submitted to the City, which provides for evergreen landscape screening, to include trees, shrubs, and groundcovers that shall be planted, permanently irrigated, and fully maintained, and which is located between an ADU and adjacent parcels, and where an ADU impacts a front yard and/or is subject to public views from a public or private street. Evergreen landscape screening shall be provided as follows:

a. Minimum 15-gallon size screening shrubs shall be installed at every 5 linear feet of exterior building wall. Alternatively, a 6-FT high decorative masonry block wall may be constructed.

b. ADUs created by garage conversion, which results in the removal of the garage door, shall provide a minimum 3-FT wide foundation landscape planter for the full length of the wall wherein the garage door was removed, which shall be fully landscaped and irrigated, and permanently maintained.

c. All landscaping must be drought tolerant and California friendly.

d. Landscape and irrigation plans shall be prepared and submitted to the City for review and approval.

9. Historical Protections. An ADU that is on or within 600 feet of real property that is listed in the California Register of Historic Resources must be located so as to not be visible from any public right-of-way.

G. Fees. The following requirements apply to all ADUs and JADUs that are approved under Subsections D.1 or D.2, above.

1. Impact Fees.

a. No impact fee is required for an ADU that is less than 750 SF in size. For the purposes of this Subsection G.1, the term "impact fee" means a "fee" under the Mitigation Fee Act (Government Code Section 66000(b)) and a fee under the Quimby Act (Government Code Section 66477). "Impact fee" as used in this Section, does not include any connection fee or capacity charge for water or sewer service.

b. Any impact fee that is required for an ADU that is 750 SF or larger in size must be charged proportionately in relation to the square footage of the primary dwelling unit (e.g., the floor area of the ADU, divided by the floor area of the primary dwelling, times the typical fee amount charged for a new dwelling.)

2. Utility Fees.

a. If an ADU is constructed with a new single-family home, a separate utility connection directly between the ADU and the utility and payment of the normal connection fee and capacity charge for a new dwelling are required~~ADUs and JADUs shall not be required to have a new or separate utility connection directly between the ADU or JADU and the utility, nor shall a connection fee or capacity charge be required~~.

b. Except as described in subsection (G)(2)(a), converted ADUs on a single-family lot that are created under subsection (D)(1)(a) above are not required to have a new or separate utility connection directly between the ADU and the utility. Nor is a connection fee or capacity charge required.

c. Except as described in subsection (G)(2)(a), all ADUs that are not covered by subsection (G)(2)(b) require a new, separate utility connection directly between the ADU and the utility for any utility that is provided by the city. All utilities that are not provided by the city are subject to the connection and fee requirements of the utility provider.

(1) The connection is subject to a connection fee or capacity charge that is proportionate to the burden created by the ADU based on either the floor area or the number of drainage-fixture units (DFU) values, as defined by the Uniform Plumbing Code, upon the water or sewer system.

~~(1)~~(2) The portion of the fee or charge that is charged by the city may not exceed the reasonable cost of providing this service.

H. Nonconforming Zoning Code Conditions, Building Code Violations, and Unpermitted Structures.

1. Generally. The City will not deny an ADU or JADU application due to a nonconforming zoning condition, building code violation, or unpermitted structure on the lot that

does not present a threat to the public health and safety and that is not affected by the construction of the ADU or JADU.

2. Unpermitted ADUs constructed before 2020~~2018~~.

a. *Permit to Legalize.* As required by state law, the City may not deny a permit to legalize an existing, but unpermitted ADU or JADU that was constructed before January 1, 2020~~2018~~, if denial is based on either of the following grounds:

(1) The ADU or JADU violates applicable building standards; or

(2) The ADU or JADU does not comply with state ADU or JADU law ~~(Government Code Section 65852.2)~~ or this ADU ordinance (Section 5.03.010).

b. *Exceptions.*

(1) Notwithstanding Subsection H.2.a, above the City may deny a permit to legalize an existing but unpermitted ADU or JADU that was constructed before January -1, 2020~~2018~~, if the City makes a finding that correcting a violation is necessary to ~~protect the health and safety of the public or of occupants of the structure~~comply with the standards specified in California Health and Safety Code section 17920.3.

(2) Subsection H.2.a, above does not apply to a building that is deemed to be substandard in accordance with California Health and Safety Code Section 17920.3.

I. Nonconforming ADUs and Discretionary Approval. Any proposed ADU or JADU that would otherwise be allowed under this section but that does not conform to the objective design or development standards set forth in Subsections A through H of this Section may be allowed by the City, subject to a Conditional Use Permit issued in accordance with the other provisions of this Development Code.

5.03.011: Accessory Residential Structures

A. Purpose. The purpose of this Section is to establish standards for the construction and use of Accessory Residential Structures (other than Accessory Dwelling Units allowed pursuant to Section 5.03.010 of this Development Code) in conjunction with existing single-family dwellings located within single-family or multiple-family zoning districts. (Note: The construction and use of Accessory Residential Structures in conjunction with existing multiple-family dwellings shall be subject to the development standards applicable to the primary multiple-family dwellings.)

B. Applicability. For purposes of this Section, the herein established development standards shall apply to Accessory Residential Structures such as garages, carports, guesthouses, storage sheds, pool houses, recreation rooms, etc., which are incidental or subordinate to the primary dwelling.

C. Definitions. As used in this Section, the words or phrases listed below shall have the meanings thereafter specified:

CITY OF ONTARIO *Agenda Report* **February 18, 2025**	**SECTION:** **PUBLIC HEARINGS**
Department: Economic Development Prepared By: Thailin Martin Staff Member Presenting: Jennifer McLain Hiramoto, Economic Development Director Reviewed By: Charity Hernandez Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 12

SUBJECT: **A PUBLIC HEARING TO CONSIDER APPROVAL OF A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND ONTARIO RANCH HOTELS, LLC. FOR THE DEVELOPMENT OF A HOTEL FEATURING 227-GUEST ROOMS AT THE SOUTHEAST CORNER OF EAST RIVERSIDE DRIVE AND ONTARIO AVENUE; MAKING CERTAIN CEQA FINDINGS IN CONNECTION THEREWITH**

RECOMMENDATION: That the City Council ("City") consider and:

A. Adopt a Resolution approving pursuant to the Certified Final Environmental Impact Report for the Ontario Regional Sports Complex (SCH No. 2023110328) the Disposition and Development Agreement ("Agreement") between the City of Ontario and Ontario Ranch Hotels, LLC. ("Developer") (on file with the Records Management Department) and approving the acquisition of real property for road improvements needed at the corner of East Riverside Drive and Vineyard Avenue.
B. Authorize the City Manager, or his designee, to sign all documents necessary to implement 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

FISCAL IMPACT: Developer will purchase 2.368 acres of real property at the fair market value of $1,444,594. In addition, the developer will convey to the City certain easement right-of-way interests and a temporary construction easement located at the south westerly corner of Riverside Drive and Vineyard Avenue, consisting of approximately 25,489 square feet area, with an appraised value of $458,802.00, ($18/SF). Easement value will be credited against the $1,444,594 purchase price. As a result, the net value of $985,792 in land sale proceeds will be deposited in the Capital Projects – Measure Q Fund.

BACKGROUND & ANALYSIS: The City of Ontario ("City") is in the process of developing an approximately 200 acre state-of-the-art regional spots complex to meet the region's growing demand for sports recreation amenities. As the first phase of development is underway with the construction of a Single-A Minor League Baseball stadium, a retail component is running parallel. The City currently owns real property located at the southeast corner of East Riverside Drive and Ontario Avenue, consisting of approximately 2.3688 acres.

The Development will result in the construction of a luxury 5-star hotel featuring 227 guest rooms ("keys") within a four-story building designed to deliver an upscale hospitality experience. Key components of the project include a restaurant and bar, frozen yogurt shop, and conference room/ballroom, as well as rooftop lounge amenities. The Developer will also be required to build all associated on-site and off-site improvements, including but not limited to all hardscape and landscaping.

The Developer is Ontario Ranch Hotels, LLC, located in Watsonville, California. The Developer has developed, owned and managed residential, mixed-use, and office/commercial projects at various locations throughout Southern California. The estimated total development construction cost is $60,000,000. The Development will be designed with the highest level of architectural features and quality to provide exceptional benefits to the City and to serve as a catalyst for future development in the Sports Empire District area. The site plan has been prepared to be consistent with the development and design guidelines. As part of the terms and conditions of the Disposition and Development Agreement, the Developer will be conveying to the City an easement for right-of-way purposes and a temporary construction easement located at the southwest corner of Riverside Drive and Vineyard Avenue, consisting of an approximately 25,489 square feet area.

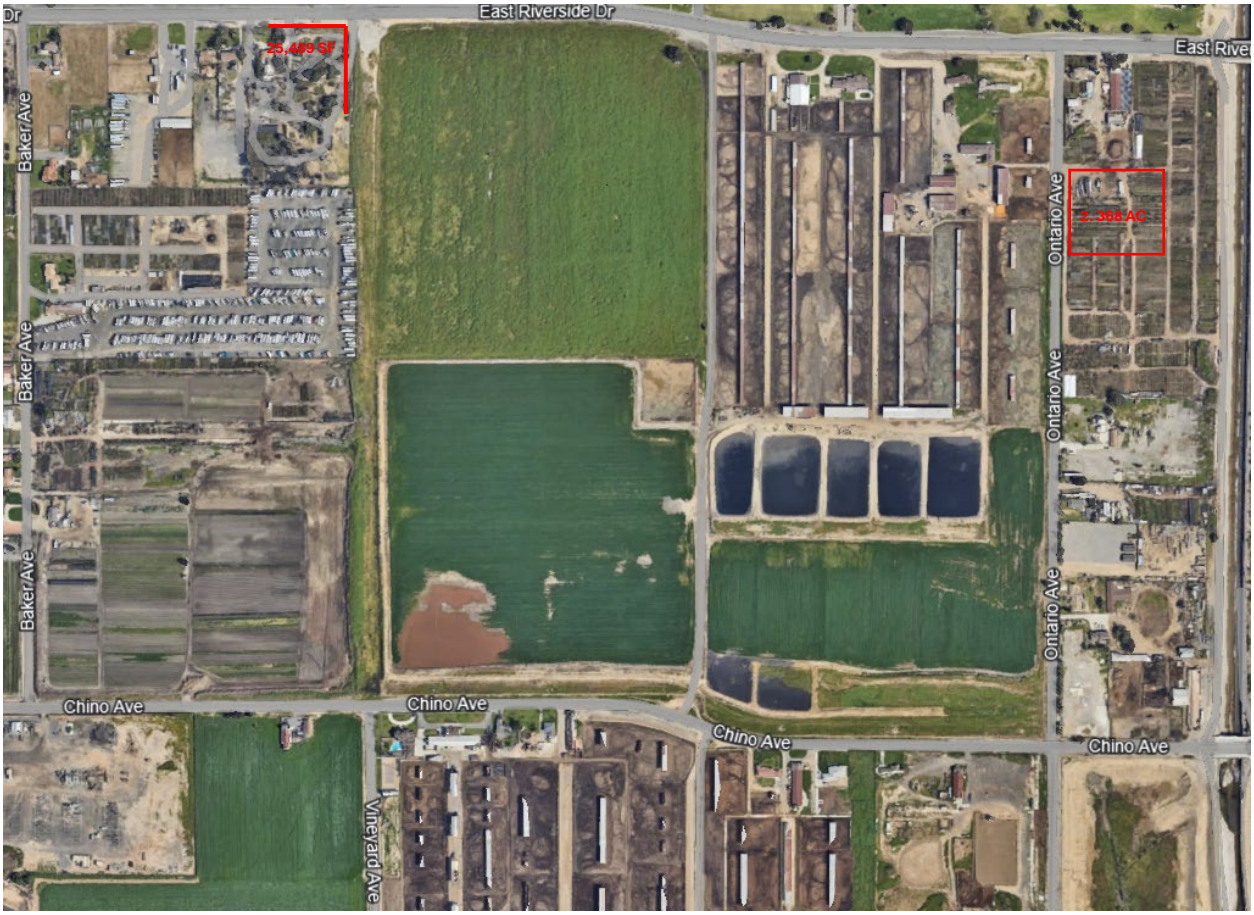
The Final Environmental Impact Report (FEIR) for the Ontario Regional Sports Complex was certified on July 16, 2024, (SCH No. 2023110328), by the City Council, which considered the development of the property subject to the Disposition and Development Agreement, adopted environmental findings, and a Statement of Overriding Considerations, approved the Mitigation Monitoring Reporting Program, and the Project.

The Development offers an opportunity to continue Ontario's efforts to engage economic generating opportunities, which will in turn bring more visitors and pedestrians to create an active Sports Empire Stadium Village. The Development will provide for elimination of blighting conditions, develop the site into its highest and best use, generate property tax revenue, produce new jobs (both permanent and temporary), stimulate economic vitality, and continue to inspire additional investment within the Sports Empire Stadium Village. Staff recommends approval of the Disposition and Development Agreement.

EXHIBIT "A"

SOUTHEAST CORNER OF EAST RIVERSIDE DRIVE AND ONTARIO AVENUE (2.368 AC)

SOUTHWEST CORNER OF EAST RIVERSIDE DRIVE AND VINEYARD AVENUE (25,489 SF)



RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING, PURSUANT TO THE CERTIFIED FINAL ENVIRONMENTAL IMPACT REPORT FOR THE ONTARIO REGIONAL SPORTS COMPLEX (SCH NO. 2023110328), A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY AND ONTARIO RANCH HOTELS, LLC FOR THE DEVELOPMENT OF CERTAIN REAL PROPERTY LOCATED ON THE SOUTHEAST CORNER OF EAST RIVERSIDE DRIVE AND ONTARIO AVENUE, ONTARIO, CALIFORNIA (PORTION OF APN 0218-111-12-0000); MAKING CERTAIN CEQA FINDINGS IN CONNECTION THEREWITH.

WHEREAS, the City of Ontario ("City") currently owns in fee certain real property located at the southeast corner of East Riverside Drive and Ontario Ave, in the City of Ontario, County of San Bernardino, State of California, consisting of approximately 5.5 acres, identified with Assessor's Parcel Number (APN) 0218-111-12-0000 (the "City Land"); and

WHEREAS, pursuant to the California Environmental Quality Act (Public Resource Code §§ 21000 et seq.) ("CEQA"), and the State CEQA Guidelines (14 Cal. Code Regs. §§ 15000 et seq.) the City previously determined that an Environmental Impact Report ("EIR") be prepared pursuant to CEQA in order to analyze all potential adverse environmental impacts of the Ontario Regional Sports Complex ("ORSC"); and

WHEREAS, the City prepared and certified the Final EIR ("FEIR") in July 16, 2024, for the ORSC (SCH No. 2023110328) and Mitigation, Monitoring and Reporting Program ("MMRP") consisting of comments received during the 45-day public review and comment period on the Draft FEIR, written responses to those comments, and revisions and errata to the Draft FEIR. For the purposes of this Resolution, the "FEIR" shall refer to the Draft FEIR, as revised by the Final FEIR's errata section, together with the other sections of the Final FEIR; and

WHEREAS, the City and Ontario Ranch Hotels, LLC, a California limited liability company ("Developer") have been in exclusive negotiations regarding the acquisition and development of a portion of the City Land by Developer, which consists of an approximately 2.3688 acres area, more particularly legally described in Exhibit A attached to this Resolution and incorporated herein by this reference (the "Property") to develop and construct a hotel featuring 227 guest rooms within a four-story building, including a restaurant and bar, frozen yogurt shop, conference room and ballroom, rooftop lounge amenities, certain on-site and off-site improvements, and utility connections (the "Project"); and

WHEREAS, the City and Developer have negotiated a Disposition and Development Agreement (the "Agreement"), a copy of which is attached to this Resolution as Exhibit B and which provides for the sale of the Property to Developer at

consideration which is at fair market value at its highest and best use, and binds Developer to construct the Project, subject to all required approvals and environmental compliance, in a timely manner, and in accordance with the terms therein; and

WHEREAS, the Developer's proposed acquisition of the Property and subsequent construction and completion of the Project on the Property pursuant to the terms of this Agreement is in the best interest of the City and the health, safety and welfare of the City's taxpayers and residents and is in accordance with the public purposes set forth in applicable law. Implementation of this Agreement will further the goals and objectives of the City's general plan by: (i) strengthening the City's land use and social structure, (ii) alleviating economic and physical blight on the Property and in the surrounding community, (iii) generate property tax revenue, (iv) produce new jobs, (v) stimulate economic vitality and (vi) continue to inspire additional investment within the Ontario Sports Empire; and

NOW, THEREFORE, THE CITY COUNCIL FOR THE CITY OF ONTARIO DOES HEREBY RESOLVE AND DECLARE AS FOLLOWS:

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

SECTION 2. **Findings.** The City Council finds that the sale and development of the Property pursuant to the Agreement will further the goals and purposes of the City, and is in the common interest of the City and its residents.

SECTION 3. **Approval of Agreement.** The City Council hereby approves the Agreement in substantially the form attached hereto as Exhibit B, subject to any non-substantive revisions which do not increase the City's liability and are approved by the City Attorney, and authorizes the City Manager to sign and enter into the Agreement and perform the obligations of the City under the Agreement.

SECTION 4. **CEQA.** As the decision-making body for the Agreement, City Council has reviewed and considered the previously certified FEIR, any oral or written comments received, and the administrative record prior to making any decision on the Agreement. The Council finds that the FEIR contains a complete and accurate reporting of all of the environmental impacts associated with the Agreement.

SECTION 5. **Findings on the Necessity for a Subsequent or Supplemental Environmental Impact Report.** Based on the substantial evidence set forth in the record, including but not limited to, the previously certified FEIR, and all related information presented to the City Council, the Council finds, pursuant to State CEQA Guidelines Section 15164 that the preparation of a subsequent or supplemental EIR is not required for the Agreement.

SECTION 6. **Findings on Environmental Impacts.** Having considered the administrative record, the previously certified FEIR and all written and oral evidence

presented to the City Council, the Council finds that all environmental impacts of the Agreement have been addressed within the FEIR. The City Council finds that no new or additional mitigation measures or alternatives are required. The Council further finds that there is no substantial evidence in the administrative record that the Agreement may result in any significant environmental impacts beyond those analyzed in the FEIR.

SECTION 7. **Notice of Determination.** The Executive Director, or designee, is hereby directed to file a Notice of Determination for the Agreement under CEQA.

SECTION 8. **Severability.** If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City declares that the City would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

SECTION 9. **Effective Date.** This Resolution shall become effective immediately upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 18th day of February, 2025.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2025- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held February 18, 2025 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2025- duly passed and adopted by the Ontario City Council at their regular meeting held February 18, 2025.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT "A"
Legal Description of the Property

EXHIBIT "A"

ALL THAT PORTION OF LOT 2, BLOCK 1 OF THE MOIST BELT TRACT IN THE CITY OF ONTARIO, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 12, PAGE 45 OF MAPS, RECORDS OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 2;

THENCE SOUTH 89°24'44" EAST ALONG THE NORTHERLY LINE OF SAID LOT 2, A DISTANCE OF 18.35 FEET TO THE PROLONGATION OF THE WESTERLY LINE OF SAID LOT 2;

THENCE SOUTH 00°02'36" WEST ALONG SAID PROLONGATION AND THE WESTERLY LINE OF SAID LOT 2, A DISTANCE OF 284.47 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID WESTERLY LINE SOUTH 00°02'36" WEST, A DISTANCE OF 280.63 FEET;

THENCE SOUTH 45°00'12" EAST, A DISTANCE OF 18.40 FEET;

THENCE SOUTH 90°00'00" EAST, A DISTANCE OF 341.02 FEET;

THENCE NORTH 00°02'31" WEST, A DISTANCE OF 290.09 FEET;

THENCE NORTH 89°25'33" WEST, A DISTANCE OF 353.63 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 2.3688 ACRES, MORE OR LESS.

SEE EXHIBIT "B" ATTACHED HERETO AND MORE A PART HEREOF.

BLACK GOLD SURVEYING, INC.
PREPARED BY ME OR UNDER MY SUPERVISION

1/7/2025
Scott Sturm, P.L.S. 8549 Date



EXHIBIT “B”

Disposition and Development Agreement

(Portion of APN 0218-111-12-0000)

SUMMARY REPORT PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 52200 – 52201 REGARDING A DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND Ontario Ranch Hotels, LLC.

The following Summary Report has been prepared pursuant to Sections 52200 - 52201 of the California Government Code. The report sets forth certain details of the proposed Disposition and Development Agreement (Agreement) between the City of Ontario (City) and Ontario Ranch Hotels, LLC. (Developer). The site is approximately 2.368 acres located at the southeast corner of East Riverside Drive and Ontario Avenue in the City of Ontario, California (Site).

The Site's current land use is Hospitality. The project would consist of the development of a luxury 5-star hotel featuring 227 guest rooms ("keys") within a four-story building designed to deliver an upscale hospitality experience. Key components of the project include a restaurant and bar, frozen yogurt shop, and conference room/ballroom, as well as a rooftop lounge amenities (Project).

BACKGROUND STATEMENT

The following Summary Report is based upon information contained within the Agreement, and is organized into the following six sections:

I. **Terms of Agreement:** This section includes a description of the project; and the obligations imposed on the City and the Developer by the Agreement.

II. **Cost of the Agreement to the City:** This section details the total cost to the City associated with implementing the Agreement.

III. **Estimated Value of the Interests to be Conveyed Determined at the Highest UsePermitted Under the General Plan:** This section estimates the value of the interests to be conveyed determined at the highest use permitted under the existing zoning and the requirements imposed by the General Plan.

IV. **Estimated Fair Market Value of the Interest to be Conveyed:** This section summarized the valuation estimate for the City Property based on the required use.

V. **Consideration Received:** This section describes the compensation to be

received by the City.

VI. **Creation of Economic Opportunity:** This section describes the how the Project will asset in the creation of economic opportunity.

This Summary Report and the Agreement are to be made available for public inspection prior to the approval of the Agreement.

I. TERMS OF THE AGREEMENT

A. Project Description

The Site is located at the southeast corner of East Riverside Drive and Ontario Avenue and the Project will consist of the development of a luxury 5-star hotel featuring 227 guest rooms ("keys") within a four-story building designed to deliver an upscale hospitality experience

The Developer will also be required to build all associated on-site and off-site improvements, including but not limited to all hardscape and landscaping.

B. City Responsibilities

The Agreement requires the City to accept the following responsibilities:

1. The City must sell the City Property to the Developer for $1,444,593.50.

C. Developer Responsibilities

The Agreement imposes the following responsibilities on the Developer:

1. The Developer must accept conveyance of the City Property from the City under the terms of the Agreement.

2. The Developer must develop Project under the terms of the Agreement.

II. COST OF THE AGREEMENT TO THE CITY

The City has owned the subject property for over one (1) year. The City incurred the cost of preparing the necessary agreements to facilitate the disposition and development of the subject land parcel.

Ill. ESTIMATED VALUE OF THE INTERESTS TO BE CONVEYED DETERMINED ATTHE HIGHEST USE PERMITTED UNDER THE REDEVELOPMENT PLAN

Section 52201 of the California Government Code requires the City to identify the value of the interests being conveyed at the highest use allowed by the Site's zoning and the

requirements imposed by the General Plan.

Pursuant to an appraisal prepared by Thompson & Thompson Real Estate Valuation and Consulting, Inc. for the subject property, the appraiser arrived at a $14.00 per square foot value. The value concludes a stand-alone site with a highest and best use assembled with adjacent land coupled with the Developer's overall project costs of $60 million. The proposed new development costs exceed the current market value of the Property by $1,444,593.50.

IV. ESTIMATED REUSE VALUE OF THE INTERESTS TO BE CONVEYED

As discussed above, the property is being conveyed to the Developer at the appraised price of $14.00 per square foot, with developer improvement costs estimated at $60 million, the estimated reuse value of the interests to be conveyed are significantly higher than present fair market value. Once conveyed, and then developed, the Project will generate increased property tax revenues, Transient Occupancy Tax (TOT), and other tax revenues for which the City will receive its share.

V. CONSIDERATION RECEIVED AND COMPARISON WITH THE ESTABLISHED VALUE OF THE SITE

Under the Agreement, the Developer is making a significant investment in the Ontario Sports Empire District which will not only generate new jobs but also raise property taxes for which the City will receive its share of property tax revenues generated by the Project.

VI. CREATION OF ECONOMIC OPPORTUNITY

Implementation of the Agreement helps to remove blighting influences within the area by improving the physical appearance of the area. The Site currently includes a vacant land. In its current condition and use, the site is attractive to vandalism and illegal dumping. This will be removed and replaced by a new modern Project.

The proposed development would fulfill goals and objectives defined in the City's adopted General Plan and create economic opportunity in the following ways:

1. The proposed project would consist of the development of a luxury 5-star hotel featuring 227 guest rooms ("keys") within a four-story building designed to deliver an upscale hospitality experience. Key components of the project include a restaurant and bar, frozen yogurt shop, and conference room/ballroom, as well as rooftop lounge amenities (Project). The Developer will also be required to build all associated on-site and off-site improvements, including but not limited to all hardscape and landscaping.

2. The proposed project will provide for elimination of blighting conditions, develop the

site into its highest and best use, generate property tax revenue, produce new jobs (both permanent and temporary), stimulate economic vitality, and continue to inspire additional investment within the Ontario Sports Empire.

DISPOSITION AND DEVELOPMENT AGREEMENT
(SPORTS EMPIRE HOTEL)

between

THE CITY OF ONTARIO
a California municipal corporation

and

ONTARIO RANCH HOTELS LLC
a California limited liability company

This **DISPOSITION AND DEVELOPMENT AGREEMENT (SPORTS EMPIRE VILLAGE HOTEL)** ("**Agreement**") is dated as of February 18, 2025 ("**Date of Agreement**"), for reference purposes only, and is entered into by and between the City of Ontario, a California municipal corporation ("**City**") and Ontario Ranch Hotels LLC, a California limited liability company ("**Developer**"). The City and the Developer are sometimes referred to in this Agreement, each individually, as a "**Party**," or collectively, as the "**Parties**."

RECITALS

This Agreement is entered into with reference to the following recitals of fact ("**Recitals**") that City and Developer believe to be true as of the Effective Date of this Agreement:

A. The City is the owner of that certain real property located southeast corner of East Riverside Drive and Ontario Avenue, consisting of approximately 5.5 acres of land, identified with Assessor's Parcel Number 0218-111-12-0000 in the City of Ontario, County of San Bernardino, State of California ("City Land").

B. The Developer's proposed acquisition of a portion of the City Land, consisting of approximately 103,185.25 square feet (2.3688 acres), and more particularly described and depicted in Exhibit A to this Agreement, attached hereto and incorporated herein by this reference (the "**Property**") and subsequent construction and completion of the Project (as defined in Section 6) on the Property pursuant to the terms of this Agreement is in the best interest of the City and the health, safety and welfare of the City's taxpayers and residents and is in accordance with the public purposes set forth in applicable law. Implementation of this Agreement will further the goals and objectives of the City's general plan by: (i) strengthening the City's land use and social structure, and (ii) alleviating economic and physical blight on the Property and in the surrounding community.

C. The City desires to sell the Property to the Developer for consideration and for the development of the Project and the Developer desires to purchase the Property from the City for the same purpose.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by City and Developer, the Parties agree as follows:

TERMS AND CONDITIONS

ARTICLE I

DEFINITIONS; REPRESENTATIONS AND WARRANTIES; EFFECTIVE DATE

1.1 Definitions. All initially capitalized terms not otherwise defined in this Agreement shall have the following meanings:

1.1.1 "**Additional Insureds**" has the meaning ascribed to such term in Section 5.9.

1.1.2 **"Affiliate"** means and refers to any person or entity, directly or indirectly, Controlling or Controlled by or under common Control with the Developer, whether by direct or indirect ownership of equity interests, by contract or otherwise.

1.1.3 "**CEQA**" means the California Environmental Quality Act, Public Resources Code Sections 21000, et seq.

1.1.4 "**Certificate of Completion**" means the written certification of City that the construction of the Project has been completed in compliance with the terms and conditions of this Agreement, substantially in the form of Exhibit G attached to this Agreement.

1.1.5 "**City**" means the City of Ontario, California, a California municipal corporation.

1.1.6 "**City Manager**" means the City Manager of the City or his or her designee or successor in function.

1.1.7 "**City Requirements**" has the meaning ascribed to the term in Section 2.6.1.

1.1.8 "**City's Title Notice Response**" means the written response of the City to the Developer's Title Notice, in which the City either (i) elects to cause the removal from the Preliminary Report of any matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy that were objected to in the Developer's Title Notice, or (ii) elects not to cause the removal from the Preliminary Report of any matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy that were objected to in the Developer's Title Notice.

1.1.9 "**Close of Escrow**" or "**Closing**" means the recording of the Grant Deed for the Property in the Official Records of the Recorder of the County, and completion of each of the actions set forth in ARTICLE III by the Escrow Holder for the City to sell the Property to the Developer and the Developer to purchase the Property from the City.

1.1.10 "**Completion of Construction**" means the issuance of a Certificate of Completion confirming that the final certificate of occupancy for the Project, based on the plans submitted by the Developer to the City, has been issued.

1.1.11 "**Construction Costs**" means the total cost incurred by Developer in acquiring the Property and constructing the Project in accordance with this Agreement.

1.1.12 "**Construction Lender**" means a Lender(s) that provide(s) a Construction Loan to the Developer to pay the Construction Costs of all or a portion of the Project.

1.1.13 "**Construction Loan**" means a Loan obtained by Developer from a Construction Lender to finance all or part of the Construction Costs in conformity with the Financing Plan.

1.1.14 "**Construction Loan Deed of Trust(s)**" means the Lien(s) required by

a Construction Lender to secure the Developer's performance under the associated Construction Loan.

1.1.15 **"Control"** means and refers to possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether by ownership of equity interests, by contract or otherwise.

1.1.16 **"Controlling"** and **"Controlled"** mean and refer to exercising or having Control.

1.1.17 "**County**" means the County of San Bernardino, California.

1.1.18 "**Developer's Title Notice**" means a written notice from the Developer to the City indicating the Developer's acceptance of the state of the title to the Property, as described in the Preliminary Report, or the Developer's objection to specific matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy for the Property, describing in suitable detail the actions that the Developer reasonably believes are indicated to cure or correct each of the Developer's objections.

1.1.19 "**Developer's Title Notice Waiver**" means a written notice from the Developer to the City waiving the Developer's previous objection in the Developer's Title Notice to specific matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy for the Property.

1.1.20 "**Due Diligence Investigations**" means the Developer's due diligence investigations of the Property to determine the suitability of the Property for development and operation of the Project, including, without limitation, investigations of the environmental and geotechnical suitability of the Property, as deemed appropriate in the reasonable discretion of the Developer, all at the sole cost and expense of the Developer.

1.1.21 "**Due Diligence Investigation Conclusion Notice**" means a written notice of the Developer delivered to the City and the Escrow Holder, prior to the end of the Due Diligence Period, indicating the Developer's acceptance of the condition of the Property or indicating the Developer's rejection of the condition of the Property and refusal to accept a conveyance of fee title to the Property, describing in reasonable detail the actions that the Developer reasonably believes are indicated to allow the Developer to accept the condition of the Property.

1.1.22 "**Due Diligence Period**" means the date commencing on the Effective Date and ending at 5:00 p.m. on the sixtieth (60th) day following the Effective Date.

1.1.23 "**Earnest Money Deposit**" means One Hundred Thousand and No/100 Dollars ($100,000.00) payable in cash or other immediately available funds.

1.1.24 "**Effective Date**" has the meaning ascribed to the term in Section 1.3.

1.1.25 [Intentionally omitted.]

1.1.26 "**Environmental Claims**" has the meaning ascribed to the term in Section 5.8.

1.1.27 "**Environmental Laws**" means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability of standards of conduct concerning any hazardous substance (as later defined), or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to hazardous substances on, under, or about the Property, occupational or environmental conditions on, under, or about the Property, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") [42 USC Section 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 ("RCRA") [42 USC Section 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act ("FWPCA") [33 USC Section 1251 et seq.]; the Toxic Substances Control Act ("TSCA") [15 USC Section 2601 et seq.]; the Hazardous Materials Transportation Act ("HMTA") [49 USC Section 5101 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC Section 6901 et seq.] the Clean Air Act [42 USC Section 7401 et seq.]; the Safe Drinking Water Act [42 USC Section 300f et seq.]; the Solid Waste Disposal Act [42 USC Section 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USC Section 1201 et seq.] the Emergency Planning and Community Right to Know Act [42 USC Section 11001 et seq.]; the Occupational Safety and Health Act [29 USC Section 655 and 657]; the California Underground Storage of Hazardous Substances Act [California Health & Safety Code Section 25288 et seq.]; the California Hazardous Substances Account Recodification Act [California Health & Safety Code Section 78000 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [California Health & Safety Code Section 25249.5 et seq.] the Porter-Cologne Water Quality Act [California Water Code Section 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to occupational health or industrial hygiene, and only to the extent the occupational health or industrial hygiene laws, ordinances, or regulations relate to hazardous substances on, under, or about the Property, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

1.1.28 "**Environmental Matters**" has the meaning ascribed to the term in Section 5.8.

1.1.29 "**Escrow**" has the meaning ascribed to the term in Section 2.1.

1.1.30 "**Escrow Closing Date**" has the meaning ascribed to the term in Section 3.6.

1.1.31 "**Escrow Holder**" means Chicago Title Insurance Company.

1.1.32 "**Escrow Opening Date**" has the meaning ascribed to the term in Section 3.1.

1.1.33 "**Event of Default**" has the meaning ascribed to the term in Section 7.1.

1.1.34 "**Financing Commitment**" means (a) one or more commitment(s) from one or more Construction Lender(s) agreeing to provide sufficient funds which, when combined with the Developer's equity contribution and the financial assistance to be provided by the City pursuant to this Agreement, is sufficient, as determined by the City in its reasonable discretion, to fully fund the Project's Construction Costs, or (b) a letter from one or more Construction Lender(s) indicating approval of a loan to the Developer for the development of the Property.

1.1.35 "**FIRPTA Affidavit**" means an affidavit complying with Section 1445 of the United States Internal Revenue Code.

1.1.36 "**Grant Deed**" means a deed in the form of Exhibit D to this Agreement, conveying all of the City's interest in the Property to the Developer.

1.1.37 "**Governmental Agency**" means any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city, or otherwise) whether now or later in existence.

1.1.38 "**Governmental Requirements**" means all codes, statutes, ordinances, laws, permits, orders, and any rules and regulations promulgated thereunder of any Governmental Agency.

1.1.39 "**Hazardous Substances**" means, without implied limitation, substances defined as "hazardous substances," "hazardous material," "toxic substance," "solid waste," or "pollutant or contaminate" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601, et seq.; the Toxic Substances Control Act ("TSCA") [15 U.S.C. Sections 2601, et seq.]; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 5101, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or by the EPA, or any successor authority, as hazardous substances [40 CFR Part 302]; and those substances defined as "hazardous waste" in Section 25117 of the California Health and Safety Code or, as "hazardous substances" in Section 78075 of the California Health and Safety Code; other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under federal, state, or local laws or regulations and in the regulations adopted pursuant to said laws, and shall also include manure, asbestos, polychlorinated biphenyl, flammable explosives, radioactive material, petroleum products, and substances designated as a hazardous substance pursuant to 33 USC Section 1321 or listed pursuant to 33 USC Section 1317.

1.1.40 "**Indemnified Parties**" has the meaning ascribed to the term in Section 5.8.

1.1.41 "**Knowledge of the City**" shall mean the actual knowledge of the City Manager.

1.1.42 "**Lender**" means any state or federally chartered bank, savings and loan, capital investment group, or other third party financial institution which routinely makes Loans to developments and developers such as the Project and the Developer in the normal course of business and which has been approved by the City pursuant to Section 6.3.

1.1.43 "**Lien**" means any mortgage, deed of trust, or other security instrument encumbering Developer's fee interest in the Property and/or Project, or any part thereof, or any pledge or other agreement given as security for the repayment of a Loan and by which a Lender would be able to acquire any interest in the Developer upon the Developer's breach of any obligation under the Lender's Loan Documents.

1.1.44 "**Loan**" means any loan or third party equity/capital contribution (e.g. mezzanine financing) for the Project other than that provided by the City.

1.1.45 "**Loan Documents**" means the various documents and instruments made by and between the Developer and a Lender that evidence a Loan and the security for repayment of such Loan.

1.1.46 "**Maintenance Deficiency**" has the meaning ascribed to the term in Section 5.3.1.

1.1.47 "**Normal Business Hours**" means the normal business hours of the City. As of the Effective Date, the City's normal business hours are Monday through Thursday, between the hours of 7:30 a.m. and 5:30 p.m. Pacific Time.

1.1.48 "**Notice of Agreement**" means the notice in the form of Exhibit E to this Agreement to be recorded against the Property at the Close of Escrow to provide constructive record notice of the existence and application of this Agreement to the Property.

1.1.49 "**Other Consideration**" means that Developer will provide consideration in the form of conveying to the City certain easement right-of-way interests and a temporary construction easement interest (collectively, the "**Easements**"), located at the south westerly corner of Riverside Drive and Vineyard Avenue, consisting of an approximately 25,489 square feet area, a portion of land identified with Assessor's Parcel Numbers 0216-174-16-0000 and 0216-174-17-0000, more particularly legally described and depicted in Exhibit A-1, attached hereto and by this reference incorporated herein and has an appraised value of Four Hundred Fifty Eight Thousand Eight Hundred Two and No/100 Dollars ($458,802.00) per the terms in Section 2.2.1 of this Agreement, and such value will be credited against the Purchase Price for the Property.

1.1.50 "**Party**" means, individually, the City or the Developer, as applicable.

1.1.51 "**Parties**" means, collectively, the City and the Developer.

1.1.52 "**PCO Statement**" means a preliminary change of ownership statement provided for in California Revenue and Taxation Code Section 480.3.

1.1.53 "**Permitted Exceptions**" means (i) any and all items shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy that the Developer accepts, pursuant to Section 2.4; (ii) any exceptions from coverage under the proposed Title Policy resulting from the Developer's activities on the Property; (iii) non-delinquent property taxes and assessments; (iv) this Agreement; or (v) the Grant Deed.

1.1.54 "**Permitted Transfer**" means and refers to any of the following types

of Transfers by the Developer, where the person or entity to which such Transfer is made expressly assumes the obligations of the Developer under this Agreement in a written instrument satisfactory to the City.

1.1.54.1 Any Transfer of stock or equity of the Developer that does not change management or operational Control of the Property or the Project;

1.1.54.2 Any Transfer of any interest in the Developer or the Property or Project or any portion thereof irrespective of the percentage of ownership (i) to any other owner of any interest in the Developer; or (ii) to any Affiliate, or (iii) to any other person or entity in which any holder of an interest (including any beneficial interest) in the Developer is a manager, officer or partner or in which any of the aforementioned is a shareholder, member or partner (including a beneficial owner); and

1.1.54.3 Any Lien given to Lender in connection with a Loan approved by the City pursuant to Section 6.3.

1.1.55 "**Plans and Specifications**" has the meaning ascribed to the term in Section 2.6.1.

1.1.56 "**Preliminary Report**" means a preliminary report issued by the Title Company in contemplation of the issuance of the Title Policy, accompanied by legible copies of all documents listed in Schedule B of the report as exceptions to coverage under the proposed Title Policy. The Parties acknowledge that they may prepare one (1) or more Preliminary Reports for each parcel, or group of parcels, comprising the Property. In such case, all reports, notices, and objection letters which pertain to the Preliminary Report for the entirety of the Property shall apply separately to each Preliminary Report associated with a parcel or a group of parcels.

1.1.57 "**Project**" means the construction and redevelopment of the Property as a commercial development, including all required or associated on-site and off-site improvements, all hardscape and all landscaping, all as specifically described in the Scope of Development, and all to be developed in accordance with the Plans and Specifications to be approved by the City and any conditions imposed by the City in its approval of the Plans and Specifications.

1.1.58 "**Project Completion Date**" means that date set forth therefor by which a Certificate of Completion shall be issued for the Project, as more particularly provided in the Schedule of Performance. The Project Completion Date shall be no later than the date which is twenty-four (24) months after the Close of Escrow.

1.1.59 "**Property**" means that real property, and all current and future improvements thereon (including, without implied limitation, the Project), legally described and depicted in Exhibit A.

1.1.60 **"Property Transfer"** means and refers to any "change in ownership," as defined in Revenue and Taxation Code Sections 60, et seq., of all or any portion of the Property.

1.1.61 "**Purchase Price**" means the amount of One Million Four Hundred Forty Four Thousand Five Hundred Ninety Three Dollars and Fifty Cents ($1,444,593.50),

tendered in cash or immediately available funds and Other Consideration as defined in Section 1.1.48.

1.1.62 "**Record**", "**recorded**", "**recording**" or "**recordation**" each mean and refer to recordation of the referenced document in the official records of the Recorder of the County of San Bernardino, California.

1.1.63 "**Schedule of Performance**" means the schedule for the performance of certain actions by the Parties pursuant to this Agreement, attached to this Agreement as Exhibit C.

1.1.64 "**Scope of Development**" means the detailed description of the Project attached to this Agreement as Exhibit B.

1.1.65 "**Title Company**" means Chicago Title Insurance Company, National Commercial Services and Stephanie Zapalac as the title officer.

1.1.66 "**Title Policy**" means a standard CLTA owners' policy of title insurance issued by the Title Company, with coverage in the full amount of the Purchase Price and insuring fee title to the Property, subject only to the Permitted Exceptions. However, at Developer's option, Developer may acquire an ALTA extended coverage policy. City shall pay for the standard CLTA policy. Developer shall pay for any additional or ALTA extended coverage policy.

1.1.67 "**Transfer**" means any of the following:

1.1.67.1 Any total or partial sale, assignment, conveyance, trust, power, or transfer in any other mode or form, by the Developer of more than a 49% interest in the Developer's interest in this Agreement, the Property, or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest in the Developer's interest in this Agreement, the Property or the Project; or

1.1.67.2 Any total or partial sale, assignment, conveyance, or transfer in any other mode or form, of or with respect to any interest in the Developer or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest in any interest in the Developer; or

1.1.67.3 Any merger, consolidation, sale, or lease of all or substantially all of the assets of the Developer or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest of all or substantially all of the assets of the Developer; or

1.1.67.4 Any Property Transfer; or

1.1.67.5 The recordation of any deed of trust, mortgage, Lien or similar encumbrance against all or any portion of the Property or the Project.

1.1.68 "**Unavoidable Delay**" means any delay that is caused by the exclusively by the other party or that is beyond the control of the City or the Developer, including delay caused by strikes, acts of God, pandemic, weather, inability to obtain labor or materials, inability to obtain

governmental permits or approvals, governmental restrictions, civil commotion, fire or similar causes, but excluding circumstances subject to Section 8.7.2.

1.2 Representations and Warranties.

1.2.1 City Representations and Warranties. All representations and warranties contained in this Section 1.2.1 are true and correct as of the Effective Date. City's liability for misrepresentation or breach of warranty, representation or covenant, wherever contained in this Agreement, shall survive the execution and delivery of this Agreement and the Closing. City hereby makes the following representations, covenants and warranties and acknowledges that the execution of this Agreement by Developer has been made in material reliance by Developer on such covenants, representations and warranties:

1.2.1.1 City is a California municipal corporation, duly formed and operating under the laws of the State of California. City has the legal power, right and authority to enter into this Agreement and to execute the instruments and documents referenced herein, and to consummate the transactions contemplated hereby.

1.2.1.2 The persons executing any instruments for or on behalf of City have been authorized to act on behalf of City and this Agreement is valid and enforceable against City in accordance with its terms and each instrument to be executed by City pursuant hereto or in connection therewith will, when executed, shall be valid and enforceable against City in accordance with its terms. No approval, consent, order or authorization of, or designation or declaration of any other person, is required in connection with the valid execution and delivery of and compliance with this Agreement by City.

1.2.1.3 City has taken all requisite action and obtained all requisite consents for agreements or matters to which City is a party in connection with entering into this Agreement and the instruments and documents referenced herein and in connection with the consummation of the transactions contemplated hereby.

1.2.1.4 If the City becomes aware of any act or circumstance that would change or render incorrect, in whole or in part, any representation or warranty made by the City under this Agreement, whether as of the date given or any time thereafter, whether or not such representation or warranty was based upon the City's knowledge and/or belief as of a certain date, the City will give immediate written notice of such changed fact or circumstance to the Developer.

1.2.2 Developer Representations and Warranties. The representations and warranties of Developer contained in this Section 1.2.2 shall be based upon the actual knowledge of Gurvinder Singh as of the Effective Date. All representations and warranties contained in this Section 1.2.2 are true and correct as of the Effective Date. Developer's liability for misrepresentation or breach of warranty, representation or covenant, wherever contained in this Agreement, shall survive the execution and delivery of this Agreement and the Closing. Developer hereby makes the following representations, covenants and warranties and acknowledges that the execution of this Agreement by City has been made in material reliance by City on such covenants, representations and warranties:

1.2.2.1 Developer is a California limited liability company, lawfully

entitled to do business in the State of California and the City. Developer has the legal right, power and authority to enter into this Agreement and the instruments and documents referenced herein and to consummate the transactions contemplated hereby. The persons executing this Agreement and the instruments referenced herein on behalf of Developer hereby represent and warrant that such persons have the power, right and authority to bind Developer.

1.2.2.2 Developer has taken all requisite action and obtained all requisite consents in connection with entering into this Agreement and the instruments and documents referenced herein and the consummation of the transactions contemplated hereby, and no consent of any other party is required for Developer's authorization to enter into Agreement.

1.2.2.3 Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby shall result in a breach of or constitute a default under any other agreement, document, instrument or other obligation to which Developer is a party or by which Developer may be bound, or under law, statute, ordinance, rule, governmental regulation or any writ, injunction, order or decree of any court or governmental body applicable to Developer or to the Property.

1.2.2.4 This Agreement is, and all agreements, instruments and documents to be executed by Developer pursuant to this Agreement shall be, duly executed by and shall be valid and legally binding upon Developer and enforceable in accordance with their respective terms. No approval, consent, order or authorization of, or designation or declaration of any other person, is required in connection with the valid execution and delivery of in compliance with this Agreement by Developer.

1.2.2.5 If the Developer becomes aware of any act or circumstance that would change or render incorrect, in whole or in part, any representation or warranty made by the Developer under this Agreement, whether as of the date given or any time thereafter, whether or not such representation or warranty was based upon the Developer's knowledge and/or belief as of a certain date, the Developer will give immediate written notice of such changed fact or circumstance to the City.

1.3 Effective Date. This Agreement is dated February 18, 2025 for reference purposes only. This Agreement shall not become effective until the date on which all of the following are true ("**Effective Date**"): (i) this Agreement is approved and executed by the appropriate authorities of Developer and delivered to City; (ii) Developer has delivered to City a certified copy of the official action taken by all of the members of the Developer approving this Agreement, in the form attached to this Agreement as Exhibit F; (iii) following all legally required notices and hearings, this Agreement is approved by the City Council; and (iv) this Agreement is executed by the authorized representatives of City.

1.4 Exhibit List. The following is a list of the Exhibits attached to this Agreement. Each of the Exhibits is incorporated by this reference into the text of this Agreement.

Exhibit A	Legal Description of Property to be conveyed to Developer
Exhibit A-1	Legal Description and Plat of Easements to be conveyed to City
Exhibit B	Scope of Development

Exhibit C	Schedule of Performance
Exhibit D	Form of Grant Deed for the Property conveyed to Developer
Exhibit D-1	Form of Easement Deed of Right-of-Way Dedication and Grant of Temporary Construction Easement to be conveyed to the City
Exhibit E	Form of Notice of Agreement
Exhibit F	Form of Official Action of Developer
Exhibit G	Form of Certificate of Completion

ARTICLE II

PROPERTY DISPOSITION

2.1 Purchase and Sale. In exchange for the Purchase Price and the Developer's other covenants and undertakings set forth in this Agreement, the City shall sell the Property to the Developer and the Developer shall purchase the Property from the City pursuant to the terms and conditions of this Agreement. For the purposes of exchanging funds and documents to complete the sale from the City to the Developer and the purchase by the Developer from the City of the Property pursuant to the terms of this Agreement, the City and the Developer agree to open an escrow ("**Escrow**") with the Escrow Holder. ARTICLE III of this Agreement constitutes the joint escrow instructions of the Parties to the Escrow Holder for completion of the Escrow for the sale of the Property, as contemplated by this Agreement. The Developer and the City shall execute such further escrow instructions, consistent with the provisions of this Agreement, as may be reasonably requested by the Escrow Holder. In the event of any conflict between the provisions of this Agreement and any other escrow instructions requested by the Escrow Holder, the provisions of this Agreement shall control.

2.2 Payment of Purchase Price. The Developer shall deposit the Purchase Price into Escrow, subject to credit to the Developer for the Earnest Money Deposit and the Other Consideration provided by Developer pursuant to the terms and conditions in this Agreement.

2.2.1 Forms of Consideration. City has agreed to accept from Developer the Easements interest for right-of-way that City would otherwise need to acquire for its own road project and Developer has agreed to convey the Easements to the City whereby the value of the Easements in the amount of Four Hundred Fifty Eight Thousand Eight Hundred Two and No/100 Dollars ($458,802.00) shall be credited against the Purchase Price. Developer shall deliver to the Escrow Holder a duly authorized notarized Easement Deed for Right-of-Way Dedication and a Grant of Temporary Construction Easement in the form attached hereto as Exhibit D and by this reference incorporated herein. Recordation of the Easement Deed for Right-of-Way Dedication and a Grant of Temporary Construction Easement shall occur within ten (10) days after Developer delivers said documents to the Escrow Holder and before the close of escrow shall occur for the disposition of the Property to the Developer. City, at its sole discretion and at the City's cost, may obtain a title policy for the Easements. Separate escrow instructions will be provided to process the consummation of the Easements to the City.

2.3 Earnest Money Deposit. Within five (5) days of its opening of the Escrow, the Developer shall deposit into Escrow the Ernest Money Deposit. The Escrow Holder shall deposit the Earnest Money Deposit into an interest bearing account. All interest earned on such funds

shall be added to the original principal amount of the Earnest Money Deposit and be considered part of the same. The Earnest Money Deposit shall be nonrefundable upon the conclusion of the Due Diligence Period, except that, in the event that this Agreement is terminated or Escrow should fail to close due to a material default by the City hereunder the Earnest Money Deposit and all interest thereon shall be promptly refunded to Developer. Upon the Close of Escrow, the Earnest Money Deposit shall be credited to the Developer toward the Purchase Price and paid to the City as part of the Purchase Price. Should Escrow fail to close in event of a material default by the Developer, the Earnest Money Deposit shall be forfeited by Developer and shall be paid to the City upon the cancelation of Escrow in accordance with Section 3.10.

2.4 Title Approval. As soon as practicable following the opening of the Escrow, the City shall obtain from Title Company the Preliminary Report and deliver a copy of the Preliminary Report to the Developer. Within thirty (30) days following the Developer's receipt of a Preliminary Report for the entire Property, the Developer shall deliver to the City written notice ("**Title Notice**") of Developer's approval or disapproval of every item or exception disclosed by the Preliminary Report. If the Developer fails to deliver the Developer's Title Notice to the City within thirty (30) days following the Developer's receipt of the Preliminary Report, the Developer will be deemed to disapprove the status of title to the Property and refuse to accept title to the Property, in which case the City shall have the right, subject to Section 2.4.2, to cancel the Escrow and terminate this Agreement, in the City's sole discretion, without liability to the Developer or any other person, by delivery of a written notice of termination to the Developer and Escrow Holder. Within twenty (20) days following receipt by the City of Developer's Title Notice, if any, the City shall serve City's Title Notice Response. If Developer's Title Notice does not object to any matter in the Preliminary Report, the City shall not be required to serve City's Title Notice Response. If the City does not serve City's Title Notice Response, if necessary, within twenty (20) days following its receipt of Developer's Title Notice, the City shall be deemed to elect not to remove any matter objected to in Developer's Title Notice, if any, from the Preliminary Report. If the City elects in City's Title Notice Response to cause the removal of any matter objected to in Developer's Title Notice from the Preliminary Report, the City shall cause the removal of each such objectionable matter from the Preliminary Report within sixty (60) days following receipt by the Developer of City's Title Notice Response or such other period of time that may be agreed to in writing by both the City and the Developer. If the City is unwilling or unable to cause the removal of any matter objected to in Developer's Title Notice from the Preliminary Report, then, within ten (10) days following the Developer's receipt of City's Title Notice Response stating that the City is unwilling to remove or cause the removal of any matter objected to in Developer's Title Notice or upon the expiration of the above sixty (60) day time period during which the City elected to remove such objectionable matters from the Preliminary Report and was unable to do so, the Developer may either (1) refuse to accept the title to and conveyance of the Property, in which case the Parties shall have the right, subject to Section 2.4.2, to cancel the Escrow and terminate this Agreement without liability to either Party or any other person, by delivery of a written notice of termination to the Escrow Holder, in which case the entire Earnest Money Deposit shall be refunded to Developer, or (2) waive its objection to any items set forth in Developer's Title Notice by delivering Developer's Title Notice Waiver to the City. Notwithstanding the foregoing provisions, the City, at its sole cost, on or prior to the Close of Escrow, shall cause to be eliminated all liens evidencing monetary encumbrances (other than liens for non-delinquent real estate taxes and assessments, and supplemental taxes and assessments) (collectively, "**Monetary Liens**"). Failure of Developer to object to such Monetary Liens shall in no event be deemed a waiver of

Developer's right to require the City to eliminate such Monetary Liens at Close of Escrow. Failure by the Developer to deliver Developer's Title Notice Waiver, where City's Title Notice Response or the City's failure to serve City's Title Notice Response indicates the City's election not to cause the removal of any matter objected to in Developer's Title Notice from the Preliminary Report, for the City to deliver City's Title Notice Response under this Agreement, will be deemed the Developer's continued refusal to accept the title to and conveyance of the Property, in which case the City shall have the right, subject to Section 2.4.2, to cancel the Escrow and terminate this Agreement, in the City's sole discretion, without liability to the Developer or any other person, by delivery of a written notice of termination to the Developer and Escrow Holder.

2.4.1 If at any time prior to the Close of Escrow the Title Company issues an updated Preliminary Report containing any previously undisclosed matter affecting title to the Property, or the City becomes aware of any previously undisclosed matter affecting title to the Property, following the delivery of the Developer's Title Notice, the City shall provide written notice to the Developer of such matter, together with any updated Preliminary Report related to such matter. The City and the Developer shall have such rights and obligations with respect to such previously undisclosed title matters as they did with respect to any title matters set forth in the original Preliminary Report as set forth in Section 2.4.

2.4.2 Before exercising any right a Party may have under this Section 2.4 to cancel the Escrow and terminate this Agreement, such Party shall notify the non-terminating Parties in writing of its election to terminate and shall, upon a non-terminating Party's request, which must be delivered, if at all, within three (3) days following its receipt of the terminating Party's notice of election to terminate, meet and confer with the non-terminating Parties for a period of thirty (30) days. During such time, the Parties shall meet as often as reasonably requested by any Party to negotiate, in good faith, methods and means by which the objectionable title matter may be eliminated or mitigated. Nothing herein shall constitute an agreement, representation, or warranty by any Party that an acceptable resolution of the objectionable title matter will be achieved, nor shall any Party be obligated to expend any funds or undertake any other action whatsoever with respect to such title matter unless such agreement is reduced to a writing which is approved by all Parties, in their sole and absolute discretion. If, at the end of such thirty (30) day period, the Parties have not been able to agree on a mutually acceptable method of resolving such title matter, or if any proposed agreement is disapproved by the City Council, the Escrow shall be cancelled, this Agreement shall be terminated without liability to any Party, the entire Earnest Money deposit shall be refunded to the Developer, and the Parties shall proceed pursuant to Section 3.10.

2.5 <u>Developer Investigations</u>.

2.5.1 The Developer shall have until the expiration of the Due Diligence Period to complete all of its Due Diligence Investigations with respect to the entirety of the Property. The Developer shall complete all of its Due Diligence Investigations within the Due Diligence Period and shall conduct all of its Due Diligence Investigations at its sole cost and expense. The Developer shall rely solely and exclusively upon the results of its Due Diligence Investigations of the Property, including, without limitation, investigations regarding geotechnical soil conditions, compliance with applicable laws pertaining to the use of the Property by the Developer and any other matters relevant to the condition or suitability of the Property for the

Project, as the Developer may deem necessary or appropriate. Except as expressly set forth herein, City makes no representation or warranty to the Developer relating to the condition of the Property or suitability of the Property for any intended use or development by the Developer. The Developer shall deliver a Due Diligence Investigation Conclusion Notice to the City and the Escrow Holder prior to the end of the Due Diligence Period. If the Developer does not unconditionally accept the condition of the Property by delivery of its Due Diligence Investigation Conclusion Notice indicating such acceptance prior to the end of the Due Diligence Period, the Developer shall be deemed to have rejected the condition of the Property and refused to accept conveyance of title to the Property. If the condition of the Property is rejected or deemed rejected by the Developer, then the City shall have the right, subject to Section 2.4.2, to cancel the Escrow and terminate this Agreement, in the City's sole discretion, without liability to the Developer or any other person, by delivery of a written notice of termination to the Developer and Escrow Holder, in which case the entire Earnest Money Deposit shall be refunded to Developer. The Developer shall accept all conditions of the Property, without any liability of the City whatsoever, upon the Developer's acceptance of the condition of the Property indicated in its Due Diligence Investigation Conclusion Notice. The Developer's delivery of its Due Diligence Investigation Conclusion Notice indicating the Developer's unconditional acceptance of the condition of the Property shall evidence the acceptance of the condition of the Property by the Developer in its existing "AS IS," "WHERE IS" and "SUBJECT TO ALL FAULTS" condition, as of the last day of the Due Diligence Period, subject to the representations and warranties of the City contained herein. In its sole discretion, the Developer may accept the Property in its "AS IS," "WHERE IS" and "SUBJECT TO ALL FAULTS" condition at any time before the end of the Due Diligence Period. The Developer shall conduct during the Due Diligence Period such environmental assessment(s) of the Property as the Developer deems appropriate. If such assessment(s) do not reveal the presence of any Hazardous Substances on the Property in levels that exceed applicable Governmental Requirements, then the City shall promptly and at its sole cost and expense install security fencing around the Property. If such assessment(s) do reveal the presence of any Hazardous Substances on the Property in levels that exceed applicable Governmental Requirements, then the City and the Developer shall negotiate in good faith in an effort to reach agreement as to the allocation of responsibility and cost of remediation thereof.

2.5.2 Any Due Diligence Investigations of the Property by the Developer shall not unreasonably disrupt any then existing use or occupancy of the Property or the operations of the City. The Developer shall be liable for any damage or injury to any person or property arising from the acts of the Developer, its employees, agents or representatives during the course of any Due Diligence Investigations on the Property and the Developer shall indemnify, defend with counsel reasonably acceptable to the City and hold harmless the City and its elected officials, officers, directors, attorneys, contractors, agents and employees from any and all actual or alleged liens, claims, demands or liability arising from any Due Diligence Investigations by the Developer on the Property. Prior to commencing any Due Diligence Investigations on the Property, the Developer shall deliver copies of policies or certificates of insurance to the City evidencing compliance by the Developer with the insurance requirements of Section 5.8.

2.5.3 Before exercising any right a Party may have under this Section 2.5 to cancel the Escrow and terminate this Agreement, such Party shall notify the non-terminating Parties in writing of its election to terminate and shall, upon a non-terminating Party's request, which must be delivered, if at all, within three (3) days following its receipt of the terminating

Party's notice of election to terminate, meet and confer with the non-terminating Parties for a period of thirty (30) days. During such time, the Parties shall meet as often as reasonably requested by any Party to negotiate, in good faith, methods and means by which the objectionable Due Diligence matter may be eliminated or mitigated. Nothing herein shall constitute an agreement, representation, or warranty by any Party that an acceptable resolution of the objectionable Due Diligence matter will be achieved, nor shall any Party be obligated to expend any funds or undertake any other action whatsoever with respect to such Due Diligence matter unless such obligation is reduced to a writing which is approved by all Parties, in their sole and absolute discretion. If, at the end of such thirty (30) day period, the Parties have not been able to agree on a mutually acceptable method of resolving the objectionable Due Diligence matter, or if any proposed agreement is disapproved by the City Council, the Escrow shall be cancelled, this Agreement shall be terminated without liability to any Party, and the Parties shall proceed pursuant to Section 3.10.

2.6 Developer to Obtain all Project Entitlements.

2.6.1 Developer has developed and presented to City staff and the City Council, for review, the following (collectively, the "**Plans and Specifications**"):

2.6.1.1 A proposed complete conceptual development plan for the Project on the Property that describes and depicts: (1) the location and placement of proposed buildings and (2) the architecture and elevations of the proposed buildings;

2.6.1.2 Proposed zoning change or changes to the City's General Plan, if any, necessary to accommodate the Project on the Property;

2.6.1.3 A list of potential users or tenants and anticipated lease rates and resale land prices for the Property, as developed with the Project;

2.6.1.4 A proposed time schedule and cost estimates for the development of the Project on the Property;

2.6.1.5 A proposed financing plan identifying financing sources for all private and public improvements proposed for the Project; and

2.6.1.6 A preliminary financial analysis demonstrating the costs and benefits to the City and the City regarding all construction, maintenance and operations of all proposed public improvements, the costs of additional or increased levels of public services and any new public revenues anticipated to be generated by the Project.

2.6.2 The City's zoning, building and land use regulations (whether contained in ordinances, the City's municipal code, conditions of approval, policies, practice or elsewhere) (collectively, the "**City Requirements**"), shall be applicable to the use and development of the Project on the Property by the Developer. The Developer acknowledges that all Plans and Specifications and any changes to the Plans and Specifications shall be subject to the City Requirements. No action by the City with reference to this Agreement or any related documents shall be deemed to constitute a waiver of any City Requirements regarding the Property, the Project, the Developer, any successor-in-interest of the Developer or any successor-in-interest to

the Property. The City Requirements may only be changed or waived by modification or variance approved by the City and consistent with this Agreement. No entitlement, permit or other approval from the City for development of the Project on the Property shall attach to any portion of the Property or otherwise become effective to allow the Developer to develop the Project on the Property until after the Developer owns fee title to that portion of the Property to which such entitlement, permit or other approval pertains. Under no circumstances shall the Developer commence development of any portion of the Project on the Property prior to the Developer owning fee title to the Property.

2.6.3 The approval of the Scope of Development shall not be binding on the City Council or the Planning Commission of the City regarding any approvals of the Project required by such bodies. the Developer obtains no right to develop the Project on the Property or any portion of the Property by virtue of this Agreement, except that following the Close of Escrow, the Developer shall possess the same rights as any other owner of property within the Property that desires to develop its property in a manner consistent with the City's General Plan. If any revisions of the Scope of Development are required by a Governmental Agency (other than the City) having jurisdiction over the Property or the Project, the Developer shall promptly make any such revisions that are generally consistent with the Scope of Development.

2.6.4 Notwithstanding any provision to the contrary in this Agreement, following the Close of Escrow, the Developer agrees to accept and comply fully with any and all conditions of approval applicable to all approvals, permits and other governmental actions regarding the development or operation of the Project on the Property, so long as such conditions of approval are consistent with the Scope of Development and this Agreement in all material respects.

2.6.5 Developer to Pay All Costs and Expenses. The Parties agree that the City shall not provide any financial assistance to the Developer in connection with the Project except as may be expressly set forth in this Agreement. The Developer shall be solely responsible for paying for the costs of all design work, construction, labor, materials, fees and permit expenses associated with the Project. The Developer shall pay any and all fees pertaining to the review and approval of the Project by the City, any other Governmental Agency and utility service providers, including the costs of preparation of all required construction, planning and other documents reasonably required by a Governmental Agency pertinent to the development or operation of the Project on the Property, including, but not limited to, specifications, drawings, plans, maps, permit applications, land use applications, zoning applications, environmental review and disclosure documents and design review documents. The Developer shall pay for any and all costs, including, but not limited to, the costs of design, construction, relocation and securing of permits for sewer or utility improvements and connections, that may be required in development of the Project, whether located on or off of the Property. The Developer shall obtain any and all necessary approvals, prior to the commencement of applicable portions of construction, and the Developer shall take reasonable precautions to ensure the safety and stability of surrounding properties during said construction. In accordance with this Section 2.6.5, Developer shall be responsible for the costs, or immediate reimbursement to the City upon delivery of an invoice for the costs, of the following:

2.6.5.1 all fees or expenses of engineers, architects, financial

consultants, legal, planning or other consultants or contractors, retained by the Developer for any study, analysis, evaluation, report, schedule, estimate, environmental review, planning and/or design activities, drawings, specifications or other activity or matter relating to the Property or the Project or the negotiation of this Agreement that may be undertaken by the Developer;

2.6.5.2 all fees, charges and costs, make all deposits and provide all bonds or other security associated with the submission to and processing by the City of any and all applications and other documents and information to be submitted to the City by the Developer pursuant to this Agreement or otherwise associated with the Project; and

2.6.6 The Developer shall obtain all entitlements, permits and other approvals for use and development of the Project on the Property from each Governmental Agency, within the time period for such actions specifically set forth in the Schedule of Performance, subject to any extensions of time authorized by this Agreement upon the occurrence of an Unavoidable Delay.

ARTICLE III

ESCROW INSTRUCTIONS

3.1 Opening of Escrow. For purposes of this Agreement, the opening of Escrow shall be the first date on which a fully executed copy of this Agreement and Earnest Money Deposit are deposited with Escrow Holder ("**Escrow Opening Date**"). The Developer shall cause the Escrow to be opened within seven (7) days following the Effective Date. Escrow Holder shall promptly confirm in writing to each of the Parties the date of the Escrow Opening Date. This ARTICLE III shall constitute the joint escrow instructions of the City and the Developer to Escrow Holder for conduct of the Escrow to complete the purchase and sale of the Property between them, as contemplated in this Agreement.

3.2 Conditions to Close of Escrow. The conditions set forth below shall be satisfied or waived in writing by the respective benefited Party on or before the Escrow Closing Date or the Party benefited by any unsatisfied condition shall not be required to proceed to close Escrow.

3.2.1 Developer's Conditions to Close of Escrow. The Developer's obligation to purchase the Property from the City on the Escrow Closing Date shall be subject to the satisfaction of the following conditions precedent, each of which can only be waived in writing by the Developer:

3.2.1.1 The Developer agrees to accept the title to and conveyance of the Property, pursuant to Section 2.4;

3.2.1.2 The Developer delivers its Due Diligence Investigation Conclusion Notice to both the City and Escrow Holder indicating the Developer's unconditional acceptance of the condition of the Property, prior to the expiration of the Due Diligence Period;

3.2.1.3 The City's planning commission finds, pursuant to Government Code Section 65402, that the Project is consistent with the City's General Plan;

3.2.1.4 The Title Company is unconditionally committed to issue the Title Policy for the Property, subject to any Permitted Exceptions, to the Developer;

3.2.1.5 The City deposits the items into the Escrow required by Section 3.4;

3.2.1.6 The representations, warranties and covenants of the City set forth in Section 1.2.1 are true and correct in all material respects on the Effective Date and on the Escrow Closing Date;

3.2.1.7 The Developer has obtained all entitlements required in connection with the development of the Property, subject to conditions of approval acceptable to Developer in Developer's sole discretion, any applicable appeal period has expired without appeal having been filed or, if an appeal is filed, such appeal has been denied, and no legal action has been instituted against Developer or the City alleging the invalidity of such entitlements; and

3.2.1.8 The City has completed all of their material obligations required by this Agreement to be completed prior to the Close of Escrow.

3.2.2 City's Conditions to Close of Escrow. The City's obligation to sell the Property to the Developer on or before the Escrow Closing Date shall be subject to the satisfaction of the following conditions precedent, which can only be waived in writing by the City:

3.2.2.1 The Developer has deposited the Purchase Price less the Earnest Money Deposit and the value of the Other Consideration into Escrow;

3.2.2.2 Developer has deposited the Traffic Signal Deposit into Escrow, if applicable.

3.2.2.3 The Developer agrees to accept the title to and conveyance of the Property, pursuant to Section 2.4;

3.2.2.4 The Developer delivers its Due Diligence Investigation Conclusion Notice to both the City and Escrow Holder indicating the Developer's unconditional acceptance of the physical condition of the Property, prior to the expiration of the Due Diligence Period;

3.2.2.5 The City's planning commission finds, pursuant to Government Code Section 65402, that the Project is consistent with the City's General Plan;

3.2.2.6 The Title Company is unconditionally committed to issue the Title Policy for the Property, subject to any Permitted Exceptions, to the Developer;

3.2.2.7 The Developer submits to the City, at least five (5) business days prior to the Escrow Closing Date, evidence satisfactory to the City, in the City's reasonable discretion, that the Developer has obtained all entitlements necessary for the development of the Property from each applicable Governmental Agency, including the City;

3.2.2.8 The Developer delivers to the City, at least thirty (30) days prior to the Escrow Closing Date, in form and substance acceptable to the City, the Financing Commitment(s) applicable to the Property;

3.2.2.9 The Developer obtains the City's approval of the Construction Loan and Construction Lender applicable to the Property, in accordance with Section 6.3, which approval shall not be unreasonably withheld;

3.2.2.10 The Developer has completed all of its material obligations required by this Agreement to be completed prior to the Close of Escrow;

3.2.2.11 The representations, warranties and covenants of the Developer set forth in Section 1.2.2 are true and correct in all material respects on the Effective Date and on the Escrow Closing Date; and

3.2.2.12 The Developer deposits the funds and items into the Escrow required by Section 3.3 for the Escrow; and

3.2.2.13 The Developer has delivered the duly authorized Easement Deed of Right-of-Way Dedication and Grant of Temporary Construction Easement with notarized signatures in a recordable form to Escrow Holder to be recorded per separate escrow instructions signed by the Parties and submitted to Escrow Holder.

3.3 Developer's Escrow Deposits. Following satisfaction or waiver of each of the Developer's conditions to Close of Escrow set forth in Sections 3.2.1, as applicable, the Developer shall deposit the following funds and documents into Escrow at least two (2) business days prior to the Escrow Closing Date in a writing delivered to the Parties, except as otherwise provided:

3.3.1 Purchase Price and Other Funds. Purchase Price, less the amount of the Earnest Money Deposit and the value of the Other Consideration, plus any additional funds required to be deposited into Escrow by the Developer under the terms of this Agreement to close the Escrow, all in immediately available funds.

3.3.2 PCO Statement. A PCO Statement executed by the authorized representative(s) of the Developer.

3.3.3 Acceptance of Grant Deed. The Certificate of Acceptance of the Deed, in the form attached to the Grant Deed, executed by the authorized representative(s) of the Developer in recordable form.

3.3.4 Notice of Agreement. The Notice of Agreement executed by the authorized representative(s) of the Developer in recordable form.

3.3.5 Deeds for Easements. The Easement Deed of Right-of-Way Dedication and Grant of Temporary Construction Easement executed by the authorized representative in recordable form.

3.4 City's Escrow Deposits. Following satisfaction or waiver of each of the City's

conditions to Close of Escrow set forth in Sections 3.2.2, as applicable, the City shall deposit the following documents into Escrow at least two (2) business days prior to the Escrow Closing Date:

3.4.1 Grant Deed. The Grant Deed executed by the authorized representative(s) of the City in recordable form.

3.4.2 FIRPTA Affidavit (City). The FIRPTA Affidavit completed and executed by the authorized representative(s) of the City.

3.4.3 Notice of Agreement. The Notice of Agreement executed by the authorized representative(s) of the City in recordable form.

3.5 Closing Procedure. When each of the Developer's Escrow required deposits, as set forth in Section 3.3, and each of the City's Escrow required deposits, as set forth in Section 3.4, are deposited into Escrow, Escrow Holder shall request confirmation in writing from both the City and the Developer that each of their respective conditions to the Close of Escrow, as set forth in Section 3.2, are satisfied or waived. Upon Escrow Holder's receipt of written confirmation from both the City and the Developer that each of their respective conditions to the Close of Escrow are either satisfied or waived, Escrow Holder shall close the Escrow for the Property by doing all of the following:

3.5.1 Recordation of Documents. File the following with the Office of the Recorder of the County, for recordation in the order set forth in Section 3.7 (i) the Grant Deed, with the Developer's certificate of acceptance attached, (ii) the Notice of Agreement, and (iii) if applicable, the Construction Loan Deed of Trust.

3.5.2 Distribution of Recorded Documents. Distribute each recorded document to the Party or person designated for such distribution in Section 3.7.

3.5.3 PCO Statement. File the PCO Statement with the Office of the Recorder of the County.

3.5.4 FIRPTA Affidavit. File the FIRPTA Affidavit with the United States Internal Revenue Service.

3.5.5 Title Policy. Obtain and deliver the Title Policy to the Developer.

3.5.6 Purchase Price. Deliver the Purchase Price to the City, less the City's share of Escrow closing costs, and less any other charges to the account of the City, and return any remaining funds held by Escrow Holder for the account of the Developer to the Developer, less the Developer's share of Escrow closing costs, and less any other charges to the account of the Developer.

3.6 Close of Escrow. Subject to the Parties having received written confirmation of the satisfaction or waiver of all conditions precedent to the Close of Escrow for the Property, Close of Escrow shall occur within five (5) business days following the issuance of the grading permit for the Project, or if extended, a date agreed upon by the Parties in writing (the "**Escrow Closing Date**"). If for any reason the Close of Escrow has not occurred by the Escrow Closing Date, then

any Party not then in default of this Agreement may cancel the Escrow and terminate this Agreement, subject to the notice and cure provisions of Section 7.1 (to the extent applicable), without liability to any other Party or any other person for such termination and cancellation, by delivering written notice of termination to the other Party(ies) and Escrow Holder and, thereafter, the Parties shall proceed pursuant to Section 3.10 if the non-terminating Party is not in default or pursuant to Section 7.2 or 7.3 (as applicable) if the non-terminating Party is in default. Without limiting the right of any Party to terminate this Agreement, pursuant to the preceding sentence, if Escrow does not close on or before the Escrow Closing Date, and no Party has exercised its contractual right to cancel Escrow and terminate this Agreement before such time, then Escrow shall close as soon as reasonably possible following the first date on which Escrow Holder is in a position to close the Escrow pursuant to the terms and conditions of this Agreement.

3.7 Recordation and Distribution of Documents. As applicable, Escrow Holder shall cause the following documents to be recorded in the official records of the Recorder of the County in the following order of priority at the Close of Escrow: (i) the Grant Deed, with the Developer's certificate of acceptance attached, (ii) the Notice of Agreement, and (iii) the Construction Loan Deed of Trust, if applicable, and (iv) any other documents to be recorded through Escrow upon the joint instructions of the Parties. All recorded documents shall provide that they are to be returned to Escrow Holder after recordation. When originals of such recorded documents are returned to Escrow Holder, Escrow Holder shall deliver: (i) the original Grant Deed, with the Developer's original certificate of acceptance attached, to the Developer and copies to the City, each showing all recording information, (ii) the original of the Notice of Agreement to the City, with copies to the Developer, each showing all recording information, (iii) the Construction Loan Deed of Trust to the Construction Lender for the Project, with copies to the Developer and the City, each showing all recording information, and (iv) the original of any other document recorded at the close of Escrow to the Party or other person designated in the joint escrow instructions of the Parties for such recordation and a copy of each such document to the other Party or Parties, each showing all recording information.

3.8 Escrow Closing Costs, Taxes and Title Policy Premium. The City and the Developer shall each pay one-half (1/2) of the Escrow fees and such other costs as Escrow Holder may charge for the conduct of the Escrow. Escrow Holder shall notify the Developer and the City of the costs to be borne by each of them at the Close of Escrow by delivering the Escrow Holder's estimated closing/settlement statement to both the City and the Developer at least four (4) business days prior to the Escrow Closing Date. The City shall pay the premium charged by the Title Company for the standard Title Policy for the Property, exclusive of any endorsements or other supplements to the coverage of such Title Policy that may be requested by the Developer. The City as a tax exempt entity shall not be responsible for paying any documentary transfer taxes and any and all other charges, fees and taxes levied by a Governmental Authority relative to the conveyance of the Easements. Developer shall be responsible for payment of any documentary transfer taxes and any and all other charges, fees and taxes levied by a Governmental Authority relative to the conveyance of any portion of the Property through the Escrow transaction contemplated in this Agreement. The Developer shall pay any and all recording fees relative to the conveyance of any portion of the Property through the Escrow transaction contemplated in this Agreement.

3.9 Escrow Cancellation Charges. If the Escrow fails to close due to either the City's

material default under this Agreement and the Escrow is cancelled and this Agreement is terminated, the City shall pay all ordinary and reasonable Escrow and title order cancellation charges. If the Escrow fails to close due to the Developer's material default under this Agreement and the Escrow is cancelled and this Agreement is terminated, the Developer shall pay all ordinary and reasonable Escrow and title order cancellation charges. If the Escrow fails to close for any reason other than the material default of either the Developer or the City and the Escrow is cancelled and this Agreement is terminated, the Developer and the City shall each pay one-half (1/2) of any ordinary and reasonable Escrow and title order cancellation charges.

3.10 Escrow Cancellation. If this Agreement is terminated and the Escrow cancelled pursuant to a contractual right granted to a Party in this Agreement to terminate this Agreement and cancel the Escrow, other than due to the material default of another Party, the Parties shall do each of the following:

3.10.1 Cancellation Instructions. The Parties shall, within three (3) business days of receipt of Escrow Holder's written request, execute any reasonable Escrow cancellation instructions requested by Escrow Holder;

3.10.2 Return of Funds and Documents. Within ten (10) days of receipt by the Parties of a settlement statement of Escrow and title order cancellation charges from Escrow Holder: (i) the Developer or Escrow Holder shall return to the City any documents previously delivered by the City to the Developer or Escrow Holder, (ii) the City or Escrow Holder shall return to the Developer all documents previously delivered by the Developer to the City or Escrow Holder; (iii) Escrow Holder shall return to the Developer any funds deposited by Developer into Escrow, including the Earnest Money Deposit, less the Developer's share of customary and reasonable Escrow and title order cancellation charges, if any; and (iv) Escrow Holder shall return to the City any funds deposited by City into Escrow if it has already been deposited, less the City's share of customary and reasonable Escrow and title order cancellation charges, if any.

3.11 Report to IRS. Following the Close of Escrow and prior to the last date on which such report is required to be filed with the Internal Revenue Service, if such report is required pursuant to Section 6045(e) of the Internal Revenue Code, Escrow Holder shall report the gross proceeds of the purchase and sale of the Property to the Internal Revenue Service on Form 1099-B, W-9 or such other form(s) as may be specified by the Internal Revenue Service pursuant to Section 6045(e). Upon the filing of such reporting form with the Internal Revenue Service, Escrow Holder shall deliver a copy of the filed form to the City and the Developer.

ARTICLE IV

PROJECT DEVELOPMENT

4.1 Developer Covenant to Undertake Project. The Developer covenants, for itself, its successors and assigns, to and for the exclusive benefit of the City, that the Developer shall commence and complete the development of the Project on the Property within the time period for such actions set forth in the Schedule of Performance, subject to Unavoidable Delays. The Developer covenants and agrees for itself, its successors, and assigns, that the Property shall be improved and developed with the Project in substantial conformity with the terms and conditions

of this Agreement, the Scope of Development, the Schedule of Performance, any and all plans, specifications and similar development documents required by this Agreement, except for such changes as may be mutually agreed upon in writing by and among the Parties, and all applicable laws, regulations, orders and conditions of each Governmental Agency with jurisdiction over the Property or the Project. The covenants of this Section 4.1 shall run with the land of the Property until the earlier of the date of recordation of the Certificate of Completion or the fifteenth (15th) anniversary of the date of the Close of Escrow.

4.2 Developer Changes to Plans and Specifications During Course of Construction. The Developer shall have the right during the course of construction of the Project to make "**minor field changes**," without seeking the approval of the City, if such changes do not affect the type of use to be conducted within all or any portion of a structure. "**Minor field changes**" shall be defined as those changes from the approved Plans and Specifications that have no substantial effect on the Project or are made in order to expedite the work of construction in response to field conditions. The Developer shall submit all other changes, i.e. those changes which are not **"minor field changes"**, to the City for its review and approval no less than fifteen (15) days prior to the date that the Developer intends to implement such changes. The City shall have ten (10) days from its receipt of such proposed changes to review the same and advise the Developer in writing whether such changes are acceptable to the City in its reasonable discretion. Any proposed changes which are not disapproved by the City within such ten (10) day period shall be deemed approved. Nothing contained in this Section 4.2 shall be deemed to constitute a waiver of or change in the City Requirements governing "**minor field changes**" or other changes or in any approvals by the City otherwise required for "**minor field changes."** or other changes.

4.3 Construction Start and Completion of Project. The Developer shall commence construction of the Project in accordance with the Schedule of Performance and, thereafter, shall diligently proceed to complete the construction of the Project in a good and workmanlike manner in substantial conformity with the approved plans, specifications, and conditions for the Project approved by the City and the Schedule of Performance. The Developer shall obtain a Certificate of Completion on or before the Project Completion Date, subject to Unavoidable Delays. The Developer will, promptly upon completion of construction of the Project, cause the Project to be inspected by each Governmental Agency with jurisdiction over the Project, shall correct any defects and deficiencies that may be disclosed by any such inspection and shall cause to be duly issued all occupancy certificates and other licenses, permits and authorizations necessary for the operation and occupancy of the completed Project. The Developer shall do and perform all of the foregoing acts and things and cause to be issued and executed all such occupancy certificates, licenses, and authorizations for the Project on or before the date set forth therefor in the Schedule of Performance as the completion date for the Project. After commencement of the work of improvement of the Project, the Developer shall not permit the work of improvement of the Project to cease or be suspended for a time period in excess of thirty (30) consecutive calendar days, subject to Unavoidable Delays.

4.4 Compliance with Laws. All work performed in connection with the development of the Project shall comply with all Governmental Requirements.

4.5 Schedule of Performance. The Schedule of Performance establishes various dates and times for the accomplishment of various tasks assigned to the City and the Developer and the

satisfaction of the conditions precedent to the close of the Escrow. The Parties agree that time is of the essence in the performance of such tasks and the satisfaction of conditions precedent, in view of the large investment of resources that all Parties recognize will be required for assembly of the Property and the undertaking of the Project. If the date or time for the performance of a task or the satisfaction of a condition, as set forth in either the text of this Agreement or in the Schedule of Performance, may not be achieved, then prior to such date or time set forth in the text of this Agreement or the Schedule of Performance, the Parties shall consider whether a modification to the text of this Agreement or to the Schedule of Performance is indicated. Any decision to approve a modification to a time or date established in either the text of this Agreement or the Schedule of Performance shall be subject to the sole discretion of each Party. Any modification of a time or date for performance of a particular task or satisfaction of a particular condition that does not result in a change of more than one hundred eighty (180) days may be approved on behalf of the City by the City Manager, in his or her reasonable discretion. A modification of a time or date for performance of a task or satisfaction of a condition (or a series of such modifications) that results in an aggregate change of more than one hundred eighty (180) days shall be subject to the approval of the City Council, in its sole and absolute discretion. If performance of a task or satisfaction of a condition in the Schedule Performance is prevented or delayed by Unavoidable Delays, the deadline for completion of such task or satisfaction of such condition shall be extended by the period of such Unavoidable Delays.

4.6 Developer Attendance at City Meetings. The Developer agrees to have one or more of its employees or consultants who are knowledgeable regarding this Agreement and the development of the Project, such that such person(s) can meaningfully respond to City questions regarding the progress of the Project, attend City Council meetings, when requested to do so on not less than ten (10) days prior written notice by City staff.

4.7 City's Right to Inspect Project and Property. Officers, employees, agents and representatives of the City shall have the right of reasonable access to the Property, without the payment of charges or fees, during normal construction hours, during the period of construction of the Project. Such officers, employees, agents or representatives of the City shall be those persons who are designated by the City Manager. Any and all officers, employees, agents or representatives of the City who enter the Property shall identify themselves at the construction management office on the Property, upon their entrance on to the Property, and shall at all times be accompanied by a representative of the Developer, while on the Property. The Developer shall make a representative of the Developer available for this purpose at all times during normal construction hours, upon reasonable notice from the City. The City shall indemnify and hold the Developer harmless from injury, property damage or liability arising out of the exercise by the City of the right of access to the Property provided in this Section 4.7, other than injury, property damage or liability arising from the negligence or willful misconduct of the Developer or its officers, agents or employees. The City shall inspect relevant portions of the Property, prior to issuing any written statements reflecting adversely on the Developer's compliance with the terms and conditions of this Agreement pertaining to development of the Project. If in the City's reasonable judgment it is necessary, the City shall have the further right, from time to time, to retain a consultant or consultants to inspect the Project and verify compliance by the Developer with the provisions of this Agreement. The Developer acknowledges and agrees that any such inspections are for the sole purpose of protecting the City's rights under this Agreement, are made solely for the City's benefit, that the inspections may be superficial and general in nature, and are

for the purposes of informing the City of the progress of the Project and the conformity of the Project with the terms and conditions of this Agreement, and that the Developer shall not be entitled to rely on any such inspection(s) as constituting an approval, satisfaction or acceptance of any materials, workmanship, conformity of the Project with this Agreement or otherwise. The Developer agrees to make its own regular inspections of the work of construction of the Project to determine that the quality of the Project and all other requirements of the work of construction of the Project are being performed in a manner satisfactory to the Developer. The Developer also agrees to immediately notify the City in writing should the Developer's inspections show any matters that will prevent the entire Project from being completed by the Project Completion Date set forth therefore in the Schedule of Performance. Without limiting the foregoing, the Developer shall permit the City upon reasonable notice to examine and copy all books and account records and other papers relating to the Property and the construction of the Project. The Developer will use commercially reasonable efforts to cause all contractors, subcontractors and materialmen to cooperate with the City to enable such examination.

4.8 Cost of Construction. The cost and expense of undertaking and completing the Project, including, without limitation, constructing all legally imposed on- and off-site improvements, and providing all utilities therefor, shall be borne by Developer at its sole cost, expense and liability. Developer shall be solely responsible for payment of all City land use, construction, inspection, plan check and development impact fees (collectively, "**Development Fees**") imposed by the City with respect to the development of the Project. Developer shall bear all costs and expenses associated with the processing and obtaining of the entitlements and shall bear all costs and expenses (except to the extent expressly set forth otherwise in this Agreement), associated with any and all terms, conditions, requirements, mitigation measures and other exactions imposed on, or required in connection with, the entitlements.

4.9 Prevailing Wages.

4.9.1 The Developer acknowledges that the City has not made any representation, express or implied, to the Developer or any person associated with the Developer regarding whether or not laborers employed relative to the construction of the Project must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to Labor Code Sections 1720, et seq. The Developer agrees with the City that the Developer shall assume the responsibility and be solely responsible for determining whether or not laborers employed relative to the construction of the Project must be paid the prevailing per diem wage rate for their labor classification.

4.9.2 The Developer, on behalf of itself, its successors, and assigns, waives and releases the City from any right of action that may be available to it pursuant to Labor Code Sections 1726 and 1781. The Developer acknowledges the protections of Civil Code Section 1542 relative to the waiver and release contained in this Section 4.9, which reads as follows:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY

AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

BY INITIALING BELOW, THE DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 4.9.2.

_____
Developer's Initials

4.9.3 Additionally, in accordance with Section 7.7, the Developer shall indemnify, defend with counsel acceptable to the City and hold the City harmless against any claims pursuant to Labor Code Sections 1726 and 1781 arising from this Agreement or the construction or operation of the Project.

4.10 Certificate of Completion.

4.10.1 Following the substantial completion of construction of the Project, and upon written request from the Developer for issuance of a Certificate of Completion for the Project, the City shall inspect the Project to determine whether or not the Project has been substantially completed in compliance with this Agreement. If the City determines, in its reasonably discretion, that the Project is complete and substantially in compliance with this Agreement, the City Manager shall furnish the Developer with a Certificate of Completion for the Project. If the City determines, in its reasonable discretion, that the Project is not in substantial compliance with this Agreement, the City Manager shall send written notice of each non-conformity to the Developer. Upon issuance of the final certificate of occupancy for the development of the Project, based on the plans submitted by the Developer to the City, the City shall furnish the Developer with a Certificate of Completion for the Project.

4.10.2 Upon the Developer's substantial completion of the Project, the Developer shall request and be entitled to receive a Certificate of Completion, including the right of the City Manager to issue the Certificate of Completion, except that the Certificate of Completion, upon issuance, shall be evidence of the City's conclusive determination of satisfactory substantial completion of the entirety of the Project pursuant to the terms of this Agreement.

4.10.3 The City shall not unreasonably withhold, condition or delay the issuance of a Certificate of Completion. A Certificate of Completion shall be evidence of the City's conclusive determination of satisfactory completion of the Project to which it pertains pursuant to the terms of this Agreement. After the recordation of a Certificate of Completion for the Project, any person then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Property improved with the Project shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement regarding construction or installation of the Project except that such person shall be bound by any reservations, covenants, conditions, restrictions and other interests recorded against the Property pursuant to this Agreement and the Grant Deed.

4.10.4 If the City fails or refuses to issue a Certificate of Completion following

written request from the Developer, the City shall, within fifteen (15) calendar days of the Developer's written request or within three (3) calendar days after the next regular meeting of the City Council, whichever date occurs later, provide the Developer with a written statement setting forth the reasons for the City's failure or refusal to issue a Certificate of Completion. The statement shall also contain the City's opinion of the action(s) the Developer must take to obtain a Certificate of Completion from the City. If the reason for the Developer's failure to complete the Project is confined to the immediate unavailability of specific items or materials for construction or landscaping at a price reasonably acceptable to the Developer or other minor building "**punch-list**" items, the City may issue its Certificate of Completion upon the posting of a bond or irrevocable standby letter of credit by the Developer in a form reasonably acceptable to the City in an amount representing the fair value of the work on the Project remaining to be completed, as reasonably determined by the City. If the City fails to provide such written statement, within the specified time period, the Developer shall be deemed conclusively and without further action of the City to have satisfied the requirements of this Agreement with respect to the Project, as if a Certificate of Completion had been issued by the City pursuant to this Agreement.

4.10.5 A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the Project, or any parts thereof. A Certificate of Completion shall not be deemed to constitute a notice of completion under Section 9204 of the California Civil Code, nor shall it act to terminate the continuing covenants, restrictions or conditions contained in the Grant Deed or any other instruments recorded against the Property pursuant to this Agreement. A Certificate of Completion is not evidence of the compliance of the Project with any City Requirements or any building code, conditions of approval, land use, zoning or other requirements of the City or any Governmental Agency with jurisdiction over the Property, other than the City.

ARTICLE V

DEVELOPER COVENANTS

5.1 Covenant to Maintain Property on Tax Rolls. The Developer for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

5.1.1 The entire Property shall remain on the County secured real property tax rolls for twenty years from the date of issuance of a certificate of occupancy for the Project.

5.1.2 The Developer shall pay all property tax bills with respect to the Property and all improvements thereon on or before the last day for the timely payment of each property tax installment on each December 10 and April 10 during such time period and to timely pay all supplemental tax bills regarding the Property issued by the County. The Developer further covenants and agrees to provide to the City, on or before July 31 of each year, commencing in the calendar year following the calendar year in which a Certificate of Completion is recorded and in each calendar year, thereafter, for the full term of this covenant: (i) a true and correct copy of all property tax assessment notices, property tax bills and property tax assessment correspondence by and between the Developer and the County regarding the Property and all improvements thereon,

with respect to the preceding fiscal year of the County, and (ii) cancelled checks issued by the Developer in payment of all property tax payments that are made to the County regarding the Property and all improvements thereon (or other reasonably acceptable evidence of such payment), with respect to the preceding County fiscal year.

5.1.3 The covenants of this Section 5.1 shall run with the land of the Property, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed.

5.2 Intentionally Omitted.

5.3 Maintenance Condition of the Property. The Developer for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

5.3.1 The areas of the Property that are subject to public view (including all existing and future improvements, paving, walkways, landscaping, exterior signage and ornamentation) shall be maintained in good repair and a neat, clean and orderly condition, ordinary wear and tear excepted. If there is an occurrence of an adverse condition on any area of the Property that is subject to public view in contravention of the general maintenance standard described above (a "**Maintenance Deficiency**"), then the City shall notify the Developer in writing of the Maintenance Deficiency. If the Developer fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) days of its receipt of notice of the Maintenance Deficiency, the City shall have the right to enter the Property and perform all acts reasonably necessary to cure the Maintenance Deficiency, or to take any other action at law or in equity that may then be available to the City to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the City for the abatement of a Maintenance Deficiency on the Property pursuant to this Section 5.3.1 shall become a lien on the Property, as applicable. If the amount of the lien is not paid within thirty (30) days after written demand for payment from the City to the Developer, the City shall have the right to enforce the lien in the manner provided in Section 5.3.3.

5.3.2 Graffiti, as this term is defined in Government Code Section 38772, that has been applied to any exterior surface of a structure or improvement on the Property that is visible from any public right-of-way adjacent or contiguous to the Property, shall be removed by the Developer by either painting over the evidence of such vandalism with a paint that has been color-matched to the surface on which the paint is applied, or graffiti may be removed with solvents, detergents or water, as appropriate. If Developer does not commence any action to remove any such graffiti within ninety-six (96) hours following the time of the discovery of the graffiti by Developer, the City shall have the right to enter the Property and remove the graffiti, at reasonable times and upon reasonable notice to the Developer. Any sum reasonably expended by the City for the removal of graffiti from the Property pursuant to this Section 5.3.2, shall be a lien on the Property. If the amount of the lien is not paid within thirty (30) days after written demand to the Developer from the City, the City shall have the right to enforce its lien in the manner provided in Section 5.3.3.

5.3.3 The Parties further mutually understand and agree that the rights conferred upon the City under this Section 5.2 expressly include a grant by the Developer of a

security interest in the Property with the power to establish and enforce a lien or other encumbrance against the Property or any portion thereof, in the manner provided under Civil Code Sections 2924, 2924b and 2924c, to secure the obligations of the Developer and it successors under Section 5.3.1 or Section 5.3.2, including the reasonable attorneys' fees and costs of the City associated with the abatement of a Maintenance Deficiency or removal of graffiti. For the purposes of the preceding sentence the words "reasonable attorneys' fees and costs of the City" mean and include the salaries, benefits and costs of the City Attorney and the lawyers employed in the Office of the City Attorney.

5.3.4 The provisions of this Section 5.2, shall be a covenant running with the land of the Property, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed. Nothing in the foregoing provisions of this Section 5.2 shall be deemed to preclude the Developer from making any alteration, addition, or other change to any structure or improvement or landscaping on the Property, provided that any such changes comply with applicable zoning and building regulations of the City.

5.4 Obligation to Refrain from Discrimination. The Developer for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

5.4.1 There shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall the Developer, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sub-lessees or vendees of the Property. The covenant of this Section 5.4 shall run with the land of the Property and shall be enforceable against the Developer and its successors and assigns in perpetuity and be a covenant in the Grant Deed and the Notice of Agreement.

5.4.2 The covenant of this Section 5.4 shall run with the land of the Property in perpetuity, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed.

5.5 Form of Non-Discrimination and Non-Segregation Clauses. The Developer for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

5.5.1 The Developer, such successors and such assigns shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Property (or any portion thereof) on the basis of sex, marital status, race, color, religion, creed, ancestry or national origin of any person. All deeds, leases or contracts pertaining to the Property shall contain or be subject to substantially the following non-discrimination or non-segregation covenants:

5.5.1.1 In deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no

discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sub-lessee, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

5.5.1.2 In leases: "The Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants lessees, sub-lessee, sub-tenants, or vendees in the premises herein leased."

5.5.1.3 In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed or leased, nor shall the transferee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sub-lessees, sub-tenants, or vendees of the premises herein transferred." The foregoing provision shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

5.5.2 The covenant of this Section 5.5 shall run with the land of the Property in perpetuity, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed.

5.6 Survival of Special Development Covenants. All of the covenants set forth in ARTICLE V, inclusive, shall be a covenant running with the land of the Property and each such special development covenant shall survive the Close of Escrow, execution and recordation of the Grant Deed, and issuance and recordation of any Certificate of Completion for the time period specifically set forth in each such special development covenant. The Parties acknowledge that although the special development covenants apply to the entirety of the Property, portions of the Project and Property may, in accordance with the Permitted Transfer requirements, be sold or otherwise transferred to various successors and assigns of the Developer. Accordingly, the City agrees that with respect to enforcement of any of the special development covenants, it is understood and agreed that, in the event of a breach of any of the special development covenants, the City will seek to enforce those covenants only against the then-current owner(s) of that portion of the Property which is not in compliance with any one or more the special development covenants. No owner of any portion of the Property which is in compliance with the special development covenants shall be liable for the breach of any of the special development covenants by any other owner of any other portion of the Property; provided, however, that the foregoing

shall not preclude City from seeking damages against any prior owner of any portion of the Property if, during the tenure of such owner's ownership, such owner's portion of the Property was not in compliance with any one or more of the special development covenants.

5.7 Developer Covenant to Defend this Agreement. The Developer acknowledges that the City is a "**public entity**" and/or "**public agency**" as defined under applicable California law. Therefore, the City must satisfy the requirements of certain California statutes relating to the actions of public entities and public agencies including, without limitation, CEQA. Also, as a public body, the City's action in approving this Agreement may be subject to proceedings to invalidate this Agreement or mandamus. The Developer assumes the risk of delays and damages that may result to the Developer from any third-party legal actions related to the City's approval of this Agreement or the pursuit of the activities contemplated by this Agreement, even in the event that an error, omission or abuse of discretion by the City is determined to have occurred. If a third-party files a legal action regarding the City's approval of this Agreement or the pursuit of the activities contemplated by this Agreement, either the City may terminate this Agreement on thirty (30) days written notice to the Developer of the City's intent to terminate this Agreement, referencing this Section 5.7, without any further obligation to perform the terms of this Agreement and without any liability to the Developer resulting from such termination, unless the Developer unconditionally agrees to indemnify and defend the City, with legal counsel reasonably acceptable to the City, against such third-party legal action, as provided in the next sentence. Within thirty (30) days of receipt of the City's notice of intent to terminate this Agreement, as provided in the preceding sentence, the Developer may offer to defend the City, with legal counsel reasonably acceptable to the City, in the third-party legal action and pay all of the court costs, attorney fees, monetary awards, sanctions, attorney fee awards, expert witness and consulting fees, and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action. Any such offer from the Developer must be in writing and reasonably acceptable to the City in both form and substance. Nothing contained in this Section 5.7 shall be deemed or construed to be an express or implied admission that the City is liable to the Developer or any other person or entity for damages alleged from any alleged or established failure of the City to comply with any statute, including, without limitation, CEQA. The Developer's defense of such third party actions as described in this Section 5.7 shall constitute an Unavoidable Delay.

5.8 Environmental Indemnity of the City by the Developer. Subject to the representation and warranties of the City hereunder, the Developer agrees, at its sole cost and expense, to fully indemnify, protect, hold harmless, and defend (with counsel selected by the Developer and approved by the City) the City and its commissions, agents, attorneys, officers, employees, and authorized representatives (collectively, the "**Indemnified Parties**"), from and against any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements and expenses, including, without limitation, attorney fees, disbursements and costs of attorneys, environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever (collectively, "**Environmental Claims**") that may, at any time, be imposed upon, incurred or suffered by, or claimed, asserted or awarded against, the Indemnified Parties, directly or indirectly relating to or arising from any of the following "**Environmental Matters**" existing or occurring during or arising from the Developer's ownership of the Property or construction or operation of the Project:

5.8.1 The presence of Hazardous Materials on, in, under, from or affecting all or any portion of the Property or the Project.

5.8.2 The storage, holding, handling, release, threatened release, discharge, generation, leak, abatement, removal or transportation of any Hazardous Materials on, in, under, from or affecting the Property or the Project.

5.8.3 The violation of any law, rule, regulation, judgment, order, permit, license, agreement, covenant, restriction, requirement or the like by the Developer, its agents or contractors, relating to or governing in any way Hazardous Materials on, in, under, from or affecting the Property or the Project.

5.8.4 The failure of the Developer, its agents or contractors, to properly complete, obtain, submit and/or file any and all notices, permits, licenses, authorizations, covenants and the like in connection with the Developer's activities on the Property or regarding the Project.

5.8.5 The implementation and enforcement by the Developer, its agents or contractors of any monitoring, notification or other precautionary measures that may, at any time, become necessary to protect against the release, potential release or discharge of Hazardous Materials on, in, under, from or affecting the Property or the Project.

5.8.6 The failure of the Developer, its agents or contractors, in compliance with all applicable Environmental Laws, to lawfully remove, contain, transport or dispose of any Hazardous Materials existing, stored or generated on, in, under or from the Property or the Project.

5.8.7 Any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency in connection with any Hazardous Materials on, in, under, from or affecting the Property or the Project or the violation of any Environmental Law relating to the Property or the Project.

5.8.8 The Developer shall pay to the Indemnified Parties all costs and expenses including, without limitation, reasonable attorneys' fees and costs, incurred by the Indemnified Parties in connection with enforcement of the aforementioned environmental indemnity.

5.9 Insurance. In order to protect the City and its commissions, agents, attorneys, officers, employees and authorized representatives (collectively, "**Additional Insureds**") against any and all claims and liability for death, injury, loss and damage resulting from the Developer's actions in connection with this Agreement, the Property, and the Project, the Developer shall secure and maintain the insurance coverage, described in and required by this Section 5.9. The City shall not have any obligation under this Agreement until the Developer provides the required policies and/or certificates evidencing the insurance required by this Section 5.9 to the City and the City approves such evidence of insurance. The Developer shall pay any deductibles and self-insured retentions under all insurance policies issued in satisfaction of the terms of this Agreement. Developer shall retain all insurance policies as set forth in this Section 5.9 until recordation of the Certificate of Completion.

5.9.1 Workers' Compensation Insurance Requirement. The Developer shall submit written proof that the Developer is insured against liability for workers' compensation in accordance with the provisions of Section 3700 of the Labor Code. By executing this Agreement, the Developer makes the following certification, required by Section 1861 of the Labor Code:

> "I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

The Developer shall require each contractor and sub-contractor performing work on the Project to provide workers' compensation coverage for all of such contractor's or sub-contractor's employees, unless the contractor's or sub-contractor's employees are covered by workers' compensation insurance provided by the Developer. If any class of employees engaged in work or services performed in connection with the Project is not covered by Labor Code Section 3700, the Developer shall provide and/or require each contractor or sub-contractor to provide adequate workers' compensation insurance covering such employees. Each workers' compensation policy procured pursuant to this Section 5.9.1 shall contain a full waiver of subrogation clause in favor of the Additional Insureds.

5.9.2 Liability and Permanent Insurance Requirements.

5.9.2.1 The Developer shall maintain in full force and effect, until the issuance of the Certificate of Completion, subject to Section 5.9.2.4, the following insurance coverage:

5.9.2.1.1 Commercial General Liability Insurance coverage, including, but not limited to, Premises-Operations, Contractual Liability Insurance (specifically covering all indemnity obligations of the Developer pursuant to this Agreement), Products-Completed Operations Hazards, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of the construction of the Project and/or the Developer's operations concerning the Property or the Project. The commercial general liability insurance coverage shall have minimum limits for Bodily Injury and Property Damage liability of TWO MILLION DOLLARS ($2,000,000) each occurrence and FOUR MILLION DOLLARS ($4,000,000) aggregate.

5.9.2.1.2 Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering all owned, leased, hired and non-owned vehicles used by the Developer with minimum limits for Bodily Injury and Property Damage of ONE MILLION DOLLARS ($1,000,000) each occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate. Such insurance shall be provided by a business or commercial vehicle policy.

5.9.2.1.3 If the Developer hires a consultant to provide design

services, such as architectural or engineering services in connection with the Project, or any portion of the Project, the Developer shall require each such consultant to provide Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, the performance of such design services, with limits of not less than ONE MILLION DOLLARS ($1,000,000).

5.9.2.1.4 Upon acceptance of the Project or any portion thereof, from each contractor, the Developer shall maintain Fire and Extended Coverage Insurance on the Project on a blanket basis or with an agreed amount clause in amounts not less than 100% of the replacement value of all portions of the Project so accepted.

5.9.2.2 During the construction of the Project, the Developer shall require that each contractor performing work on the Project maintain the following insurance coverage, as specified below, at all times during the performance of said work, or the Developer shall provide for such contractors "wrap" coverage, as specified below, at all times during the performance of said work:

5.9.2.2.1 The Developer shall maintain Builder's Risk Insurance to be written on an All Risk Completed Value form, in an aggregate amount equal to 100% of the completed insurable value of the Project or portion of the Project on which such contractor is performing work.

5.9.2.2.2 Each general contractor and each sub-contractor shall maintain Commercial General Liability Insurance with limits of not less than ONE MILLION DOLLARS ($1,000,000) per occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate to protect the Developer during the construction of the Project from claims involving bodily injury and/or death and damage to the property of others.

5.9.2.2.3 Each general contractor and each sub-contractor shall maintain Automobile Liability Insurance against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, hired and non-owned vehicles used in the performance of the contractor's obligations with minimum limits for bodily injury and property damage of ONE MILLION DOLLARS ($1,000,000) each occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate. Such automobile liability insurance shall be provided by a business or commercial vehicle policy.

5.9.2.3 The insurance required in Section 5.9.2.1 and Section 5.9.2.2 above shall include endorsements naming the Additional Insureds as additional insured for liability arising out of this Agreement and any operation related to this Agreement.

5.9.2.4 Any insurance coverage required under this Agreement shall not be written on a "claims made" basis. The applicable certificate of insurance must clearly provide that the coverage is on an "occurrence" basis. The requirements of this Section 5.9.2.4 shall survive any expiration or termination of this Agreement and the recordation of the Grant Deed and any Certificate of Completion.

5.9.2.5 Receipt by the City of evidence of insurance that does not comply with the above requirements shall not constitute a waiver of the insurance requirements of this

Agreement.

5.9.2.6 Subject to Section 5.9.2.4, all of the insurance coverage required under this Section 5.9 shall be maintained by the Developer or its contractors, as required by the terms of this Agreement, until the issuance of the Certificate of Completion and shall not be reduced, modified, or canceled without, at least, thirty (30) days prior written notice to the City. Also, phrases such as "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates of insurance or any coverage for the Additional Insureds. The Developer shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits are exhausted or upon insolvency of the insurer that issued the policy.

5.9.2.7 All insurance to be obtained and maintained by the Developer under this Section 5.9 shall be issued by a company or companies listed in the then current "Best's Key Rating Guide" publication with a minimum of an "A:VII" rating and be admitted to conduct business in the State of California by the State of California Department of Insurance.

5.9.2.8 The City will not accept self-insurance in satisfaction of the insurance requirements of this Section 5.9.

5.9.2.9 All insurance obtained and maintained by the Developer in satisfaction of the requirements of this Agreement shall be primary to and not contributing to any insurance maintained by the Additional Insureds.

5.9.2.10 Insurance coverage in the minimum amounts set forth in this Section 5.9 shall not be construed to relieve the Developer of any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the Additional Insureds from taking such other actions as are available to them under any other provision of this Agreement or otherwise at law.

5.9.3 Failure by the Developer to maintain all insurance coverage required by this Section 5.9 in effect shall be an Event of Default by the Developer. The City, at its sole option, may exercise any remedy available to them in connection with such an Event of Default. Alternatively, the City may, at its sole option, purchase any such required insurance coverage and the City shall be entitled to immediate payment from the Developer for any premiums and associated costs paid by the City for such insurance coverage. Any election by the City to purchase or not to purchase insurance otherwise required to be carried by the Developer shall not relieve the Developer of its obligation to obtain and maintain the insurance coverage required by this Agreement.

ARTICLE VI

PROJECT FINANCING

6.1 Recordation of Construction Loan Deed of Trust. The Developer covenants to the City that, if Developer has arranged any secured Construction Loan, the Developer shall cause the Construction Loan Deed of Trust(s) to be recorded against the Property within sixty (60) days

following the Close of Escrow.

6.2 Unauthorized Liens. Except as provided in Section 6.3, until recordation of the Certificate of Completion, the Developer shall not record, and shall not allow to be recorded, against the Property, or any portion thereof, any Lien not expressly authorized by this Agreement. Until recordation of the Certificate of Completion, the Developer shall remove, or shall have removed, any unauthorized Lien made or recorded against the Property or any portion of the Property, or shall assure the satisfaction thereof to the satisfaction of the City. After one hundred twenty (120) calendar days prior written notice to the Developer, the City shall have the right, but not the obligation, to satisfy any unauthorized Lien made or recorded prior to recordation of the Certificate of Completion and receive reimbursement from the Developer for any amounts paid or incurred in satisfying any such Lien, upon demand. Nothing in this Section 6.2, though, shall require the Developer to pay or make provisions for the payment of any tax, assessment, lien, or charge that the Developer is in the process of contesting the validity or amount thereof, in good faith, and so long as such contest shall not subject the Property, or any portion thereof, to forfeiture or sale.

6.3 Rights of Lenders and City Regarding Permitted Loans and Liens.

6.3.1 The City shall have the right of reasonable review and approval of any Lender from which the Developer proposes to obtain any Loan, whether or not such Loan is secured by a Lien against the Property or any portion thereof. The City shall not unreasonably withhold, condition or delay its approval of any proposed Lender or Loan. In deciding whether to give, condition or withhold such approval, the City may consider, among other matters, whether or not the proposed Lender is a state or federally chartered bank, savings and loan, or other financial institution which routinely provides construction financing to development projects such as the Project, whether the terms of the Loan are reasonable and customary when compared to the financing terms of similar development projects in the County, the size and financial strength of the proposed Lender, and what effect, if any, any changes requested by the Lender to either this Agreement or any of the exhibits to this Agreement may have upon the City's rights and remedies hereunder. In connection therewith, in any notice requesting approval of a proposed Lender and Loan, the Developer shall include a statement identifying any amendments, modifications, or other changes to this Agreement or its exhibits which the proposed Lender will request in connection with the Developer's obtaining of the Loan. The City agrees to reasonably consider, but shall not be obligated to accept, any amendment, modification, or other change to this Agreement or any of the exhibits to this Agreement which materially restricts, diminishes, or burdens the City's rights and remedies.

6.3.2 Whenever the City delivers any notice or demand to the Developer regarding any breach or default by the Developer under this Agreement that, if not timely cured by the Developer, would entitle the City to terminate this Agreement, the City shall send a copy of such notice to each affected Lender of which the City has received notice and a contact address for transmittal of such notices. Whenever the City delivers any notice or demand to the Developer regarding any breach or default by the Developer under this Agreement that, if not timely cured by the Developer, would entitle the City to exercise its power of termination of the fee estate of all or any portion of the Property pursuant to Section 7.6, the City shall at the same time send a copy of such notice or demand to each affected Lender of which the City has received notice and a

contact address for transmittal of such notice. Each affected Lender receiving a copy of any such notice shall have the right, at its option, to commence the cure or remedy of any such default of the Developer and to diligently and continuously proceed with such cure or remedy, within one hundred eighty (180) calendar days following its receipt of notice of the default. If a default of the Developer under this Agreement cannot, with diligence, be remedied or cured, or the remedy or cure of such default cannot be commenced, within such one hundred eighty (180) calendar day period, the Lender shall have such additional time as is reasonably necessary to remedy or cure such default of the Developer, but in no event beyond three hundred sixty five (365) calendar days following its receipt of notice of the default. If such default of the Developer can only be remedied or cured by the Lender upon obtaining possession of the Property, the Lender shall seek to obtain possession of the Property with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default of the Developer within one hundred eighty (180) calendar days after obtaining possession of the Property. Nothing contained in this Agreement shall be deemed to permit or authorize any Lender to undertake or continue the construction of any portion of the Project (beyond the extent necessary to conserve or protect improvements or construction already made), without expressly assuming the Developer's obligations under this Agreement by written agreement approved by the City, in which the Lender agrees to complete, in the manner provided in this Agreement, the improvements to which the Lien or title of the Lender relates, which approval shall not unreasonably be withheld, delayed, or conditioned by the City.

6.3.3 In any case where, one hundred eighty (180) calendar days after delivery of notice of a default of the Developer under Section 6.3.2, an affected Lender has not exercised the option provided in Section 6.3.2 to construct the applicable portions of the Project, or has exercised the option, but has not proceeded diligently and continuously with construction, the City shall have the option, in the City's sole and absolute discretion, to purchase the Loan of such Lender and any security interest of such Lender under its Loan Documents by payment to the Lender of the amount of the unpaid Loan, including principal, accrued and unpaid interest, late charges, costs, expenses and other amounts payable to the Lender by the Developer under its Loan Documents and, if the ownership of the Property or any portion of the Property has previously vested in such Lender, the City, at its option but not as its obligation, shall be entitled to a conveyance of any title or interest in the Property vested in such Lender from such Lender.

6.3.4 After expiration of the one hundred eighty (180) calendar day period provided for in Section 6.3.3, any affected Lender may demand, in writing, that the City act to exercise or forego the option granted in Section 6.3.3. If the City fails to exercise the right granted in Section 6.3.3 within sixty (60) calendar days from the date of the City's receipt of such written demand from a Lender, the City shall be conclusively deemed to have waived its right of purchase of that Lender's interest pursuant to Section 6.3.3.

6.3.5 In the event of a default or breach by the Developer under any Loan Documents, where the Lender has not exercised its option to complete the Project under Section 6.3.2, the City may cure the default of the Developer under the applicable Loan Documents, but is under no obligation to do so, prior to completion of any sale or foreclosure of the Property or any portion thereof under the applicable Loan Documents. The City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing any default of the Developer under any Loan Documents.

6.3.6 In any case where a Lender has acquired title to all or any portion of the Property or Project through foreclosure, deed in lieu of foreclosure, or any other means, and such Lender proposes to enter into an agreement to transfer the Property and/or Project, or any portion thereof, to a third party transferee, the Lender shall provide the City with written notice thereof, which notice shall include a reasonably detailed description of the terms and conditions of the proposed transaction. The City shall have the option, but not the obligation, to purchase the Property and/or Project on substantially the same terms as described in the Lender's notice, which option, if ever, shall be exercised by written notice from the City to the Lender within twenty (20) days following the City's receipt of the Lender's notice. If the City elects not to exercise its option, then, subject to Section 8.2.2, the Lender may complete the transaction described in its notice, provided that such transaction is closed on materially identical terms and conditions as those described in the Lender's notice to the City. If the Lender and third party transferee desire to materially amend the terms of their proposed transaction, the Lender shall give the City written notice of the proposed modifications and the City shall once again have the right to elect to acquire the Property and the Project (or portion thereof) on terms and conditions substantially similar to those modified terms. If, for any reason, the proposed transaction between the Lender and third party transferee fails to close within two hundred forty (240) days following the date on which the City first receives notice of the proposed transaction (or notice of the proposed modified transaction, whichever is later), then the City once again have the right to elect to acquire the Property and/or Project pursuant to this Section 6.3.6.

6.3.7 The restrictions set forth in this Section 6.3 shall remain in effect only until the recordation of the Certificate of Completion for the Project.

ARTICLE VII

DEFAULTS, REMEDIES AND TERMINATION

7.1 Defaults - General.

7.1.1 Subject to any extensions of time provided for in this Agreement, failure or delay by any Party to perform any term or provision of this Agreement shall constitute an "Event of Default" under this Agreement; provided, however, that if a Party otherwise in default commences to cure, correct or remedy such default, within thirty (30) calendar days after receipt of written notice from the injured Party specifying such default, and shall diligently and continuously prosecute such cure, correction or remedy to completion (and where any time limits for the completion of such cure, correction or remedy are specifically set forth in this Agreement, then within said time limits), such Party shall not be deemed to be in default under this Agreement and no Event of Default shall be deemed to have occurred.

7.1.2 The injured Party shall give written notice of default to the Party in default, specifying the default complained of by the non-defaulting Party. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

7.1.3 Any failure or delays by any Party in asserting any of their rights and/or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by any Party in asserting any of its rights and/or remedies shall not deprive that

Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies.

7.1.4 In addition to other acts or omissions of the Developer that may legally or equitably constitute a default or breach of this Agreement, the occurrence of any of the following specific events, prior to the issuance of a Certificate of Completion for the Project, shall constitute an "Event of Default" under this Agreement and shall not be subject to the notice and cure provisions of Section 7.1.1:

7.1.4.1 Any material default by the Developer under any Loan Documents for any purpose or reason that remains uncured following any applicable notice and expiration of any applicable cure period under such Loan Documents.

7.1.4.2 Any representation, warranty or disclosure made to the City by the Developer regarding this Agreement or the Project is materially false or misleading, whether or not such representation or disclosure appears in this Agreement.

7.1.4.3 The Developer fails to make any payment or deposit of funds required under this Agreement or to pay any other charge set forth in this Agreement, following seven (7) days' written notice to the Developer from the City of such failure.

7.1.4.4 The construction of the Project is delayed or suspended for a period in excess of that permitted under Section 4.3 or the Developer has not been issued, or entitled to be issued, a Certificate of Completion by the Project Completion Date.

7.1.4.5 There occurs any event of dissolution, reorganization or termination of the Developer that adversely and materially affects the operation or value of the Property or the Project, and such event is not corrected within five (5) days following written notice of such event from the City to the Developer.

7.1.4.6 The Developer Transfers its interest in this Agreement, the Property, or the Project, or any portion thereof, whether voluntarily or involuntarily or by operation of law, in violation of the terms and conditions of this Agreement and such action is not cured within the period prescribed in Section 8.2.2.

7.1.4.7 The Developer becomes insolvent or a receiver is appointed to conduct the affairs of the Developer under state or federal law.

7.1.4.8 The Developer's legal status as a California limited liability company authorized by the Secretary of State of the State of California to transact business in California is suspended or terminated, and such suspension is not cured within five (5) days following written notice thereof.

7.2 LIQUIDATED DAMAGES TO THE CITY. UPON THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW, THE CITY MAY CANCEL THE ESCROW PURSUANT TO SECTION 3.10, AND UPON CANCELLATION OF THE ESCROW, THE CITY SHALL BE RELIEVED OF ANY OBLIGATION UNDER THIS AGREEMENT TO SELL OR CONVEY

THE PROPERTY OR ANY PORTION THEREOF AND ANY SUCH ESCROW CANCELLATION SHALL BE WITHOUT ANY LIABILITY OF THE CITY TO THE DEVELOPER OR ANY OTHER PERSON ARISING FROM SUCH ACTIONS. THE CITY AND THE DEVELOPER ACKNOWLEDGE THAT IT IS EXTREMELY DIFFICULT AND IMPRACTICAL, IF NOT IMPOSSIBLE, TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY THE CITY IN THE EVENT OF A CANCELLATION OF THE ESCROW DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES THE CITY WOULD SUFFER IN THE EVENT OF A CANCELLATION OF THE ESCROW DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW, THE CITY AND THE DEVELOPER AGREE THAT A REASONABLE ESTIMATE OF THE CITY'S DAMAGES IN SUCH EVENT IS THE TOTAL SUM OF EARNEST MONEY DEPOSIT AMOUNT OR ONE HUNDRED THOUSAND AND NO/100 DOLLARS ($100,000) WHICHEVER IS GREATER (THE "**LIQUIDATED DAMAGES AMOUNT**"). THEREFORE, UPON THE CANCELLATION OF THE ESCROW BY THE CITY DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF THE ESCROW, ESCROW HOLDER SHALL IMMEDIATELY CANCEL THE ESCROW AND PAY THE LIQUIDATED DAMAGES AMOUNT TO THE CITY, IN PART, FROM THE EARNEST MONEY DEPOSIT WITHIN FIVE (5) DAYS OF ESCROW CANCELLATION. RECEIPT OF THE LIQUIDATED DAMAGES AMOUNT SHALL BE THE CITY'S SOLE AND EXCLUSIVE REMEDY UPON THE CANCELLATION OF THE ESCROW DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW.

CITY'S INITIALS: _____ DEVELOPER'S INITIALS: _____

7.3 DEVELOPER'S ELECTION RE: SPECIFIC ENFORCEMENT OF AGREEMENT OR WAIVER OF RIGHT TO SPECIFIC PERFORMANCE AND LIMITATION ON RECOVERY OF DAMAGES PRIOR TO CLOSE OF ESCROW. UPON THE OCCURRENCE OF AN EVENT OF DEFAULT PERTAINING TO THE CONVEYANCE OF THE PROPERTY BY THE CITY UNDER THIS AGREEMENT PRIOR TO CLOSE OF ESCROW, THE DEVELOPER SHALL, AS ITS SOLE AND EXCLUSIVE REMEDY, HAVE THE RIGHT TO EXERCISE ONE OF THE ALTERNATIVE REMEDIES DESCRIBED IN SECTIONS 7.3.1 AND 7.3.2. THE DEVELOPER'S ELECTION, ONCE MADE, SHALL BE IRREVOCABLE.

7.3.1 WAIVER OF RIGHT TO SPECIFIC PERFORMANCE AND LIMITATION ON RECOVERY OF DAMAGES. THE DEVELOPER MAY WAIVE THE REMEDIES SET FORTH IN SECTION 7.3.2 AND MAY CANCEL THE ESCROW PURSUANT TO SECTION 3.10, AND UPON CANCELLATION OF THE ESCROW, THE DEVELOPER SHALL BE RELIEVED OF ANY OBLIGATION UNDER THIS AGREEMENT TO PURCHASE OR ACCEPT TITLE TO THE PROPERTY AND ANY SUCH ESCROW CANCELLATION SHALL BE WITHOUT ANY LIABILITY OF THE DEVELOPER TO THE CITY OR ANY OTHER PERSON ARISING FROM SUCH ACTIONS. THE DEVELOPER

SHALL BE LIMITED TO RECOVERING ANY AMOUNTS ACTUALLY EXPENDED BY THE DEVELOPER IN REASONABLE RELIANCE ON THIS AGREEMENT PRIOR TO THE DATE OF THE OCCURRENCE OF THE EVENT OF DEFAULT BY THE CITY, NOT TO EXCEED TEN THOUSAND DOLLARS ($10,000). THE DEVELOPER WAIVES ANY RIGHT TO RECOVER ANY OTHER SUMS FROM THE CITY ARISING FROM AN EVENT OF DEFAULT BY THE CITY PRIOR TO THE CLOSE OF ESCROW. THE DEVELOPER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542 RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 7.3.1, WHICH CIVIL CODE SECTION READS AS FOLLOWS:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, WHICH, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

BY INITIALING BELOW, THE DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 7.3.1.

DEVELOPER'S INITIALS _____

IN CONNECTION WITH THE WAIVERS OF THIS SECTION 7.3.1, THE DEVELOPER FURTHER WAIVES THE RIGHT TO RECORD A NOTICE OF PENDENCY OF ACTION AGAINST ALL OR ANY PORTION OF THE PROPERTY EXCEPT DEVELOPER MAY RECORD SUCH A NOTICE IN CONNECTION WITH ANY SUIT FOR SPECIFIC PERFORMANCE PERMITTED HEREUNDER IN THE EVENT DEVELOPER ELECTS NOT TO WAIVE ITS RIGHT TO SEEK SPECIFIC PERFORMANCE UNDER SECTION 7.3.2.

7.3.2 SPECIFIC PERFORMANCE. THE DEVELOPER MAY WAIVE THE REMEDIES SET FORTH IN SECTION 7.3.1 AND, IN ACCORDANCE WITH CIVIL CODE SECTION 3384, ET SEQ., INSTITUTE AN ACTION AGAINST THE CITY FOR SPECIFIC PERFORMANCE OF THE TERMS OR PROVISIONS OF THIS AGREEMENT WHICH WERE TO HAVE BEEN COMPLETED BY THE CITY PRIOR TO THE CLOSE OF ESCROW.

7.4 Legal Actions.

7.4.1 Except as otherwise provided by Section 7.3, any Party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy available to that Party under this Agreement or at law or in equity. Such legal actions must be instituted in the Superior Court of the State of California in and for the County of San Bernardino, California, in any other appropriate court within the County of San Bernardino, California.

7.4.2 The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflicts of laws principles. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in and relates to real property located in the City of Ontario, County of San Bernardino, California.

7.5 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this ARTICLE VII are non-exclusive and cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party(ies).

7.6 City Power of Termination Regarding the Property.

7.6.1 The City hereby reserves a power of termination pursuant to Civil Code Sections 885.010, et seq., exercisable by the City, in its sole and absolute discretion, upon thirty (30) calendar days written notice to the Developer referencing this Section 7.6, to terminate the fee interest of the Developer in the Property and/or any improvements to the Property and revest such fee title in the City and take possession of all or any portion of such real property and improvements, without compensation to the Developer, upon the occurrence of an Event of Default by the Developer following the Close of Escrow and prior to the issuance of the Certificate of Completion.

7.6.2 The thirty (30) calendar day written notice specified Section 7.6.1 shall specify the Event of Default by the Developer triggering the City's exercise of its power of termination. The City shall proceed with its remedy set forth in Section 7.6.1 only if the Developer continues in default for a period of sixty (60) calendar days following such notice or, upon commencing to cure such default, fails to diligently and continuously prosecute said cure to satisfactory conclusion.

7.6.3 The rights of the City under this Section 7.6 shall be subject and subordinate to, shall be limited by and shall not defeat, render invalid or limit:

7.6.3.1 Each Lien recorded against the Property and specifically authorized by this Agreement as a Permitted Transfer;

7.6.3.2 Any leases, declarations of covenants, conditions and restrictions, easement agreements or other recorded documents or interests applicable to the Property and specifically authorized by this Agreement as a Permitted Transfer.

7.6.4 Upon the City's exercise of its power of termination pursuant to this Section 7.6, the Developer or its successors or assigns shall convey by grant deed to the City title to the Property, as specified in the City's notice pursuant to Section 7.6.1, and all improvements thereon, in accordance with Civil Code Section 1109, as such code section may hereafter be amended, renumbered, replaced or substituted. Such conveyance shall be duly acknowledged by the Developer and a notary in a manner suitable for recordation. The City may enforce its rights pursuant to this Section 7.6 by means of an injunctive relief or forfeiture of title action filed in any court of competent jurisdiction.

7.6.5 Upon the revesting in the City of title to the Property, whether by grant deed or court decree, the City shall exercise its reasonable good faith efforts to resell the Property at its then fair market value, as soon and in such manner as the City shall, in its sole discretion, find feasible and consistent with the objectives of the City's General Plan, to a qualified and responsible person or persons (as reasonably determined by the City) who will assume the Developer's obligations to begin and/or complete and/or operate that portion of the Project located on the Property, or such other replacement development acceptable to the City, in its sole and absolute discretion. Upon any such resale of the Property (or any portion thereof), the proceeds to the City from such sale shall be applied as follows:

7.6.5.1 First, to pay any and all amounts required to release/reconvey any Lien recorded against all or any portion of the Property; and

7.6.5.2 Second, to reimburse the City on its own behalf or on behalf of the City for all actual internal and third-party costs and expenses previously or currently incurred by the City related to the Property, the Project, or this Agreement, including, but not limited to, customary and reasonable fees or salaries to third-party personnel engaged in such actions, in connection with the recapture, management and resale of the Property or any part thereof; all taxes, assessments and utility charges paid by the City with respect to the Property or portion thereof; any payment made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations incurred by the Developer with respect to the acquisition of the Property or the construction of the Project; and amounts otherwise owing to the City by the Developer or its successors or assigns pursuant to the terms of this Agreement; and

7.6.5.3 Third, to the extent that any proceeds from such resale are, thereafter, available, taking into account any prior encumbrances with a claim thereto, to reimburse the Developer, or its successors in interest to the equal to the sum of: (1) the Purchase Price; and (2) the third-party costs actually incurred and paid by the Developer regarding the development of the Project located on the Property, including, but not limited to, pro rata costs of carry, taxes, and other items as set forth in a cost certification to be made by the Developer to the City prior to any such reimbursement, which certification shall be subject to the City's reasonable approval; provided, however, that the Developer shall not be entitled to reimbursement for any expenses to the extent that such expenses relate to any loans, Liens or other encumbrances that are paid by the City pursuant to the provisions of sub-sections 7.6.5.1 or 7.6.5.2 above.

7.6.5.4 Any portion of the proceeds from the resale of the Property remaining after the foregoing applications shall be retained by the City as their sole and exclusive property.

7.6.6 IMMEDIATELY FOLLOWING THE THIRTY (30) DAY PERIOD SPECIFIED IN SECTION 7.6.1, ABOVE, THE CITY, ITS EMPLOYEES AND AGENTS SHALL HAVE THE RIGHT TO REENTER AND TAKE POSSESSION OF THE PROPERTY AND ANY IMPROVEMENTS THEREON, WITHOUT FURTHER NOTICE OR COMPENSATION TO THE DEVELOPER. BY INITIALING BELOW, THE DEVELOPER HEREBY EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS THAT THE DEVELOPER MAY HAVE UNDER CALIFORNIA CIVIL

CODE SECTION 791 AND CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1162, AS THOSE STATUTES MAY BE AMENDED, REPLACED, RENUMBERED OR SUBSTITUTED, OR UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

DEVELOPER'S INITIALS _____

7.6.7 THE DEVELOPER ACKNOWLEDGES AND AGREES THAT THE CITY'S EXERCISE OF ITS POWER OF TERMINATION AND RIGHT OF REENTRY PURSUANT TO THIS SECTION 7.6 MAY WORK A FORFEITURE OF THE ESTATE IN THE DEFAULTED PORTION OF THE PROPERTY CONVEYED TO THE DEVELOPER THROUGH THE GRANT DEED. THE DEVELOPER HEREBY EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL EQUITABLE AND LEGAL DEFENSES THAT THE DEVELOPER MAY HAVE TO SUCH FORFEITURE, INCLUDING, BUT NOT LIMITED TO, THE DEFENSES OF LACHES, WAIVER, ESTOPPEL, SUBSTANTIAL PERFORMANCE OR COMPENSABLE DAMAGES. THE DEVELOPER FURTHER EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS AND DEFENSES THAT THE DEVELOPER MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3275 OR ANY OTHER STATUTE OR COMMON LAW PRINCIPLE OF SIMILAR EFFECT. THE DEVELOPER ACKNOWLEDGES THAT THE TERMS AND CONDITIONS OF THIS AGREEMENT REFLECT THE POSSIBILITY OF FORFEITURE BY VIRTUE OF THE EXERCISE OF THE CITY'S POWER OF TERMINATION PROVIDED IN THIS SECTION 7.6 AND FURTHER ACKNOWLEDGE THAT IT HAS RECEIVED INDEPENDENT AND ADEQUATE CONSIDERATION FOR ITS WAIVER AND RELINQUISHMENT OF RIGHTS AND REMEDIES PURSUANT TO SECTION 7.6.6. AND THIS SECTION 7.6.7.

DEVELOPER'S INITIALS _____

7.7 Developer Indemnification of the City. In addition to any other specific indemnification or defense obligations of the Developer set forth in this Agreement, the Developer agrees to indemnify, defend (upon written request by the City and with counsel reasonably acceptable to the City and hold harmless the Indemnified Parties, from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs and expenses, including, but not limited to reasonable attorney's fees of counsel retained by the Indemnified Parties, expert fees, costs of staff time, and investigation costs, of whatever kind or nature, that are in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, through any act, omission, fault or negligence, whether active or passive, of the Developer or the Developer's officers, agents, employees, independent contractors or subcontractors of any tier, relating in any manner to this Agreement, any work to be performed by the Developer related to this Agreement, the Property, or the Project, or any authority or obligation exercised or undertaken by the Developer under this Agreement. Without limiting the generality of the foregoing, the Developer's obligation to indemnify the Indemnified Parties shall include injury or death to any person or persons, damage to any property, regardless of where located, including the property of the Indemnified Parties, any workers' compensation or prevailing wage determination, claim or suit or any other matter arising from or connected with any goods or materials provided or services or labor performed regarding the Project or the Property on behalf

of the Developer by any person or entity.

ARTICLE VIII

GENERAL PROVISIONS.

8.1 Incorporation of Recitals. The Recitals of fact set forth preceding this Agreement are true and correct and are incorporated into this Agreement in their entirety by this reference.

8.2 Restrictions on Transfers.

8.2.1 The Developer acknowledges that the qualifications and identity of the Developer are of particular importance to the City. The Developer further recognizes and acknowledges that the City has relied and is relying on the specific qualifications and identity of the Developer in entering into this Agreement with the Developer and, as a consequence, Transfers are permitted only as expressly provided in this Agreement. The Developer shall promptly notify the City in writing of any and all changes whatsoever in the identity of the business entities or individuals either comprising or in control of the Developer, as well as any and all changes in the interest or the degree of control of the Developer by any such person, of which information the Developer or any of its partners, members or officers are notified or may otherwise have knowledge or information.

8.2.2 Except as expressly permitted in this Agreement, the Developer represents to the City that it has not made and agrees that it will not make or create, or suffer to be made or created, any Transfer other than a Permitted Transfer, either voluntarily, involuntarily or by operation of law, until after the recordation of a Certificate of Completion for the Project subject to the Transfer; provided, however, that the City may approve in its reasonable discretion, Transfers other than Permitted Transfers prior to the recordation of a Certificate of Completion. In deciding whether to approve or disapprove any proposed Transfer, the City may consider the proposed transferee's financial strength and the experience of the proposed transferee and its senior management in undertaking and successfully completing projects of a similar type and size as the Project or that portion of the Project proposed to be transferred. Any Transfer made in contravention of this Section 8.2 shall be voidable at the election of the City and this Agreement may be terminated by the City or the City may exercise any other remedy available to the City under the terms of this Agreement, provided, however, that (i) the City shall first notify the Developer in writing of its intention to terminate this Agreement or to exercise any other remedy, and (ii) the Developer shall have twenty (20) calendar days following its receipt of such written notice to commence and, thereafter, diligently and continuously proceed to cure the default of the Developer and submit evidence of the initiation and satisfactory completion of such cure to the City, in a form and substance reasonably satisfactory to the City.

8.2.3 The Developer shall provide the City no less than thirty (30) days prior written notice of any proposed Permitted Transfer which the Developer desires to enter into prior to the recordation of a Certificate of Completion for the Project subject to the Transfer, other than a Permitted Transfer for which no notice shall be required. The Developer shall have the burden of demonstrating to the City's reasonable satisfaction that the proposed Permitted Transfer meets the conditions and requirements of this Agreement with respect to Permitted Transfers.

8.2.4 In connection with the City's review of any request for approval of any proposed Transfer under this Section 8.2, or of any Lender or Loan under Section 6.3, the Developer agrees to reimburse the City for those third party costs and expenses reasonably incurred by the City in connection with its review of the Developer's request for approval, including, without implied limitation, the reasonable fees and costs of those outside consultants and legal counsel retained by the City to assist it in its review of the Developer's request, including the City Attorney.

8.2.5 Anything in this Agreement to the contrary notwithstanding, the restrictions and prohibitions on Transfers contained in this Section 8.2 shall terminate upon issuance of a Certificate of Completion for the Project.

8.3 Notices, Demands and Communications Between the Parties.

8.3.1 Any and all notices, demands or communications submitted by any Party to another Party pursuant to or as required by this Agreement shall be proper, if in writing and dispatched by messenger for immediate personal delivery, by a nationally recognized overnight courier service or by registered or certified United States Mail, postage prepaid, return receipt requested, to the principal office of the City or the Developer, as applicable, as designated in Section 8.3.2. Such written notices, demands or communications may be sent in the same manner to such other addresses as either Party may from time to time designate. Any such notice, demand or communication shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that it is delivered by personal delivery, on the date of delivery by a nationally recognized overnight courier service or three (3) calendar days after it is placed in the United States Mail, as provided in this Section 8.3.

8.3.2 The following are the authorized addresses for the submission of notices, demands or communications to the Parties:

TO DEVELOPER: Ontario Ranch Hotels LLC
Attn: Gurvinder Singh
1140 Natalie Lane
Watsonville, CA 95076
(T) (831) 840-5517
Email: gs@gakhalgroup.com

COPY TO: Brothers Smith LLP
2033 N. Main Street, Suite 720
Walnut Creek, CA 94596
Attn: Roger J. Brothers
(T) 925-944-9700
Email: rbrothers@brotherssmithlaw.com

TO CITY:	City of Ontario Attn: City Manager 303 East B Street Ontario, CA 91764 (T) (909) 395-2000 (F) (909) 395-2420
COPY TO:	Best Best & Krieger, LLP 2855 E. Guasti Rd., Suite 400 Ontario, CA 91761 Attn: Ruben Duran (T) (213) 787-2569 Email: Ruben.Duran@bbklaw.com
TO TITLE COMPANY:	Chicago Title Insurance Company, NCS California Attn: Stephanie Zapalac 4911 Birch Street Newport Beach, CA 92660 (M) (714) 742-7777 Email: Stephanie.Z@ctt.com

8.4 Conflict of Interest. No member, official or employee of the City, having any conflict of interest, direct or indirect, related to this Agreement, the Property, or the development or operation of the Project shall participate in any decision relating to this Agreement. The Parties represent and warrant that they do not have knowledge of any such conflict of interest.

8.5 Warranty Against Payment of Consideration for Agreement. The Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section 8.5, shall not include persons to whom fees are paid for professional services, if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary by the Developer.

8.6 Non-liability of City, Officials and Employees. No member, official or employee of the City shall be personally liable to the Developer, or any successor in interest of the Developer, in the event of any default or breach by the City under this Agreement or for any amount that may become due to the Developer or to its successor, or on any obligations under the terms of this Agreement, except as may arise from the gross negligence or willful acts of such member, official or employee.

8.7 Unavoidable Delay; Extension of Time of Performance.

8.7.1 Subject to specific provisions of this Agreement, performance by any Party under this Agreement shall not be deemed, or considered to be, in default where any such default is due to an Unavoidable Delay that is not attributable to the fault of the Party claiming an extension of time to perform. An extension of time for any Unavoidable Delay shall be for the period of the Unavoidable Delay and shall commence to run from the date of occurrence of the

Unavoidable Delay, if the Party asserting the existence of the Unavoidable Delay provides the other Parties with written notice of the occurrence of the Unavoidable Delay, within ten (10) days of the commencement of such asserted Unavoidable Delay. Otherwise, the extension of time for an Unavoidable Delay shall commence on the date of receipt of written notice of the occurrence of the Unavoidable Delay by the Parties not requesting an extension of time to perform due to such Unavoidable Delay.

8.7.2 The Parties expressly acknowledge and agree that changes in either general economic conditions or changes in the economic assumptions of either of them that may have provided a basis for entering into this Agreement and that occur at any time after the execution of this Agreement, do not constitute an Unavoidable Delay and do not provide any Party with grounds for asserting the existence of an Unavoidable Delay in the performance of any covenant or undertaking arising under this Agreement. Each Party expressly assumes the risk that changes in general economic conditions or changes in such economic assumptions relating to the terms and covenants of this Agreement could impose an inconvenience or hardship on the continued performance of such Party under this Agreement.

8.8 Inspection of Books and Records. The City shall have the right at all reasonable times, and upon reasonable notice, at the City's cost and expense, to inspect the books and records of the Developer pertaining to the Property and/or the Project until a Certificate of Completion has been issued. The Developer shall also have the right at all reasonable times, and upon reasonable notice, at the Developer's sole cost and expense, to inspect the books and records of the City pertaining to the Property and/or the Project, to the extent relevant to the Developer's obligations under this Agreement. Nothing in this Section 8.8 or elsewhere in this Agreement shall, however, constitute a waiver or modification of any right or privilege which any Party may have with respect to any document, statement, or other record, including, without implied limitation, the attorney-client privilege, the attorney-work product privilege, any privilege arising under any state or federal evidentiary code or rule, or any privilege or exclusionary right arising under any state or federal freedom of information or public records disclosure law.

8.9 Real Estate Commissions. Each party represents to the other party that there is no broker representing such party in the current transaction, and that the representing party has incurred no liability for any brokerage commission or finder's fee arising from or relating to the transactions contemplated by this Agreement. Each party hereby indemnifies and agrees to protect, defend and hold harmless the other party from and against all liability, cost, damage or expense (including without limitation attorneys' fees and costs incurred in connection therewith) on account of any brokerage commission or finder's fee which the indemnifying party has agreed to pay or which is claimed to be due as a result of the actions of the indemnifying party. This Section is intended to be solely for the benefit of the parties hereto and is not intended to benefit, nor may it be relied upon by, any person or entity not a party to this Agreement.

8.10 Binding on Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

8.11 Entire Agreement.

8.11.1 This Agreement shall be executed in three (3) duplicate originals, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Agreement including all exhibits shall constitute the entire understanding and agreement of the Parties regarding the subjects addressed in this Agreement.

8.11.2 This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all negotiations or previous agreements between the Parties with respect to the Property, the Project, and the other subjects addressed in this Agreement.

8.11.3 None of the terms, covenants, agreements or conditions set forth in this Agreement shall be deemed to be merged with any deed conveying title to the Property and this Agreement shall continue in full force and effect before and after such conveyances.

8.11.4 All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representative(s) of all Parties.

8.12 Execution of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Executed counterparts of this Agreement may be delivered by facsimile transmission or by delivery of a scanned counterpart in portable document format (PDF) by email, in either case with delivery confirmed. On such confirmed delivery, the signatures in the facsimile or PDF data file shall be deemed to have the same force and effect as if the manually signed counterpart had been delivered to the other party in person. Following execution of this Agreement by the authorized representative(s) of the Developer and prompt delivery of such originals, thereafter, to the City, accompanied by an official action of the governing body of the Developer authorizing the individuals executing this Agreement on behalf of the Developer to execute and perform this Agreement, in form and substance acceptable to the City, this Agreement shall be subject to the review and approval by the City Council, in their sole and absolute discretion, no later than forty-five (45) calendar days after such date of delivery to the City. If the City have not approved, executed, and delivered an original of this Agreement to the Developer within the foregoing time period, then no provision of this Agreement shall be of any force or effect for any purpose.

8.13 Survival of Indemnity Obligations. All general and specific indemnity and defense obligations of the Parties set forth in this Agreement shall survive the expiration or termination of this Agreement, the execution or recordation of the Grant Deed, and/or the issuance and recordation of any Certificate of Completion.

8.14 Implementation of Agreement. The City shall implement this Agreement through its City Manager (or his or her duly authorized representative). The City Manager shall have the authority to issue interpretations, waive provisions, and/or enter into amendments to this Agreement on behalf of the City so long as such actions do not materially or substantially change the uses or concept of the Project. All other materials and/or substantive interpretations, waivers, or amendments shall require consideration, action and written consent of the City and/or City Council.

8.15 Time Declared to be of the Essence. As to the performance of any obligation hereunder as to which time is a component thereof, the performance of such obligation within the time provided is of the essence.

[Signatures on Following Pages]

SIGNATURE PAGE
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(SPORTS EMPIRE HOTEL)

CITY:

THE CITY OF ONTARIO,
a California municipal corporation

Dated:_____, 2025 By:_____
Scott Ochoa
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO LEGAL FORM:
BEST BEST & KRIEGER LLP

By: _____
Ruben Duran
City Attorney

SIGNATURE PAGE
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(SPORTS EMPIRE HOTEL)

DEVELOPER:

ONTARIO RANCH HOTELS LLC,
a California limited liability company

Dated:_____ By:_____
NAME
TITLE

EXHIBIT A
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(SPORTS EMPIRE HOTEL)

LEGAL DESCRIPTION AND PLAT MAP OF THE PROPERTY TO BE CONVEYED TO DEVELOPER

ALL THAT PORTION OF LOT 2, BLOCK 1 OF THE MOIST BELT TRACT IN THE CITY OF ONTARIO, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 12, PAGE 45 OF MAPS, RECORDS OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 2;

THENCE SOUTH 89°24'44" EAST ALONG THE NORTHERLY LINE OF SAID LOT 2, A DISTANCE OF 18.35 FEET TO THE PROLONGATION OF THE WESTERLY LINE OF SAID LOT 2;

THENCE SOUTH 00°02'36" WEST ALONG SAID PROLONGATION AND THE WESTERLY LINE OF SAID LOT 2, A DISTANCE OF 284.47 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID WESTERLY LINE SOUTH 00°02'36" WEST, A DISTANCE OF 280.63 FEET;

THENCE SOUTH 45°00'12" EAST, A DISTANCE OF 18.40 FEET;

THENCE SOUTH 90°00'00" EAST, A DISTANCE OF 341.02 FEET;

THENCE NORTH 00°02'31" WEST, A DISTANCE OF 290.09 FEET;

THENCE NORTH 89°25'33" WEST, A DISTANCE OF 353.63 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 2.3688 ACRES, MORE OR LESS.

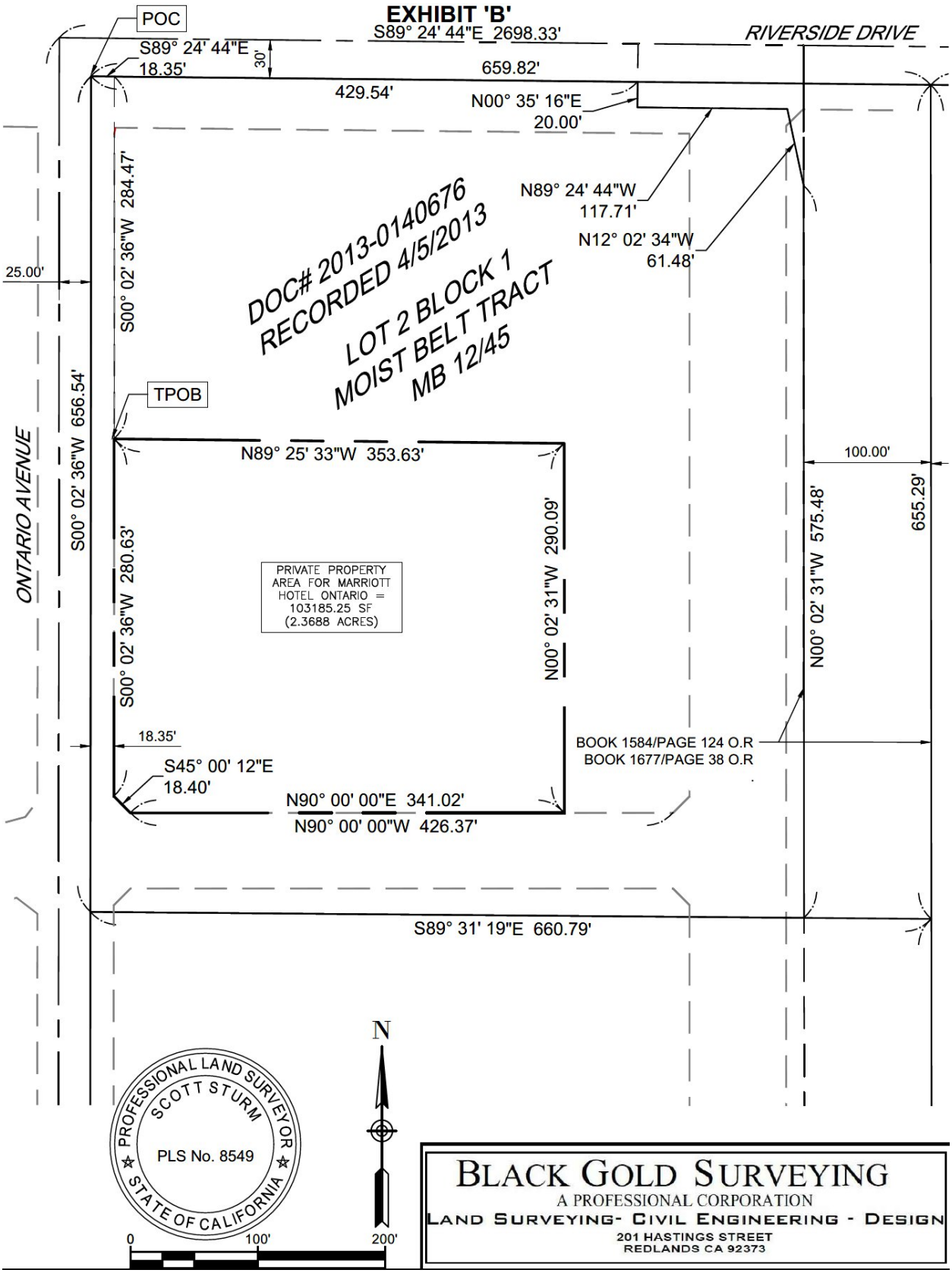


EXHIBIT A

46700.12001\43118563.5

EXHIBIT A-1

LEGAL DESCRIPTION AND PLAT MAP OF PROPERTY TO BE CONVEYED TO CITY

LEGAL DESCRIPTION

(APN 216-174-16, 216-174-17)

A PORTION OF PARCELS 2 AND 3 OF PARCEL MAP 983, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 12, PAGE 34 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY OF RIVERSIDE DRIVE, 50 FEET SOUTH AND PARALLEL TO THE CENTERLINE OF RIVERSIDE DRIVE AS SHOWN ON SAID PARCEL MAP, AND THE WESTERLY LINE OF SAID PARCEL 2; THENCE EASTERLY ALONG SAID SOUTHERLY RIGHT OF WAY, NORTH 89°18'43" EAST 589.93 FEET; THENCE ALONG THE ARC OF A 20.00 FOOT RADIUS TANGENT CURVE, CONCAVE SOUTHWESTERLY, THROUGH A CENTRAL ANGLE OF 89°51'42" A DISTANCE OF 31.37 FEET TO A LINE THAT IS PARALLEL TO AND 50.00 FEET WEST OF THE CENTERLINE OF VINEYARD AVENUE; THENCE SOUTHERLY ALONG SAID LINE, SOUTH 00°49'35" EAST 592.68 FEET TO THE SOUTH LINE OF SAID PARCEL 3; THENCE WESTERLY ALONG SAID SOUTH LINE, SOUTH 89°20'03" WEST 24.00 FEET TO A LINE THAT IS PARALLEL TO AND 74 FEET WEST OF THE CENTERLINE OF VINEYARD AVENUE; THENCE ALONG SAID LINE NORTH 00°49'35" WEST 563.64 FEET; THENCE NORTH 35°57'17" WEST 28.15 FEET TO A LINE THAT IS PARALLEL TO AND 76 FEET SOUTH OF THE CENTERLINE OF RIVERSIDE DRIVE; THENCE ALONG SAID LINE SOUTH 89°18'43" WEST 244.75 FEET; THENCE ALONG THE ARC OF A 135.00 FOOT RADIUS TANGENT CURVE, CONCAVE NORTHERLY, THROUGH A CENTRAL ANGLE OF 13°29'00", A DISTANCE OF 31.77 FEET; THENCE NORTH 77°12'17" WEST 35.30 FEET; THENCE ALONG THE ARC OF A 111.00 FOOT RADIUS TANGENT CURVE, CONCAVE SOUTHERLY, THROUGH A CENTRAL ANGLE OF 12°41'49", A DISTANCE OF 24.60 FEET; THENCE NORTH 89°54'06" WEST 234.84 FEET TO THE WEST LINE OF SAID PARCEL 2, THENCE NORTHERLY ALONG SAID WEST LINE NORTH 00°49'02" WEST 7.78 FEET TO THE POINT OF BEGINNING.

AREA: 25489 SQ. FT.

EXHIBIT "B" ATTACHED
AND MADE A PART THEREOF



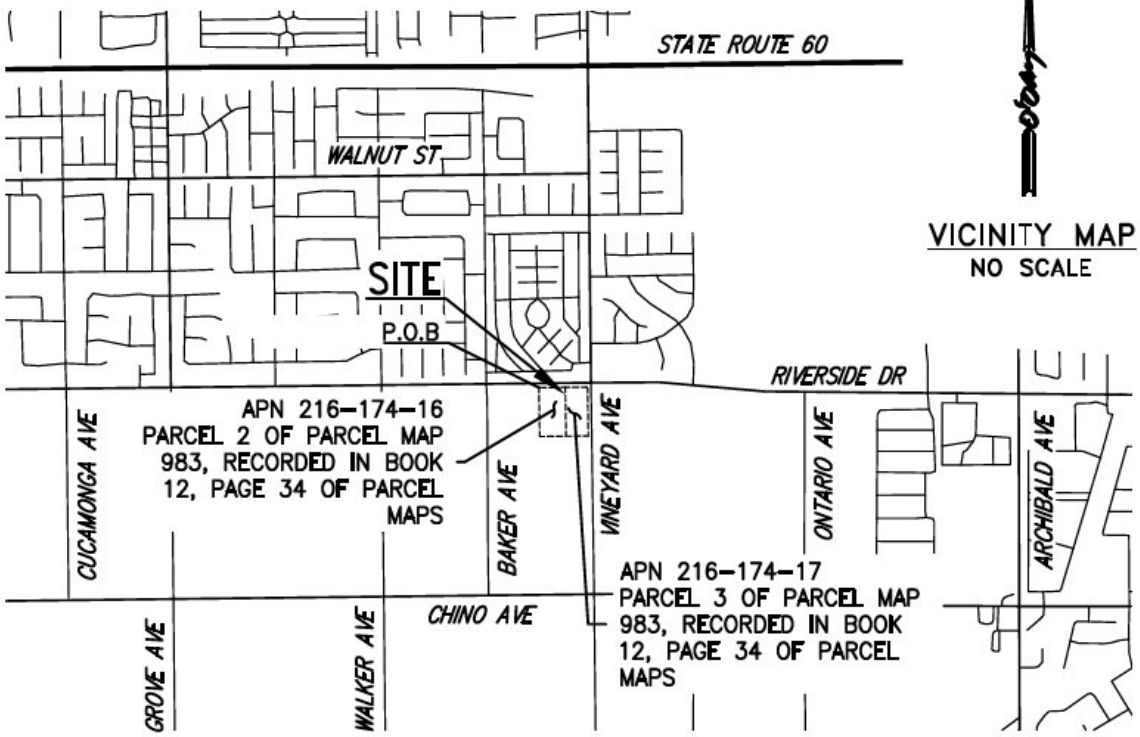
PREPARED BY OR UNDER
THE DIRECTION OF:

FOR REVIEW

GEORGE O'DAY DATE
R.C.E. NO. 32014

SHEET 1 OF 1

EXHIBIT A



VICINITY MAP
NO SCALE

PROPERTY LEGAL DESCRIPTION

PARCELS 2 AND 3 OF PARCEL MAP 983, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 12, PAGE 34 OF PARCEL MAPS, RECORDS OF SAID COUNTY.

BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS PLAN IS THE CALIFORNIA COORDINATE SYSTEM (CCS 83), ZONE 5, EPOCH 2017.50, BEARING BETWEEN FOUND CITY OF ONTARIO CONTROL POINTS X-27-1 AND CITY OF ONTARIO CONTROL POINT X-30-1, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO.

IE. S 88°00'54" E

REGISTERED PROFESSIONAL ENGINEER
GEORGE O'DAY
NO. 32014
CIVIL
STATE OF CALIFORNIA

FOR REVIEW

GEORGE O'DAY DATE
R.C.E. NO. 32014

LEGEND:

AREA OF LEGAL DESCRIPTION: 25489 SQ. FT.	
ROAD CENTERLINE	
EXISTING LOT/PARCEL LINES	
TIE LINE	
EXISTING RIGHT-OF-WAY (R/W)	
EXISTING EASEMENT LINES	

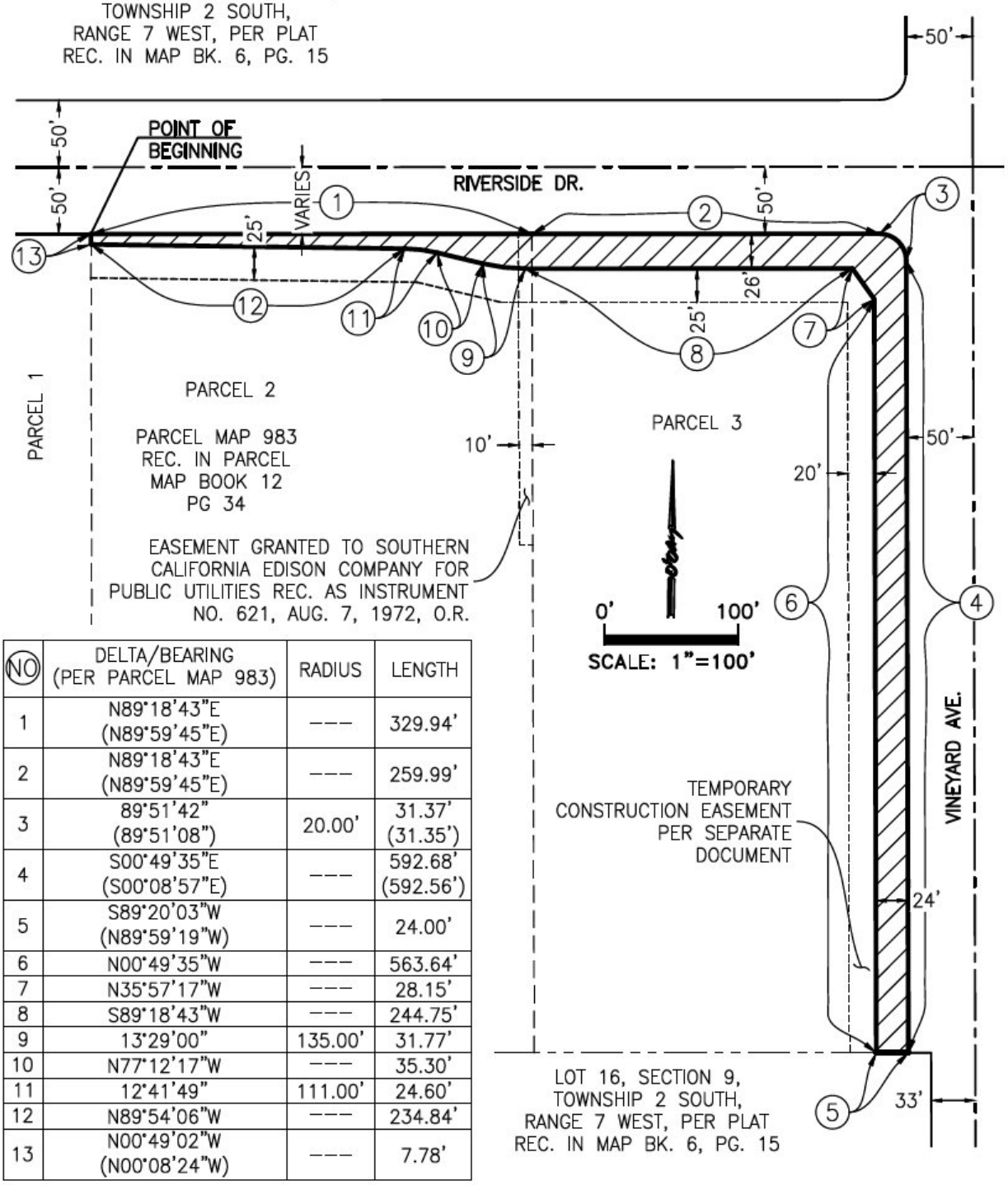
Prepared by:
O'Day CONSULTANTS
9/27/2024
Date

PLAT TO ACCOMPANY LEGAL DESCRIPTION

APN: 216-174-16
216-174-17
DOC. NO.
SHEET: 1 OF 2

EXHIBIT A

EXHIBIT B



NO	DELTA/BEARING (PER PARCEL MAP 983)	RADIUS	LENGTH
1	N89°18'43"E (N89°59'45"E)	---	329.94'
2	N89°18'43"E (N89°59'45"E)	---	259.99'
3	89°51'42" (89°51'08")	20.00'	31.37' (31.35')
4	S00°49'35"E (S00°08'57"E)	---	592.68' (592.56')
5	S89°20'03"W (N89°59'19"W)	---	24.00'
6	N00°49'35"W	---	563.64'
7	N35°57'17"W	---	28.15'
8	S89°18'43"W	---	244.75'
9	13°29'00"	135.00'	31.77'
10	N77°12'17"W	---	35.30'
11	12°41'49"	111.00'	24.60'
12	N89°54'06"W	---	234.84'
13	N00°49'02"W (N00°08'24"W)	---	7.78'

Prepared by:
O'Day CONSULTANTS
9/27/2024
Date

PLAT TO ACCOMPANY LEGAL DESCRIPTION

APN: 216-174-16
216-174-17
DOC. NO.
SHEET: 2 OF 2

EXHIBIT A

46700.12001\43118563.5

EXHIBIT B
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(SPORTS EMPIRE HOTEL)

Scope of Development

The Development will result in the construction of a luxury 5-star hotel featuring 227 guest rooms ("keys") within a four-story building designed to deliver an upscale hospitality experience. Key components of the project include a restaurant and bar, frozen yogurt shop, and conference room/ballroom, as well as rooftop lounge amenities.

The Developer will also be required to build all associated on-site and off-site improvements, including but not limited to all hardscape and landscaping.

EXHIBIT C
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(SPORTS EMPIRE HOTEL)

Schedule of Performance

	Action	**Date Action to be Completed By**
1.	Effective Date	See Section 1.3
2.	Developer to open Escrow and, concurrently, deposit Earnest Money Deposit into Escrow	Within 7 days following the Effective Date
3.	Due Diligence Period commences	The date of the Escrow Opening Date
4.	City to deliver Preliminary Report to Developer	Within 3 days following City's receipt of the Preliminary Report from Title Company
5.	Developer to deliver Developer's Title Notice to Agency	Within 30 days following Developer's receipt of the Preliminary Report
6.	City to deliver City's Title Notice Response to Developer, if appropriate	Within 20 days following City's Receipt of Developer's Title Notice
7.	Developer to deliver Developer's Title Notice Waiver, if appropriate	Within 10 days following Developer's receipt of City's Title Notice Response
8.	Developer to deliver its Due Diligence Investigation Conclusion Notice	On or before the end of the Due Diligence Period
9.	Due Diligence Period ends	On the 60th day following the Escrow Opening Date

	Action	Date Action to be Completed By
15.	Escrow Closing Date	No later than five (5) days after the grading permit for the Project is issued or as extended by written agreement by the Parties
16.	Developer to commence construction of the Project; Developer to transmit Project Commencement Notice to City	No later than 10 days after the close of escrow
17.	Developer to complete construction and installation of the Project (issuance of certificate of occupancy for the entire Project by the City)	No later than 24 months from the Close of Escrow or may be extended in writing by ninety (90) days and executed by the Parties.

EXHIBIT D
TO DISPOSITION AND DEVELOPMENT AGREEMENT
(SPORTS EMPIRE HOTEL)

FORM OF GRANT DEED FOR PROPERTY TO BE CONVEYED TO DEVELOPER

[Attached Behind This Page]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

_____

GRANT DEED

PART ONE

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

the City of Ontario, a California municipal corporation ("**Grantor**"),

hereby grants to

Ontario Ranch Hotels LLC, a California limited liability company ("**Grantee**"),

that certain real property located in the City of Ontario, County of San Bernardino, State of California, specifically described in Exhibit "A" attached to this Grant Deed ("**Property**") and made a part of this Grant Deed by this reference.

PART TWO

The conveyance of the Property by the Grantor to the Grantee in Part One is subject to the following community development terms, conditions, covenants and restrictions:

Section 1. Conveyance Subject to Terms of a Disposition and Development Agreement. The Property is conveyed subject to that certain Disposition and Development Agreement (Sports Empire Hotel), dated as of _____, 2025, between the Grantor and the Grantee (the "**Agreement**"). The provisions of the Agreement are incorporated into this Grant Deed by this reference and are deemed to be a part of this Grant Deed, as though fully set forth in this Grant Deed.

Section 2. Condition of Property. The Grantee acknowledges and agrees that the Property is conveyed by the Grantor to the Grantee in its "AS IS," "WHERE IS" and "SUBJECT TO ALL FAULTS CONDITION," as of the date of recordation of this Grant Deed, with no warranties, expressed or implied, as to the environmental or other physical condition of the Property, the presence or absence of any patent or latent environmental or other physical condition on or in the Property, or any other matters affecting the Property.

Section 3. Obligation to Refrain from Discrimination**.** The Grantee for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

3.1 There shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall the Grantee, itself or any person claiming under or through it, establish or permit any

such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sub-lessees or vendees of the Property. The covenant of this Section 3 shall run with the land of the Property and shall be enforceable against the Grantee and its successors and assigns in perpetuity and be a covenant in the Grant Deed and the Notice of Agreement.

3.2 The covenant of this Section 4 shall run with the land of the Property in perpetuity, shall be enforceable against the Grantee and its successors and assigns, and shall be covenants set forth in the Grant Deed.

Section 4. Form of Non-Discrimination and Non-Segregation Clauses. The Grantee for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

4.1 The Grantee, such successors and such assigns shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Property (or any portion thereof) on the basis of sex, marital status, race, color, religion, creed, ancestry or national origin of any person. All deeds, leases or contracts pertaining to the Property shall contain or be subject to substantially the following non-discrimination or non-segregation covenants:

(a) In deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sub-lessee, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(b) In leases: "The Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants lessees, sub-lessee, sub-tenants, or vendees in the premises herein leased."

(c) In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed or leased, nor shall the transferee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sub-lessees, sub-tenants, or vendees of the premises herein transferred." The foregoing

provision shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

4.2 The covenants of this Section 4 shall run with the land of the Property in perpetuity.

Section 5. Covenant to Maintain Property on Tax Rolls. The Grantee for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

5.1 The entire Property shall remain on the County secured real property tax rolls for twenty years from the date of issuance of the certificate of completion for the Project.

5.2 The Grantee shall pay all property tax bills with respect to the Property and all improvements thereon on or before the last day for the timely payment of each property tax installment on each December 10 and April 10 during such time period and to timely pay all supplemental tax bills regarding the Property issued by the County. The Grantee further covenants and agrees to provide to the Grantor, on or before July 31 of each year, commencing in the calendar year following the calendar year in which a Certificate of Completion for the Project is recorded and in each calendar year, thereafter, for the full term of this covenant: (i) a true and correct copy of all property tax assessment notices, property tax bills and property tax assessment correspondence by and between the Grantee and the County regarding the Property and all improvements thereon, with respect to the preceding fiscal year of the County, and (ii) cancelled checks issued by the Grantee in payment of all property tax payments that are made to the County regarding the Property and all improvements thereon, with respect to the preceding County fiscal year.

5.3 The covenants of this Section 5 shall run with the land of the Property, shall be enforceable against the Grantee and its successors and assigns.

Section 6. No Conveyance to Tax Exempt Entity. The Grantee for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

6.1 The Grantee shall not use or otherwise sell, transfer, convey, assign, lease, leaseback or hypothecate the Property, the Project, or any portion of any of the foregoing to any entity or person, or for any use of the Property, the Project, or any portion of any of the foregoing, that is partially or wholly exempt from the payment of real or personal property taxes or that would cause the exemption of the payment of all or any portion of real or personal property taxes otherwise assessable regarding the Property, the Project, or any portion of any of the foregoing, without the prior written consent of the Grantor, which may be withheld in the Grantor's sole and absolute discretion, for twenty years from the date of issuance of the certificate of completion for the Project.

6.2 If the Property, or any portion of the Property, shall be conveyed, transferred or sold to any entity or person that is partially or wholly exempt from the payment of real or personal property taxes otherwise assessable against the Property, or any portion thereof, without the prior written consent of the Grantor, then the Grantee shall pay to the Grantor a fee in lieu of payment of such taxes each year in an amount determined by the Grantor to be one percent (1%)

of the "**full cash value**" of the Property, or portion thereof, as may be subject to such exemption from payment of real or personal property taxes. The Grantor's determination of "full cash value" for in-lieu payment purposes under this Section 6 shall be established by the Grantor each year, if necessary, by reference to the real or personal property tax valuation principles and practices generally applicable to a county property tax assessor under Section 1 of Article XIIIA of the California Constitution. The Grantor's determination of "full cash value" and that an in-lieu payment is due shall be conclusive on such matters. If the Grantor determines that an amount is payable as an in-lieu payment under this Section 6 in any tax year, then such amount shall be paid to the Grantor for that tax year within forty-five (45) days following transmittal by the Grantor to the Grantee of an invoice for payment of the in-lieu amount.

6.3 The covenants of this Section 6 shall run with the land of the Property, shall be enforceable against the Grantee and its successors and assigns of the Property.

Section 7. Maintenance Condition of the Property. The Grantee for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

7.1 The areas of the Property that are subject to public view (including all existing and future improvements, paving, walkways, landscaping, exterior signage and ornamentation) shall be maintained in good repair and a neat, clean and orderly condition, ordinary wear and tear excepted. If there is an occurrence of an adverse condition on any area of the Property that is subject to public view in contravention of the general maintenance standard described above (a "**Maintenance Deficiency**"), then the Grantor shall notify the Grantee in writing of the Maintenance Deficiency. If the Grantee fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) days of its receipt of notice of the Maintenance Deficiency, the Grantor shall have the right to enter the Property and perform all acts reasonably necessary to cure the Maintenance Deficiency, or to take any other action at law or in equity that may then be available to the Grantor to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the Grantor for the abatement of a Maintenance Deficiency on the Property pursuant to this Section 7.1 shall become a lien on the Property, as applicable. If the amount of the lien is not paid within thirty (30) days after written demand for payment from the Grantor to the Grantee, the Grantor shall have the right to enforce the lien in the manner provided in Section 7.1.

8.2 Graffiti, as this term is defined in Government Code Section 38772, that has been applied to any exterior surface of a structure or improvement on the Property that is visible from any public right-of-way adjacent or contiguous to the Property, shall be removed by the Grantee by either painting over the evidence of such vandalism with a paint that has been color-matched to the surface on which the paint is applied, or graffiti may be removed with solvents, detergents or water, as appropriate. If Grantee does not commence action to remove any such graffiti within ninety-six (96) hours following the time of the discovery of the graffiti by Grantee, the Grantor shall have the right to enter the Property and remove the graffiti, at reasonable times and upon reasonable notice to the Grantee. Any sum expended by the Grantor for the removal of graffiti from the Property pursuant to this Section 7.2, shall be a lien on the Property. If the amount of the lien is not paid within thirty (30) days after written demand to the Grantee from the Grantor, the Grantor shall have the right to enforce its lien in the manner provided in Section 7.2.

7.3 The Parties further mutually understand and agree that the rights conferred upon the Grantor under this Section 7.3 expressly include a grant by the Grantee of a security interest in the Property with the power to establish and enforce a lien or other encumbrance against the Property or any portion thereof, in the manner provided under Civil Code Sections 2924, 2924b and 2924c, to secure the obligations of the Grantee and it successors under Section 7.1 or Section 7.2, including the reasonable attorneys' fees and costs of the Grantor associated with the abatement of a Maintenance Deficiency or removal of graffiti. For the purposes of the preceding sentence the words "**reasonable attorneys' fees and costs of the Grantor**" mean and include the salaries, benefits and costs of the City Attorney and the lawyers employed in the Office of the City Attorney.

7.4 The provisions of this Section 7.4, shall be a covenant running with the land of the Property, shall be enforceable against the Grantee and its successors and assigns in perpetuity. Nothing in the foregoing provisions of this Section 7 shall be deemed to preclude the Grantee from making any alteration, addition, or other change to any structure or improvement or landscaping on the Property, provided that any such changes comply with applicable zoning and building regulations of the City.

Section 8 Grantor Power of Termination Regarding the Property.

8.1 The Grantor hereby reserves a power of termination pursuant to Civil Code Sections 885.010, et seq., exercisable by the Grantor, in its sole and absolute discretion, upon thirty (30) calendar days written notice to the Grantee referencing this Section 8.1, to terminate the fee interest of the Grantee in the Property and/or any improvements to the Property and revest such fee title in the Grantor and take possession of all or any portion of such real property and improvements, without compensation to the Grantee, upon the occurrence of an Event of Default by the Grantee following the Close of Escrow and prior to the issuance of the Certificate of Completion for Property.

8.2 The thirty (30) calendar day written notice specified Section 8.1 shall specify the Event of Default by the Grantee triggering the Grantor's exercise of its power of termination. The Grantor shall proceed with its remedy set forth in Section 8.1 only if the Grantee continues in default for a period of sixty (60) calendar days following such notice or, upon commencing to cure such default, fails to diligently and continuously prosecute said cure to satisfactory conclusion.

8.3 The rights of the Grantor under this Section 8 shall be subject and subordinate to, shall be limited by and shall not defeat, render invalid or limit:

(1) Each Lien recorded against the Property and specifically authorized by this Agreement as a Permitted Transfer;

(2) Any leases, declarations of covenants, conditions and restrictions, easement agreements or other recorded documents or interests applicable to the Property and specifically authorized by this Agreement as a Permitted Transfer.

8.4 Upon the Grantor's exercise of its power of termination pursuant to this Section 8, the Grantee or its successors or assigns shall convey by grant deed to the Grantor title

to the Property, as specified in the Grantor's notice pursuant to Section 8.1, and all improvements thereon, in accordance with Civil Code Section 1109, as such code section may hereafter be amended, renumbered, replaced or substituted. Such conveyance shall be duly acknowledged by the Grantee and a notary in a manner suitable for recordation. The Grantor may enforce its rights pursuant to this Section 8.4 by means of an injunctive relief or forfeiture of title action filed in any court of competent jurisdiction.

8.5 Upon the revesting in the Grantor of the Property, whether by grant deed or court decree, the Grantor shall exercise its reasonable good faith efforts to resell the Property at its then fair market value, as soon and in such manner as the Grantor shall, in its sole discretion, find feasible and consistent with the objectives of the City's General Plan, to a qualified and responsible person or persons (as reasonably determined by the Grantor) who will assume the Grantee's obligations to begin and/or complete and/or operate the Project located on the Property, or such other replacement development acceptable to the Grantor, in its sole and absolute discretion. Upon any such resale of the Defaulted Portion of the Property (or any portion thereof), the proceeds to the Grantor from such sale shall be applied as follows:

(1) First, to pay any and all amounts required to release/reconvey any Lien recorded against all or any portion of the Property; and

(2) Second, to reimburse the Grantor on its own behalf or on behalf of the City for all actual internal and third-party costs and expenses previously or currently incurred by the Grantor, or the City related to the Property, the Project, or this Agreement, including, but not limited to, customary and reasonable fees or salaries to third-party personnel engaged in such actions, in connection with the recapture, management and resale of the Property or any part thereof; all taxes, assessments and utility charges paid by the City and/or the Grantor or authority with respect to the Property or portion thereof; any payment made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations incurred by the Grantee with respect to the acquisition of the Property or the construction of the Project and amounts otherwise owing to the Grantor or authority by the Grantee or its successors or assigns pursuant to the terms of this Agreement; and

(3) Third, to the extent that any proceeds from such resale are, thereafter, available, taking into account any prior encumbrances with a claim thereto, to reimburse the Grantee, or its successors in interest to the equal to the sum of: (1) Purchase Price; and (2) the third-party costs actually incurred and paid by the Grantee regarding the development of the Project, including, but not limited to, pro rata costs of carry, taxes, and other items as set forth in a cost certification to be made by the Grantee to the Grantor prior to any such reimbursement, which certification shall be subject to the Grantor's reasonable approval; provided, however, that the Grantee shall not be entitled to reimbursement for any expenses to the extent that such expenses

relate to any loans, Liens or other encumbrances that are paid by the Grantor pursuant to the provisions of sub-sections (1) or (2) above.

(4) Any portion of the proceeds from the resale of the Property remaining after the foregoing applications shall be retained by the Grantor as its sole and exclusive property.

8.6 IMMEDIATELY FOLLOWING THE THIRTY (30) DAY PERIOD SPECIFIED IN SECTION 8.1, ABOVE, THE GRANTOR, ITS EMPLOYEES AND AGENTS SHALL HAVE THE RIGHT TO REENTER AND TAKE POSSESSION OF THE PROPERTY AND ANY IMPROVEMENTS THEREON, WITHOUT FURTHER NOTICE OR COMPENSATION TO THE GRANTEE. BY INITIALING BELOW, THE GRANTEE HEREBY EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS THAT THE GRANTEE MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 791 AND CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1162, AS THOSE STATUTES MAY BE AMENDED, REPLACED, RENUMBERED OR SUBSTITUTED, OR UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

GRANTEE'S INITIALS _____

8.7 THE GRANTEE ACKNOWLEDGES AND AGREES THAT THE GRANTOR'S EXERCISE OF ITS POWER OF TERMINATION AND RIGHT OF REENTRY PURSUANT TO THIS SECTION 8.7 MAY WORK A FORFEITURE OF THE ESTATE IN THE PROPERTY CONVEYED TO THE GRANTEE THROUGH THE GRANT DEED. THE GRANTEE HEREBY EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL EQUITABLE AND LEGAL DEFENSES THAT THE GRANTEE MAY HAVE TO SUCH FORFEITURE, INCLUDING, BUT NOT LIMITED TO, THE DEFENSES OF LACHES, WAIVER, ESTOPPEL, SUBSTANTIAL PERFORMANCE OR COMPENSABLE DAMAGES. THE GRANTEE FURTHER EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS AND DEFENSES THAT THE GRANTEE MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3275 OR ANY OTHER STATUTE OR COMMON LAW PRINCIPLE OF SIMILAR EFFECT. THE GRANTEE ACKNOWLEDGES THAT THE TERMS AND CONDITIONS OF THE AGREEMENT REFLECT THE POSSIBILITY OF FORFEITURE BY VIRTUE OF THE EXERCISE OF THE GRANTOR'S POWER OF TERMINATION PROVIDED IN THIS SECTION 8.7 AND FURTHER ACKNOWLEDGE THAT IT HAS RECEIVED INDEPENDENT AND ADEQUATE CONSIDERATION FOR ITS WAIVER AND RELINQUISHMENT OF RIGHTS AND REMEDIES PURSUANT TO SECTION 8.6 AND THIS SECTION 8.7.

GRANTEE'S INITIALS _____

PART THREE

Section 9. Grantee Covenant to Undertake Project. Grantee covenants, for itself, its successors and assigns, to and for the exclusive benefit of Grantor, that Grantee shall commence

and complete the development of the Project on the Property within the time period for such actions set forth in the Schedule of Performance. Grantee covenants and agrees for itself, its successors, and assigns, that the Property shall be improved and developed with the Project in substantial conformity with the terms and conditions of the Agreement, the Scope of Development, the Schedule of Performance, any and all plans, specifications and similar development documents required by the Agreement, except for such changes as may be mutually agreed upon in writing by and among Grantor and Grantee, and all applicable laws, regulations, orders and conditions of each Governmental Agency with jurisdiction over the Property or the Project. The covenants of this Section 9 shall run with the land of the Property until the earlier of the date of recordation of the Certificate of Completion or the fifteenth (15th) anniversary of the date of the Close of Escrow.

Section 10. Covenants Run with the Land of the Property. Each of the covenants and agreements contained in this Grant Deed touch and concern the Property and each of them is expressly declared to be a community development covenant that runs with the land for the benefit of the Grantor, and such covenants run with the land in favor of the Grantor for the entire period that such covenants are in full force and effect, regardless of whether the Grantor is or remains an owner of any land or interest in land to which such covenants relate. The Grantor, in the event of any breach of any such covenants, has the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings, to enforce the curing of such breach, as provided in the Agreement or by law. The covenants contained in this Grant Deed are for the benefit of and are enforceable only by the Grantor, and shall survive the execution and recordation of this Grantor Deed and the issuance and recordation of each and every Certificate of Completion, for the time period set forth above for each covenant.

Section 11. Costs and Attorneys' Fees for Enforcement Proceeding. If legal proceedings are initiated to enforce the rights, duties or obligations of any of the covenants set forth in this Grant Deed, then the prevailing party in such proceeding shall be entitled to collect its reasonable attorney fees and costs from the other party in addition to any other damages or relief obtained in such proceedings.

Section 12. Effect of Unlawful Provision; Severability. In the event that any provision of this Grant Deed is held to be invalid or unlawful by a final judgment of a court of competent jurisdiction, such invalidity shall not affect the validity of any other provision of this Grant Deed.

IN WITNESS WHEREOF, the Grantor has caused this Grant Deed to be executed by its authorized representative(s) on this ____ day of _____, 2025.

GRANTOR:

CITY OF ONTARIO,
a California municipal corporation

By: _____
Scott Ochoa
City Manager

[ALL SIGNATURES MUST BE NOTARY ACKNOWLEDGED]

EXHIBIT A
TO
GRANT DEED

Property Legal Description

ALL THAT PORTION OF LOT 2, BLOCK 1 OF THE MOIST BELT TRACT IN THE CITY OF ONTARIO, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 12, PAGE 45 OF MAPS, RECORDS OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 2;

THENCE SOUTH 89°24'44" EAST ALONG THE NORTHERLY LINE OF SAID LOT 2, A DISTANCE OF 18.35 FEET TO THE PROLONGATION OF THE WESTERLY LINE OF SAID LOT 2;

THENCE SOUTH 00°02'36" WEST ALONG SAID PROLONGATION AND THE WESTERLY LINE OF SAID LOT 2, A DISTANCE OF 284.47 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID WESTERLY LINE SOUTH 00°02'36" WEST, A DISTANCE OF 280.63 FEET;

THENCE SOUTH 45°00'12" EAST, A DISTANCE OF 18.40 FEET;

THENCE SOUTH 90°00'00" EAST, A DISTANCE OF 341.02 FEET;

THENCE NORTH 00°02'31" WEST, A DISTANCE OF 290.09 FEET;

THENCE NORTH 89°25'33" WEST, A DISTANCE OF 353.63 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 2.3688 ACRES, MORE OR LESS.

CERTIFICATE OF ACCEPTANCE OF
GRANT DEED

The undersigned hereby acknowledges acceptance by Ontario Ranch Hotels LLC, a California limited liability company, the Grantee in the within Grant Deed, of the delivery of the subject Property described in the within Grant Deed from the City of Ontario.

GRANTEE:

ONTARIO RANCH HOTELS LLC,
a California limited liability company

Dated: _____ By: _____
NAME
TITLE

[ALL SIGNATURES MUST BE NOTARY ACKNOWLEDGED]

EXHIBIT D

EXHIBIT D-1
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(SPORTS EMPIRE HOTEL)

Forms of Easement Deed of Right-of-Way Dedication and
Grant of Temporary Construction Easement

[attached behind this page]

Atlas Sheet:_____
File:_____
Prepared By:_____
Checked By:_____
No. of Parcels Involved 2
Assessor's Parcel #:0216-174-16-0000
& 0216-174-17-0000

Recording requested by City of Ontario,
and when recorded mail to:

City Clerk
City of Ontario
303 East "B" Street

EXEMPT RECORDING FEES GOVERNMENT CODE SECTION 6103 & 792748.1 **(**SPACE ABOVE THIS LINE FOR RECORDER'S USE)

EASEMENT DEED OF RIGHT-OF-WAY DEDICATION

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

Ontario Ranch Hotels LLC, a California limited liability company

GRANTOR(S)

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Grantor(s) hereby grant(s) to the City of Ontario, a political subdivision of the State of California, for public street and public utilities purposes, a right-of- way easement in, over, under, upon, and across all that real property situated in the City of Ontario, County of San Bernardino, State of California, described as follows:

SEE ATTACHED EXHIBITS A AND B

SIGNATURE(S) OF GRANTOR(S) ***(NOTE: ATTACH NOTARY ACKNOWLEDGMENT)***

Article I. FU
LL NAME OF CORPORATION: _____

Print Name and Title	Signature and Date
Print Name and Title	Signature and Date
Print Name and Title	Signature and Date

This is to certify that the interest in real property conveyed by the within instrument to the City of Ontario, California ("Grantee"), a municipal corporation, is hereby accepted by the undersigned officer pursuant to authority conferred by Resolution 2007-148 of the City Council adopted on December 18th, 2007, and the Grantee consents to the recordation thereof by its duly authorized officer.

CITY OF ONTARIO:

Khoi Do P.E. / City Engineer / Date

ATTEST:

City Clerk

Last Updated 01-30-19

NOTARY 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 _____ §
COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature_____(Seal)

Legal Definitions

"Permanent Easement" refers to a non-exclusive permanent and perpetual easement and right of way in favor of the City of Ontario (the "City"), and to its successors, and assigns, hereinafter described together with the right to forever construct, maintain, improve, alter, relocate, inspect, occupy, and use for the construction and maintenance of roadways, streets and underground lines, power poles, public utilities, and other public uses, as determined necessary by the City, together with all necessary rights incidental thereto, on, over, under, and across the property in connection with the exercise of any easement rights described herein. The property affected is described and depicted in the legal description and plat mat included hereto and made a part hereof.

Property owner(s) shall not erect or construct, or permit to be erected or constructed, any building, structure or improvement on, over, or under any portion of the easement, or plant trees or any other vegetation on any portion of the easement except with the prior written consent of the City, its successors and assigns.

The area subject to the easement remains owned in fee by Grantor, its successors and assigns and shall be considered part of the larger parcel for all zoning, land use and density calculations. The area within the easement shall be considered in the evaluation of any necessary setback.

The City shall have the right to trim, cut or clear away any trees, brush, or other vegetation from time to time as determined in its sole discretion, without payment of additional compensation.

No other easements shall be granted on, under or over the easement without the prior written consent of the City, its successors and assigns.

The ground elevations of the roadway upon completion of construction shall not be further increased or decreased without the prior written consent of the City.

Property owner(s) shall not cause, directly, indirectly or negligently, any interference with or harm to the rights conveyed hereunder.

RECORDING REQUESTED BY:
City of Ontario
Engineering Department
303 East "B" Street Ontario, CA 91764

AND WHEN RECORDED MAIL TO:
City Clerk
City of Ontario
303 East "B" Street
Ontario, CA 91764

MAIL TAX STATEMENTS AS DIRECTED ABOVE (SPACE ABOVE THIS LINE FOR RECORDER'S USE)
EXEMPT RECORDING FEES GOVERNMENT CODE SECTION 61O3 & 27383

(a) GRANT OF TEMPORARY CONSTRUCTION EASEMENT

Ontario Ranch Hotels LLC, a California limited liability company (referred to herein as "Grantor"), is the owner in fee of certain real property located at [ADDRESS], identified with Assessor's Parcel Numbers 0216-174-16-0000 and 0216-174-17-0000 (hereinafter referred to as the "Property").

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Grantor does hereby GRANT and CONVEY to the **CITY OF ONTARIO, a California municipal corporation** (the **"Grantee"**, hereinafter referred to as **"City"**), its successors and assigns:

1. Temporary Construction Easement. A temporary and non-exclusive construction easement over, on, under, in, across, along and through that certain portion of the Property more fully described and depicted in EXHIBIT A and B attached hereto and incorporated herein by reference (hereinafter referred to as the "**Temporary Construction Easement"**), for purposes of the constructing the City's project known as the [INSERT NAME OF PROJECT] Project, (**"Project"**).

2. Grantor hereby covenants, by and for itself, its assigns, heirs and voluntary and involuntary successors in interest to the Property or any part thereof, that at all times prior to the Expiration Date (defined below), Grantor shall not, without the express written consent of Grantee: (i) erect nor permit the erection of any building, wall, fence or other structure within the Temporary Construction Easement Parcel; (ii) plant nor permit the planting of any tree(s), plant(s) or other vegetation or flora on any portion of the Temporary Construction Easement Parcel; (iii) undertake nor permit the undertaking of any activity that may interfere with Grantee's use of the Temporary Construction Easement and exercise of all rights and privileges thereof; nor (iv) grant any other easements on, under or over the Temporary Construction Easement Parcel.

3. The Temporary Construction Easement shall include, without limitation, the right and privilege of Grantee and its employees, agents, representatives, contractors, subcontractors, and workmen to: (i) perform all activities as may be necessary to facilitate the purposes of the Temporary Construction Easement; (ii) use, control and occupy the Temporary Construction Easement Parcel; (iii) have access to, ingress to, and egress from the Temporary Construction Easement Parcel; (iv) use and temporarily place and operate tools, equipment, machinery and materials on the Temporary Construction

Easement Parcel; and (v) trim, cut, or clear away any trees, brush or other vegetation or flora, including the roots thereof, located within the Temporary Construction Easement Parcel.

4. By its acceptance of this Temporary Construction Easement, Grantee covenants and agrees, by and for itself, its assigns, heirs and voluntary and involuntary successors in interest to the Temporary Construction Easement, that upon completion of that portion of the Project abutting to the Property, Grantee shall: (i) repair or replace in kind, at Grantee's sole discretion and expense, any improvements such as fences, gates and other "hard" features that the Grantor did not receive compensation, existing on the Temporary Construction Easement Parcel that are damaged as a result of Grantee's exercise of its rights and privileges under the Temporary Construction Easement; and (ii) leave the Temporary Construction Easement Parcel in a clear, graded state with no construction debris present. Notwithstanding the foregoing, Grantee shall not be obligated to repair and/or replace any vegetation removed by Grantee.

5. The Temporary Construction Easement shall automatically expire and be of no further force and effect upon the date ("**Expiration Date**") that any of the following-described events first occurs: (i) [number written out] (X) months from the notice of commencement of the Temporary Construction Easement is given to the Grantor; or (ii) [number written out] (X) months from the date of recording of the Temporary Construction Easement. Termination of the Temporary Construction Easement as of the Expiration Date shall be automatic without any further act by either Grantor or Grantee.

6. The Temporary Construction Easement terms and covenants contained herein shall run with the land and shall inure to the benefit of and be binding upon the Grantor and Grantee and their respective assigns, heirs, and voluntary and involuntary successors in interest.

7. In the event Grantee is unable to complete the Project before the expiration of the Temporary Construction Easement period, the Grantor shall grant the Grantee an extension of the Temporary Construction Easement period for up to an additional twelve (12) months. The compensation for any such Temporary Construction Easement extension will be an additional ($XXX) per month, to be paid upon the Buyer's notification of the need for an extension.

8. All Exhibits attached hereto are incorporated herein by reference.

9. Subject to the rights of Grantee and the covenants and restrictions contained herein, Grantor retains the right to use the Temporary Construction Easement Parcel for any purpose that does not unreasonably interfere with Grantee's use of the Temporary Construction Easement and exercise of all rights and privileges thereof.

DATED:

GRANTOR:

Ontario Ranch Hotels LLC, a California limited liability company

By:

_____

Its:

Name:

NOTARY 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 _____

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature_____(Seal)

Legal Definitions

"Temporary construction easement" or "TCE" refers to the temporary and non-exclusive right of the City of Ontario ("City"), its successors and assigns, to engage in construction and related activities for purposes of constructing the City's project known as the Grove Avenue and Holt Boulevard Intersection Widening Project ("Project"), together with all necessary rights of ingress and egress to the easement area in connection with the exercise of any of the easement rights.

The rights under this Temporary Construction easement are non-exclusive and the owner(s) may make use of the TCE area so long as it does not interfere with the rights, purpose, and intent of the City's use of the Temporary Construction Easement.

Such right shall be exercised for a period of 14 months, beginning no fewer than 72 hours after the date that the City provides written notice of commencement of the TCE to the property owner(s).

The Temporary Construction Easement shall automatically expire and be of no further force and effect upon the date ("Expiration Date") that any of the following-described events first occurs: (i) fourteen months from the notice of commencement of the Temporary Construction Easement is given to the property owner(s); or (ii) fourteen months from the date of recording of the Temporary Construction Easement. Termination of the Temporary Construction Easement as of the Expiration Date shall be automatic without any further act by either the City or the property owner(s).

In the event the City is unable to complete the Project before the expiration of the Temporary Construction Easement period, the City reserves the right to extend the TCE period for up to an additional 12 months upon: (i) 72 hours' notice of the need for any such extension, and (ii) payment of just compensation for each month the TCE is extended in an amount agreed-upon by the City and the owner(s), or in the event there is no such agreement, the probable amount of just compensation that is determined by a qualified appraisal.

Non-Permitted Activities by Property Owner(s):

Through the duration of the TCE, the property owner and their successor or assigns may not, without the express written consent of the City: (i) erect or permit the erection of any building, wall, fence or other structure within the Temporary Construction Easement area; (ii) plant nor permit the planting of any tree(s), plant(s) or other vegetation or flora on any portion of the Temporary Construction Easement are; (iii) undertake or permit the undertaking of any activity that may interfere with the City's use of the Temporary Construction Easement and exercise of all rights and privileges thereof; or (iv) grant any other easements on, under or over the Temporary Construction Easement area that would interfere with the City's use or purpose of the TCE.

Permitted Activities by the City:

Through the duration of the TCE, the City, its employees, agents, representatives, contractors, subcontractors, and workmen shall be allowed to: (i) perform all activities as may be reasonably necessary to facilitate the purposes of the Temporary Construction Easement; (ii) use, control and occupy the Temporary Construction Easement Parcel on a non-exclusive basis; (iii) have access to, ingress to, and egress from the Temporary Construction Easement Parcel; (iv) use and temporarily place and operate tools, equipment, machinery and materials on the Temporary Construction Easement Parcel; and (v) trim, cut, or clear away any trees, brush or other vegetation or flora, including the roots thereof, located within the Temporary Construction Easement Parcel.

Obligations of the City:

The City agrees, by and for itself, its assigns, heirs and voluntary and involuntary successors in interest to the Temporary Construction Easement, that upon completion of that portion of the Project abutting to the Property, the City shall: (i) repair or replace in kind, at the City's sole discretion and expense, any improvements such as fences, gates and other "hard" features that the property owner(s) did not receive compensation for, existing on the Temporary Construction Easement Parcel that are damaged as a result of the City's exercise of its rights and privileges under the Temporary Construction Easement; and (ii) leave the Temporary Construction Easement Parcel in a clear, graded state with no construction debris present.

EXHIBIT “A and B”
TEMPORARY CONSTRUCTION EASEMENT PARCEL

CITY OF ONTARIO
CERTIFICATE OF ACCEPTANCE OF GRANT OF TEMPORARY CONSTRUCTION EASEMENT

[Portions of APN]

This Certificate of Acceptance pertains to the interests in real property conveyed by the Grant of Temporary Construction Easement dated_____ to which this Certificate of Acceptance is attached,

from: Ontario Ranch Hotels LLC, a California limited liability company ("Grantor")

to: CITY OF ONTARIO, a California municipal corporation ("Grantee")

Said Grant of Temporary Construction Easement is hereby accepted by the undersigned officer on behalf of Grantee pursuant to authority conferred by the Grantee's governing body, and Grantee hereby consents to recordation of such Grant.

Dated:_____

CITY OF ONTARIO,
a California municipal corporation

By:_____
Khoi Do
City Engineer

Attest:

_____
City Clerk

EXHIBIT E
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(SPORTS EMPIRE HOTEL)

Form of Notice of Agreement

[Attached Behind This Page]

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

The City of Ontario
303 East B Street
Ontario, California 91764
Attn: City Manager

Exempt from Recording fee
pursuant to Gov't Code § 27383

NOTICE OF AGREEMENT

Disposition and Development Agreement
(SPORTS EMPIRE HOTEL)

TO ALL INTERESTED PERSONS PLEASE TAKE NOTICE that Ontario Ranch Hotels LLC, a California limited liability company (the "**Developer**"), and the City of Ontario, a California municipal corporation (the "**City**"), entered into an agreement entitled Disposition and Development Agreement (_____), dated as of _____, 2025 (the "**Agreement**"). A copy of the Agreement is on file with the City and is available for inspection and copying by interested persons as a public record of the City at the City's offices located at 303 East B Street, Ontario, California 90164, during the City's regular business hours.

The Agreement affects the real property described in Exhibit A attached to this Notice of Agreement (the "**Property**"). The meaning of defined terms, indicated by initial capitalization, used in this Notice of Agreement shall be the same as the meaning ascribed to such terms in the Agreement.

This NOTICE OF AGREEMENT is dated as of _____, 2025, and has been executed on behalf of the Developer and the City by and through the signatures of their authorized representative(s) set forth below. This Notice of Agreement may be executed in counterparts and when fully executed each counterpart shall be deemed to be one original instrument.

CITY:

CITY OF ONTARIO,
a California municipal corporation

Dated: _____, 2025

By: _____
Scott Ochoa
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO LEGAL FORM:
Best Best & Krieger LLP

By: _____
Ruben Duran
City Attorney

EXHIBIT E

DEVELOPER:

ONTARIO RANCH HOTELS LLC,
a California limited liability company

Dated: _____ By: _____
Name:
Title:

[ALL SIGNATURES MUST BE NOTARY ACKNOWLEDGED]

EXHIBIT A
TO
NOTICE OF AGREEMENT

Legal Description of Property

ALL THAT PORTION OF LOT 2, BLOCK 1 OF THE MOIST BELT TRACT IN THE CITY OF ONTARIO, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 12, PAGE 45 OF MAPS, RECORDS OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 2;

THENCE SOUTH 89°24'44" EAST ALONG THE NORTHERLY LINE OF SAID LOT 2, A DISTANCE OF 18.35 FEET TO THE PROLONGATION OF THE WESTERLY LINE OF SAID LOT 2;

THENCE SOUTH 00°02'36" WEST ALONG SAID PROLONGATION AND THE WESTERLY LINE OF SAID LOT 2, A DISTANCE OF 284.47 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID WESTERLY LINE SOUTH 00°02'36" WEST, A DISTANCE OF 280.63 FEET;

THENCE SOUTH 45°00'12" EAST, A DISTANCE OF 18.40 FEET;

THENCE SOUTH 90°00'00" EAST, A DISTANCE OF 341.02 FEET;

THENCE NORTH 00°02'31" WEST, A DISTANCE OF 290.09 FEET;

THENCE NORTH 89°25'33" WEST, A DISTANCE OF 353.63 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 2.3688 ACRES, MORE OR LESS.

EXHIBIT F
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(SPORTS EMPIRE HOTEL)

Form of Official Action of Developer

CERTIFICATION OF LLC AUTHORITY

The undersigned members of Ontario Ranch Hotels LLC, a California limited liability company (the "**LLC**"), do certify that we are all of the members of the LLC and that there are no other members.

We further certify that any one (1) of the following named persons, individually:

Gurvinder Singh

Karamvir Gakhal

be, and they are, authorized and empowered for and on behalf of and in the name of the LLC to execute and deliver that certain 2025 Disposition and Development Agreement (Sports Empire Hotel), dated _____, 2025, between The City of Ontario, a California municipal corporation, ("**City**") and the LLC (the "**Agreement**"), to purchase certain real property located in the City of Ontario, California, as specifically described in the Agreement, and all other documents to be executed by the LLC in connection with the transactions contemplated in the Agreement, and to take all actions that may be considered necessary to conclude the transactions contemplated in the Agreement and perform the other obligations of the LLC pursuant to the Agreement.

The authority conferred shall be considered retroactive, and any and all acts authorized in this document that were performed before the execution of this Certificate are approved and ratified. The authority conferred shall continue in full force and effect until the City shall have received notice in writing from the LLC of the revocation of this Certificate.

We further certify that the activities covered by the foregoing certifications constitute duly authorized activities of the LLC; that these certifications are now in full force and effect; and that there is no provision in any document under which the LLC is organized and/or that governs the LLC's continued existence, limiting the power of the undersigned to make the certifications set forth in this certificate, and that such certifications are in conformity with the provisions of all such documents.

LLC Members:

_____

_____

EXHIBIT G
TO
2025 DISPOSITION AND DEVELOPMENT AGREEMENT
(SPORTS EMPIRE HOTEL)

Form of Certificate of Completion

[Attached Behind This Page]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

The City of Ontario
303 East B Street
Ontario, California 91764
Attn: City Manager

Exempt from Recording fee
pursuant to Gov't Code § 27383

CERTIFICATE OF COMPLETION
(SPORTS EMPIRE HOTEL)

I, Scott Ochoa, City Manager of the City of Ontario (the "City") certify that:

Section 1. The Project described as [_____] required to be constructed in accordance with that certain Disposition and Development Agreement (Sports Empire Hotel), dated _____, 2025 ("DDA"), between the City and Ontario Ranch Hotels LLC, a California limited liability company (the "**Developer**"), on that certain real property specifically described in the legal description(s) attached to this Certificate of Completion as **Exhibit A** (the "**Property**"), is complete in accordance with the provisions of the Agreement.

This Certificate of Completion constitutes conclusive evidence of the City's determination of the Developer's satisfaction of its obligation under the Agreement to construct and install the Project on the Property, including any and all buildings, parking areas, landscaping areas and related improvements necessary to support or meet any requirements applicable to the Project and its use and occupancy on the Project, whether or not such improvements are located on or off the Property or on other property subject to the Agreement. Notwithstanding any provision of this Certificate of Completion, the City may enforce any covenant surviving this Certificate of Completion in accordance with the terms and conditions of the Agreement and the Grant Deed by which the Property was conveyed to the Developer by the City under the Agreement. The Agreement is an official record of the City and a copy of the Agreement may be inspected at the City's office located at 303 East B Street, Ontario, California 91764, during the City's regular business hours.

DATED AND ISSUED this _____ day of _____, 2025.

THE CITY OF ONTARIO
a California municipal corporation

By: _____
Scott Ochoa
City Manager

EXHIBIT A
TO
CERTIFICATE OF COMPLETION

Legal Description of the Property

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

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

WITNESS my hand and official seal.

_____
Notary Public

CITY OF ONTARIO *Agenda Report* **February 18, 2025**	**SECTION:** **PUBLIC HEARINGS**
Department: Economic Development Prepared By: Charity Hernandez Department: 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: 13

SUBJECT: **A PUBLIC HEARING TO CONSIDER ADOPTING A RESOLUTION OF NECESSITY FOR THE ACQUISITION BY EMINENT DOMAIN OF A FEE SIMPLE INTEREST IN CERTAIN REAL PROPERTY LOCATED AT 434 NORTH EUCLID AVENUE**

RECOMMENDATION: That the City Council conduct a public hearing and adopt A Resolution of Necessity declaring that the acquisition by eminent domain of a fee simple interest in certain real property located at 434 North Euclid Avenue, more particularly described as Assessor Parcel No. 1048-363-01 (the Property), is necessary for the Downtown Public Parking Project (the Project).

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)

FISCAL IMPACT: The deposit necessary to file the Resolution of Necessity for prejudgment possession of the Property is approximately $2,000,000. If approved, additional appropriations will be presented to City Council in a future Fiscal Year 2024-2025 Budget Update for approval.

BACKGROUND & ANALYSIS: The Property consists of 1 (one) parcel located at 434 North Euclid Avenue, as shown on Exhibit 1, for the City of Ontario's Downtown Public Parking Project. The City seeks to acquire a full fee interest in the parcel referenced above.

The City obtained an appraisal of the real estate from Benjamin Balos, MAI, of R.P. Laurain and Associates and made an offer of just compensation to the property owner for the acquisition pursuant to California Government Code section 7267.2. Following standard public records and due diligence searches for ownership information, a notice of the Resolution of Necessity hearing was mailed to the Property owner on January 27, 2025 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, an offer of just compensation was made to the owner for the full Fair Market Value, as determined by an independent appraisal. City Staff attempted to acquire the property voluntarily and 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 434 North Euclid Avenue, Ontario, California 91764.

HEARINGS AND REQUIRED FINDINGS: The recommended actions of the City Council pertain to the acquisition property owned by Faisal Afsari and Nusrat Afsari.

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 was mailed on January 27, 2025 by first class mail to the property owner in accordance with Section 1245.235 of the California Code of Civil Procedure.

The above four required findings are addressed as follows:

The Public Interest and Necessity Require the Proposed Project

The City's robust redevelopment activities have gained monument over the last few years with the development of a new mixed-used project on corner of Euclid Avenue and C Street to the adaptive reuse of the former Bank of Italy building at 200 North Euclid into a multi-tenant restaurant building. The next significant project is slated to break ground on the northeast corner of Euclid Avenue and D Street in 2025. This project will displace over 200 surface public parking spaces in Downtown which will negatively impact local businesses, the University of La Verne, City Hall and other uses in the Civic Center area.

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 indirectly support the creation of additional housing units in the Downtown as well as the Civic Center expansion. This project will assist by providing ample access and parking for employees and the public as part of the City of Ontario’s Downtown Public Parking Project. This Project supports the City Council’s goals and objectives. The Property to be acquired is 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.

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, at 434 North Euclid Avenue, Ontario, CA 91764, Assessors Parcel No. 1048-363-01 (owned by Faisal Afsari and Nusrat Afsari). The property is necessary for the Downtown Public Parking Project.

The Offer of Just Compensation Has Been Made

An appraisal was prepared by Benjamin Balos, MAI, of R.P. Laurain and Associates, to establish the Fair Market Value of the fee interest the City is seeking to acquire. An offer of just compensation was made to the 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 a negotiated settlement may still be possible for the fee interest cited above, it would be appropriate to commence the procedures to acquire the fee 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”

434 NORTH EUCLID AVENUE



`

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 IN CERTAIN REAL PROPERTY LOCATED AT 434 NORTH EUCLID AVENUE IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, CALIFORNIA AND MORE PARTICULARLY DESCRIBED AS ASSESSOR PARCEL NUMBER 1048-363-01, FOR THE ONTARIO DOWNTOWN PUBLIC PARKING PROJECT, ONTARIO, CALIFORNIA.

WHEREAS, the City of Ontario (the "City") proposes to acquire, by eminent domain, a fee simple interest in certain real property located at 434 North Euclid Avenue, in the City of Ontario, County of San Bernardino, California, more particularly described as Assessor Parcel Number 1048-363-01, for the Ontario Downtown Public Parking Project. This new public parking garage is designed to provide approximately 400 parking spaces for both public and City use. The garage will be accessible via drive aisles connected to E Street and Lemon Avenue; and

WHEREAS, pursuant to Section 1245.235 of the California Code of Civil Procedure, the City scheduled a public hearing for Tuesday, February 18, 2025, 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, THE CITY DOES HEREBY RESOLVE AND DECLARE 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 use of the real property interest to be acquired is to provide ample access and parking for employees and the public as part of the City of Ontario’s Downtown Public Parking Project, located in the City of Ontario, San Bernardino County, California. Section 37350.5 of the California Government Code

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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 is the legal definition, descriptions and depictions of the real property to be acquired by the City, which describes the general location and extent of the properties 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 simple 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. **Use Not Unreasonably Interfering with Existing Public Use:** Some or all of the real property to be acquired may be subject to easements and rights-of-way appropriated to existing public uses. The legal descriptions of these easements and rights-of-way are on file with the City and describe the general location and extent of the easements and rights-of-way with sufficient detail for reasonable identification. In the event the herein described use or uses will not unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future, counsel for the City is authorized to acquire the fee interest subject to such existing public use(s) pursuant to Section 1240.510 of the California Code of Civil Procedure.

SECTION 6. **More Necessary Public Use.** Some or all of the real property to be acquired may be subject to easements and rights-of-way appropriated to existing public uses. To the extent that the herein described use or uses will unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future, the City finds and determines that the herein described use or uses are more necessary than said existing public use. Counsel for the City is authorized to acquire the real property appropriated to such existing public use(s) pursuant to Section 1240.610 of the California Code of Civil Procedure. Staff is further authorized to make such improvements to the real property being acquired that it determines is reasonably necessary to mitigate any adverse impact upon the existing public use.

SECTION 7. **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

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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 8. **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 18th day of February, 2025.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2025- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held February 18, 2025 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2025- duly passed and adopted by the Ontario City Council at their regular meeting held February 18, 2025.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

LEGAL DEFINITION
City of Ontario
Ontario Downtown Public Parking Project
As to Assessor Parcel Number 1048-363-01

"Fee," also known as fee simple or fee simple absolute, grants to the City of Ontario absolute ownership in the property to be acquired.

EXHIBIT A

Legal Description

For APN/Parcel ID(s): 1048-363-01-0000

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

THE WEST 78 FEET OF LOTS 4 AND 5, BLOCK 20, TOWN OF ONTARIO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 9, PAGE 43 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND THAT PORTION OF LOT 6, BLOCK 20 OF SAID TOWN OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

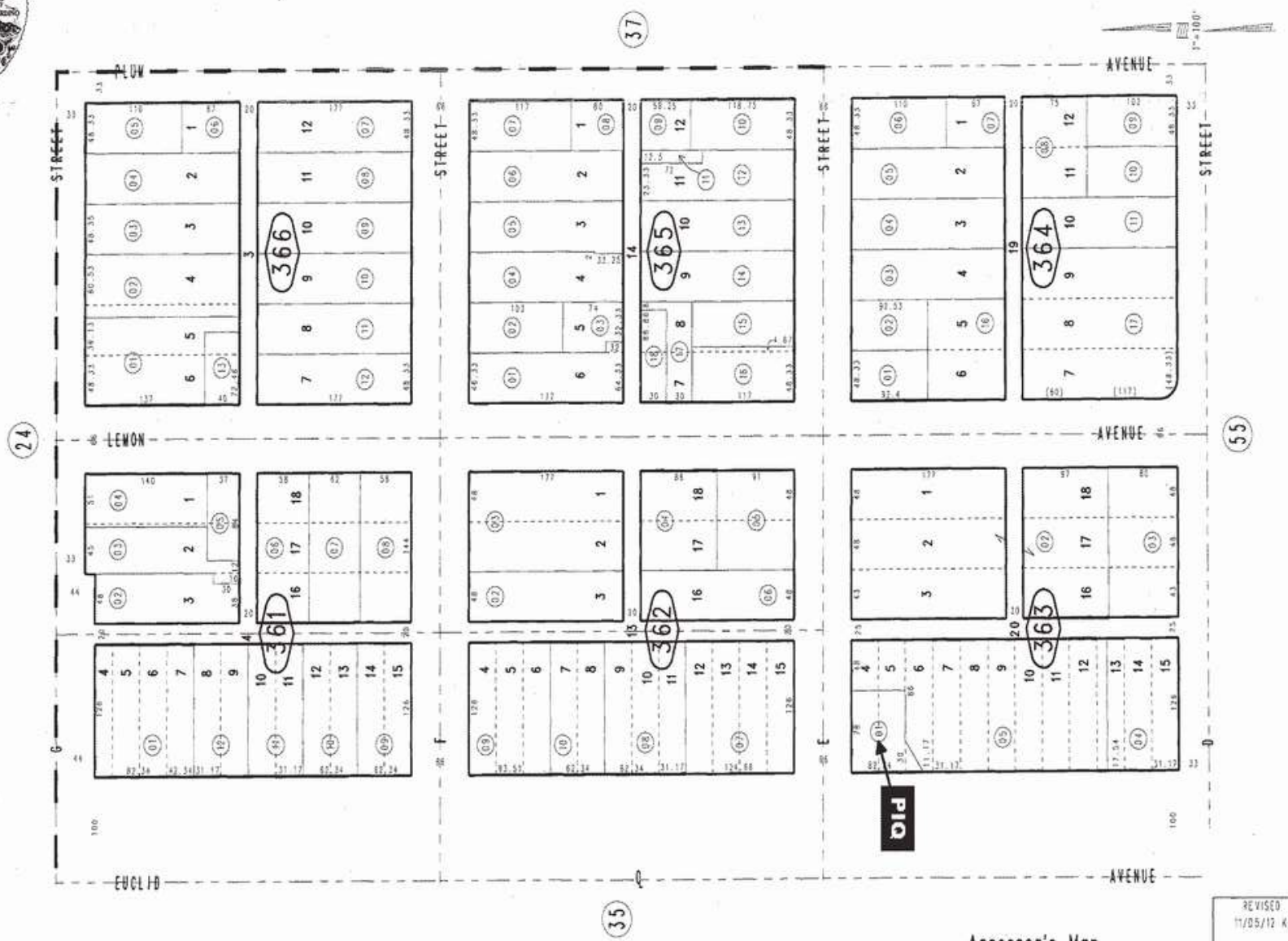
BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 6, BLOCK 20 AND RUNNING EASTERLY AS DISTANCE OF 30 FEET ALONG THE NORTHERLY BOUNDARY LINE OF LOT 6 OF SAID BLOCK; THENCE SOUTHWESTERLY TO A POINT ON THE WESTERLY BOUNDARY LINE OF LOT 6, BLOCK 20, WHICH IS 20 FEET SOUTH OF THE NORTHWEST CORNER OF LOT 6, BLOCK 20; THENCE NORTHERLY, A DISTANCE OF 20 FEET ALONG THE WEST BOUNDARY OF SAID LOT 6 TO THE POINT OF BEGINNING.

THIS MAP IS FOR THE PURPOSE OF AD VALOREM TAXATION ONLY.

Ptn. Town of Ontario
M.B. 9/43

City of Ontario
Tax Rate Area
4051

1048 - 36



October 2004

Ptn. S.E.1/4, Sec.19
T.1S.,R.7W.

Assessor's Map
Book 1048 Page 36
San Bernardino County

REVISED
11/05/12 KA